



Office of the Anti-Discrimination Commissioner

Celebrating Difference, Embracing Equality

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2 August 2009

Committee Secretary
Senate Education, Employment and Workplace Relations Committee

By email
ewer.sen@aph.gov.au

Dear Committee Secretary

Re: Inquiry into the Welfare of International Students

Thank you for the opportunity to provide a submission to the *Inquiry into the Welfare of International Students*.

By way of background, the Office of the Anti-Discrimination Commissioner (OADC) administers the Tasmanian *Anti-Discrimination Act 1998* (the ADA). The ADA prohibits discrimination (including on the basis of race and religious belief or affiliation and religious activity), inciting hatred and other specified conduct and provides for the investigation and conciliation of, and inquiry into, complaints in relation to discrimination and prohibited conduct. My other roles and functions as Commissioner include consulting and inquiring into discrimination; disseminating, preparing and publishing guidelines; and undertaking research and educational programs to promote attitudes, acts and practices against discrimination and prohibited conduct.

The ADA prohibits discrimination in a number of areas of public life. These areas are listed in section 22:

- (a) Employment (paid or unpaid work);
- (b) Education and training;
- (c) Provision of facilities, goods and services;
- (d) Accommodation;
- (e) Membership and activities of clubs;
- (f) Administration of any law of the State or any State program (in relation to specified attributes, not including race and religious belief or affiliation and religious activity); and
- (g) Awards, enterprise agreements or industrial agreements (in relation to specified attributes, not including race and religious belief or affiliation and religious activity).

The scope of s 22 is broad in that it applies to any activity by or against a person (complainant or a respondent) engaging in any activity in connection with the areas listed above.

In addition, s 104 of the Act imposes an obligation on organisations to ensure inter alia that: -

- (a) its members, officers, employees and agents are made aware of the discrimination and prohibited conduct to which this Act relates; and
- (c) no member, officer, employee or agent of the organisation engages in, repeats or continues such conduct.

An organisation is to take reasonable steps to ensure that no member, officer, employee or agent of the organisation engages in discrimination or prohibited conduct: s 104(2). An organisation that does not comply with this section is liable for any contravention of the Act committed by any of its members, officers, employees and agents: s 104(3).

The OADC comments as follows in relation to the specific issues for consideration:

a) the roles and responsibilities of education providers, migration and education agents, state and federal governments and relevant departments and embassies, in ensuring the quality and adequacy in information, advice, service delivery and support with particular reference to:

i) student safety

A key issue is encouraging victims of racially motivated crime to report to police. The OADC has done survey work relevant to safety and social inclusion in relation to race and religion. A racism survey/questionnaire was developed to capture anecdotal reports of abuse and attacks in the Tasmanian community against humanitarian entrants, international students and migrants. The data was collected from 1 October to December 2008 and received 92 returned surveys. A report on the findings will be released in the latter part of 2009.

The OADC has data from the survey which raises safety concerns, for example eggs being thrown out of cars at international students walking on the street. The survey results also showed that several survey respondents had been subjected to racial or religious abuse in public places. Safety in public places, including streets and bus malls, is a concern that has been raised through the survey.

Safety is an issue that should be universally observed and applies to everyone. Nevertheless, police and relevant service providers need to be aware of any problems in particular areas relating to the safety of international students.

The OADC is working with Tasmania Police and the Department of Immigration and Citizenship (DIAC) to develop networks so when problems are raised action can be taken to address issues.

There is a continuing need for a coordinated approach between the police, State and Federal government agencies and local community networks, for example Migrant Resource Centres, Relationships Australia and Centacare. The OADC supports the important role played by government, non-government and community representatives to facilitate liaison between international students and key stakeholders.

Police play a critical role and there is a need to ensure that appropriate funds and resources are available for operational policing in areas where safety problems are identified.

The OADC is also concerned about under reporting of racist abuse. Government and non-government bodies need to work cooperatively to encourage international students to report racist incidents and discrimination.

Contact with community groups through the OADC's community consultation and community education activities does suggest some misapprehension about the role of police and anti-discrimination bodies when reporting racist incidents. Encouraging people to report racial abuse and crime to the police and OADC was a key theme of a workshop the OADC delivered in Hobart on inciting hatred on the 25 June 2009, in addition to promoting awareness of the rights of students to lodge complaints and avenues for protecting their welfare.

ii) adequate and affordable accommodation

There are already statutory provisions in place to prohibit unlawful discrimination in accommodation. The ADA prohibits discrimination on the ground of race in the area of accommodation. If students are denied access to accommodation on the ground of their race or other prescribed attribute they can lodge a complaint. Similar protections exist at a Commonwealth level.

At a practical level the key is to ensure the availability of affordable accommodation, and that international students are aware of the avenues to lodge complaints. Federal and state government agencies need to ensure that affordable housing is available to international students in consultation with educational institutions (for example University Housing Services).

iii) social inclusion

The OADC is of the view that safety and social inclusion are interconnected. If international students don't feel safe it is not a socially inclusive society. Reports of abuse of international students and newly arrived groups is very concerning because it can deter or discourage students from fully participating in all aspects of public life, if they fear for their safety or experience abuse in public places.

Social inclusion means students are treated in a non-discriminatory manner. The main concerns raised anecdotally through community consultation with the OADC are safety because of racial attacks and discrimination affecting employment.

iv) student visa requirements

The OADC notes that visas can be revoked if students don't meet study requirements.¹ However, a concern that has been expressed during community education sessions conducted by the OADC is a fear by students that their visas may also be revoked if they complain about discrimination etc. A workshop has been hosted by the OADC to address this misplaced concern. It does suggest, however, the continuing need to promote and support international students so they are aware of the protections that are available at law if they have grievances about service provision, education etc.

Making a discrimination complaint and indeed any other complaint to administrative bodies has no impact on visas. The OADC is of the view stakeholders (including DIAC) need to reinforce the message that students can complain to the police and other administrative bodies and this will not affect their visa.

A key strategy to encourage students to report discrimination is to ensure that they are aware of their rights and that they can complain about racism without fear of victimisation and persecution. Under the ADA victimisation is unlawful (section 18) providing protection to international students who complain about discrimination. Informing students about their rights and responsibilities is important, particularly timely and accurate advice to prospective students and also when they first arrive in Australia.

DIAC should/could have an educative role at the start of the process when prospective students apply for a visa. When DIAC provide students with information setting out what are their obligations in relation to their visa requirements and responsibilities, they could also provide information to students about their rights under anti-discrimination legislation at a Commonwealth and State level. It is important that students are aware of bodies they can complain to at a State and Federal level if they experience discrimination.

Similarly, the OADC submits there is an opportunity for DIAC, if it is not already being done, to include an information pack to students when they arrive, about the role of police, and anti-discrimination bodies. The information pack could clearly state that in relation to visa issues complaints to anti-discrimination bodies and other administrative bodies are irrelevant to obtaining and holding a visa.

v) adequate international student supports and advocacy

It is critical that support services for international students are adequately resourced and funded. The OADC is of the view that there is a need for an advocacy support service to assist international students who wish to make complaints to administrative bodies for example, anti-discrimination bodies and the Ombudsman. There is no legal or discrimination advocate for international students affected by discrimination.

The OADC supports, where not currently available, the establishment of a legal advocacy service for people who experience racial or religious discrimination

¹ For example, as reported in Healy, Guy, '36 overseas students in detention', *The Australian*, 15 July 2009.

(including international students, students who are new arrivals, and students from culturally and linguistically diverse (CALD) backgrounds). There is a clear need for a funded advocacy service because of under reporting due to fears that students will lose their visa (which is not legally correct), English is often a second language for many of these students, and many of these students are unfamiliar with the Australian legal system. The Service could be organised along similar lines to the Tasmanian Disability Discrimination Legal Advocacy Service delivered by the Launceston Community Legal Centres.

Under section 104 of the ADA there is an obligation for educational providers to educate students about their rights and responsibilities under the ADA. Steps educational institutions should be taking include developing policies and procedures about discrimination and other prohibited conduct, ensuring students are aware of policies and procedures and who to contact if they experience any trouble, and training staff. In relation to the OADC's role, the OADC promotes awareness of these protections through community education programmes including student forums, where information is provided to students about their rights and responsibilities. Even with these steps the OADC doesn't reach the entire audience and there is still the issue of under reporting which is due in part to misconceptions about the role of the police. The OADC can also deliver training to organisations.

In Tasmania, universities and educational institutions have an obligation under section 104 of the ADA to provide information to students and to educate and inform them about discrimination. Educational institutions and universities have an ongoing relationship with students and therefore have an important role to play in supporting students through the delivery of information services.

v) employment rights and protections from exploitation

The ADA prohibits discrimination on the ground of race in the area of employment in Tasmania. Similar protections exist at a Commonwealth level. It is important that information is provided to students so that they are aware of their rights. The suggestion for a funded legal advocacy service would promote this objective.

vii) the appropriate pathways to permanency

No comment.

b) the identification and quality benchmarks and controls for service, advice and support for international students studying at an Australian education institution

Under section 104 of the ADA educational institutions in Tasmania should be providing information to students about discrimination. Whether or not educational institutions are complying with section 104 and have developed policies and procedures, informed students about their rights and conduct training of their staff may be a benchmark for the committee and inquiry to assess the quality of the service, advice and support for international students.

The OADC does not know whether universities are surveying outgoing international students as to the quality of services. If not, the OADC suggests it may be an option for universities to survey outgoing international students about their experiences in Australia. It is possible international students may be more likely to report negative experiences at the end of their stay than at the commencement of their study and this is a good way of obtaining data as to their experiences.

c) any other related matters.

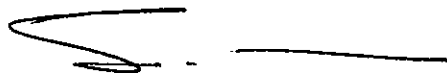
The OADC would support a broad based mass media campaign promoting diversity and the social benefits of having a diverse community. The OADC is of the view the Federal Government should support a broad based media campaign because immigration is a federal responsibility.

The OADC strongly supports the development of a Committee or Committees that brings together key stakeholders that provide services/assistance to International Students as well as representatives from the International Student fraternity, including those families who foster or provide home stay to address identified issues.

It is the view of the OADC that such a committee or committees would aim to provide practical and real assistance, advice and or advocacy for International Students in Australia.

If the Committee has any queries or requires further information, please contact Ms Catherine Edwards, Complaints Manager.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'S. Bolt', with a long horizontal line extending to the right.

Sarah Bolt
Anti-Discrimination Commissioner