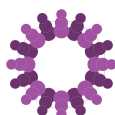


NO PLACE LIKE HOME

*Addressing Exploitation of International Students
in Sydney's Housing Market*

EXECUTIVE SUMMARY

UNSW Human Rights Clinic | July 2019



Human Rights Clinic
UNSW Law



Migrant Worker
Justice Initiative

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Executive Summary

In 2018, there were a record 548,000 international students at universities, vocational colleges, English colleges and schools in Australia -- nearly double the number in 2013.¹ Education providers, government agencies and others are concerned about unscrupulous conduct by landlords and others that leave many international students living in poor housing conditions. These conditions seriously undermine international students' physical, emotional and financial wellbeing, and in many cases, their basic human right to adequate housing.²

Sydney (and other major Australian cities) has very limited dedicated student accommodation on campus or within commercial Purpose Built Student Accommodation (PBSA). As a result, most international students in Sydney rely on private rentals. Cost and other barriers render the formal rental market inaccessible to most international students. Instead, most live in share houses, boarding houses and other insecure arrangements in the marginal rental sector, which they find online. International students are therefore highly vulnerable to deceptive and exploitative conduct both when finding a place to live, and as tenants.

Most international students living in share house arrangements do not have a formal tenancy agreement, leaving them without tenancy rights and other protections under the *Residential Tenancies Act 2010* (NSW) (**RTA**) or other laws. They are therefore 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'). This includes access 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.

International students under 18 also encounter a range of problems in unregulated homestay arrangements.

This report focuses on Sydney because of the large number of international students in the city, and the particular challenges to housing affordability in general. It concentrates on problems international students encounter in the marginal rental market. Though some of these problems are experienced by other disadvantaged groups, their implications are particularly acute for international students who are especially vulnerable to deceptive and unscrupulous practices and have limited family or community support in Australia when problems emerge.

1 Natasha Robinson, 'Australia hosting unprecedented numbers of international students', ABC News (online, 18 April 2018) <<https://www.abc.net.au/news/2018-04-18/australia-hosting-unprecedented-numbers-international-students/9669030>>.

2 United Nations Committee for Economic, Social and Cultural Rights, *General Comment No 4: The Right to Adequate Housing*, 6th sess, UN Doc E/1992/23 (13 December 1991) (**General Comment No. 4**).

Housing problems encountered by international students

International students in Sydney encounter a range of circumstances that undermine their right to adequate housing, and in many cases breach their legal rights under NSW law. They typically encounter multiple housing problems simultaneously.³ These most commonly include:

- 1. Bond issues.** The withholding of bond money by landlords is one of the most common tenancy problems faced by international students across Sydney. Although bond receipts are mandatory under the *RTA*,⁴ international students commonly do not receive a bond receipt and have no proof they paid the bond. Fair Trading NSW provides an online service for the payment, management, and return of bonds,⁵ which means that the bond is paid directly to the Rental Bond Board rather than the landlord. However, many landlords and agents do not offer this option to international students. International students in the marginal renting sector who lack tenancy agreements and are not protected by the *RTA* are the most vulnerable to landlords' improper withholding of their bond, as are students in accommodation classified as a boarding house for which a bond is not required to be lodged. In addition to creating emotional distress, improper withholding of bonds from international students can compel them to remain in poor or dangerous housing, and financially prevent them from seeking alternative accommodation. Landlords and agents commonly require international students to pay a bond that is more than four weeks of rent, which is prohibited under the *RTA*.⁶
- 2. Misrepresentation, deceptive conduct and scams.** Unscrupulous landlords and agents are able to perpetrate scams and deceive international students by taking advantage of cultural differences and international students' lack of awareness of their rights or standard Australian housing practices. International students' vulnerability to exploitation is exacerbated when they organise accommodation through informal avenues (as most do), including when organising their housing from their home country. International students easily fall for online scams that charge upfront for rental properties that do not exist and service providers and media reports suggest these practices are widespread. International students also commonly pay for property online that is falsely described, and/or are given inaccurate or missing contact details for the landlord. In some cases, the landlord liquidates and transfers its assets to a new company (phoenixing) so the international student cannot recover money they paid upfront, or their bond at the end of a lease. International students are also frequently charged excessive rent increases and other excessive costs, including for repairs and cleaning fees. All of these deceptive practices have significant financial consequences that exacerbate the already considerable financial burden that international students face in Sydney.
- 3. Lack of written agreements with tenancy rights.** Although the *RTA* requires landlords to provide a written tenancy agreement, many international students either do not receive a written agreement from their landlord or receive an agreement containing unfair or unlawful terms. Some landlords mis-classify their tenancy as a boarding house and issue occupancy agreements rather than tenancy agreements to attempt to avoid their obligations under the *RTA*. Students in a share house without a written agreement are not covered by the *RTA* and if there are fewer than five students, the arrangement is not a boarding house. These students fall through a significant crack in which they lack tenancy rights and will struggle to recover their bond, and are therefore significantly more vulnerable to unscrupulous conduct and unfair evictions.
- 4. Unfair evictions.** Improper evictions with little or no notice are common among international students, often when the landlord wants the room for a new higher-paying tenant. Landlords also undertake 'informal evictions' by harassing the student and/or making the accommodation intolerable. Emergency accommodation is generally unavailable to international students who are suddenly evicted.

3 Analysis of de-identified Kingsford Legal Centre files relating to advice sought by international students between October 2017-April 2018.

4 *Residential Tenancies Act 2010* (NSW) s 159(3) ('*RTA*').

5 'Rental Bonds Online', *Fair Trading NSW* (Web Page) <<https://www.fairtrading.nsw.gov.au/housing-and-property/renting/rental-bonds-online>>.

6 Data obtained through case analysis of Kingsford Legal Centre files on tenancy matters for international students between October 2017 and April 2018 ('Kingsford Legal Centre case analysis'); *RTA* s 159(1).

5. **Poor living conditions.** Many international students live in overcrowded housing – either knowingly in order to make accommodation affordable, or through deception where they do not expect to be sharing with many others and do not receive the financial benefit of overcrowding because each tenant is overcharged. A substantial proportion of international students live in accommodation that is unsafe, or in which they feel unsafe, particularly in overcrowded conditions.
6. **Bullying, harassment and assault.** International students confront bullying behaviour or harassment by landlords, especially when the landlord lives with the student as a head tenant. Many are fearful of addressing this behaviour and other issues with their accommodation because they lack alternate affordable accommodation options, or because landlords threaten reporting the student to Immigration if they take action.
7. **Discrimination.** International students report racial discrimination when searching for accommodation, and in the terms on which housing is offered.

Factors that prevent international students from securing adequate housing or leaving inadequate housing

International students confront numerous intersecting barriers to finding secure, safe and affordable housing in Sydney. These push students into precarious and inadequate living conditions and render them vulnerable to exploitation and mistreatment by landlords who are aware of international students' limited alternatives. A number of these barriers are connected with the Sydney housing market and are difficult to address. Others are the result of factors which government, education providers and other stakeholders can influence and reform.

1. **Limited availability of affordable housing in Sydney and shortage of student housing.** Affordability of housing is paramount for international students. On-campus accommodation is inaccessible to the overwhelming majority of international students due to its cost and highly limited availability, and there are no regulations requiring universities to provide housing to international students. The limited availability of on-campus accommodation and PBSA means that international students in Australia are forced to rely on private rental accommodation more than international students studying in other countries such as the U.S.A., U.K. and Canada.⁷ The high cost of accommodation on the Sydney rental market is a key factor pushing international students into more insecure and exploitative rentals that violate tenants' rights.
2. **International students' financial constraints.** Although prospective international students are required to demonstrate they have sufficient financial means to live and study in Australia for the duration of their course, many experience substantial financial strain due to:
 - a. the **cost of tuition and living.** Focus group participants indicated that international students believe affordable rent to be approximately \$150 per week for a shared bedroom, or \$200 for a private room. Although most international students prefer to live close to their campuses, analysis of median rents in those areas suggests they are unaffordable to many international students without overcrowding.
 - b. the **uniquely high cost of public transport in NSW**, the only state that denies student travel concessions to international students. This offsets financial benefits of accommodation further from campus, and compromises the physical safety of those who choose to walk home at night to avoid public transport costs.

⁷ Terry Burke, 'Does Australia Have a Competitive Disadvantage in Student Accommodation?' (Discussion Paper, International Education Association of Australia, 2015), 3.

- c. **visa conditions restricting employment** to 40 hours per fortnight, coupled with widespread and substantial underpayment of international students.⁸ Together, these factors limit international students' capacity to afford adequate housing. They restrict the weekly income students can demonstrate when applying for housing, making them less appealing tenants than other groups seeking low cost housing.

3. Inaccessibility of the formal rental market to international students through real estate agents. In addition to work restrictions, international students often cannot submit competitive tenancy applications as they lack steady income or evidence of their pay through payslips or bank statements because they received their wages in cash. They generally lack local references and documentary evidence of rental history; proof of overseas history, references or funds are often not accepted. This is compounded by the temporary nature of their stay in Australia.

4. Lack of essential information pre-departure and in Australia. Because of the inaccessibility of student housing and the formal rental market, most international students find accommodation through social media and other informal channels. The majority organise their accommodation while they are still overseas, through two main methods: informal platforms for finding share house or sub-lease arrangements (e.g. Gumtree, Facebook, Flatmates.com.au, WeChat), and companies that promise to arrange international students' accommodation. In both cases, students generally pay upfront deposits and with no ability to inspect a property, leaving them highly vulnerable to deceptive conduct, unlawful charges and scams. International students are commonly unable to accurately evaluate potential housing and identify "red flags" because they are unfamiliar with standard practices, real estate terms, and tenancy rights in NSW, and do not know how to find decent affordable housing or where to seek legal advice. This also prevents them from insisting on conditions (such as a written tenancy agreement or bond receipt) that are essential to protecting themselves when problems arise. International students generally get their information on housing from family or friends, but they want to receive more useful information on housing from their education providers via email and social media.

5. Lack of access to justice and help to resolve problems. International students generally do not know where to go for legal assistance when housing problems arise. Cultural and language differences also deter some international students from seeking help. Those who contact legal services often encounter long wait times as the demand for assistance far outweighs organisational capacity in Sydney. Those legal services that advise students on tenancy issues do not have capacity to represent many students in claims against their landlords beyond informing them about their rights and options. As noted above, many international students, including those in share houses without a written agreement and those in boarding houses, cannot access NCAT to enforce key tenancy rights under the *RTA*. International students who have rights as a tenant under the *RTA* face a range of barriers to filing and succeeding in a claim against a landlord in NCAT. The vast majority require legal assistance and representation. They face further barriers including a lack of necessary documentation, cost, and the urgency and/or time-consuming nature of housing claims. International students have limited time available to pursue claims amid significant work and study commitments and pressures, and many return home immediately after moving out which prevents them from pursuing their bond or other claims (a factor built into exploitative landlord business models). International students' inability to enforce their rights is compounded by a lack of government enforcement of relevant laws that protect tenants in NSW. This includes limited exercise of investigation powers by NSW Fair Trading and key local councils (besides City of Sydney), and the Overseas Student Ombudsman's non-acceptance of housing-related complaints.

⁸ Laurie Berg and Bassina Farbenblum, *Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey* (Report, November 2017) 6.

Impact of insecure housing on Sydney's international students

Lack of a safe, adequate and stable place to live profoundly impacts students' physical and mental wellbeing, creating new issues or magnifying existing problems. This includes a significant impact on students' mental health, with housing issues creating high levels of psychological distress that compound students' concerns regarding their studies, finances and work. International students' housing experiences can substantially impact on their perceptions of Australia and their self-perception. Students' academic performance and class attendance are often affected by stress, poor sleep, lack of a safe quiet place to study, or time required to deal with unacceptable living conditions including looking for a new place to live at short notice. Students' academic performance and mental health are affected by the financial impact of housing problems, including the need to work more hours to cover a sudden rent increase, or to secure alternative accommodation when they need to leave poor or unsafe accommodation, even more stressful when they are unable to recover their bond or other money paid. Students face an even greater financial burden if they need to repeat a subject due to inadequate class attendance, which may lead to the ultimate penalty of losing their visa due to unsatisfactory course completion.

Conclusion and Recommendations

A considerable proportion of international students in Sydney (and other Australian cities) do not currently enjoy the basic human right to live in a place that is legally and physically secure, affordable, accessible, habitable, and has the facilities necessary for its occupants to live in security, peace and with dignity.⁹ A range of actions can be taken by the NSW and Commonwealth governments, local councils, education providers and other key stakeholders to reduce students' vulnerability to deceptive and exploitative conduct by landlords and others, and enable them to obtain assistance and swiftly obtain remedies when their rights are violated.

A. Increase Access to Adequate Affordable Housing

- a. Increase availability of quality affordable accommodation for international students.
- b. Improve international students' capacity to pay for better quality accommodation, including by extending eligibility for travel concessions to full-time international students.
- c. Education providers and the NSW government should provide emergency support services to ensure international students have a safe place to stay if they need to leave accommodation.

B. Improve International Students' Access to Information and Tenancy Services

- a. The NSW government (including StudyNSW and Fair Trading NSW) should collaborate with education providers, tenants/legal assistance services, local councils and international student groups to develop and deliver targeted information that enables international students to identify adequate housing, avoid unscrupulous housing practices, and seek help for problems when they arise.
- b. The NSW and Commonwealth governments should substantially increase availability of services to provide international students with tenancy advice and legal assistance to enforce their rights, including through a centrally located NSW-government funded International Student Hub with phone and online chat services.
- c. Universities should provide a dedicated tenancy (and employment) advice and legal service on campus, staffed by supervised international students.

⁹ *General Comment No. 4* (n 2) [7].

C. Establish Accountability of Unscrupulous Accommodation Providers and Enable International Students to Identify Quality Providers

- a. Education providers, local councils, NSW Fair Trading, international student groups and tenancy/legal assistance services should collaborate, ideally in the form of a well-resourced Taskforce, to share information on scams and unscrupulous practices reported by international students, identify repeat offenders, instigate investigations, and publish findings of unlawful conduct by specific providers. In tandem, the Commonwealth government should establish a further Phoenixing Taskforce focused on individuals who provide accommodation and other services to international students (and other temporary migrants), and local councils with significant international student populations should establish their own centralised investigation system similar to the City of Sydney with appropriate referral pathways.
- b. The NSW government should implement a code of practice for commercial student accommodation to establish a clear set of standards regarding quality and enforcement of tenants' rights, and a related accreditation process. The NSW government should also establish a registration scheme for homestay providers.
- c. NSW and Commonwealth regulatory reforms should be implemented to close loopholes that enable unscrupulous landlords to evade accountability.

D. Strengthen Rights and Access to Justice

- a. 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.
- b. Amend the *Residential Tenancies Act 2010* (NSW) 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.
- c. Introduce reforms to NSW Civil and Administrative Tribunal processes to increase accessibility for international students.



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