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## Inquiry into the worsening rental crisis in Australia

Submission from the University of Melbourne Student Union Legal Service to the  
Parliament of Australia Community Affairs References Committee

1 September 2023

The UMSU Legal Service acknowledges the Traditional Owners and Custodians of the lands on which we work, and pay our respects to Indigenous Elders past and present. Sovereignty has never been ceded. It always was and always will be, Aboriginal land.

## 1 Introduction

The University of Melbourne Student Union Inc (UMSU) Legal Service is grateful for the opportunity to address the Parliament of Australia's Community Affairs References Committee in response to the Inquiry into the worsening rental crisis in Australia.

As the union for all enrolled graduate and undergraduate University of Melbourne students, UMSU's purpose is to enhance student life at the University of Melbourne. UMSU does this by elevating and representing student voices through purposeful engagement and advocacy as well as providing exceptional programs, services and opportunities that champion inclusivity and accessibility.

The UMSU Legal Service is a community legal centre operated by UMSU, which provides free legal advice, representation, and financial counselling to current University of Melbourne students. The UMSU Legal Service is accredited by Community Legal Centres Australia and is a member of the Victorian Federation of Community Legal Centres. We also convene the Victorian Student Legal Services Network and co-convene the National Student Legal Services Network, groups of legal services which assist tertiary students across Australia and collaborate on legal issues affecting students.

Rental issues typically account for over 50% of enquiries to the UMSU Legal Service, with international students particularly vulnerable to exploitation in their rental arrangements.

Below we have provided a summary of the most common rental issues experienced by students, together with our recommendations for the reforms needed to address these issues and improve the experiences of student renters in Australia. The remainder of our submission addresses these issues and our recommendations in more detail.

As a result of our broad collaborative experience with the Victorian and National Student Legal Services Networks, and other sector networks including the Tenancy Working Group and Tenancy Coordination Group, we emphasise the importance of national collaboration on reforming rental laws. There are currently large disparities in rental laws across Australia. These disparities fall particularly hard on renters, who are vulnerable in a system with inherent power imbalances. The current nationwide rental crisis is only exacerbating the impact of these disparities. We need to approach housing as an essential service and human right for all Australians. To do this, it is vital that we modernise and harmonise states' rental laws and implement efficient and effective resolution and enforcement mechanisms to ensure safe and secure housing for all.

We also endorse the joint statement submitted to this enquiry by the National Association of Rental Organisations ("NARO").

Please note that where this submission refers to a "rental agreement" or "landlord" this refers to a "residential rental agreement" or "residential rental provider" within the definitions in s 3 of the *Residential Tenancies Act 1997* (Vic) (the "VIC RTA"). In addition, all references to specific sections of legislation are to the VIC RTA unless otherwise specified.

## 2 Summary of recommendations

### 2.1 Addressing rental affordability for students

Students are experiencing a crisis in rental affordability and availability which mirrors that experienced by renters in the broader population of Australia. While many students renting in the private rental market are

experiencing this crisis, students renting in dedicated student housing face even higher rents, poorer standards of accommodation, and greater risk of exploitation.

We endorse calls from Tenants Victoria and other community organisations for action to alleviate rental stress. We also emphasise that educational exemptions from state rental laws must be repealed to ensure that all student renters enjoy the benefit of such an intervention into the affordability crisis in the housing market, addressed further below.

## 2.2 Proposed reforms to rental laws

While the VIC RTA reforms which took effect in 2020-2021 onwards have improved renters' rights (new rental minimum standards, reduced no reason evictions, increased rights to have pets in rentals etc.), there are several major reforms still needed:

- Repeal educational exemptions from rental laws
  - The section 21 exemption from the VIC RTA, and analogous exemptions in other state rental laws, are outdated and unnecessary. They mean student renters living in exempt accommodation cannot access any of the rights and protections provided by rental laws
- Introduce co-renting laws
  - Laws are needed to enable co-renters to leave a co-renting agreement and resolve disputes via the Tribunal jurisdictions
  - We propose the co-renting laws and ACAT jurisdiction in the ACT as a model
- Introduce fixed lease break costs
  - Laws are needed to provide clarity on the costs a renter will have to pay when breaking a lease
  - We propose the fixed lease break cost laws in NSW as a model
- Reform the bond claim process
  - Laws are needed to prevent landlords from continuing to make bond claims with no proper basis, which delays the return of renters' bonds and burdens the Tribunal jurisdictions, including the Victorian Civil and Administrative Tribunal Residential Tenancies Division ("the VCAT RT Division"), which must resolve these disputes
  - We propose further documentary requirements be introduced for landlords to substantiate their bond claims, similar to the documentary requirements which have been introduced in Victoria regarding most notices to vacate

## 2.3 Proposed reforms to the resolution of rental disputes

Reforms are needed to ensure the continued effective and prompt functioning of the mechanisms available for enforcement and resolution of disputes under rental laws.

Currently, the focus is on individual renters to resolve disputes. While Tribunals exist in some jurisdictions<sup>1</sup> to try and help provide an accessible forum for dispute resolution, in practice, the complexity of the law and legal processes, the inherent power imbalances between renters and landlords, and the fear of consequences for future renting situations, mean that there are many deterrents to renters enforcing their rights.

Unfortunately, this means that many real estate agents and landlords continue to breach the law without fear of any consequences.

We propose that enforcement of existing civil penalty provisions, and any additions to these penalties, must be prioritised as a deterrent to landlords breaching the law. Consistent with other areas of the law, this enforcement should be undertaken by government regulators, to take the burden off individual renters and ensure compliance across the rental sector.

### 3 Addressing rental affordability for students

There has been ample media coverage highlighting the housing affordability and availability issues that students, in particular international students, have faced returning to Australia in 2023, and the impact the rental crisis has had on them.<sup>2</sup> Surveys conducted in 2022 and 2023 by UMSU International student representatives also indicate worsening trends for international students regarding lack of supply of accommodation, accommodation affordability, and rent increases.

This crisis in the affordability and availability of housing is also disproportionately affecting students with other vulnerabilities who may additionally face the burden of discrimination in accessing housing, including students with a disability who are seeking accessible housing, Aboriginal and Torres Strait Islander students, and LGBTQIA+ students.

We do not propose to address in further detail these issues which have been addressed at length in the submissions of other community organisations, other than to note that the rental affordability and availability crisis affecting the broader community is similarly affecting students; to provide case studies of this impact; and to emphasise calls for action to address this crisis for all renters.

#### 3.1 Student renter example 1

*After only 3 months of living in a student housing property, Andi received a notice from his landlord to increase his rent by 33%. There was little basis provided for the proposed increase, with the landlord referring to rents at other properties which were not comparable in terms of the facilities provided and the age of the properties.*

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<sup>1</sup> Some jurisdictions, such as Western Australia and Tasmania, do not even have Tribunal jurisdictions to resolve rental disputes, and urgently need better mechanisms available.

<sup>2</sup> “University property sell-offs heighten ‘dire’ housing shortage as students return to Australia,” The Guardian, 7 February 2023, <https://www.theguardian.com/australia-news/2023/feb/05/university-property-sell-offs-heighten-dire-housing-shortage-as-students-return-to-australia>;

“Students are living in tents and hotels as rental crisis worsens,” Australian Financial Review, 11 April 2023, <https://www.afr.com/property/residential/students-are-living-in-tents-and-hotels-as-rental-crisis-worsens-20230411-p5czjw>;

“International students faced with housing and cost-of-living stress say they were misled about Australia,” ABC News, 19 May 2023, <https://www.abc.net.au/news/2023-05-19/international-students-migrant-housing-crisis-living-costs/102355508>.

*While Andi was eventually able to negotiate for the landlord to withdraw the notice, the experience had already caused him extreme stress during his university exam period, as he did not know where he would be able to live if the rent increase went ahead.*

### 3.2 Student renter example 2

*Jia<sup>3</sup> and her housemates received a notice to increase the rent in their share house by over 50%. While the notice cited market rents in the area, it placed the property at the very top of this range, and failed to consider the age and condition of the property.*

*Throughout their lease, Jia and her housemates had experienced numerous urgent repair and cleaning issues which the landlord had failed to address, many of which were pre-existing. These included mouse and wasp infestations; broken locks, windows and doors; rubbish and refuse left on the premises; extremely poor plumbing; broken essential appliances; and a gas leak. No renovation or general maintenance was done on the property in the 2 years since the beginning of the lease, and the landlord had also failed to provide a condition report or comply with rental minimum standards, in breach of the law.*

*Despite this, Jia and her housemates received an indication from Consumer Affairs Victoria that the proposed rent increase was reasonable, and therefore felt they had no choice but to move out of the property.*

### 3.3 Recommendation

As a crucial step towards improving housing affordability in Australia, we commend calls from Tenants Victoria and other community organisations for action to alleviate rental stress, such as legislated rent increases via a “fairness formula” in line with factors such as average weekly earnings for a given area or the consumer price index (as is currently the case in the ACT), and the additional possibility of temporary rent caps/freezes.

## 4 Proposed reforms to rental laws

### 4.1 Repeal educational exemptions, including section 21 of the VIC RTA

Increasingly in Australia, we see student housing owned and operated by, or affiliated with, an educational institution, such as to claim an exemption from rental laws. In Victoria, this exemption is claimed under section 21 of the VIC RTA. 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 VIC RTA. Analogous exemptions in state rental laws are a problem around Australia.

We contend that educational exemptions were drafted into rental laws before commercial provision of housing on this scale by universities, not to mention their commercial affiliates, 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 in Australia, seems inconsistent with the renter protection purposes of the legislation. There is additionally no check on commercial providers affiliating even further in the future.

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<sup>3</sup> Name changed.

We note that there are also a range of other legal issues students are experiencing in rooming house style student accommodation which is covered by rental laws, as detailed in our submission to the Residential Tenancies Commissioner's Rooming House Lived-Experience Project in May 2022.<sup>4</sup>

#### 4.1.1 Impact

The existence of educational exemptions means that large numbers of students are exempted from the protections of rental laws, and from the rental Tribunal jurisdictions (where these exist). This means that there are almost no viable legal options for students to resolve disputes in exempt housing.

Whilst agreements made in these circumstances are still subject to the Australian Consumer Law, 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 rental laws.

As an example of how the exemptions can operate in practice, based on copies of agreements with the University of Melbourne provided by students to the UMSU Legal Service, the university also includes contractual terms requiring students to agree to link their obligations under these agreements to their enrolment record. This means that non-payment of rent could lead to the university withholding results, or the student's right to enrol or graduate. Students may not be aware of this difference in relation to the private rental market and other student accommodation when entering into these agreements (which are often offered to international students before they have even entered Australia). We have seen examples of enrolment record sanctions implemented in practice. We consider that this is wholly inappropriate in a rental situation, and could have particularly devastating effects for international students, given visa status is tied to their enrolment. We are aware of similar examples in NSW seen in the work of the Redfern Legal Centre.

Please see also our comments in a recent article for The Age on this issue.<sup>5</sup>

In addition, the existence of this exemption can enable unscrupulous landlords to claim they are exempted from rental laws, even if they are not. We have seen this happen in practice. If students are not aware of the requirements in respect of providers for the exemption to apply, this may compound the likelihood that students will not seek to enforce their rights under rental laws.

#### 4.1.2 Student renter example 3

*Jordan is a student from NZ who in 2022 was living in university-owned accommodation which is exempt from the VIC RTA. The property would fall under rooming house laws if it were not exempt.*

*Jordan signed up to this accommodation before he had a good idea of average rent and income in Melbourne. When he began experiencing severe financial hardship, he asked to end his accommodation agreement early without paying additional costs so he could move somewhere cheaper. The university accommodation team refused this request, on the basis that they believed he had not demonstrated "exceptional or extenuating circumstances beyond his control."*

*The terms in the university's accommodation agreement relating to ending an agreement were more onerous than the typical liability for a renter who breaks a lease which is covered by the VIC RTA and*

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<sup>4</sup> A copy of this submission can be found on the UMSU Legal Service website here:

<https://umsu.unimelb.edu.au/pageassets/support/legal/policies/20220506-UMSU-Legal-Service-RH-Lived-Experience-Project-submission.pdf>.

<sup>5</sup> "Universities use loophole to evade renter protections for students," The Age, 26 June 2023:

<https://www.theage.com.au/national/victoria/universities-use-loophole-to-evade-renter-protections-for-students-20230317-p5ct0s.html>.

*is ordered to pay compensation by the VCAT. The rooming house provisions of the VIC RTA are even more favourable, providing the resident with the ability to end a fixed term agreement with a 14-day notice. In addition, if Jordan's agreement had been covered by the VIC RTA, he could have applied to the VCAT under section 91U to end his lease early because of his severe hardship.*

*Unfortunately, as the agreement was exempt from the VIC RTA, Jordan's options were limited to challenges under consumer law – which, even if successful, were unlikely to provide a resolution in sufficient time to help with his financial situation. In addition, if Jordan stopped paying rent or was perceived to have breached the agreement in any other way, the university would have applied sanctions against his enrolment record (such as preventing him from re-enrolling in his course), a penalty which also would not have been allowed had the agreement not been exempt from the VIC RTA.*

*Because of this, Jordan's only viable option at the time he sought help from the UMSU Legal Service was to remain in the agreement and investigate other ways to try and manage his financial hardship.*

#### 4.1.3 Recommendation

To improve renters' rights in university-owned and -affiliated accommodation, we recommend simply that the educational exemptions are repealed.

Universities, and the companies which typically affiliate with them, are large commercial entities which hardly lack the capacity or resources to understand and comply with landlord or rooming house operator obligations under rental laws. Indeed, they are already landlords in the private rental market.

There is no reason why students living in this housing should be afforded any fewer rights than renters and rooming house residents living elsewhere in Australia.

## 4.2 Introduce uniform co-renting laws

Currently, there are no straightforward mechanisms in some jurisdictions to resolve issues between co-renters.

For example, in Victoria, the VCAT has no jurisdiction to resolve these disputes. While such disputes may fall under general contract law, the agreements involved between co-renters are rarely in writing, and it is impractical and not cost effective to pursue these as contractual disputes in the Magistrates' Court of Victoria.

Co-renting disputes are most evident when one co-renter wants to leave a co-rental agreement. This is because one co-renter cannot simply choose to end their share of the lease and vacate, if the other co-renters are staying and the lease remains on foot.

While this can be achieved via lease transfer (i.e. assignment), and there is a process in section 81 of the VIC RTA for how this should be done as between a renter and landlord, there are no specific laws in Victoria governing how a lease transfer should proceed as between the actual co-renters.

### 4.2.1 Impact

This means that, while there is often no issue with processing a lease transfer if the co-renters agree for one of them to leave and can find a replacement renter, if the co-renters do not agree to this, or the outgoing renter cannot find a replacement, this outgoing renter is effectively trapped in the co-rental agreement. Renters will often vacate the property in this situation anyway, leading to complex and difficult to resolve disputes over the bond, rent and liability under the co-rental agreement.

The lack of clear processes in the law governing co-rental disputes of this nature means all parties in this situation lose. Co-renters who wish to leave are either forced to remain, or lose bond and rent money; co-renters who wish to remain are often left paying higher rent (owing to payments under co-rental agreements being subject to joint and several liability); and agents and landlords often face difficulties with rent arrears and bond disputes when co-renters are in dispute.

#### 4.2.2 Student renter example 4

*Ben was renting in a sharehouse and needed to move out after experiencing mental health issues following a dispute with his housemates.*

*Because he was on a fixed term co-renting agreement, he had no legal option to end only his share of the lease early by giving a notice or breaking the lease. Instead, he had to do a lease transfer, which was difficult to arrange in circumstances where he no longer had a good relationship with his housemates. The real estate agent was unhelpful, and he could not find any useful information online about any laws prescribing how he could resolve his co-renting situation.*

*When he did vacate, he found the process to recover his share of the bond in a lease transfer situation unclear, and was not aware of the risks of signing over his right to the bond before he had been paid his share. Unfortunately, he only sought legal advice from the UMSU Legal Service after he had taken this step, and the remaining legal options available to him to recover the bond were impractical to pursue.*

*While he was luckily still able negotiate to recover his share of the bond, he found the entire process to leave his co-renting agreement extremely stressful.*

#### 4.2.3 Recommendation

In the ACT, the law provides a clear process for one co-renter to leave a co-rental agreement, and ACAT has jurisdiction to resolve disputes.<sup>6</sup> We suggest these laws as a model for other states.

### 4.3 Introduce uniform fixed lease break costs

There is currently no guidance in some jurisdictions regarding the potential liability for costs when a renter wishes to leave a fixed term rental agreement early (without a legal order or a reason to serve a valid notice of intention to vacate), usually called a “lease break.”

#### 4.3.1 Impact

While fixed term rental agreements are useful to provide certainty and security to both landlords and renters, a renter’s circumstances sometimes change after they enter into a fixed term agreement, leading to the need to end the agreement early. These kinds of changes in circumstances do not always fit within the remit of an option such as section 91U of the VIC RTA, (which enables a renter to apply to the VCAT for an order to end the lease early), and so their only alternative (if a lease transfer or a valid notice of intention to vacate is not available) is to break the lease.

In Victoria, when landlords have made compensation claims to the VCAT regarding a renter breaking a lease, the VCAT has historically ordered in the range of 4-6 weeks’ rent as compensation, and, where there is a real estate agent, compensation for reasonable costs to re-advertise the property and a pro-rata re-letting fee (depending on how much of the lease term is left). In such claims, the landlord will be required

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<sup>6</sup> See ACAT website on co-tenancies jurisdiction: <https://www.acat.act.gov.au/case-types/rental-disputes/co-tenancies>.



to produce documentary evidence to substantiate their claim for the costs they have incurred as a result of the renter breaking the lease.

However, as there is no guidance in the VIC RTA about the calculation of the potential liability for costs when breaking a lease, renters are almost always asked by agents and landlords in the first instance to pay higher costs than they would normally be found liable to pay when compensation claims are resolved at a Tribunal. Renters are typically told they must continue paying rent indefinitely while being given no updates on the efforts that are being made to find a new renter, and are rarely provided with any evidence to substantiate claims for advertising and re-letting costs.

This means that most renters who need to break a lease face extreme uncertainty on what they might be liable to pay, unreasonable demands for costs, and no clarity on their ultimate liability unless and until a compensation claim is made and decided. This represents an additional burden on Tribunals, and, with the current backlog of bond and compensation claims in the VCAT RT Division, means that renters' bonds are often tied up in these disputes for 2 years or more before being resolved.

#### 4.3.2 Student renter example 5

*Anna<sup>7</sup> is an international student who signs a 12-month fixed-term rental agreement in student accommodation. However, her university course finishes 4 months before the end of the fixed term period, and she wishes to return home overseas.*

*She asks her landlord how she can end her lease early, and they incorrectly tell her that she must keep paying rent indefinitely if she wishes to leave early. They also ask her to pay a lump sum lease break fee and advertising costs amounting to several further weeks' rent, and do not provide any documentation to support how these costs have been incurred.*

*Anna feels she has no choice but to follow what her landlord says, so she returns the keys, pays the extra costs demanded, and allows rent to continue to be deducted from her bank account for the next 4 months.*

#### 4.3.3 Recommendation

NSW rental laws provide a tiered system for the amount payable for breaking a lease (depending on how much of the lease term is left).<sup>8</sup> We suggest these laws as a model for other states.

### 4.4 Reform the bond claim process

Although recent reforms to the bond claim process in Victoria (including the ability for renters to make bond refund claims directly to the Victorian Residential Tenancies Bond Authority ("the VIC RTBA")) have improved renters rights, bond disputes are still being raised by landlords without proper basis. These disputes are burdening the VCAT RT Division and leading to unacceptable delays in renters receiving bond refunds.

Landlords appear to approach bond claims with the view that they have an entitlement to bond money, when in fact this money belongs to the renter, unless there is an agreement to divide the money or sufficient evidence is produced through a Tribunal application to substantiate a claim.

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<sup>7</sup> As this is such a prevalent issue, we have provided here an example which is an amalgamation of case experiences from the UMSU Legal Service.

<sup>8</sup> See overview on NSW Fair Trading website here: <https://www.fairtrading.nsw.gov.au/housing-and-property/renting/ending-a-tenancy#Breakingafixedtermagreementearly>

#### 4.4.1 Impact

While renters do not need their landlord's consent to make a claim to the VIC RTBA for a bond refund, if the landlord wishes to dispute this claim, they can make an application to the VCAT with little or no evidence as a basis for this claim, and by so doing delay the renters' bond refund until the VCAT application is decided. With current backlogs of bond and compensation matters at the VCAT, this means that a renter's bond can be held in limbo for over 12 months, even for frivolous and vexatious bond claims.

Unscrupulous agents and landlords are currently using their awareness of this delay to pressure renters into accepting baseless bond claims, threatening that if they do not accept the proposed claim from the bond, they will have to wait at least 12 months to access any of their bond money at all.

Renters are left between a rock (accepting an unreasonable and baseless amount be deducted from their bond) and a hard place (not being able to resolve the dispute and access any of their bond money for likely over 12 months). Many renters rely on receiving this bond money to help with moving costs or pay bond at a new property, and this situation is exacerbating financial hardship at a time when renters are also facing the pressures of vastly increased rents, lack of housing availability, and generally increased cost of living.

The proliferation of bond claims also puts extra pressure on the VCAT RT Division, reducing resources available to deal with other rental disputes.

#### 4.4.2 Student renter example 6

*Ruth<sup>9</sup> is a university student who rented an apartment in the CBD with another housemate.*

*Throughout the tenancy Ruth and her housemate kept the apartment clean and tidy. At the end of their tenancy, they diligently cleaned the apartment, returning the apartment to the landlord as they found it a year ago.*

*However, the landlord claimed that Ruth and her housemate needed to have the apartment professionally cleaned, even though they were not legally required to do so.*

*The real estate agent, acting for the landlord, wrote to Ruth and warned her that if she did not hire a professional cleaner to clean the apartment, one would be arranged, and the landlord would seek to have the cost deducted from the bond. The real estate agent also mentioned in her email that any dispute of the bond would mean that the matter would be resolved at the VCAT, and specifically mentioned that there is currently a waiting period at the VCAT of more than 2 ½ years.*

*Ruth and her housemate felt the situation was extremely unfair, and that the real estate agent was weaponising the backlog at the VCAT against them, even though the landlord's claim had no merit.*

*Unfortunately, Ruth and her housemate were not in a financial position to not be able to access their bond for possibly 2 ½ years. Reluctantly, Ruth and her housemate paid for a professional cleaner to clean the apartment at a cost of \$250.*

#### 4.4.3 Recommendation

This is an issue which likely requires a multi-faceted approach to reform, and we have included multiple interlinked recommendations below.

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<sup>9</sup> Name changed.

We propose that landlords be required to provide sufficient particulars and supporting documentation (invoices etc.) when making a bond claim to a renter, similar to the current documentary evidence requirements for certain types of notices to vacate.

This requirement could be implemented by way of a similar prescribed notice which must be given to a renter after they vacate, and/or as a requirement for the supporting documentation which a landlord must produce for the VCAT to accept a landlord's application in relation to a bond dispute.<sup>10</sup>

We propose that these documentary evidence requirements be implemented in addition to the ability for renters to make a claim directly to their VIC RTBA for their bond, so their rights in this respect are not reduced by any further reform.

## 5 Proposed reforms to mechanisms for resolving rental disputes

While reforming rental laws around Australia is an important step toward improving renter protections and clarity for both renters and landlords, inherent power imbalances in the renter-landlord relationship remain. Renters' vulnerability in this position (particularly as some form of "no grounds" evictions remain a possibility in most jurisdictions) means they are often unable or unwilling to try and enforce their rights, even where these exist under their state rental laws and there are mechanisms available for dispute resolution.

For this reason, we emphasise that the focus must be taken off individual renters to enforce rental laws, and placed on government regulators, in line with other areas of the law (such as consumer and employment protections). Amendments to rental laws providing for further penalties are ineffective unless they are regularly enforced.

### 5.1.1 Recommendation

We propose enforcement of civil penalty provisions must be prioritised in all jurisdictions as a deterrent to landlords breaching the law, and to reduce the burden on individual renters to try and enforce rental laws.

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Thank you for the opportunity to share our perspective on rental reforms for Australia, and please do not hesitate to contact us for any further information on this submission.

### UMSU Legal Service

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<sup>10</sup> See, for example, the current specialised application form used at ACAT for bond disputes, which includes reference to the kinds of documentation required to support a bond claim: <https://www.acat.act.gov.au/case-types/rental-disputes/rental-bond-disputes>.

This submission is endorsed by:



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Student Legal Advice Centre



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