

International Student Housing Project Report



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WEstjustice acknowledges the ancestors, Elders and families of the Kulin nations, who are the traditional owners of Western Melbourne, the country we are located on. As we work to achieve a just and fair society we pay our respects to the deep knowledge embedded within the Aboriginal community and Aboriginal custodianship of Country. We acknowledge this land as a place of age-old ceremonies of celebration, initiation and renewal, and that the Kulin peoples' living culture has a fundamental role in the life of this region.



ACKNOWLEDGEMENTS

WEstjustice acknowledges the contribution of participants of the International Student Housing Network ('ISHN'). WEstjustice has been in consultation and discussion with the ISHN throughout this project, and its members included the Office of the Commissioner for Residential Tenancies, Tenants Victoria, Eastern Community Legal Centre, Youth Law, Inner Melbourne Community Legal Centre, Deakin Student Legal Service, Barwon Community Legal Centre, the University of Melbourne Student Union Legal Service, and the Renters and Housing Union.

ENDORSEMENTS:

This report is endorsed by Tenants Victoria, Youth Law, Inner Melbourne Community Legal, Eastern Community Legal Centre, the University of Melbourne Student Union Legal Service and the Renters And Housing Union, and Justice Connect.

This project was generously funded by the Lord Mayor's Charitable Foundation.

Note on the *Residential Tenancies Amendment Act 2018*

The data collection and drafting for this report occurred before the commencement of the *Residential Tenancies Amendment Act 2018 (Vic)* ('RTAA'), and some of the recent amendments may impact a few of the issues discussed to some extent. We particularly welcome the RTAA amendments in respect of the introduction of minimum standards and new bond process, and will need to observe the impact of these (and other amendments) in the future.

The report largely adopts the new terminology of the RTAA, with most references to 'landlord' replaced with 'residential rental provider', 'tenant' to 'renter', and 'tenancy agreement' to 'residential rental agreement'. However, the older terminology is also occasionally used interchangeably.



ACRONYMS AND ABBREVIATIONS

CAV: Consumer Affairs Victoria

COVID-19 Omnibus Act: COVID-19 Omnibus (Emergency Measures) Act 2020 (Vic)

COVID-19 Regulations: Residential Tenancies (COVID-19 Emergency Measures) Regulations 2020 (Vic)

FTRH Agreement: Fixed Term Rooming House Agreement

ISHN: International Student Housing Network

ISALS: International Student Accommodation Legal Service

ISEALS: International Students Employment and Accommodation Legal Service

LGA: Local Government Authority

PHW Act: Public Health and Wellbeing Act 2008 (Vic)

PHW Regulations: Public Health and Wellbeing (Prescribed Accommodation) Regulations 2020 (Vic)

RHO: Rooming House Operator

RT (RHS) Regulations: Residential Tenancies (Rooming House Standards) Regulations 2012 (Vic)

RTA: Residential Tenancies Act 1997 (Vic)

RTAA: Residential Tenancies Amendment Act 2018 (Vic)

RTBA: Residential Tenancies Bond Authority



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1 EXECUTIVE SUMMARY

WEstjustice's International Student Housing Project aims to identify, address, and ultimately reduce some of the renting issues facing international students in Victoria, with a particular focus on insecure housing and the regulation of the rental sector. The project report draws on data and consolidates learnings from WEstjustice's International Student Accommodation Legal Service ('ISALS') and consultations with the International Student Housing Network ('ISHN').

International students are an important part of Victoria's vibrant community, and make a huge contribution to the economy. Yet many international students end up living in insecure housing, including unregistered and non-compliant rooming houses, sub-tenancies, licences and homestays, and other informal or ambiguous situations.

These types of housing are often overcrowded, unsafe and in poor condition, and international students living in such arrangements are significantly more vulnerable to unscrupulous conduct and exploitation by residential rental providers. This report identifies and explores some of the most significant housing issues encountered by international students, including:

- the non-lodgement of bonds with the Residential Tenancies Bond Authority ('RTBA') and the withholding of bonds without cause;
- illegal evictions, which can cause significant stress and put students at risk of homelessness;
- the provision of misleading information by rental providers, which can undermine students' rights as renters and lead to financial exploitation;
- the prevalence of students living in arrangements that fall outside the conventional rental provider and tenant relationship, where it is not clear if they are covered by tenancy laws; and
- misrepresentation, deceptive conduct and scams by unscrupulous rental providers that target international students.

The report finds that international students also face significant barriers in taking legal action and asserting their rights, such as substantial fears over exercising their legal rights, a lack of access to legal information, as well as delays and the complexity of legal processes.

Finally, the report analyses a number of complaints lodged with Consumer Affairs Victoria ('CAV') and the City of Melbourne on behalf of international students, and identifies some of the gaps and limitations in the rental sector's regulatory framework. The report makes the following findings:

- The current regulatory approach is mostly reactive and complaints driven, rather than proactive and investigative, which is onerous on renters who are often not aware of, or not empowered to enforce their rights;
- There is a lack of co-ordination and information sharing between various regulatory authorities and service providers, and particularly between CAV and local councils in respect of rooming houses;
- There are concerns that regulatory authorities very rarely use enforcement options, such as fines and prosecutions, which undermines any deterrent effect of regulation; and
- Complaints may take a long time to investigate, and complainants are often not made aware of their progress or outcome.

From these findings, WEstjustice makes a number of recommendations aimed at improving the regulation of the rental sector and addressing issues faced by international students in Victoria.



2 RECOMMENDATIONS

2.1 Preliminary recommendations

To address some of the issues faced by international students, and improve the regulation of irresponsible rental providers, we make the following preliminary recommendations:

Recommendation 1:

Regulatory authorities to ensure **early delivery of legal education to rental providers** — particularly those that target international students, such as specialist student accommodation companies, rooming house operators and head-tenants (especially those operating commercially) — with a particular focus on:

- Their obligations in respect to the common issues identified in this report; and
- The penalties involved in giving false visa or migration information. To this end, CAV should work as necessary with relevant migration departments.

Recommendation 2:

Regulatory authorities to **be proactive in monitoring compliance** of rental providers on an ongoing basis. This may be, for example, through the creation of a registration or licensing scheme for homestay providers and specialist student accommodation, which sets certain minimum standards and creates commercial, reputational incentives for rental providers that cater to the international student community.

Recommendation 3:

Regulatory authorities to develop a **simple, appropriate and accessible complaints pathway for international students** to report housing issues and providers. This pathway should ensure complainants reach the appropriate authority and receive the same response wherever they make a report, whether by effective referrals between authorities, or by the creation of a single streamlined contact point.

Recommendation 4:

Regulatory authorities to develop and implement a **consistent and cohesive policy and practice** for responding to complaints, which provides for:

- Prioritisation of complaints made by or on behalf of international students, including complaints that involve allegations of misinformation or threats about visas, in acknowledgement of the significant systemic issues students face in housing and exercising their rights;
- Proactive investigation of complaints, including where a complainant is only able to provide limited information about the issue or rental provider;
- Clear and consistent guidelines as to steps that may be taken in response to complaints, including timelines and provision for action where the rental provider is not responsive or chooses not to cooperate;
- Clear referral pathways for complaints to other authorities, so that complainants can expect the same response wherever they report an issue;
- Clear referral pathways to international student support and legal services (such as the Study Melbourne Student Centre, International Students Employment and Accommodation Legal Service (ISEALS), and university legal services), where a complaint or enquiry from an international student is received;
- Timely and transparent communication with complainants about the steps taken and any outcome of the complaint;
- Monitoring, recording, and immediate referral of any punishment or retaliatory action by a rental provider against a complainant;
- The more frequent imposition of penalties, including fines, where offences are committed under relevant legislation; and
- A strategic, systematic response that, in the event of serious and significant breaches that may necessitate the closure of a rooming house, ensures the housing needs of residents are met, for example, through early contact with housing and homelessness services within the local government authority ('LGA').

Recommendation 5:

Creation of a **simple feedback mechanism** to allow international students to provide feedback on the complaints pathway and authorities' responses to complaints.

Recommendation 9:

Victorian education institutions to ensure this information is provided to international students when they are offered a position at the institution, upon their enrolment and at orientation.

Recommendation 6:

Formation of a **network of regulatory authorities, service providers and international student groups** dedicated to improving co-ordination and information sharing between stakeholders to identify and monitor repeat offenders, and report findings of investigations.

Recommendation 10:

Regulatory authorities to ensure **timely and targeted delivery of information about any changes to the law** to international students and rental providers.

Recommendation 7:

Development of a **mechanism for effective information sharing** between CAV and LGAs in respect to reported rooming houses and rooming house operators ('RHOs'), to improve coordination and coverage of regulatory monitoring and enforcement.

Recommendation 8:

Development and delivery of **clear and linguistically appropriate housing information targeted to international students**, with a particular focus on:

- Creating simplified information resources about types of housing for international students, their legal rights and where they can seek further help and make complaints.
- Providing information about the circumstances tenancy issues may, or may not, impact student visas. CAV should work with relevant migration departments to produce clear material about this.
- Engaging with rental providers and education institutions to ensure early provision of these resources, and the Renting a Home: A Guide for Tenants and Rooming Houses: A Guide for Residents and Operator.
- Ensuring all information resources are easily accessible in different languages.



2.2 Longer term recommendations

While the implementation of these preliminary recommendations should go some way to ensure the aims of this project, the issues identified herein clearly indicate the need for greater systemic change. This will require continued efforts by service providers working with international students, education providers, regulatory authorities and the State Government.

Recommendation 11:

Creation of an **infringement notice system** whereby regulatory authorities may issue infringement notices to rental providers that have committed certain offences, particularly, for example, the failure to lodge a bond and the failure to register a rooming house.

Recommendation 12:

The Victorian State Government to **amend relevant legislation** to:

- Allow VCAT to deal with some co-tenant disputes in the Residential Tenancies list, especially to enable co-tenants to terminate their right in periodic rental agreements and fixed-term rental agreements in certain circumstances.
- Create a small claims list at VCAT to enable licensees and co-tenants who have incurred a debt through a rental agreement not covered by the *Residential Tenancies Act 1997 (Vic)* ('RTA') to claim compensation.
- Provide clearer guidance as to the definition and rights of sub-tenants.
- Abolish the RTA exemption for accommodation owned or affiliated with an education provider.
- Create a penalty provision requiring mandatory disclosure by real estate agents, rental providers, RHOs and head-tenants of correct information about certain tenancy laws, and in response to renters' requests for certain information, including, for example, their options to terminate a lease.¹
- Introduce a standardised agent referral form to be used in tenancy applications, which requires and allows the former agent to provide only defined information, to minimise the risk of bad references with no basis.

- Ensure that any student accommodation that includes shared facilities are covered by the *Public Health and Wellbeing (Prescribed Accommodation) Regulations 2020 (Vic)* ('PHW Regulations'), regardless of whether they are a rooming house or affiliated with an education provider or university.²
- Provide coverage for residents of motels and licensed premises from day one, where they occupy the premises as their only or main place of residence.

Recommendation 13:

The Victorian State Government to ensure **investment to increase the availability of quality and affordable accommodation** that is accessible for international students.

Recommendation 14:

Active and ongoing consultation with international students to ensure issues are properly identified and responses are developed that are appropriate to their needs.

Recommendation 15:

Adequate **funding for outreach programs**, which aim to reach international students residing in situations of insecure tenure.

Recommendation 16:

Clear mapping of services available to international students and the development of an accessible and well-resourced central intake service, which can identify international students' legal and non-legal needs, and provide a timely and coordinated response.



**ABOUT THE INTERNATIONAL
STUDENT HOUSING PROJECT**

3 ABOUT THE INTERNATIONAL STUDENT HOUSING PROJECT

3.1 Introduction

WEstjustice is funded by the Lord Mayor's Charitable Foundation to complete the International Student Housing Project, which aims to identify, address, and ultimately reduce some of the issues facing international students in Victoria, with a particular focus on the regulation of insecure housing.

3.2 Background

International students are an important part of Victoria's vibrant community, and make a huge contribution to the economy through their education fees, working in critical job industries, and spending locally. In 2019, over 299,600 international students were enrolled in Victoria, contributing approximately \$13.7 billion to the economy through the education sector alone.³

Yet students choosing to study and live in Melbourne must make their way in one of the world's most unaffordable housing markets.⁴ While there may be community perceptions that international students come from wealthy backgrounds, there is great diversity in the cohort; many arrive from low to middle income countries, with tight budgets and limited family support, and rely on scholarships, casual employment, or loans taken for the opportunity to study here.⁵ Students are forced to spend a large portion of their finances on housing, and many end up living in insecure housing, which is often overcrowded and in poor condition.⁶

For the purposes of this project, insecure housing is defined to include unregistered and non-compliant rooming houses, sub-tenancies, licences and homestays, and other informal or ambiguous situations. The prevalence of these types of housing may also be understood as forming a marginal rental sector. Additionally, international students often reside in co-tenancy arrangements, or in accommodation owned or affiliated with an education institution, which present further specific issues.

International students are also particularly vulnerable to deceptive and exploitative conduct, with some rental providers taking advantage of cultural and linguistic differences, and a lack of awareness of their rights and standard housing practices. International students often have limited family and community support in Australia, and housing issues can seriously impact their experience of living in Victoria, placing acute stress on their physical, emotional and financial wellbeing.

3.3 Project objectives and anticipated outcomes

The objectives of the International Student Housing Project are:

- To identify and document housing issues faced by international students in Victoria, identify relevant limitations or gaps in current laws and regulatory practices, and produce recommendations on how these can be addressed;
- To increase identification and effective reporting of unscrupulous and irresponsible rental providers by international students to regulatory authorities;
- To promote consistent and responsive handling of complaints regarding rental providers by regulatory authorities; and
- To increase international students' awareness of their housing rights under Victorian laws, including the processes available for reporting issues.

The anticipated outcomes of project, in reach of these objectives, include:

- The development of a culturally appropriate and accessible complaints pathway for international students to report housing issues and unscrupulous and irresponsible rental providers to the relevant authorities;
- The development of an effective information sharing mechanism between housing service providers, Local Government Authorities ('LGAs') and Consumer Affairs Victoria ('CAV'); and
- The establishment of an International Student Housing Network of service providers dedicated to the reduction of insecure accommodation for international students.

3.4 Aims of this report

This report has been developed to identify some of the key issues encountered by international students residing in insecure tenure in Victoria, and explore the efficacy and limitations of current regulatory frameworks and practices for addressing these issues. It focuses on greater Melbourne due to the large number of international students in the metropolitan region, and the problems international students encounter in the marginal rental market.

The fundamental principle underpinning the project is that current regulatory frameworks fail to afford adequate protections to international students or empower them to exercise their rights. The recommendations set out in the report are intended to address the issues identified, and create a more accessible and effective regulatory framework.

To this end, the report is directed primarily to regulatory authorities, including CAV and LGAs, and is attached to an invitation for these authorities to further discuss its findings and recommendations.

3.5 Methodology

This report draws on data and consolidates learnings from WEstjustice's International Student Accommodation Legal Service ('ISALS'), together with the experiences of the ISHN participants.

3.5.1 International Student Accommodation Legal Service data

From 1 August 2019 to 11 December 2020, WEstjustice delivered the ISALS clinic, in partnership with the Study Melbourne Student Centre. This service provided legal assistance to international students with accommodation issues. Assistance offered included legal advice, casework, negotiation, advocacy, and VCAT representation.

Through ISALS, WEstjustice provided legal assistance to 250 clients in that 16 month period. We were able to reach a larger total of 319 international students, as some clients attended with their housemates. From this client work, we collected data about:

- a) The number of international students residing in situations of insecure tenure, including unregistered and non-compliant rooming houses, sub-tenancies, licences and homestays, and other informal or ambiguous situations;
- b) The common housing issues faced by these students; and
- c) The process and outcomes of complaints lodged against rental providers with regulatory authorities on behalf of international students.

ISALS still operates through the Study Melbourne Student Centre, now as the International Student Employment and Accommodation Legal Service (ISEALS), in partnership with Victoria Legal Aid, Springvale Monash Legal Service and Job Watch.

We also sent a survey to ISALS clients to obtain feedback about the quality of the service, and whether students felt they could better understand renting laws and enforce their rights after their appointment. We received 48 anonymous responses to this survey, and have used some of the results in this report.

Profile of ISALS clients

 **250** international students assisted by ISALS

from



42 countries



43% under 25 years old



25% 25 to 30 years old



23% required an interpreter



Arrival in Australia

48% in 2019-20
28% in 2017-2018
34% in 2016 or earlier

3.5.2 International Student Housing Network

As part of this project, WEStjustice has established the ISHN, which involves participants that work with international students in the housing sector.

Through the ISHN, WEStjustice has been in consultation and discussion with the Office of the Commissioner for Residential Tenancies, Tenants Victoria, Eastern Community Legal Centre, Youth Law, Inner Melbourne Community Legal Centre, Deakin Student Legal Service, Barwon Community Legal Centre, the University of Melbourne Student Union Legal Service, and the Renters and Housing Union.

The first meeting of the ISHN was held on 2 July 2020, to identify and discuss housing issues encountered by participants working with international students. A further meeting was held on 18 December 2020 to discuss the contents of this report.



"I felt supported... by the [ISALS] team through the long and stressful process. I think this support is very important for international students, who may otherwise become scared, put in vulnerable positions and exploited." - ISALS client.

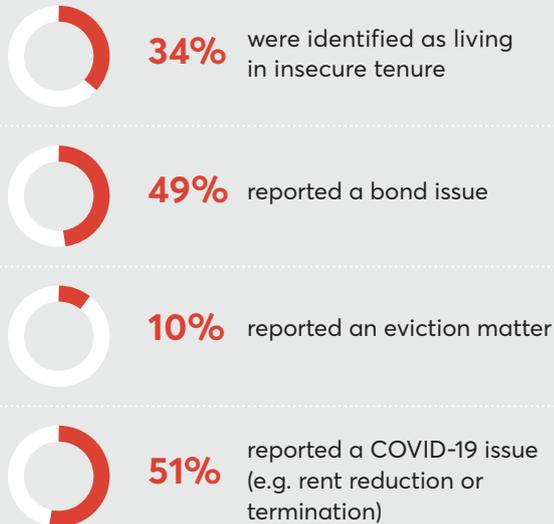




**HOUSING ISSUES ENCOUNTERED
BY INTERNATIONAL STUDENTS**

4 HOUSING ISSUES ENCOUNTERED BY INTERNATIONAL STUDENTS

Housing issues facing ISALS clients



4.1 Lack of appropriate and affordable housing

In 2019, Melbourne ranked in the top ten least affordable housing markets internationally.⁷ Affordable rental housing for international students is increasingly hard to find, particularly in areas well situated for access to universities and other education providers, job opportunities, and social and community services. On-campus or formally affiliated university accommodation is limited and too costly for many international students, and is exempt from the *Residential Tenancies Act 1997 (Vic)* ('RTA').⁸

The formal rental market is also inaccessible to many students, as they struggle to submit competitive tenancy applications in light of factors such as a lack of local references and rental history, low and unsteady incomes (often due to visa work restrictions), and the temporary nature of their stay in Australia.⁹

The high cost and limited availability of appropriate accommodation is a key factor pushing international students into insecure and exploitative rentals, which are often overcrowded, in poor condition, and unsafe.¹⁰

4.2 Insecure tenure

A high number of international students reside in situations of insecure tenure. Thirty-four per cent of students seen through ISALS were identified to live in these types of tenure. The actual number and proportion of international students residing in these arrangements may be inferred to be much higher, as students living in rooming houses and other informal arrangements appear less likely to be aware they may have rights or access support services.

Students in insecure tenure are significantly more vulnerable to unscrupulous conduct, financial exploitation, and illegal evictions as they may not (as in the case of licences and homestays) have rights under the *RTA*. Alternatively, they may have housing rights under the *RTA* (as in some sublets and rooming houses) but find it difficult to assert these.

ISALS clients living in insecure tenure



4.2.1 Rooming houses

As the demand for private rental grows and affordability declines, there has been a growth in the number of rooming houses in Victoria.¹¹ Rooming houses generally accommodate the most vulnerable and disadvantaged in our community, but are increasingly also used as accommodation for international students. In the recent review of the *PHW Regulations*, stakeholders reported that there is an increase in the number of illegal rooming houses operating out of high-rise apartment buildings, which target international students.¹²

ISALS saw 30 students living in rooming house situations, 77 per cent of which were unregistered. Further, and not included in these figures, were a number of unclear situations that may have been rooming houses, as well as accommodation — notably including specialist student accommodation — in which students signed a tenancy agreement in respect to their own room, but which nonetheless operated as unregistered rooming houses. The most common issues for students in rooming houses were in respect to the failure of the rooming house operators ('RHOs') to return their bond (usually not lodged with the RTBA), improper eviction, safety concerns (e.g. overcrowding), poor conditions (e.g., non-compliance with minimum standards), and other breaches of rooming house provisions of the RTA.

The failure to register rooming houses presents problems for regulatory authorities in ensuring compliance with minimum standards. Further, students are often reluctant to report non-compliant rooming houses for fear of eviction by authorities or the operator, as well as fear of other retaliatory action by the operator and the possible impacts on other residents.

4.2.2 Agreements over rooms in rooming houses

Tenancy agreements made under s 94(1) of the RTA in respect to a room in a rooming house often disadvantaged residents as they were not well suited to the needs of renters with shared spaces and amenities, or in need of short-term accommodation.¹³ ISHN participants also observed the practice of some rental providers attempting to create multiple fixed-term tenancies over a shared room. Tenancy agreements could not previously be made over shared rooms,¹⁴ and this practice is likely to mislead students as to their rights.

The *Residential Tenancies Amendment Act 2018* ('RTAA') amends s 94 of the RTA so that a RHO and resident may only enter a residential rental agreement in relation to a self-contained apartment.¹⁵ The RTAA introduces a specific fixed term Rooming House Agreement ('FTRH agreement'), for which a standard form is prescribed in the *Residential Tenancies Regulations 2021*.¹⁶ So long as there is education and uptake in respect to the introduction of this new standard agreement, it should go some way to ensuring agreements more accurately reflect the RHO and residents' rights and responsibilities.

However, it remains of concern that inflexible fixed term agreements are not suitable for the needs of international students' living in rooming houses.

CASE STUDY:

Li's illegal rooming house matter*

Li was an international student who attended WEStjustice's ISALS at Study Melbourne. Li rented a shared room in a three-bedroom apartment operating as a rooming house from Robert, with four other students.* Li paid a \$400 bond, which was in excess of two weeks' rent and was not lodged with the RTBA. Robert was a tenant at the property, and later transferred his lease to a person named Sophie.* Robert told the residents that the transfer would not impact their residency.

Immediately following the lease transfer, however, Sophie tried to increase Li's rent, and set up bunk beds in the only lounge space, to increase the number of residents in the apartment. Sophie tried to pressure Li to sign a new agreement on new terms, and told her if she refused, she would be evicted.

The premises was not registered as a rooming house, and neither Robert nor Sophie were registered as rooming house operators. A number of unfair house rules were enforced, such that residents were never allowed to use the oven, air conditioner or heater. Residents were also told they would be fined \$200 for having friends over at any time, and were prohibited from using the intercom.

After seeking legal advice, Li declined to sign the new agreement on the basis she had an existing residency right, and asked Sophie to refrain from interfering with her access and use of the premises, increasing the rent without proper notice, and illegally evicting her. In response, Sophie told Li she must vacate in two weeks, pressuring her to leave through WhatsApp messages and, on one occasion, by coming to the apartment at night time, without notice and with friends. Sophie also told the other residents that if Li took action and the apartment was closed, she would not return any of their bonds.

WEStjustice tried calling Sophie to explain the legal obligations of a rooming house operator and negotiate in respect to Li's matter, however she hung up on the call. Although Li received legal advice about her options, she decided to move out of the apartment as she was no longer comfortable living there. Luckily, her bond was returned after she safely vacated.

* names have been changed to protect client's identity

There is a risk that rental providers may misleadingly present the FTRH agreement to students as their only option, or a required practice when renting in Victoria. There is also some ambiguity about whether the new provisions may allow residents with a FTRH agreement to give 14 days' notice of their intention to vacate, prior to the termination date in their agreement, and residents may be led to believe they are bound by that end date.¹⁷ Rooming houses are often a short-term or transitional accommodation solution, and there are valid reasons why students may need flexibility, including the option to vacate at short notice. These may include safety or welfare issues that arise in the shared nature of the housing, and other unforeseeable circumstances.

Further, it appears that FTRH agreements, and residential rental agreements over self-contained apartments, may be made over shared rooms.¹⁸ It may be anticipated that RHOs could encourage students to sign co-residency agreements, possibly with others they do not know. This will likely create a significant barrier for students that need to end their residency, and consequent risks in relation to securing the return of their bond, as well as liability for rent or damages — these serious issues have been identified in respect of co-tenancies, and are discussed further below in section 2.3.

4.2.3 Licences, homestays and sublets

Fifty-five students seeking help from ISALS were in licence, homestay or subletting situations. Of these, seven lived in homestays or had licences, 25 had sub-tenancies, and a further 23 were in unclear situations, in the sense they may have been licensees or sub-tenants.

Licensees and students living in homestays are not covered by the *RTA*, and so cannot rely on tenancy rights or processes to assert their rights. This is a significant gap in protections for international students.

It is very common for students to live with the person they are renting off, and to not have a formal written agreement. In these situations, it is often unclear whether students are subletting or merely have a licence. For there to be a sub-tenancy, the sub-tenant must have 'exclusive possession' over part of the premises in exchange for rent, and there is a presumption that a person who has the right to occupy a bedroom, but shares common areas with others (particularly the person they are renting from), is a licensee.¹⁹ This presumption is considered amongst other factors and may be rebutted, and VCAT has proven — both through our ISALS casework and as reported by other legal services — willing to accept a sub-tenancy

exists over a room in some such situations.²⁰ However, it is a grey area which presents a significant barrier for students attempting to assert tenancy rights, and can add significant complexity to VCAT applications.

While sub-tenancies are covered by the *RTA*, and head-tenants have the responsibilities of a rental provider, they may be classified as insecure tenure for a number of reasons. Sub-tenants usually have informal arrangements, with no written agreement, and head-tenants who are not aware of, or deliberately avoid, their obligations as a rental provider. Significantly, sub-tenants are at greater risk of eviction and financial loss — for example, where the head-tenant has not asked for the rental provider's permission to sublet, and/or fails to lodge the bond or forward rental payments. It can also be difficult for sub-tenants to seek repairs or take action against the landlord directly, as their agreement is with the head-tenant. While many head-tenants are other renters, ISALS identified a number of instances where the head-tenants were operating in a commercial way, whether individually or as a company, by operating multiple properties.

4.2.4 AirBnBs and long term hotel stays

ISHN participants have also been approached by international students with issues with AirBnBs and hotel-type accommodation, which has become a long-term solution for many students at risk of homelessness as a result of the COVID-19 pandemic. Usually, the *RTA* does not apply to premises ordinarily used for holiday purposes.²¹ Unless students can establish they have a tenancy, there are few legal protections for those in this type of housing. Further, the *RTA* does not apply to a residential rental agreement of less than 60 days for a room in a motel or licensed premises.²² This means that even renters with an agreement are not afforded coverage under the *RTA* for the first 60 days. As the *RTA* will often not apply, students are unable to access government rental grants or the processes for securing a rent reduction, which has left some at greater risk of homelessness and financial distress.

CASE STUDY:

Amelia's sub-tenancy eviction and \$22,000+ loss *

Amelia signed a standard 12 month residential tenancy agreement with Linda* in respect to unit 1* of an apartment block in Malvern East. Around eight months into the tenancy, Linda asked Amelia to sign a new agreement and move into unit 2* at the same address, in two months' time. Amelia had paid a bond of \$3,300 for unit 1, which was to be used as bond for the second agreement, but was never lodged with the RTBA. Amelia also paid \$20,896 as 10 months' rent in advance for unit 2.

Before moving into the new unit, Amelia was evicted from unit 1 by the building manager, who said he was acting on behalf of the landlord. The building manager told Amelia that Linda was a tenant, and had stopped paying rent to the landlord for the apartment. He also told Amelia that Linda's other leases had not been renewed. Amelia was forced to vacate unit 1 before she was able to seek legal advice, and never took possession of unit 2.

Linda returned \$1,400 to Amelia, but failed to return the remaining \$22,796 owed for bond and excess rent. Linda had leases over a number of units in the apartment block, and was operating under a business name through WeChat. Amelia was in contact with at least 35 other students who had been similarly affected.

WEstjustice assisted Amelia to make an application to VCAT for compensation. Linda did not attend the hearing, and VCAT made an order for the full \$22,796 amount in favour of Amelia. After being provided with the order, Linda returned \$1,800 to Amelia but has been uncontactable since then. Amelia thinks Linda returned overseas, and has had to return home herself, so found it too difficult to pursue further enforcement of the VCAT order.

* names and unit numbers have been changed to protect client's identity

4.3 Co-tenancies

Many international students live in co-tenancies, where they share a lease with others. As disputes between co-tenants are not covered by the RTA, neither CAV nor VCAT deal with such matters. This also impacts students' ability to access legal help, as most tenancy services do not offer assistance for co-tenant disputes, and university support services may be conflicted where multiple students from the same university are involved.

Another problematic practice observed by the ISHN occurs when some rental providers target international students online, ask them to pay their bond and rent separately in advance, and then get them to sign a rental agreement, which names co-tenants they do not know and have not chosen to live with. This appears to be an attempt to avoid the application of rooming house laws and/or the need to have individual rental agreements. While the validity of some of these agreements may be open to challenge (as they may, on the facts, be individual rental agreements), this is a complex argument for students to make, particularly given the identified lack of legal help available for co-tenant disputes.

A common issue for students in co-tenancies is the difficulty of removing their name from a lease or ending the agreement, where other co-tenants remain at the property. This creates challenges securing the return of bonds and, due to the principle of joint liability, creates a risk of a debt accruing where, for example, co-tenants stop paying rent. These issues have been particularly highlighted in the context of COVID-19, where many students were either unable to enter Australia due to travel bans or needed to return home urgently.

The limited options and recourse to deal with co-tenancy disputes also means some students stay in housing that is unpleasant or unsafe, which can severely impact their wellbeing.

4.4 Accommodation owned or affiliated with an educational institution

Accommodation owned or formally affiliated with educational institutions is not covered by the RTA (including college accommodation). Students living in this type of housing therefore have no rights or avenues for dispute resolution under tenancy law. This type of accommodation is often heavily marketed to international students before they come to Australia, sometimes by including an accommodation offer in their enrolment offer. Students are often unaware that this accommodation is exempt from standard tenancy protections.

Further, agreements for this type of housing often contain terms to the effect that a student's failure to pay any amount claimed to be owed in a dispute under the agreement (including costs of rent, damage or cleaning issues, or lease breaking) may be penalised by enrolment sanctions, such as preventing students from enrolling in subjects, or cancelling their enrolment. For international students, the cancellation of enrolment can have devastating consequences, as it can lead to the cancellation of their visa and exclusion from Australia. These are not empty threats; members of the ISHN network have assisted international students who have had enrolment sanctions enforced against them because of rental disputes.

ISHN participants are of the view that such terms in an accommodation agreement are inappropriate, connecting unrelated issues of students' rental situation with their enrolment record, and creating an even greater power imbalance between the student and their rental provider.

This issue was recently highlighted in reports by the ABC about students that needed to end their contracts during the coronavirus pandemic.²³ Students who were never able to arrive in Australia, or had to return home due to personal and financial distress, were unable to rely on termination provisions of the *RTA*, as amended by the new COVID-19 laws, and were pressured by university affiliated accommodation to pay out the full amount of their contracts in the event of early termination.

4.5 Misrepresentation, deceptive conduct and scams

International students are targeted in the housing market by scammers and unscrupulous rental providers that aim to take advantage of their cultural and linguistic diversity, unfamiliarity with standard housing practices in Victoria, and tendency to organise accommodation through informal avenues, often from overseas. Scams and deceptive conduct reported by students to ISALS included:

- Online scams that charged high upfront bond and advance rent payments for properties that did not exist or were not available to rent;
- Properties advertised online that were falsely described in respect to location, condition and/or level of crowding; and
- Landlord or head-tenant phoenixing, where a rental provider company liquidated and transferred its assets to a new company, so that students could not recover their bond or rent paid in advance.

CASE STUDY:

Daniel's police assisted eviction*

Daniel rented a room in a house from Chris,* paying him a \$1,480 bond and rent in advance. The bond was not lodged with the RTBA. Chris was a tenant to a lease with the landlord, and became head-tenant to Daniel. Chris and Daniel did not have a written agreement, but had agreed to the payment of bond and rent, and an approximate term of the sub-tenancy by Facebook Messenger.

Shortly before the end of the agreement, Daniel and Chris had an argument about the payment of rent. Chris had requested Daniel pay further rent. Daniel declined to do this as he had already paid two weeks in advance, and he was considering vacating the property before he would owe more.

In the course of this argument, both Daniel and Chris called the police, who attended the house. Daniel had difficulty explaining the situation in English. At Chris' request, the police told Daniel he must pack up his belongings, leave, and return the key. Daniel was then forced to couch surf with his brother, and Chris failed to return the bond or excess rent owed to Daniel.

We assisted Daniel to make an application for compensation to VCAT against Chris for the return of his bond and excess rent, on the basis he had been illegally evicted. After hearing our submissions, VCAT was satisfied Daniel had a sub-tenancy with Chris and had been illegally evicted, and ordered Chris to pay Daniel the full \$2,080 claimed. Unfortunately, Chris subsequently refused to pay this amount, saying that he had no money and had moved interstate

* names have been changed to protect client's identity

4.6 Improper eviction

26 ISALS clients reported an eviction issue 

 **92%** concerned threats attempts or instances of illegal evictions

18 ISALS clients living in insecure tenure reported an eviction issue 

 **100%** concerned threats attempts or instances of illegal evictions

Twenty-six ISALS clients reported an eviction matter, and we identified 18 of these students as residing in insecure tenure. All 18 of these were threats, attempts or instances of improper eviction – that is, eviction otherwise than in accordance with the RTA. These 18 students represented 69 per cent of all students that sought advice from ISALS in respect to eviction, demonstrating that students in insecure tenure are at greater risk of improper eviction.

In some instances, students reported that their rental provider had harassed them and/or made their living situation uncomfortable or unsafe. This is a particular issue where students live in the same house as their rental provider. Significantly, as a result, many students facing improper eviction had already vacated the premises by the time they sought advice, or decided to vacate despite receiving advice that they had the right to stay. In some cases of informal sub-tenancies, police incorrectly assisted with evictions. Students in these situations often did not have alternative housing, and ended up couch surfing.

4.7 Bonds

123 ISALS clients reported a bond issue 



60 ISALS clients living in insecure tenure reported a bond issue 



Rental providers regularly fail to provide bond lodgement forms or lodge bonds collected from international students with the Residential Tenancies Bond Authority (‘RTBA’). The failure of rental providers to comply with either of these requirements is an offence under the RTA, and makes it difficult for students to secure the return of their bond, even where there is no cause for it to be withheld. This is particularly the case where students do not have written agreements, as they may face the additional hurdle of establishing a rental right, before VCAT will determine their application for the return of bond money in the Residential Tenancies list.

Forty-nine per cent of all students seen through ISALS sought advice in respect to getting their bond returned. Of these, 63 per cent of all matters concerned bonds that were not lodged with the RTBA. This is even higher in respect to students residing in insecure tenure, of which 64 per cent sought advice in respect to getting their bond returned, and 95 per cent concerned unlodged bonds.

The withholding of bonds without cause creates both financial and emotional distress for students, and the threat of it can compel them to remain in inappropriate housing, as they are not financially able to seek alternative accommodation.

CASE STUDY:

Ben threatened when seeking the return of his unlodged bond*

Ben entered into a tenancy agreement with two friends in respect to a room in a house, from Maria.* The house appeared to be operating as an unregistered rooming house. Ben and his friends paid Maria \$2,000 by way of bond for the premises, which was not lodged with the RTBA. After they gave notice and vacated their room at the end of their lease, Maria agreed to return their bond, but then failed to do so.

After seeking legal advice, Ben wrote a letter to Maria to request the return of their bond. A few days after sending the letter, Ben received a phone call at night, from an unidentified number, from a male person claiming to be Maria’s attorney. This person told him to stop harassing Maria for the return of their bond, and said that if they continued with the case, they would be fined \$11,000 for ‘breaching the contract’. Ben also said that the person threatened that Maria would use her connections with other landlords to prevent them being able to apply to rent other properties, and that their visas could be cancelled.

WEstjustice then assisted Ben to make an application to VCAT for compensation for the return of the amount paid as bond. Shortly before the hearing of the application, Maria agreed to return the amount claimed. Ben confirmed that they received the full \$1,771.18 owed (which took into account, some days rent they owed).

WEstjustice further lodged a complaint to CAV on behalf of Ben, in respect to Maria’s failure to lodge bond and her conduct in trying to threaten them not to take legal action. Ben instructed that he did not want us to make a complaint about the fact the premises may have been operating as an unregistered rooming house, due to the risk it might be closed and the remaining residents would be forced to vacate. CAV confirmed that a compliance letter was sent to Maria, and no further action was taken.

* names have been changed to protect client’s identity

4.8 Impact of the COVID-19 pandemic

The outbreak of the COVID-19 pandemic both exacerbated existing issues faced by international students, and saw new issues arise. ISALS saw its first COVID-19 related matter on 27 March 2020, and from that date, 79 per cent of all students attending the clinic reported an issue arising from the pandemic. Some of the most notable trends relating to international students' housing observed from March to December 2020 were:

- Severe economic and personal hardship, including job losses, serious mental health concerns, changes in family circumstances, social isolation, and a lack of support from government and/or universities;
- Difficulties negotiating rent reductions, including significant, widespread resistance on the part of rental providers to agree to a reduction, a lack of knowledge about the processes available to assist reach a reduced rent agreement, and delays in CAV's response to disputes lodged; and
- Challenges arising from students' need to terminate their lease and defend claims for lease break costs, particularly where students were unable to enter Australia due to travel bans or needed to return home. 111 students that attended ISALS sought advice about terminating their tenancy due to COVID-19.

CASE STUDY:

Bernadette's rent reduction matter that wasn't*

Bernadette* rented a room in a registered rooming house operating under a company name, for \$175 per week. While Bernadette continued working as a delivery driver through the COVID-19 lockdown, there was less work available and she was scared to take too many shifts as she had a family history of illness. As such, she began to struggle to pay her rent.

In July 2020, Bernadette's RHO sent her a letter, which was backdated as having been written on 22 April 2020, and stated that they reduced her rent from \$250 to \$175 per week. This was not true, as her rent had always been \$175 per week. They told her to lodge this letter with CAV as a new rent agreement, in order to apply for the Rent Relief Grant.

Bernadette has limited English, and did not fully understand the letter or rent reduction process. On her RHO's instructions, she submitted the letter to CAV before seeking legal advice.

* names have been changed to protect client's identity

4.9 Misleading information provided by rental providers

Rental providers routinely provide misleading information to international students about their rights, responsibilities and options under tenancy laws. Significantly, some rental providers threaten that if students commence or pursue any action in respect of an accommodation dispute, this may have implications on their visa, or even criminal consequences. A prevalent example of misinformation, as highlighted by the COVID-19 pandemic, has been the provision of incorrect or misleading information in respect to students' options for terminating rental agreements.

The *COVID-19 Omnibus (Emergency Measures) Act 2020 (Vic)* ('COVID-19 Omnibus Act') and *Residential Tenancies (COVID-19 Emergency Measures) Regulations 2020 (Vic)* ('COVID-19 Regulations') provided that renters suffering severe hardship could end their lease early, without costs, by giving at least 14 days' notice of their intention to vacate. These provisions did not require renters to prove their hardship to the rental provider, who would need to go to VCAT if they wanted to dispute the notice and claim costs. There are also some other options that may be available to renters looking to end their lease. Despite this, many rental providers, including specialist student housing companies, incorrectly told students that they could only end their lease by paying very high lease break costs. In some instances, students were pursued for rent for months after they had vacated the premises, in addition to being told they must pay fees and forfeit their bond. Some students were threatened with legal action and with being put on tenancy blacklists if they did not pay the costs demanded. In one instance, an agent threatened a student that they would report them to the Department of Home Affairs, which would jeopardise their visa and possibility of re-entry into Australia. In another, a student was told that they may be stopped at the airport if they did not pay their 'debt'.



"[A]s an international student you are pretty unaware of the implications on contracts and signed documents while landlords may be well acquainted with the system and may do things that are not necessarily fair" – ISALS client.

CASE STUDY:

Julia pressured to pay excessive costs to end her lease*

Julia had a 12-month lease for a room in an apartment with a shared living space, with a specialist student accommodation company. She moved in in February 2020, and was planning to find work in Melbourne to support herself in her second year in Australia. Due to COVID-19, Julia's classes went online and she was unable to find a job. She decided to return home to be with her family in April.

Julia first asked how to end her lease in May. The landlord gave her options to:

- 1) Pay rent for the next fortnight, as well as a lease break fee of 8 weeks' rent, a \$150 cleaning fee, and forfeit her \$1,156 bond;
- 2) Pay 60 per cent rent until she could return to Australia, and then revert to the full rate for the remainder of her lease; or
- 3) Continue to pay rent in full, which she could use as credit when she returns.

As Julia thought she might return to Australia, she selected option 2 and the landlord sent her a rent reduction agreement dated 5 May. This purported to attach conditions that she could not thereafter terminate her lease, and her key would be deactivated until she returned.

Julia kept paying rent until June 2020. After then seeking legal advice, she gave a notice of her intention to vacate, under the new COVID-19 laws, on the basis of severe hardship. Julia's landlord responded to the notice, saying that she must provide proof of this hardship in order for them to release her from the contract.

We were not able to open a case for Julia as she was overseas, but advised that she did not have to continue to pay rent after moving out. Despite this, Julia later told us that the landlord had continued to pressure her to pay costs, and she eventually agreed to forfeit her bond and pay a further eight weeks' rent as a fee.

* names have been changed to protect client's identity



**BARRIERS TO TAKING ACTION AND
ASSERTING RIGHTS**

5 BARRIERS TO TAKING ACTION AND ASSERTING RIGHTS

5.1 Lack of access to information and awareness of support services

International students often do not know where to go for assistance when housing problems arise. Cultural and linguistic differences also deter some students from seeking help. Those who contact legal services may encounter wait times as the demand for assistance outweighs organisational capacity. Legal services that advise students on tenancy issues, including ISALS, do not have capacity to open cases to represent most students.

Significantly, many students seek information from their rental providers or migration officers, who may provide incomplete or inaccurate information. Many students are not aware that real estate agents represent the interests of the rental provider, and that the agent or rental provider may not be acting impartially.

While there is a lot of information available — for example, on the websites of CAV, VCAT and Tenants Victoria — the majority of students attending ISALS had never seen these sites. It was widely observed within the ISHN that misinformation is often more accessible to students, and more likely to influence them, than the correct information available from formal sources.



"I wish more people could have access to this kind of help, because so many students and immigrants were treated unfairly because they're not australians and just didn't seek their rights because they don't think they deserve it"
– ISALS client.

5.2 Fears over exercising legal rights

In our ISALS appointments, international students regularly expressed fear or reluctance to make complaints or exercise their legal rights, often citing:

- The fear that taking action may have repercussions on their visa status, which can be heightened where they need to approach authorities, particularly government bodies, for assistance;

- Concerns over their personal safety and housing security, and fear of retributory action from rental providers — for example, by way of eviction or the withholding of their bond;
- Fear of rental providers providing a bad reference or placing them on a blacklist, which may impact their ability to find housing in future; and
- Concern that taking action may impact other residents at the premises, particularly in the case of rooming houses.

ISHN members affirmed that these fears are widespread amongst international students. Reports from tenancy service providers suggest a high proportion of renters, even in the mainstream market, are concerned that taking legal action may impact their future or current rental situation. The Australian Housing and Urban Research Institute (AHURI) report, *Renting in the Time of COVID-19*, found from survey responses of around 700 renters, that one of the four main reasons renters did not ask their rental provider for a rent reduction was that they were concerned about keeping their rental record unblemished.²⁴ Due to the insecurity of tenure of many international students, as well as their youth and cultural and linguistic differences, it is easy to understand that such concerns would be even more prevalent amongst this cohort.

These fears are largely without basis in law. It is not, for example, legal for rental providers to take baseless retributory action against a renter asserting their rights. There are also rules around how renters may be put on blacklists, and in what limited circumstances this may be done. Nonetheless, the threat of retribution can be a powerful deterrent. And in some cases, particularly where students may not have clear tenancy rights or face other challenges asserting their rights, the possibility of retributory action by unscrupulous or irresponsible rental providers is a genuine possibility.

Additionally, in rooming houses, students' concern for other residents — who are often other international students with few other housing options — may prevent them taking action for fear the rooming house may be closed by authorities, putting other occupants at risk of homelessness. Some students declined WEstjustice's offer of assistance to report unregistered rooming houses for this reason.



"Many times we do not know which right we have, or we need someone that says that what we are doing is right" – ISALS client.

5.3 Unknown details of rental providers

As international students are often targeted by irresponsible rental providers, a common difficulty for those seeking to take legal action is that they have not been provided with full or accurate contact details of the other party. This makes it difficult to seek legal advice (e.g. to satisfy lawyers' conflict check obligations), take legal action and enforce any orders made (e.g. in providing a physical address for service), or make a complaint against them. A number of students reported through ISALS that they had contacted CAV to report a matter, but were told CAV could not assist due to their inability to provide complete details.

5.4 Housing not covered by tenancy laws

As outlined above, many international students reside in housing that is not covered by the *RTA*, including licences, homestays and on-campus or affiliated student accommodation. The lack of legal protections for students residing in these types of accommodation is a significant issue.

While the *Australian Consumer Law and Fair Trading Act 2012 (Vic)* and the *Australian Consumer Law ('ACL')* may apply in some circumstances, this offers little effective protection in respect to housing issues. Where debts are owed to students under housing arrangements not covered by the *RTA* (for example, for the failure to return unlodged bonds), students' only options are often to engage in voluntary dispute settlement or commence proceedings in the Magistrates' Court, which is complex and will usually cost more than the debt owed to them.

In the common scenario where a housing right is unclear (for example, where it may be a licence, sub-tenancy or rooming house), it is a significant added complication to have to prove to VCAT or regulating authorities that the *RTA* applies in order to get help resolving disputes.

On the other hand, there are some incorrect perceptions amongst students that housing situations that are protected by tenancy laws are not covered. For example, students often think that if they do not have a written agreement, they do not have a tenancy right. Other students report a misunderstanding that specialist student accommodation which is not affiliated with a university is not covered by the *RTA*.

5.5 Delays and the complexity of legal processes

Delays and the complexity of legal processes, as well as the imbalance in power between international students and rental providers, often mean students find the effort required to resolve their issue outweighs the possible benefits of legal recourse.

Even where students are able to get information as to their legal options, they are often deterred by the time-consuming nature of housing claims. Delays at CAV and VCAT are particularly significant given that issues often occur as students leave their housing to return to their home country, or amid significant work and study commitments. This can impact their decision to take action. It is not unusual for rental providers to exert pressure on students and take advantage of these factors in negotiations.

The effect of these delays was highlighted in the context of COVID-19, as delays in processing bond and compensation claims saw many international students — who were in serious financial distress, were balancing other significant stressors, and often needed to return home quickly — reach unfair agreements or take no action in respect to lease break costs, or the return of their bond and excess rent paid. This was particularly lamentable in situations where students were suffering severe hardship, and so had a valid basis to terminate their agreement under the *COVID-19 Omnibus Act* and *COVID-19 Regulations*, but were nonetheless pursued for high lease break costs.



**LEGISLATIVE AND
REGULATORY FRAMEWORKS**

6 LEGISLATIVE AND REGULATORY FRAMEWORKS

6.1 Legislative frameworks

6.1.1 Rooming houses

Rooming house accommodation is specifically regulated under various legislation. The *Public Health and Wellbeing Act 2008* (Vic) ('PHW Act') provides that rooming houses must be registered with the local council.²⁵ Under the *Rooming House Operators Act 2016* (Vic), rooming house operators ('RHOs') must be a 'fit and proper' person, and be licensed by the Business Licensing Authority.²⁶

Rooming houses must also comply with minimum standards set out in the *Building Regulations 2006* (Vic), and the recently amended *PHW Regulations*. Under the *RTA*, they must also comply with the *Residential Tenancies (Rooming House Standards) Regulations 2012* (Vic) ('RT (RHS) Regulations'), which relate to privacy, security, safety and amenity in rooming houses. The minimum standards apply to a rooming house and its rooms, even if each resident has an individual rental agreement.

The *RTA* contains further provisions relating to the operation of rooming houses, including the duties and rights of residents and RHOs, lodgement of bonds, and payment of rent, as well as various offence provisions.

6.1.2 Licences, homestays and sublets

As above, licensees and students living in homestays are not covered by tenancy laws, which is a significant gap in protections for international students. In certain situations, they may have rights under general consumer or contract law, but these limited rights are difficult to enforce.

Sub-tenancies are covered by the standard tenancy provisions of the *RTA*, with the head-tenant and sub-tenant relationship the same as that of rental provider and renter. However, there is a lack of specific legal protections for sub-tenants to address the particular challenges outlined above.

6.2 Review of regulatory policies and practices

WEstjustice analysed four complaints lodged with CAV, as well as three reports made to the City of Melbourne, on behalf of international students through ISALS casework. See **Annexures 1 and 2** for a detailed summary of the complaints made, including the steps taken by authorities in response to these. The following comments are based on our experience in these matters, as well as information and policies available from relevant regulatory authorities.

6.3 Consumer Affairs Victoria

CAV is a business unit of the Department of Justice and Community Safety, within the Victorian Government. It is Victoria's consumer affairs regulator and is responsible for enforcing and ensuring compliance with the *RTA*, as well as general consumer law in Victoria.

Under the *RTA*, the Director of CAV has the power to do anything necessary or convenient in performance of its functions under the *RTA*, including investigating and conciliating complaints and disputes, conducting research and disseminating education information.²⁷ The Director also has the power to commence legal proceedings for offences under the *RTA*.²⁸

CAV maintains a register of rooming houses and RHOs, and is responsible for regulating RHO's compliance with the *RTA* and *RT (RHS) Regulations*. CAV inspects newly registered rooming houses, and may inspect registered operating rooming houses where a complaint is received.

6.3.1 Complaints pathways

Residents and renters can make individual complaints against rental providers through CAV's online General Complaint Form.²⁹ The form requires the complainant to fill in details about the rental provider, and provides a free text box to outline the complaint. The brief instructions on this page state: 'Please provide as much detail as possible, including relevant dates, how you tried to resolve the issue, and how you would like your problem solved.' Service providers may also email a complaint on behalf of clients to the Senior Enquiries Officer's Department of Justice email address: seniorenquiriesofficers@justice.vic.gov.au.

In addition, CAV may become involved through dispute resolution processes. Following the introduction of the *COVID-19 Omnibus Act* and *COVID-19 Regulations*, which conferred increased functions on CAV, from March 2020 to March 2021, renters had to commence tenancy disputes through CAV using the online Rental Dispute Initial Assessment form or the Coronavirus (COVID-19) Rental Agreement or Dispute form.³⁰

Services that are a part of the Tenancy Advocacy and Assistance Program (TAAP) may also refer a case to CAV's Front Line Compliance and Resolution (FLCR) team, using the Referral to CAV form.

CAV also operates the Estate Agent Resolution Service, which deals with complaints about real estate agents and can provide information, advice and dispute resolution. If a settlement cannot be reached, the dispute may be referred to CAV's Compliance and Enforcement team.

6.3.2 Compliance policy

CAV's *Regulatory Approach and Compliance Policy* provides information about how it makes decisions.³¹ It notes that CAV's key objective is voluntary compliance, and states that it proactively engages with businesses to inform them of their responsibilities. Beyond information services, it sets out the range of options CAV may utilise to address non-compliance under relevant legislation, including warning letters, infringement notices, and court action for the most serious matters.

The policy outlines how CAV selects the appropriate compliance option. It notes that the majority of activities CAV undertakes are education, advice and warnings, as these are less resource intensive. This is based also on the assumption that most businesses want to act fairly and are willing to comply with the law once they are aware of it. Other action, such as the issue of infringement notices, may be taken if a party continues to be non-compliant. It is noted that resource intensive criminal and civil court actions are taken infrequently, reserved for matters posing the highest risk, and if the conduct is blatant and ongoing. CAV's policy provides a 'Pyramid of compliance options', as set out in the figure below.

6.3.3 Response, communication and outcomes

The three complaints that WESTjustice lodged by way of email to the Senior Enquiries Officer were acknowledged within two to six days by a Senior Enquiries Officer or an Evaluation and Response Officer from the Information and Dispute Services Centre. These responses referred to CAV's *Regulatory Approach and Compliance Policy*, to indicate, generally, what may be done in respect to the complaint.

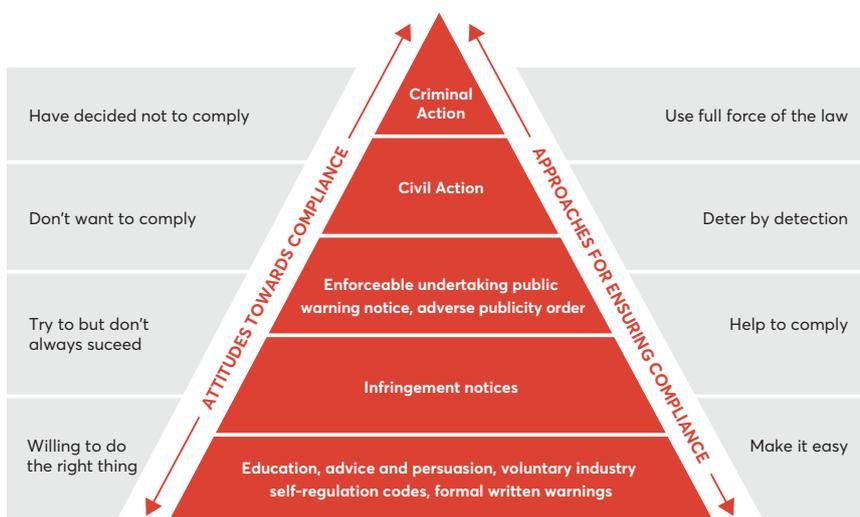
In one of these matters, CAV informed WESTjustice they had tried to contact the person about whom the complaint was made. As they were not able to contact that person, no further action was taken. In the other two matters, WESTjustice received no further communications about the progress of the cases, nor any notification that they had been resolved.

When WESTjustice called to follow up these matters, CAV indicated that the cases had been finalised. In respect to one, CAV said that if WESTjustice wanted details about the steps taken, we must make a Freedom of Information request to the Department of Justice. CAV noted that they cannot disclose any information about an investigation unless the information is on the public record. In the other case, CAV noted they could disclose to us, only on the basis that we are a known stakeholder, that they had sent a compliance letter to the party against whom the complaint was made.

The fourth complaint, lodged by way of the online Rental Dispute Initial Assessment form, was dealt with by an Inspector. This matter was initiated in July 2020 and, at the time we closed the matter in April 2021, was still ongoing. WESTjustice has only received updates by calling the Inspector, who indicated some attempts to investigate had been made, but the matter was not a priority due to COVID-19.

*See further **Annexure 1** for a detailed summary of these complaints.*

Pyramid of compliance options³¹



6.3.4 Review process

CAV's Regulatory Approach and Compliance Policy notes that feedback may be submitted through its online feedback form, email, phone or post. There appears to be no further means to review CAV's enforcement decisions and actions. Complainants would have to consider escalating the matter to an external body, such as the Victorian Ombudsman.

6.4 Local Government Authorities

LGAs (local councils) are responsible for the registration of rooming houses. LGAs have an ongoing role in monitoring conditions in rooming houses in relation to the *Building Code of Australia, Building Regulations, PHW Act* and *PHW Regulations*.

ISALS identified rooming houses, mostly unregistered, operating in 11 different LGA areas.³³

Within LGAs, the building department is usually responsible for monitoring and ensuring general state of repair, ventilation, fire hazards and safety measures, emergency lighting, exits and other health and safety issues. Generally, the health and environment departments are concerned with ensuring there is a correct register of residents, the number of bathrooms, general hygiene, rubbish collection, pest control, room size, adequate supply of hot and cold water, and issues of overcrowding and noise complaints.

6.4.1 Complaints pathway

Complaints or reports of unregistered rooming houses may be made directly to the local council, usually by calling or emailing their general contact line, or by directly emailing the relevant health or building department. CAV also sometimes refers matters to the relevant LGA.

6.4.2 Compliance policies

City of Melbourne

In response to our request for their relevant policies, the City of Melbourne provided us with the document, *'Unregistered Rooming House Investigation – Process for Health and Wellbeing'*. This provides a detailed flowchart, which sets out the steps the Health and Wellbeing Department takes after receiving a complaint.

It shows that a complaint is allocated for desk top investigation, allowing for contact to the complainant if further information is required. After this, the Building Department is contacted and an on-site inspection should be arranged. The flowchart details the steps to be taken if no access is provided to the building, including obtaining a warrant and contacting CAV. Once access is obtained, the Council completes an inspection to determine whether the building is operating as a rooming house, and whether it is compliant with relevant legislation.

The document further outlines that, where an unregistered rooming house is compliant, the Council will send a 'compliant letter' and start the registration approval process. Where the rooming house is non-compliant the Council may: (1) send an improvement notice and conduct a follow up inspection; (2) send a prohibition notice and conduct a follow up inspection (after which, if it still does not comply, the Council may start legal proceedings); or (3) issue an infringement notice. The document notes that the issue of an infringement must be in consult with a team leader and the guidelines for issuing notices outlined in the *'PHW Act 2008 Health Services Manual'*.

Moreland City Council and Maribyrnong City Council

Upon enquiry, WEstjustice was told that Moreland City Council and Maribyrnong City Council have policies or guidelines for dealing with complaints against unregistered or non-compliant rooming houses.³⁴ However, these internal policies are not publicly available and were not able to be provided upon our request through general enquiry lines.

City of Darebin and City of Yarra

The City of Darebin and the City of Yarra indicated they did not yet have a specific written policy, although the City of Yarra noted they use the Municipal Association of Victoria's Guidance Manual for Local Government Authorised Officers, published in March 2010 in respect of the *PHW Act*.

Municipal Association of Victoria's Guidance Manual

This manual sets out information about prescribed accommodation (including rooming houses), such as the registration requirements and standards, and the Council's responsibilities and powers in enforcing the legislation. We note the manual does not set out any specific steps for dealing with complaints, and few guidelines for when and how compliance action may be taken.

In respect of infringement notices, the manual does state, 'Councils may decide to serve an infringement notice rather than prosecuting for an offence as it is a quick and easy enforcement mechanism. Infringement notices are punitive in nature and are designed to act as a deterrent. If a council wants to be proactive in remedying a contravention, an improvement notice or a prohibition notice may be more suitable.'

6.4.3 Response, communication and outcomes

All of the unregistered rooming houses about which WESTjustice made complaints were located within the City of Melbourne. The complaints were lodged by email to the Health Department, though the response to each of these varied.

Upon lodging the first complaint with the City of Melbourne in October 2019, we received an automated response stating that the Council would update us within 30 days. We received no further communication in respect of this matter. We followed it up in May 2020, and several times thereafter, but were told each time that the person allocated to it was not available, and no one else was able to provide an update. As at 31 January 2021, the matter remained unresolved, as far as we are aware.

The second complaint, lodged in January 2020, was acknowledged by an email stating that the Council would update us within 120 days. We received no further communication, but, upon following it up in May 2020, were told that the Council had unsuccessfully tried to inspect the property and that there was a subsequent delay due to COVID-19. A couple of weeks later, the Council advised that they had inspected the property and found overcrowding and clear breaches of the *PHW Act*. The Council could not contact the RHO, who was a renter at the premises, and so contacted the property manager to request the landlord issue a notice to vacate to the RHO. As a result, the current residents were required to vacate.

The final complaint reviewed for this project was lodged in April 2020 and received no confirmation of receipt. When we followed it up in November 2020, we were told there was no complaint recorded on the system for that address. We lodged the complaint again, and two weeks later called to follow up. Council then found the complaint, noted CAV had also referred the matter to them, and escalated it immediately. In January 2021, Council inspected the premises and found only three people living there, at this stage, and were satisfied it was not operating as a rooming house.

See further Annexure 2 for a detailed summary of these complaints.

6.4.4 Review process

Most Councils provide for internal complaints and feedback.³⁵ If complainants are still not satisfied with the outcome of a complaint, they can seek help from the Victorian Ombudsman.

6.5 Gaps and limitations

6.5.1 Complaints driven approach

The regulation of housing and enforcement of tenancy laws in Victoria is predominantly driven by individual complaints made by renters, rather than proactive strategies by authorities to ensure compliance. This places the onus on international students (along with other disempowered renters) to report issues, where there are barriers to them doing so. As a vast number of housing issues go unreported, authorities fail to enforce laws consistently and are unable to collect data in respect to systemic issues.

Recommendations:

- Regulatory authorities to be proactive in monitoring compliance of rental providers on an ongoing basis. This may be, for example, through the creation of a registration or licensing scheme for homestay providers and specialist student accommodation, which sets certain minimum standards and creates commercial, reputational incentives for rental providers that cater to the international student community.
- Regulatory authorities to develop and implement a policy which provides for proactive investigation of complaints, including where a complainant is only able to provide limited information about the issue.

6.5.2 Lack of clear, timely and targeted information

There is a lack of clear and targeted information available to international students about their housing rights and complaint pathways. While CAV's website, for example, provides a lot of information, it is often hard to find relevant material. The various complaint pathways, in particular, are not easily identifiable, accessible or linguistically appropriate for international students. While some of CAV's information is available in other languages, the online pages and forms for lodging a dispute, registering reduced rent agreements and making complaints appear to be available in English only. This is a basic and significant barrier for international students.

It was also apparent through ISALS casework, that many rental providers, particularly those providing housing for international students, including rooming house operators, head-tenants and some specialist student accommodation, are not aware of their legal duties and responsibilities as a rental provider.

Most information available through authorities refers simply to rental providers and renters, and is not targeted to renters in other types of arrangements, such as sublets, specialist student accommodation and rooming houses. This may result in many international students, and rental providers, thinking they are not covered by tenancy laws.

Renters and rental providers' lack of knowledge about their rights and responsibilities are likely to be even more pronounced at times when there are changes to the law. This was evidenced with the introduction of the COVID-19 emergency laws.

A number of legal services, including WEstjustice, deliver community legal education for international students. However, there is currently limited funding and capacity for this activity, and so it is done on an ad hoc basis.



"I think it will be great if the legal team would work with the universities around Victoria to inform international students about their renting rights once they arrive into Melbourne.... It would be really helpful to know these things before we start renting" – ISALS client.

Recommendations:

- Regulatory authorities to ensure early delivery of legal education to rental providers — particularly those that target international students, such as specialist student accommodation companies, rooming house operators and head-tenants (especially those operating commercially) — with a particular focus on:
 - Their obligations in respect to the common issues identified in this report; and
 - The penalties involved in giving false visa or migration information. To this end, CAV should work as necessary with relevant migration departments.
- Development and delivery of **clear and linguistically appropriate housing information targeted to international students**, with a particular focus on:
 - Creating simplified information resources about types of housing for international students, their legal rights and where they can seek further help and make complaints.
 - Providing information about the circumstances tenancy issues may, or may not, impact student visas. CAV should work with relevant migration departments to produce clear material about this.
 - Engaging with rental providers and education institutions to ensure early provision of these resources, and the *Renting a Home: A Guide for Tenants and Rooming Houses: A Guide for Residents and Operators*.
 - Ensuring all information resources are easily accessible in different languages.
- Victorian education institutions to ensure this information is provided to international students when they are offered a position at the institution, upon their enrolment and at orientation.
- Regulatory authorities to ensure **timely and targeted delivery of information about any changes to the law** to international students and rental providers.
- Regulatory authorities to develop a **simple, appropriate and accessible complaints pathway for international students** to report housing issues and providers.

6.5.3 Lack of co-ordination and information sharing

There is a variety of legislation and regulations that govern the operation of rooming houses; the responsibility for this is shared between CAV and LGAs. The complexity of this regulatory framework means it may not be clear to residents to whom a report or complaint should be made for a particular issue.

Unfortunately, there does not seem to be a cohesive approach to rooming house regulation between authorities. For example, where a report is made to either CAV or a LGA, there does not seem to be effective information sharing or referrals to the other relevant authority. This means that even if issues are reported, they may not be directed to the appropriate authority.

More generally, there are many service providers operating in this space, with access to data and knowledge of rental issues and the operation of irresponsible rental providers, and the ability to assist students. Better outcomes for renters might be achieved with more consistent communication and clear referral pathways between regulatory authorities and these service providers.

Recommendations:

- Regulatory authorities to develop and implement a policy which provides for:
 - **Clear referral pathways** for complaints to be referred to other authorities, so that complainants can expect the same response wherever they report an issue; and
 - **Clear referral pathways** to international student support and legal services (such as the Study Melbourne Student Centre, ISEALS and university legal services), where a complaint or enquiry from an international student is received.
- Development of a mechanism for **effective information sharing** between CAV and LGAs in respect to reported rooming houses and RHOs, to improve coordination and coverage of regulatory monitoring and enforcement.
- **Formation of a network** of regulatory authorities, service providers and international student groups dedicated to improving co-ordination and information sharing between stakeholders to identify and monitor repeat offenders, and report findings of investigations.

6.5.4 Delays and low prioritisation

Neither CAV's nor the City of Melbourne's policies provide timelines or targets for responding to complaints and taking compliance action. Delays in dealing with the complaints we made suggest a low prioritisation of investigating reports made by international students residing in insecure housing and dealing with irresponsible or unscrupulous housing providers.

Recommendations:

- Regulatory authorities to develop and implement a policy which provides for prioritisation of complaints made by or on behalf of international students, including complaints that involve allegations of misinformation or threats about visas, in acknowledgement of the significant systemic issues students face in housing and exercising their rights.

6.5.5 Inadequacy of enforcement actions

There are concerns that regulatory authorities rarely issue fines or prosecute offences under relevant legislation. This was apparent in the compliance steps taken in response to the complaints made by WESTjustice (as far as this information was provided), and CAV's policy that states they are chiefly focused on voluntary compliance and education. Regulatory authorities have also demonstrated reluctance to take any action where there is a lack of clarity about the type of renting arrangement or the relationship between the renter and the rental provider.

As a result, the ISHN noted concerns that many rental providers know it is unlikely the penalty provisions of the RTA will be enforced, which contributes to a widespread failure to comply with the Act. While preventative education campaigns are important, and voluntary compliance may be effective in some cases, the prevalence of offences committed by rental providers demonstrates that stronger compliance responses, including those that have a deterrent effect, are required. This is particularly the case with rental providers that deliberately target international students, including organisations or companies that provide specialist student accommodation and ought to be aware of their responsibilities under the law.

Lack of enforcement efforts in a property market where affordable and appropriate options are limited means that unsafe properties remain rented to vulnerable renters and exploitative practices continue.

Recommendations:

- Regulatory authorities to develop and implement a policy which provides:
 - **Clear and consistent guidelines as to steps that may be taken** in response to complaints, including timelines and provision for action where the rental provider is not responsive or chooses not to cooperate;
 - Provision for the more frequent **imposition of penalties**, including fines, where offences are committed under relevant legislation
- Creation of an **infringement notice system** whereby regulatory authorities may issue infringement notices to rental providers that have committed certain offences, particularly, for example, the failure to lodge a bond and the failure to register a rooming house.

6.5.6 Threats and risks to complainants

ISHN participants discussed that residents and renters who make complaints against their rental providers, are sometimes threatened with retaliatory action, such as eviction or the withholding of their bond. As discussed above in respect to rooming houses, and as demonstrated through one of the complaints made through ISALS, there is also the risk that reporting premises that are not compliant with the minimum standards may result in the closure of the house and eviction of all residents.

Recommendations:

- Regulatory authorities to develop and implement a policy which provides for:
 - Monitoring, recording, and immediate referral of any punishment or retaliatory action by a rental provider against a complainant;
 - A strategic, systematic response that, in the event of serious and significant breaches that may necessitate the closure of a rooming house, ensures the housing needs of residents are met, for example, through early contact with housing and homelessness services within the LGA.

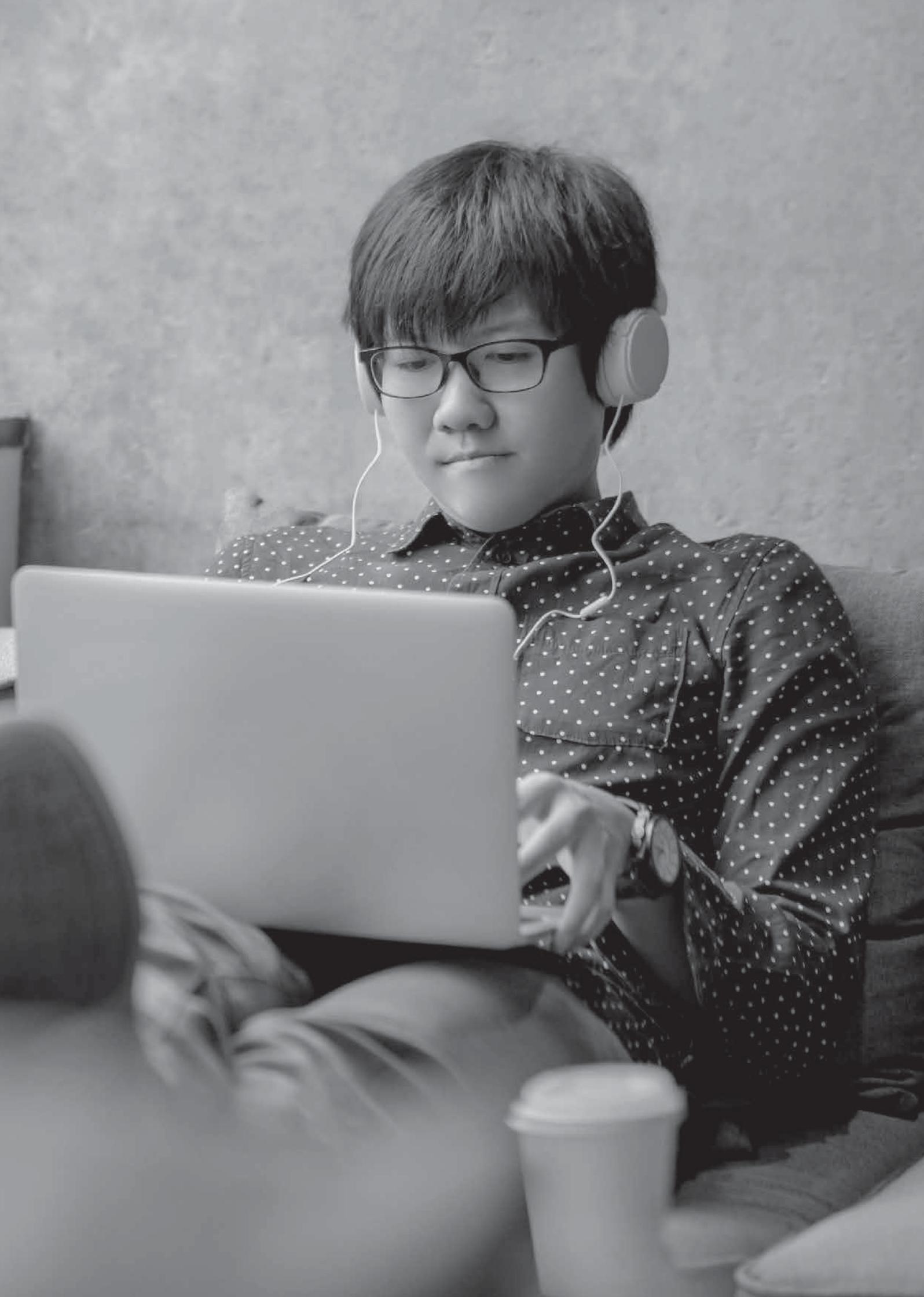
6.5.7 Lack of transparency and right of review

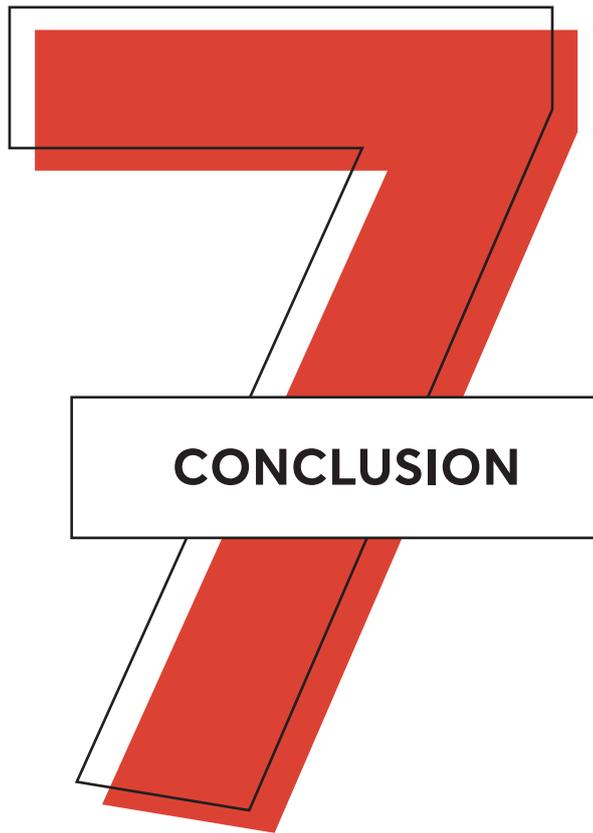
A lack of transparency is evident in the inconsistent communication from authorities in response to complaints and, in the case of CAV, the policy not to disclose any details about the steps taken or outcomes achieved without the lodgement of a freedom of information request. This lack of transparency is exacerbated by the fact that there does not seem to be a mechanism to review CAV's response to complaints.

We note that the policy documents provided by the City of Melbourne are silent as to if and when a complainant should be updated. Although the Council did provide updates on the complaints we lodged, this was usually only after we called to inquire.

Recommendations:

- Regulatory authorities to develop and implement a policy which provides for **timely and transparent communication** with complainants about the steps taken and any outcome of the complaint.
- Creation of a **simple feedback mechanism** to allow international students to provide feedback on the complaints pathway and authorities' responses to complaints.





7 CONCLUSION

Victoria's mainstream rental market is unaffordable and inaccessible to many international students. This sees a large number of newly arrived young people enter accommodation arrangements that fall outside conventional rental agreements, and live in housing that is overcrowded, unsafe and in poor condition. Many international students, but particularly those living in insecure housing, are vulnerable to unscrupulous conduct and exploitation by rental providers. Insecurity of tenure, and the informality of many rental arrangements, means they are at increased risk of evictions and homelessness. It is also common for international students to face financial exploitation as a result of the non-lodgement of bonds with the RTBA, the withholding of bonds without cause, being pursued for costs for which they should not be liable, and deceptive conduct, misrepresentation and scams.

In taking legal action or attempting to assert their rights, international students face further barriers, including significant fears around exercising their legal rights, a lack of access to legal information and support, and the delays and complexities involved in legal processes.

After analysing complaints lodged with CAV and the City of Melbourne, this report has identified some clear gaps and limitations in the rental sector's current regulatory frameworks in respect of rooming houses and other issues faced by international students.

To address these issues and protect vulnerable renters, it is recommended that regulatory authorities move away from an approach that is driven by individual complaints, to one that is proactive and investigative. It is also recommended that more linguistically appropriate, timely and targeted information be provided to renters and rental providers, and that complaint pathways are made more accessible. In respect of rooming houses, it is recommended that there be greater co-ordination and information sharing between regulators and service providers.

It is further recommended that rental providers and rooming house operators are held to account where they are in breach of rental laws, including through more frequent prosecution and the imposition of fines for certain offences. Ultimately, it is recommended that there be an infringement notice system for common offences. In the longer term, there should also be consideration of law reforms to enhance the rights of co-tenants, sub-tenants, licensees and students living in accommodation owned or affiliated with an education provider.

The recommendations made in this report acknowledge the specific needs and circumstances of international students. However, the implementation of many of these would undoubtedly assist all renters in Victoria's marginal rental sector.



8.1 ANNEXURE 1 – TABLE OF COMPLAINTS TO CONSUMER AFFAIRS VICTORIA (CAV)

COMPLAINTS TO CONSUMER AFFAIRS VICTORIA (CAV)					
DOJ – Department of Justice OP – Other party RH – Rooming house SEO – Senior Enquiries Officer WJ – WEstjustice					
Name	Complaint	Dates	Actions / Outcome	Timeline and progress of complaint	Legal, policy & practice notes
Li*	<p>Via: seniorenquiriesofficers@justice.vic.gov.au</p> <p>Re: Failure to register RH and as RH operator — Failure to lodge bond.</p> <p>Request: For resolution assistance.</p> <p>Did not have OP's address, only phone number.</p>	<p>Lodged: 28.10.19</p> <p>Resolved: 7.11.19</p> <p>Days taken: 11</p>	<p>CAV contacted Li.</p> <p>CAV attempted to call OP, but no answer.</p> <p>No further action.</p>	<p>30.10.19 – Email from SEO: acknowledged complaint; directed us to lodge allegation of unregistered rooming house with Council.</p> <p>7.11.19 – SEO noted OP not responding, referred to VCAT.</p>	<p>Referred to CAV's Regulatory Approach and Compliance Policy.</p>
Juan*	<p>Via: seniorenquiriesofficers@justice.vic.gov.au</p> <p>Re: Failure to register RH and as RH operator — Failure to lodge bond — Failure to give notice of residency right.</p> <p>Request: To investigate complaint and prosecute OP.</p>	<p>Lodged: 15.04.20</p> <p>Resolved: 21.05.20</p> <p>Days taken: 37</p>	<p>Matter referred to Council.</p> <p>No further information disclosed.</p>	<p>21.4.20 – Call / email from SEO: matter not suitable for conciliation as already tried unsuccessfully to contact OP; matter passed on to Investigation Services Branch.</p> <p>Received no further communication, inc. no notification when matter was resolved.</p> <p>WJ called to ask about progress, was told on 8.9.20 that matter was closed on 21.5.20.</p>	<p>CAV cannot disclose what action taken because of privacy reasons. Can only disclose Court reportable outcomes.</p> <p>For further information, must make a FOI request to DOJ.</p> <p>CAV deals with registered rooming houses, but does not deal with unregistered rooming houses. Do not have powers of entry.</p>
Daniel*	<p>Via: Rental Dispute Initial Assessment Form</p> <p>Re: Failure to register RH and as RH operator — Failure to lodge bond — Failure to give notice of residency right — Failure to provide RHO details.</p> <p>Request: To investigate complaint and find OP's details.</p> <p>Made via Dispute Form to also get a VCAT reference number.</p>	<p>Lodged: 10.07.20</p> <p>Resolved: N/A</p> <p>Days taken: 211</p> <p>as at 31.1.21 (ongoing)</p>	<p>CAV sent email to OP re failure to lodge bond and operation of RH.</p> <p>CAV contacted property managers/agents for property.</p> <p>No further action confirmed / matter ongoing.</p>	<p>10.7.20 – Call from CAV inspector: CAV has received previous complaints re OP; to refer to Council; to check whether bond lodged with RTBA; to send letter to premises; to email OP.</p> <p>5.8.20 – CAV inspector said no response from OP, intend to pursue non-lodgement of bond only.</p> <p>10.11.20 – CAV inspector said they might try to get Council to authorise property check; investigate further.</p> <p>WJ called 4 times to ask about progress.</p>	<p>CAV said legal team advised that premises could not be a rooming house because it is in an apartment. Advised us to take matter to VCAT and request written reasons for a finding that apartments can operate as a rooming house.</p> <p>Inspector noted these types of complaints are low priority as CAV very busy dealing with COVID-19 matters.</p>
Ben*	<p>Via: seniorenquiriesofficers@justice.vic.gov.au</p> <p>Re: Failure to lodge bond — Breach of s 501 & 502.</p> <p>Request: To investigate complaint and prosecute OP.</p>	<p>Lodged: 24.08.20</p> <p>Resolved: 7.9.20</p> <p>Days taken: 15</p>	<p>CAV sent compliance letter to OP.</p> <p>No further action.</p>	<p>7.9.20 – Letter from Evaluation and Response Officer, Information & Dispute Services Centre: acknowledging receipt and outlining in general parts of CAV's Regulatory Approach and Compliance Policy.</p> <p>10.11.20 – Noted another complaint had been made against OP for failure to lodge bond. However, both breaches occurred prior to CAV's education.</p> <p>WJ called to ask about progress after first letter, advised matter was closed on 7.9.20.</p>	<p>Action taken by CAV not on public record, but trusted stakeholders may be given some information.</p> <p>Response to first complaint is used as an opportunity to educate stakeholders. Standard procedure is to call them, then send a compliance email or letter.</p> <p>If breach occurs subsequent to CAV's education, CAV may consider further action.</p> <p>Information reported is recorded on CAV's system, so they can monitor for subsequent breaches.</p>

* names have been changed to protect clients' identity

8.2 ANNEXURE 2 – TABLE OF COMPLAINTS TO CITY OF MELBOURNE

COMPLAINTS TO CONSUMER AFFAIRS VICTORIA (CAV)					
OP – Other party RH – Rooming house WJ – WEstjustice					
Name	Complaint	Dates	Actions / Outcome	Timeline and progress of complaint	Legal, policy & practice notes
Li*	<p>Via: health@melbourne.vic.gov.au</p> <p>Re: Failure to register RH and as RH operator</p> <p>Request: For investigation and compliance.</p>	<p>Lodged: 31.10.19</p> <p>Resolved: N/A</p> <p>Days taken: 458 as at 31.1.21 (ongoing)</p>	<p>Unknown – ongoing.</p>	<p>31.10.19 – Email acknowledging receipt; expect to update you in 30 days.</p> <p>7.5.20 – Matter allocated to Building Department — contact to follow up with Health Department.</p> <p>WJ called 4 times to ask about progress, contact unavailable. No further update provided.</p>	<p>Complaint goes first to Health Department to see if registered. If not registered, they will try to contact OP.</p> <p>If inspection deemed necessary, will refer to Building Department</p> <p>Council has power to walk into property – however, unless 'access book' is signed, evidence not admissible.</p>
Julia*	<p>Via: health@melbourne.vic.gov.au</p> <p>Re: Failure to register RH and as RH operator — Possible breach of minimum standards</p> <p>Request: For investigation and compliance.</p> <p>OP was a renter operating premises as a rooming house.</p>	<p>Lodged: 15.01.20</p> <p>Resolved: 24.7.20</p> <p>Days taken: 191</p>	<p>Council emailed property manager, provided details of what they found during the inspection, and requested they issue a 14-day NTV.</p> <p>Property manager advised premises vacated.</p>	<p>21.2.20 – Email acknowledging receipt; expect to update you in 120 days.</p> <p>7.5.20 – Building Department advised they tried to inspect property 3 weeks ago but no-one was there. Subsequent delay due to COVID-19.</p> <p>12.5.20 – Health and Building Department inspected property: found clear breaches; batteries removed from smoke detectors; estimated 7+ people living in rooms and lounge. Council could not contact OP (overseas), but contacted a property manager. Awaiting response.</p> <p>23.7.20 – Email noting case closed, no details given as to outcome.</p> <p>11.11.20 – Call to confirm outcome: upon Council's warning, property manager / owner asked residents to vacate; provided photos as proof.</p>	<p>Council will usually seek that the premises be brought back into compliance – will require proof of this.</p> <p>There is limited action Council can take where it is a subletting situation, as can only take action against owner of premises. No power to do so against (e.g.) a head-tenant. In these cases, Council can only notify owner and request they take action under <i>RTA</i>.</p> <p>Council does not want people to be out of their home, but case by case.</p> <p>Council sometimes receives referrals from CAV, but does not refer to CAV.</p>
Juan*	<p>Via: health@melbourne.vic.gov.au</p> <p>Re: Failure to register RH and as RH operator.</p> <p>Request: For investigation and compliance.</p> <p>OP was a renter operating premises as a rooming house.</p> <p>Complaint also made to CAV – CAV noted they referred the matter to Council in May.</p>	<p>Lodged: 15.04.20</p> <p>Resolved: 15.01.20</p> <p>Days taken: 276</p>	<p>Council inspected premises and advised owner as to the obligations for operating a rooming house.</p>	<p>10.11.20 – Called Council as no acknowledgment of receipt: no complaint recorded on system. Re-sent.</p> <p>22.11.20 – Called Council as still no acknowledgment of receipt. Council found complaint, noted allocated to staff member no longer there – escalated immediately, confirmed investigations in new year. Confirmed CAV had also referred matter.</p> <p>14.01.20 – Council could not contact OP, but contacted owner. Council inspected premises</p>	<p>Gaining access to apartments in apartment blocks with secure entries can be very difficult</p> <p>If Council cannot enter, need to apply to the Court for entry. If Court have doubts, not enough evidence, or Council application not worded correctly, may be denied.</p>

ENDNOTES

- ¹ *Estate Agents (Professional Conduct) Regulations 2018* (Vic) already require estate agents to have a working knowledge of relevant laws, to act fairly, honestly, in good faith and to the best of their knowledge and ability at all times, and to exercise all due skill, care and diligence in performing the functions: at rr 6, 10(1), 13(1).
- ² See also Department of Health and Human Services, *Regulatory Impact Statement: Public Health and Wellbeing (Prescribed Accommodation) Regulations 2020* (September 2020) 31.
- ³ Department of Education, Skills and Employment (Cth), '2019 Export Income by State and Territory', *Research Snapshot* (Web Page, August 2020) <https://internationaleducation.gov.au/research-research-snapshots/Documents/RS_Export%20income%20infographic%202019.pdf>; Department of Education and Training (Cth), 'International Students Studying in Regional Areas', *Research Snapshot* (Web Page, February 2019) <<https://internationaleducation.gov.au/research/Research-Snapshots/Documents/Location%20of%20International%20Students%20in%202018.pdf>>.
- ⁴ Alan Morris et al, 'The Experience of International Students Before and During COVID-19: Housing, Work, Study and Wellbeing', (Research Report, University of Technology Sydney, 2020) 2, citing Wendell Cox and Hugh Pavletich, 'Demographia International Housing Affordability', (Research Report, Urban Reform Institute and The Frontier Centre for Public Policy, 2021).
- ⁵ Ibid 50–60.
- ⁶ Ibid 2, citing Terry Burke, 'Does Australia Have a Competitive Disadvantage in Student Accommodation?', (International Student Accommodation Symposium, International Education Association of Australia, June 2015); Simon Marginson et al, *International Student Security* (Cambridge University Press, 2010); Roberta Ryan et al, *The Wellbeing of International Students in the City of Sydney* (Report, July 2016) 14–15.
- ⁷ Morris et al (n 2) 2, citing Wendell Cox and Hugh Pavletich, 'Demographia International Housing Affordability', (Research Report, Urban Reform Institute and The Frontier Centre for Public Policy, 2021).
- ⁸ *Residential Tenancies Act 1997* (Vic) s 21 ('RTA').
- ⁹ UNSW Human Rights Clinic, *No Place Like Home: Addressing Exploitation of International Students in Sydney's Housing Market* (Report, July 2019) 43.
- ¹⁰ Ibid 9; Morris et al (n 2).
- ¹¹ Peninsula Community Legal Centre, 'Open the Door: The Resident's View of Life in a Rooming House', (Research Report, PCLC Rooming House Outreach Program, May 2020) 11.
- ¹² Department of Health and Human Services, *Regulatory Impact Statement: Public Health and Wellbeing (Prescribed Accommodation) Regulations 2020* (Report, September 2020) 19 <<https://www2.health.vic.gov.au/-/media/health/files/collections/policies-and-guidelines/p-regulatory-impact-statement-public-health-and-wellbeing-prescribed-accommodation-regulations-2020-pdf.pdf>>, citing Tineka Everaardt, 'Underground Rooming Houses Pose COVID-19 Risk, Says Experts' *A Current Affair* (online, 2020) <<https://9now.nine.com.au/a-current-affair/coronavirus-overcrowded-student-dorms-exposed-as-potential-covid19-hotspots/f03265e3-d575-4676-8214-3d8deba8110d>>.
- ¹³ Regulatory Impact Solutions, *Regulatory Impact Statement: Residential Tenancies Regulations 2020* (Report, 2020) 191.
- ¹⁴ RTA (n 8) s 94(3A).
- ¹⁵ *Residential Tenancies Amendment Act 2018* (Vic) s 82(2) ('RTAA').
- ¹⁶ Ibid s 81; see also *Residential Tenancies Regulations 2021* (Vic) sch 1 form 7 ('Residential Tenancies Regulations').
- ¹⁷ See RTAA (n 15) s 237, inserting s 142W into the RTA. We note the RTAA is silent on whether a 14 day notice of intention to vacate must specify a date on or after the termination date of the agreement. It is therefore arguable that this notice can be given irrespective of the termination date on a fixed term rooming house agreement. This argument is yet to be trialled at VCAT.
- ¹⁸ Section 82(5) of the RTAA repeals s 94(3A) of the RTA. The standard fixed term rooming house agreement provided in the *Residential Tenancies Regulations* seems to allow for more than one resident to sign a single agreement, and provides a specific provision in respect to shared rooms: at sch 1 cl 15.
- ¹⁹ *Frieze v Unger* [1960] VR 230, 237. See also *Radaich v Smith* (1959) 101 CLR 209, 223; *Janusauskas v Director of Housing* [2014] VSC 650; *Swan v Uecker* [2016] VSC 313.
- ²⁰ Tenants Union of Victoria, *Sub-letting* (Residential Tenancies Practice Note 09-04, December 2009) 2. See also *Saba v Kaur* [2019] VCAT 1468.
- ²¹ RTA (n 8) s 10.
- ²² Ibid s 20.
- ²³ Tamara Clark and Tyrone Dalton, 'University Students Forced Out by Coronavirus Chase Thousands in College Dorm Refunds', ABC News (online, 18 September 2020) <<https://www.abc.net.au/news/2020-09-17/students-seek-refunds-on-university-accommodation/12665520>>; Tamara Clark and Tyrone Dalton, 'University Colleges, Student Residences Could Face Legal Action over Accommodation Refund Demands', ABC News (online, 24 September 2020) <<https://www.abc.net.au/news/2020-09-24/university-colleges-could-face-legal-recourse-over-unpaid-fees/12692650>>.
- ²⁴ Emma Baker et al, Australian Housing and Urban Research Institute Limited, *Renting in the Time of COVID-19: Understanding the Impacts* (Final Report, No 340, 2020) No. 340) 11
- ²⁵ s 67.
- ²⁶ s 1(a)(ii), s 3 (definition of 'Licensing Registrar').
- ²⁷ RTA (n 8) ss 486–7.
- ²⁸ Ibid s 508.
- ²⁹ See Consumer Affairs Victoria, 'Make a Complaint', *Consumer Affairs Victoria* (Web Page) <<https://online.justice.vic.gov.au/cav-forms/generalcomplaint.do>>.
- ³⁰ Consumer Affairs Victoria, 'Rental Dispute Initial Assessment Form', *Consumer Affairs Victoria* (Web Page) <<https://forms.consumer.vic.gov.au/forms/crdf>> See also Consumer Affairs Victoria, 'Coronavirus (COVID-19) Rental Agreement or Dispute Form' (Web Page) <<https://online.justice.vic.gov.au/cav-forms/covidcomplaint.do>>.
- ³¹ Consumer Affairs Victoria, *Regulatory Approach and Compliance Policy* (July 2017) <<https://www.consumer.vic.gov.au/about-us/regulatory-approach-and-compliance-policy>>.
- ³² Ibid.
- ³³ These were City of Melbourne, City of Port Philip, City of Yarra, Maribyrnong City Council, Moreland City Council, City of Darebin, Greater Dandenong Council, Whitehorse City Council, Whittlesea Council, Monee Valley City Council and City of Boroondara.
- ³⁴ Moreland City Council further indicated that it has detailed procedures relating to reports of unauthorised accommodation, and their policy ensures that every complaint received is investigated in a coordinated manner. It was noted that Moreland City Council identifies these types of complaints as high risk and attempts to address concerns as quickly as possible.
- ³⁵ See, eg, 'Complaint Resolution Policy', *City of Melbourne* (Web Page) <<https://www.melbourne.vic.gov.au/about-council/governance-transparency/policies-protocols/Pages/complaint-resolution-policy.aspx>>; 'Customer Feedback and Complaints', *City of Yarra* (Web Page) <<https://www.yarracity.vic.gov.au/contact-us/customer-feedback-and-complaints>>; 'Complaints about Council Services', *Moreland City Council* (Web Page) <<https://www.moreland.vic.gov.au/about-us/your-council/contact-us/service-commitment-complaints/>>; 'How to Lodge a Complaint', *Maribyrnong City Council* (Web Page) <<https://www.maribyrnong.vic.gov.au/About-us/Contact-us/How-to-lodge-a-complaint>>.

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