

Victorian Equal Opportunity & Human Rights Commission

submission to

Victorian Overseas Student Taskforce

24 October 2008



Victorian Equal Opportunity
& Human Rights Commission

Introduction

The Victorian Equal Opportunity and Human Rights Commission (the Commission) commends the Victorian Government on the establishment of the International Student Experience Taskforce (the Taskforce) considering how to improve the experience of international students studying and living in Victoria.

The Commission is an independent statutory body that administers both the *Equal Opportunity Act 1995* (EOA) and the *Racial and Religious Tolerance Act 2001* (RRTA). Functions undertaken by the Commission include conciliating individual and representative complaints about discrimination, sexual harassment and racial and religious vilification; providing education about equality of opportunity, racial and religious tolerance and human rights; undertaking projects and activities aimed at eliminating discrimination and racial and religious intolerance; conducting research and providing legal and policy advice.

In addition the Commission undertakes specific functions in relation to the *Charter of Human Rights and Responsibilities Act 2006* (the Charter). These include providing an independent assessment of how well State and local Government comply with the Charter, and investigating particular human rights issues and concerns.

The Commission welcomes the opportunity to make a submission to the Taskforce. Consistent with the Commission's obligations, this submission adopts a human rights framework in examining the issues under consideration by the Taskforce.

The submission provides an overview of human rights considerations facing international students, including an analysis of the rights engaged by each of the subject areas that the taskforce is concentrating on. It emphasises the human rights aspects of the taskforce's brief and proposes a human rights based process for the Taskforce inquiry, report and outcomes.

The submission is based on a limited number of complaints formally made to the Commission. Information is also drawn from education sessions informing international students about their rights and responsibilities under human rights laws that have been undertaken in partnership with academic institutions and community organizations.

The submission examines the systemic factors driving discrimination and other human rights breaches experienced by international students. It recommends the Taskforce consider strategic responses to these issues.

Recommendations also focus on how to support and encourage international students to assert their rights under Victorian law. This includes addressing systemic barriers currently impacting on international students' capacity to understand and navigate complaint mechanisms, as well as preventative approaches.

Human rights context

As the Taskforce will be aware, the Charter protects and promotes a range of human rights, freedoms and responsibilities. It is an important step in fostering an inclusive human rights culture in Victoria. The Charter focuses on ensuring that human rights are taken into account at the earliest stages of policy development by placing a direct obligation on government to act compatibly with human rights.

As identified in our letter to the Taskforce of 13 October 2008, there are sound policy reasons for the Taskforce to frame its analysis and recommendations in light of Charter obligations. There is also an economic imperative to do so.

Education is now Victoria's largest export. Media reports suggest that international education contributes \$3.9 Billion to the state economy.¹ Yet a 2005 Monash University study found that half the international students interviewed had suffered from discrimination. One in 10 said they felt unsafe in Australia.² Human rights breaches, exploitative practices and discriminatory treatment risks Victoria's reputation as an international education provider and the economic benefits the industry brings.

Improved stakeholder relations, reduced risk of complaints, improved transparency and accountability and enhanced organisational reputation for education and other service providers are all potential benefits of adopting a rigorous approach to human rights compliance and promotion.

Issues raised by the Taskforce go directly to the human rights of international students with corresponding duties owed by educational institutions, service providers and government. Taskforce proposals will have a stronger chance of being successfully implemented if those directly affected by the issues are active participants in the Taskforce's deliberations and outcomes.

Further, the Taskforce report should include a human rights assessment of each of its recommendations, including a clear timeframe for implementation.

Legal context

'International students have rights not simply as consumers - which is the sense in which their rights are recognised in Australian law - but in four main areas: (1) as human beings (which includes legal, civil, social, political and economic rights); (2) as students in formal education, which includes rights to pastoral care; (3) as consumers; and (4) as employees, given that the majority of international students work while in Australia'.³

The Charter provides protection to all people in Victoria, including international students. They are also protected by the provisions of the EOA and the RRTA.

¹ Sushi Das 'Taskforce to study overseas students' *The Age* 19 September 2008, Melbourne

² Deumert, Marginson, Nyland et al, 2007 *The Social and Economic Security of International Students in Australia: Study of 200 student cases, Summary Report*, 3

³ Ibid 2

State higher education providers such as TAFE are public authorities and are bound by the Charter.⁴ This obligation binds them in all aspects of their operation, extending beyond provision of education services to campus employment, welfare services and the like.

The public authority status of universities is less clear cut, however the favoured view is that universities are public authorities and a contrary approach would contain unnecessary risk.

Private education providers are regulated by the Commonwealth under the *Education Services for Overseas Students Act 2000* (ESOS). In common with other higher education providers, they are also required to be accredited by the Victorian Registration and Qualification Authority (VRQA).

While the VRQA cannot directly impose human rights obligations on entities that are not public authorities, discharging their own obligations will require the VRQA to scrutinise the conduct of private providers. A failure of VRQA to take reasonable steps to identify exploitative and unfair conduct on the part of private providers and deal with it proactively may breach their obligations under section 38 of the Charter.

Further, although private actors are not directly bound by the Charter, courts and tribunals are required to interpret all legislation in a way that is compatible with human rights, so far as this is possible given the purpose of the relevant statutory provision. In practice, this means that laws regulating landlord and tenant, employer and employee, and consumer relationships are to be interpreted in light of the Charter.

All three types of education providers are bound by the EOA as 'educational institutions'.⁵ Private employers, landlords and other service providers are bound by the EOA.

All persons are bound by the RRTA.

In addition, Victorian occupational health and safety, residential tenancy, consumer and workplace laws are all engaged and relevant to the Taskforce inquiry.

Rights engaged

Table 1 (attached) sets out how Charter, EOA and RRTA rights engage with each of the priority issues the Taskforce is considering. It also includes information drawn from complaints received by the commission.

Where complaints have been made to the Commission, these have tended to be a combination of race and age (youth) discrimination claims in the areas of accommodation, employment, and education.

It should be noted however, that international students face considerable barriers in knowing about and asserting their individual rights. This has three important policy implications.

⁴ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 4(c)

⁵ *Equal Opportunity Act 1995* (Vic) s 4.

First, an absence of complaints data serves to mask the extent of the problem, increasing reliance on anecdotal reports as the basis of determining an appropriate policy response. This may lead to incorrect assumptions and the risk of wasting resources on strategies that do not work.

Second, it reveals the urgency of systemic responses to the issues facing international students. Both in identifying and implementing prevention strategies (so that students rights are not breached in the first place), and in reforming the international student market so that perverse incentives, that exacerbate exploitative practices are removed. It also reveals the need for a systemic response to the current information gap which is driving, at least part of, the barriers to international students asserting the clear legal rights.

Finally, it reveals a disconnect between a sole reliance on an individual complaints based system and the practical realisation of human rights. Particularly amongst a population group that may be isolated, face language barriers and be reliant on exploitative employment and/or housing arrangements in order to survive.

Systemic barriers to asserting individual rights

The right to recognition and equality before the law is enshrined in section 8 of the Charter. True equality requires people to be aware of and able to access their rights and participate meaningfully in legal processes that impact upon them. International students can face considerable barriers to the enjoyment of this right, not only because of issues related to language, but also a failure on the part of all involved to appreciate the impact of cultural differences.

Due to the temporary nature of their student visa and limited understanding of Victorian laws and systems international students are unlikely to make formal complaints. This includes making complaints to the Commission.

The Commission has been told by international students that they fear making complaints about employers and education providers in case this jeopardises future employment and/or permanent resident status. Similar concerns are likely to arise as regards housing complaints, particularly in a highly competitive rental market.

Systemic issues, such as the 8303 student visa condition which prohibits activities which are 'disruptive' may cause fear and confusion amongst students.⁶ This visa condition may also be miscommunicated by unscrupulous operators to frighten students into not complaining.

⁶ A discretionary condition may be applied to a student visa which states 'You must not become involved in any activities that are disruptive to, or in violence threatening harm to, the Australian community or a group within the Australian community'. See <http://www.immi.gov.au/students/visa-conditions-family.htm> at 21 October 2008

Systemic issues driving discriminatory behavior

The Commission notes that for at least some students, the factors driving them towards less scrupulous landlords and employers relate to immigration rules such as the \$12,000 living expenses requirement and the 20 hour a week employment provision. The Commission notes that the living expenses figure has not been indexed since its introduction.

We also note that if the \$12,000 figure was to be revised to a realistic amount that this may impact negatively on the market. However there is little long term gain in relying, at least in part, on a sub-sector of the market that either lives in poverty or is exploited as an unintended consequence of existing rules.

While the immigration rules are beyond the scope of the Taskforce, the Commission notes that for many international students, indeed for many domestic students, working more than 20 hours a week is a necessity - not least because of the high costs of rental accommodation.

A forum convened by the Centre for Multicultural Youth Network Meeting on *International students and community connection*,⁷ identified the following issues:

- There has been a large increase in the number of international student places, but not the housing supply to meet this increase.
- At the University of Melbourne Student Housing Service, for every one local student, two overseas students seek assistance;
- Where housing is available it tends not to be affordable, for example one bedroom apartments at \$300 per week; and
- To access acceptable, entry point share-housing many students spend 40-50% of their budget on rent, well beyond the 'housing stress' point of 30% of income.⁸

The Commission also notes that existing legislative arrangements may also leave the door open to exploitation or at least to less regulatory protection in tenancy arrangements. For example, the exception contained in Section 22(2) *Residential Tenancies Act 1997* (RTA) for campus accommodation, which extends to off campus accommodation where a written agreement to provide accommodation exists between the institution and the owner or operator of the premises. Arguably this could be used by less than reputable educational providers operating in conjunction with landlords to provide sub optimal accommodation beyond the protective scope of the RTA.

The Commission notes that specific initiatives such as 'Home stay' programs may be of benefit to some students, although others may prefer to live independently. If 'Home stay' is to be further promoted as a housing solution, both providers and consumers will require training and support. Further resources will be required for inspection and compliance to ensure that students are not exploited in such arrangements.

⁷ Centre for Multicultural Youth, *Statewide Multicultural Youth Issues Network Meeting Report : International students in our community*, 26 June 2008.

⁸ Ibid 4-5

Barriers to enforcement

As noted above, the complex relationship between visa rules, employment patterns and housing costs appears to leave some international students vulnerable to exploitation through perverse incentives to seek out and stay in arrangements which potentially breach rights.

This in turn creates particular challenges for enforcement agencies (such as Office of the Workplace Advocate, Consumer Affairs Victoria (CAV), Victoria Police) who in undertaking compliance enforcement may force students further into the informal economy or into homelessness.

Strategies

Information and support

The provision of accessible rights information and education is critical to the realization of the human rights of international students. Information provided pre departure, upon arrival and on an ongoing basis needs to stress that discrimination and exploitation is unlawful.

The Commission recognizes that many education providers, student organizations, government departments and councils are working on the ground to provide information, support and advocacy. This is to be commended.

However, we note that despite these efforts, some international students remain exposed to discrimination and exploitation. This suggests that it is necessary adopt a stronger, more sustained effort to ensure students are not only aware of their rights but have the confidence to assert them. Such information needs to be backed up by advocacy and support services to assist students to make their way through what can be complex legal processes in order to realize their rights.⁹

The Commission notes that a human rights based approach would ensure access to culturally appropriate information, support and advocacy, targeted locally through a place based approach, using agencies, networks and modes that international students know and trust.

In common with the rest of the community, international students are not a homogenous group. A range of information, support and advocacy strategies will be needed. For example, different strategies will be needed to communicate with and build trust with isolated students (potentially most likely in smaller, private settings where the entire cohort is international students).

In addition a gendered analysis of the issues facing international students, especially for younger women is needed. This would translate into specific

⁹ The Monash study found that 75% of international students interviewed reported that better backup and support services are required.

tools/campaigns and modes for engaging with female international students about their rights, safety etc and where to seek assistance.¹⁰

Education providers could further contribute to rights awareness by integrating education about rights, responsibilities and the Victorian legal system in core curriculum. Potentially this could build upon existing workplace law and OHS teaching which should already form part of many of the courses taught, particular by vocational education providers.

In regards to discrimination complaints, community education also requires face-to-face sessions with international students which explain how the Commission's complaints handling processes operate, how to make confidential complaints and how to access support services such as student organizations and community legal centres. Similar sessions may also be required for other services.¹¹ Such community education will require additional resources.

The Commission is mindful that information needs to be succinct, and connect people to help when they need it. However, information and community education strategies cannot stand in isolation. A more sustained effort focused on delivering behavioural change needs to be deployed. The outcome here must be that international students feel able to make complaints and assert their rights without fear.

Prevention

Preventing discrimination and other human rights breaches in the first place is a clear aim of the Charter, and of the Taskforce. Employers, service providers, landlords and agents also require targeted education, backed up by enforcement.

The Commission notes that in at least some parts of Victoria, and in some employment sectors, there may be a pattern of 'within community' employer/employee and landlord/tenant relations. This would suggest that preventative work with small to medium enterprises in key sectors will require multi-lingual information resources, education activities and compliance staff.

Ensuring a comprehensive approach

As noted by VicHealth in the report *More than tolerance: Embracing diversity for health*, strategies for the primary prevention of interpersonal discrimination need to go beyond just information and include:

- Direct participation programs;
- Communications and marketing, including whole of population and geographically targeted campaigns [in this context this could include campaigns that send a message of zero tolerance of racism against international students];

¹⁰ The commission also notes that young male international students are at particular risk of violence in public spaces, and that targeted campaigns through their networks would be also necessary.

¹¹ The Commission notes the proactive work of Consumer Affairs Victoria and Victoria Police on some campuses.

- Community development;
- Workforce development, including anti-discrimination training;
- Advocacy;
- Policy and legislative reform, including addressing institutional and systemic discrimination; and
- Research and monitoring.¹²

These principles are equally valid for human rights awareness and compliance campaigns, as well as personal safety initiatives.

The Commission notes the successful 'Willkommen' initiative developed as part of the *Safer Students Campaign*. This is a collaborative project between the University of Canterbury, Christchurch Polytechnic Institute of Technology, Te Runanga o Ngai Tahu (South Island Tribal Council), Christchurch City Council, New Zealand Police and the New Zealand Human Rights Commission. It is an information campaign to welcome migrants and international students to Canterbury. The project is also 'working towards ensuring that migrants and international students know their rights in terms of racial safety and harassment as well as to develop an accessible reporting method for such incidents'.¹³

This campaign arose following racist attacks against international students. With resources, the Commission could be a partner in such an initiative, localised to Victorian conditions.

Strengthening the regulatory environment

The Commission notes that the gateway for accreditation as an education provider is effectively the point of registration as a registered training organization (RTO). It may be that this filter is failing to identify providers that are unlikely to operate to proper standards.

While the Commission acknowledges the efforts being taken by the VRQA to monitor and enforce the *National Code of Practice*¹⁴ for education providers, we note that the Code does not specify anti-discrimination or human rights information and contact points under legal information provided to students. Nor does it specify quality standards for the provision of welfare related student services, merely that there be a contact officer. Improving the protections provided under the Code through clearer, more precise standards may assist in strengthening the arm of regulatory bodies such as the VRQA.

¹² Victorian Health Promotion Foundation, 2007 *More than tolerance: Embracing diversity for health* p 13

¹³ See

<http://www.hrc.co.nz/home/hrc/racerelations/tengirathenzdiversityactionprogramme/participants2008/lincolnuniversity.php>

¹⁴ *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*

Recommendations

The Commission encourages the International Student Experience Taskforce to use a human rights based framework to explore responses to improve the experience of international student studying and living in Victoria.

The Commission recommends:

Systemic responses

1. That the Taskforce report include an analysis of systemic factors driving some international students into discriminatory or exploitative work and/or housing arrangements.
2. The Taskforce identify and pursue opportunities for state and federal interventions to reduce the impact of these systemic factors.
3. That the Victorian Government enter into dialogue with the Commonwealth to identify and pursue improvements to the standards contained in the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* including:
 - Improved provision of welfare related student services
 - To include human rights and anti discrimination rights information and contact points under 'legal information'
 - To require education providers to include human rights compliance in their procurement and contracting arrangements.

Specific initiatives

4. That the Victorian Government provide additional resources for a comprehensive primary prevention intervention including the following elements:
 - Pre and post arrival information for students, including information about rights under the *Charter of Human Rights and Responsibilities Act 2006*, *Equal Opportunity Act 1995*, *Race and Religious Tolerance Act 2001* and other key legislation.
 - Culturally appropriate, targeted, place based rights education [discussed further in recommendation 5].
 - Workforce development, including anti-discrimination training targeted at high risk employers including small to medium enterprises in the retail, hospitality, tourism and taxi industries
 - Preventative campaigns with private landlords and education institutions, in partnership with Consumer Affairs Victoria, Real Estate Institute of Victoria and education providers in

contractual or referral arrangements with accommodation providers.

- Communications and marketing, including whole of population and geographically targeted campaigns that promote respect, diversity and human rights and send a zero tolerance of racism message.
5. That the Victorian Government provide additional resources to the Commission and other key agencies to partner with agencies and networks that international students trust to deliver rights education and support.
 6. That the Victorian Government provide additional resources to student organizations to facilitate intercultural contact strategies that engage local students with international students, and promote the benefits to be gained from this experience.
 7. That education about rights and responsibilities and the Victorian legal system be integrated and a compulsory part of the education curriculum.

Human rights compliance and promotion

8. That the Taskforce report include a human rights assessment of each of its recommendations, including a clear timeframe for implementation.

A human rights analysis of international student complaints and issues

Taskforce Issue	Rights engaged	Legislation	Comments	Case Studies reported and identified by the Commission ¹⁵
Accommodation	<p>Recognition and equality before the law</p> <p>Privacy</p> <p>Protection of families</p> <p>Unlawful discrimination</p> <p>Sexual harassment</p> <p>General tenancy rights</p>	<p>Charter s 8</p> <p>Charter s 13</p> <p>Charter s 17</p> <p>EOA s 50-56</p> <p>EOA s93</p> <p>Residential Tenancies Act 1997</p>	<p>Guarantees equal protection and freedom from discrimination on basis of EOA attributes.</p> <p>An expansive view of the right to privacy and protection of families and children includes protection of the home. ¹⁶</p> <p>Accommodation discrimination on the basis of race, age, gender.</p> <p>Exception re campus and off campus accommodation where a written agreement exists between the institution and the owner or operator of the premises to provide accommodation for students. [RTA s 22 (2).]</p>	<p>Students reported discrimination when applying for rental properties.</p> <p>To access acceptable, entry point share-housing many students fall into housing stress, that is paying more than 30% of their income in rent.</p> <p>Potentially open to abuse by unscrupulous education providers and landlords.</p>

¹⁵ The case studies identified are based on claims by international students provided to the Commission through community consultations and research by other agencies. Complaints made to the Commission are covered by secrecy provisions and as a result the Commission is cautious when raising and discussing complaints made to the Commission.

¹⁶ *Director of Housing v TP (Residential Tenancies) [2008] VCAT 1275 (24 June 2008)*. In this case, VCAT considered that the rights to privacy and family, and to protection of children and the family unit, were relevant when interpreting the *Residential Tenancies Act* when determining whether an application for an order of possession by the Director of Housing should be granted as against a single mother of four children.

Safety	<p>Recognition and equality before the law</p> <p>Freedom of movement</p> <p>Security of the person</p> <p>Anti-vilification law</p>	<p>Charter s 8</p> <p>Charter s 12</p> <p>Charter s 21</p> <p>RRTA s 8</p>	<p>Relates to accessibility of services to protect personal safety including policing, potentially also campus security services</p> <p>Potentially engaged if fear of physical attack leads to restrictions on movement.</p> <p>Government agencies may be required to take steps to protect a person from the actions of another person where their security is at risk.</p> <p>Subject to specific exceptions</p>	
Employment	<p>Recognition and equality before the law</p> <p>Unlawful discrimination</p> <p>Sexual harassment</p>	<p>Charter s 8</p> <p>EOA Part 3</p> <p>EOA Part 5</p>	<p>8(3) includes effective protection against discrimination</p> <p>Exceptions:</p> <p>Domestic/personal service [s 16]</p> <p>less than 5 employees [s 21]</p> <p>Youth wages [s 27]</p>	<p>One student raised that it is common for students to be made to do work for no payment for a month before being given paid employment. In one instance a male student worked for a month on night shifts at a petrol station without pay.</p> <p>Indian students paid different amounts from Australian born employees.</p> <p>Pay varying from week to week.</p> <p>Working as a sole security guard on a construction site for 72 hours without a break as well as other OHS issues.</p>
Social inclusion:	Recognition and equality before the law	Charter s 8		<p><i>Transport Act 1983</i> (Vic) s 220DA excludes overseas students from fare concessions.</p> <p>Freedom of movement does not guarantee</p>

Connectivity including transport	Freedom of movement	Charter s 12		public transport, however absence of concessions may contribute to poverty and lack of connectivity experienced by students
Language barriers	Freedom of expression	Charter s 15	Includes freedom to receive information [s15 (2).]	
	Freedom of association	Charter s 16	May relate to freedom of international students to organise	
Community participation	Taking part in public life	Charter s18	An expansive view of this right extends to a general right of participation – this also goes to the issue of participation in taskforce processes	
	Anti-vilification	RRTA s 8	Relates to safety but also community messaging around zero tolerance of vilification	
Quality and coordination of information provision	Recognition and equality before the law	Charter s 8	Educational institutions, NGO's acting on behalf of the state of Victoria will be bound directly by the Charter as regards non-discrimination in servicing.	Allegations of less favourable treatment by academics, who it is alleged automatically assume that student English proficiency is poor and treat them less favourably including by marking them down for not participating in discussions.
	Freedom of expression (receive information)	Charter s 15 (2)		
	Discrimination in provision of	EOA s 42	Includes services at no charge, such as	Claims by students of misinformation and

	goods and services		information services	<p>breaches of education contracts. Allegations of misleading advertising about the facilities offered</p> <p>The streamlining of student services on-campus and the introduction of voluntary student unionism has increased the issues for international students and reduced support.</p> <p><i>Sexual health</i></p> <p>The Centre for Culture Ethnicity and Health in consultation with service providers has been told anecdotally that there is limited knowledge of sexual health issues amongst overseas students, resulting in students presenting with high rates of sexually transmitted infections and unwanted pregnancies.</p> <p><i>Problem Gambling</i></p> <p>The Centre for Culture Ethnicity and Health in consultation with Gamblers Help (City) has been told anecdotally that there is an increasing number of international students presenting with gambling problems.</p>
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