

Commissioner for Residential Tenancies: Rooming Houses Lived-Experience Project

Submission from the University of Melbourne Student Union (UMSU) Legal Service

The UMSU Legal Service welcomes the opportunity to make a submission to the Commissioner for Residential Tenancies on behalf of tertiary student renters.

1. About us

The UMSU Legal Service is a community legal centre that provides free and confidential legal assistance and financial counselling services to all currently-enrolled students of the University of Melbourne. While our service provides legal assistance on a range of issues, renting matters form a large part of our work.

This submission is informed by our experience assisting domestic and international students with a wide range of renting issues across both the private rental market and in student housing.

2. Our submission

We note that other services which assist renters in Victoria have made broad submissions about the rooming house sector. Accordingly, in our submission we propose to focus in more detail on the interaction between rooming houses and student housing, an area which we believe may sometimes become lost in broader reviews of the sector, but which nonetheless affects a large population of tertiary students.

Overall, it is our submission that a combination of legislative classifications and exemptions, exploitative practices by student housing providers, and lack of regulatory enforcement¹ combine to undermine the rights and wellbeing of students living in rooming house-type accommodation.

These burdens fall particularly hard on international students, who are more likely to be living in student housing, and are more vulnerable to exploitation because of language barriers, lack of familiarity with the Australian legal system, and concerns about visa

¹ As has been usefully explained in other submissions to this project, there seems to have been some historical confusion between the definition of rooming houses in the *Public Health and Wellbeing Act 2008* (Vic), the RTA and the approach taken by local councils in relation to planning concessions for student housing properties. Ultimately, however, this should not affect the underlying issues discussed here.

consequences when raising a dispute (which are unfounded, but sometimes threatened by unscrupulous providers).

Please note that where this submission refers to “rental agreements,” this is a reference to a “residential rental agreement” within the definition of s 3 of the *Residential Tenancies Act 1997* (Vic) (the “RTA”), (as contrasted with different types of rooming house agreements provided for in ss 93A and 94(2)). In addition, all references to legislation are to the RTA unless otherwise specified.

2.1. Classification of rooming houses and student housing under the RTA

It is clear from our practice experience that student housing providers have made every effort over the years to set up their housing and their contracts in such a way as to try and avoid being subject to the rooming house provisions of the RTA. Judging by the hardline approach these providers typically take in relation to lease breaks and associated fees, this is presumably primarily to have the ability to lock students into fixed-term rental agreements and avoid the more generous vacate provisions available for rooming houses.

It depends on the nature of the individual apartments and buildings as to whether they should be classified as rooming houses, and generally in student housing, this will turn on whether an apartment setup will be considered a true “self-contained apartment” within the meaning of ss 3 and 18 of the RTA, as follows:

*s 3 – “self-contained apartment” means a portion of a building which forms a self-contained residence, including kitchen and bathroom and toilet facilities, **under the exclusive possession of the occupier**; (emphasis added)*

s 18 – Self-contained apartments

(1) Subject to subsections (2) and (3), the [rooming house provisions](#) do not apply to a [self-contained apartment](#).

(2) This Act applies to a [self-contained apartment](#) in a [rooming house](#) as if it were a [room](#) in that rooming house if the ratio of [rooms](#) to self-contained apartments in the [rooming house](#) is not less than 3 rooms for every [self-contained apartment](#).

(3) This Act applies to a [self-contained apartment](#) in a building declared to be a [rooming house](#) by the Minister under [section 19\(3\)](#) as if the self-contained apartment were a [room](#) in that [rooming house](#).

Pursuant to s 94, in buildings that meet the definition of a rooming house, rental agreements may only be used over self-contained apartments. If any given setup is not a self-contained apartment, the rooming house provisions should apply, and other types of

rooming house agreements may be used, including a fixed-term rooming house agreement under s 93A.

One of the key differences is that the latter kind of agreement will enable the more generous vacate provisions under s 142W, which provides that rooming house residents may vacate by providing 2 days' notice, or 14 days' notice where there is a fixed-term rooming house agreement. By contrast, ending a fixed-term rental agreement early or "breaking a lease" (unless it is done in accordance with the RTA) is vastly more onerous, entailing potential liability for advertising costs, reletting fees, and rent for a reasonable period of time until a replacement renter is found. There is no certainty about these costs unless and until a compensation claim is decided through VCAT (a process which, with current backlogs, may take over a year), and students are often told they should continue paying rent indefinitely if they wish to leave an agreement early.

More broadly, the differences between coverage by the residential rental provisions versus the rooming house provisions of the RTA are significant, entailing different minimum standards and requirements in relation to payment of rent and bond, to name a few. Overall, this means that the question of whether use of a rental agreement is allowed is a vital one which significantly affects many aspects of students' rights and responsibilities in student housing.

Following are three examples of common setups which we see in student housing, none of which are typically registered as rooming houses despite arguably fulfilling the definition in many cases, and all of which purport to use fixed-term rental agreements rather than rooming house agreements.

2.1.1. Housing setup 1 – one- or two-person shared apartments

In the past, these housing setups often took the form of individual apartments being rented out in an apartment building that was either owned and operated by one student housing provider or operated by a student housing company as a real estate agent, with individual apartments owned by private rental providers. In these situations, individual apartments would be rented out often to one or two students on a rental agreement (or co-rental agreement, as applicable), who would then share some common areas in the building with students from other apartments.

If the occupier of an apartment in these circumstances has exclusive possession, and the apartment otherwise meets the definition of a self-contained apartment under the RTA, then the rooming house provisions will not apply (noting, however, that it is unclear from the RTA whether multiple occupiers can have exclusive possession over a self-contained apartment in what would otherwise be a rooming house, as the definition only refers to "occupier" in the singular).

By contrast, in the shared housing scenarios outlined below, it is more doubtful whether the housing setups afford the occupier/s rights of exclusive possession.

In addition, in the scenarios below we have found that student housing is almost exclusively both owned and operated by large commercial student housing companies. This leads to even greater imbalances of power between the providers and the students renting these spaces.

2.1.2. Housing setup 2 – multi-person shared apartments with individual rooms

We find many student housing providers now operate on a model of offering “shared apartments,” where individual bedrooms are rented out to individual students (often 4-6 rooms in one apartment), and students then share the common areas of the apartment between them (bathroom, kitchen etc.).²

This setup may seem analogous to typical “sharehouse” living in the private rental market, but is in fact very different. The students renting these apartments are usually not on a co-rental agreement but are on individual rental agreements over their private room and shared apartment common areas. The students do not know each other beforehand, may move in and out at different times of year, and have no control over whether the rental provider changes their housemates. In these respects, this setup appears like a rooming house, yet the student housing providers purport to lock students into individual fixed-term rental agreements.

These apartments can hardly be considered “self-contained apartments” within the definition of the RTA, as no one student has exclusive possession over the whole apartment (only over their room). In buildings which otherwise fulfil the definition of a rooming house, the use of multiple fixed-term rental agreements over shared apartments in these circumstances does not appear to comply with s 94(1), and any terms inconsistent with the rooming house provisions of the RTA (such as a term imposing lease break costs for ending the agreement early, as is commonly seen) would be in breach of s 94(3) and therefore invalid.

Where co-rental agreements *are* used in shared apartments, they are even more exploitative and disingenuous, typically putting the names of all students in one shared apartment on a fixed-term co-rental agreement. Again, these students do not know each other beforehand, apply separately, may move in at different times, and are not aware that

² Anecdotally, we understand that this is out of a desire to move more towards “pod” style hotel accommodation found in some places overseas, and that student housing providers seek less regulation of the sector to enable this goal.

they are purportedly on a co-rental agreement until one of them wishes to move out, at which time the student housing provider tells them that they cannot do so without completing a lease transfer/assignment.

In practice, this means students will have to find a renter to replace them and pay additional fees relating to lease transfer (often \$200+) and are told that they must continue paying rent until someone takes over, whereas a rooming house resident could simply vacate in accordance with s 142W.

These co-rental agreements are likely to fall foul of numerous contract and consumer laws, however the complexity of the issue, imbalance of power and lack of legal help available (as many community legal centres do not provide advice on or are conflicted out of what presents as a “co-renting” dispute), generally dissuades students from taking legal action in these circumstances.

2.1.3. Housing setup 3 – multi-person shared rooms

Another offering we see less frequently is where students are placed on individual fixed-term rental agreements while sharing both a bedroom and common facilities (kitchen, bathroom etc.) in an apartment.

In buildings which otherwise fulfil the definition of a rooming house, the use of multiple fixed-term rental agreements over shared bedrooms in these circumstances once again clearly does not comply with s 94(1), and any terms inconsistent with the rooming house provisions of the RTA (such as a term imposing lease break costs, as is commonly seen) would be in breach of s 94(3) and therefore invalid.

In addition, it is clear that housing set up in this way was intended to be captured by the “shared room right” provided for in s 92B in relation to rooming houses.

2.1.4. Impact on students

In all the above scenarios, the negative impacts on students tend to be similar:

- i. misled as to their rights and responsibilities in the accommodation, particularly in relation to vacate notice periods and fees;
- ii. have limited recourse for resolving housemate disputes; and
- iii. experience barriers to pursuing legal action, including reluctance for fear of the consequences, and difficulty obtaining adequate help from community legal centres where representation is needed because of the complexity of the legal matters involved.

2.1.5. Recommendation

To improve students' rights in rooming house-style student housing, we recommend that:

- i. a comprehensive investigation should be commenced across student housing providers to ensure that properties which fulfil the definition of a rooming house are being identified and registered as such, and contracting correctly with students;
- ii. the Minister uses their power under s 19(2) to declare applicable properties to be rooming houses; and
- iii. where the existing legislative definitions are inadequate to capture the current range of student housing setups, these should be amended so as to ensure rooming house-style student housing is appropriately classified, and there are no loopholes to allow providers to force students into fixed-term rental agreements unless they are living in true self-contained apartments with exclusive possession, or wish to enter true co-renting agreements (i.e. a group of friends looking to rent an entire apartment together).

In many respects, student housing is most appropriately covered by the rooming house provisions. Unlike in the private rental market, students are less likely to be looking for long-term housing and need flexibility to move in and out of properties in accordance with term dates, and as their study circumstances change. This is particularly true of international students, who often have little choice but to enter into fixed-term rental agreements the dates of which do not accord with when they need to return home overseas, and therefore end up paying onerous lease break costs. Further, student housing is not set up for long-term living, with generally small rooms and shared facilities.

Overall, treatment of students in these student housing properties is inappropriate for their circumstances, has negative impacts on their health and wellbeing, and reflects poorly on the promotion of Victoria as an educational destination for international students. The feedback we repeatedly hear from international students is that they are shocked and appalled at the poor treatment they receive in Victorian student housing.

2.2. Section 21 RTA exemption

Also of relevance in this area is student housing owned and operated by, or affiliated with, an educational institution, such as to claim an exemption under s 21 of the RTA. While we understand this issue may be beyond the scope of this review, we raise this to highlight our broader concerns with rooming house-type student housing.

If not for the exemption in s 21, much of this style of student housing would be captured by the rooming house provisions of the RTA. The existence of the exemption raises a range of serious concerns which go beyond even those associated with student housing covered by the RTA, outlined above.

At present, the University of Melbourne (the “UoM”) requires commercial student housing providers with which it formally affiliates under s 21(2) to ensure their agreements are compliant with the RTA (there are, at present, two residences in this category). However, it does not adhere to the same standard for occupancy agreements in housing it owns and operates itself.

Section 21 was drafted before commercial provision of housing on this scale by a university was contemplated. It seems likely that this section was never intended to capture such a broad population. Such an outcome, and on such a scale as is happening at present (the UoM currently operates eight residences which claim the exemption, not including nine residential colleges which are independently run but claim an exemption under s 21(1)), seems inconsistent with the purposes of the RTA.

2.2.1. Impact on students

Unlike in the above examples covered by the RTA, there are almost no viable legal options for students to resolve disputes in exempt housing.

We are concerned by the exemption of large numbers of students from the protection of the RTA, and from the jurisdiction of the Residential Tenancies List of the VCAT. Whilst agreements made in these circumstances are still be subject to the Australian Consumer Law and the jurisdiction of the Civil Claims List of the VCAT, the protections and remedies available under the ACL are likely to be vastly more complex, expensive, timely and difficult for students to pursue than are the protections through the RTA and the Residential Tenancies List.

At present, the UoM also requires students to agree to link their obligations under these agreements to their enrolment record. For example, it is threatened that non-payment of rent could lead to the UoM withholding results, or the student’s right to enrol or graduate. Many students are likely to be unaware of this difference to the private rental market and other student accommodation when entering into these agreements (which appear often to be offered to international students before they have even entered Australia).

Far from being an empty threat, we have seen these enrolment record sanctions implemented in practice. We consider that this is wholly inappropriate, and can have particularly devastating effects for international students, whose visa status is tied to their enrolment.

2.2.2. Recommendation

To improve residents' rights in university-owned and -operated accommodation, we recommend simply that the exemption in s 21 be repealed.

Universities, and the entities which typically affiliate with them, are large commercial entities which hardly lack the capacity or resources to understand and comply with rental provider or rooming house operator obligations under the RTA (indeed, the UoM, at least, is also separately a rental provider on the private rental market).

We see no reason why tertiary students living in this housing should enjoy any fewer rights than renters and residents living elsewhere in Victoria.

Thank you for the opportunity to make a submission on our concerns in this area.

Please contact me directly on i.butler@union.unimelb.edu.au if you have any questions or wish to discuss further.

Yours faithfully,

Isabelle Butler
Senior Lawyer
UMSU Legal Service