

NO PLACE LIKE HOME

*Addressing Exploitation of International Students
in Sydney's Housing Market*

UNSW Human Rights Clinic | July 2019



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The UNSW Human Rights Clinic works to systemically advance the rights of temporary migrants and asylum seekers in Asia and Australia. Under intensive faculty supervision, clinic students work as legal advisers and advocates with individual clients, NGOs, governments and intergovernmental institutions globally and domestically. Bridging theory and practice, students learn the skills and responsibilities of human rights lawyering.

For further information on the clinic and its publications, see www.law.unsw.edu.au/current-students/law-action/clinics/human-rights-clinic.

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Please note: wherever an asterisk (*) appears in a quote or case study, the name has been changed to protect student and stakeholder confidentiality. Each case study was provided by a legal or tenancy advice service, based on a real client's experience.

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Executive Summary

In 2018, there were a record 548,000 international students at universities, vocational colleges, English colleges and schools in Australia -- nearly double the number in 2013.¹ Education providers, government agencies and others are concerned about unscrupulous conduct by landlords and others that leave many international students living in poor housing conditions. These conditions seriously undermine international students' physical, emotional and financial wellbeing, and in many cases, their basic human right to adequate housing.²

Sydney (and other major Australian cities) has very limited dedicated student accommodation on campus or within commercial Purpose Built Student Accommodation (PBSA). As a result, most international students in Sydney rely on private rentals. Cost and other barriers render the formal rental market inaccessible to most international students. Instead, most live in share houses, boarding houses and other insecure arrangements in the marginal rental sector, which they find online. International students are therefore highly vulnerable to deceptive and exploitative conduct both when finding a place to live, and as tenants.

Most international students living in share house arrangements do not have a formal tenancy agreement, leaving them without tenancy rights and other protections under the *Residential Tenancies Act 2010* (NSW) ('**RTA**') or other laws. They are therefore significantly more vulnerable to unscrupulous conduct and unfair evictions because in the face of unfair housing practices, they will generally be unable to access the legal remedies that are available to tenants through the NSW Civil and Administrative Tribunal ('NCAT'). This includes access NCAT to recover a bond. When international students are unable to recover their bond or obtain remedies for other unscrupulous landlord conduct, leaving accommodation becomes financially stressful or impossible, forcing some to stay in housing that is inadequate or unsafe. Students' lack of access to NCAT to address unscrupulous landlord conduct provides those landlords with impunity and enables them to repeat the conduct with other international students.

International students under 18 also encounter a range of problems in unregulated homestay arrangements.

This report focuses on Sydney because of the large number of international students in the city, and the particular challenges to housing affordability in general. It concentrates on problems international students encounter in the marginal rental market. Though some of these problems are experienced by other disadvantaged groups, their implications are particularly acute for international students who are especially vulnerable to deceptive and unscrupulous practices and have limited family or community support in Australia when problems emerge.

1 Natasha Robinson, 'Australia hosting unprecedented numbers of international students', ABC News (online, 18 April 2018) <<https://www.abc.net.au/news/2018-04-18/australia-hosting-unprecedented-numbers-international-students/9669030>>.

2 United Nations Committee for Economic, Social and Cultural Rights, *General Comment No 4: The Right to Adequate Housing*, 6th sess, UN Doc E/1992/23 (13 December 1991) ('*General Comment No. 4*').

Housing problems encountered by international students

International students in Sydney encounter a range of circumstances that undermine their right to adequate housing, and in many cases breach their legal rights under NSW law. They typically encounter multiple housing problems simultaneously.³ These most commonly include:

- 1. Bond issues.** The withholding of bond money by landlords is one of the most common tenancy problems faced by international students across Sydney. Although bond receipts are mandatory under the *RTA*,⁴ international students commonly do not receive a bond receipt and have no proof they paid the bond. Fair Trading NSW provides an online service for the payment, management, and return of bonds,⁵ which means that the bond is paid directly to the Rental Bond Board rather than the landlord. However, many landlords and agents do not offer this option to international students. International students in the marginal renting sector who lack tenancy agreements and are not protected by the *RTA* are the most vulnerable to landlords' improper withholding of their bond, as are students in accommodation classified as a boarding house for which a bond is not required to be lodged. In addition to creating emotional distress, improper withholding of bonds from international students can compel them to remain in poor or dangerous housing, and financially prevent them from seeking alternative accommodation. Landlords and agents commonly require international students to pay a bond that is more than four weeks of rent, which is prohibited under the *RTA*.⁶
- 2. Misrepresentation, deceptive conduct and scams.** Unscrupulous landlords and agents are able to perpetrate scams and deceive international students by taking advantage of cultural differences and international students' lack of awareness of their rights or standard Australian housing practices. International students' vulnerability to exploitation is exacerbated when they organise accommodation through informal avenues (as most do), including when organising their housing from their home country. International students easily fall for online scams that charge upfront for rental properties that do not exist and service providers and media reports suggest these practices are widespread. International students also commonly pay for property online that is falsely described, and/or are given inaccurate or missing contact details for the landlord. In some cases, the landlord liquidates and transfers its assets to a new company (phoenixing) so the international student cannot recover money they paid upfront, or their bond at the end of a lease. International students are also frequently charged excessive rent increases and other excessive costs, including for repairs and cleaning fees. All of these deceptive practices have significant financial consequences that exacerbate the already considerable financial burden that international students face in Sydney.
- 3. Lack of written agreements with tenancy rights.** Although the *RTA* requires landlords to provide a written tenancy agreement, many international students either do not receive a written agreement from their landlord or receive an agreement containing unfair or unlawful terms. Some landlords mis-classify their tenancy as a boarding house and issue occupancy agreements rather than tenancy agreements to attempt to avoid their obligations under the *RTA*. Students in a share house without a written agreement are not covered by the *RTA* and if there are fewer than five students, the arrangement is not a boarding house. These students fall through a significant crack in which they lack tenancy rights and will struggle to recover their bond, and are therefore significantly more vulnerable to unscrupulous conduct and unfair evictions.
- 4. Unfair evictions.** Improper evictions with little or no notice are common among international students, often when the landlord wants the room for a new higher-paying tenant. Landlords also undertake 'informal evictions' by harassing the student and/or making the accommodation intolerable. Emergency accommodation is generally unavailable to international students who are suddenly evicted.

3 Analysis of de-identified Kingsford Legal Centre files relating to advice sought by international students between October 2017-April 2018.

4 *Residential Tenancies Act 2010* (NSW) s 159(3) ('*RTA*').

5 'Rental Bonds Online', *Fair Trading NSW* (Web Page) <<https://www.fairtrading.nsw.gov.au/housing-and-property/renting/rental-bonds-online>>.

6 Data obtained through case analysis of Kingsford Legal Centre files on tenancy matters for international students between October 2017 and April 2018 ('Kingsford Legal Centre case analysis'); *RTA* s 159(1).

5. **Poor living conditions.** Many international students live in overcrowded housing – either knowingly in order to make accommodation affordable, or through deception where they do not expect to be sharing with many others and do not receive the financial benefit of overcrowding because each tenant is overcharged. A substantial proportion of international students live in accommodation that is unsafe, or in which they feel unsafe, particularly in overcrowded conditions.
6. **Bullying, harassment and assault.** International students confront bullying behaviour or harassment by landlords, especially when the landlord lives with the student as a head tenant. Many are fearful of addressing this behaviour and other issues with their accommodation because they lack alternate affordable accommodation options, or because landlords threaten reporting the student to Immigration if they take action.
7. **Discrimination.** International students report racial discrimination when searching for accommodation, and in the terms on which housing is offered.

Factors that prevent international students from securing adequate housing or leaving inadequate housing

International students confront numerous intersecting barriers to finding secure, safe and affordable housing in Sydney. These push students into precarious and inadequate living conditions and render them vulnerable to exploitation and mistreatment by landlords who are aware of international students' limited alternatives. A number of these barriers are connected with the Sydney housing market and are difficult to address. Others are the result of factors which government, education providers and other stakeholders can influence and reform.

1. **Limited availability of affordable housing in Sydney and shortage of student housing.** Affordability of housing is paramount for international students. On-campus accommodation is inaccessible to the overwhelming majority of international students due to its cost and highly limited availability, and there are no regulations requiring universities to provide housing to international students. The limited availability of on-campus accommodation and PBSA means that international students in Australia are forced to rely on private rental accommodation more than international students studying in other countries such as the U.S.A., U.K. and Canada.⁷ The high cost of accommodation on the Sydney rental market is a key factor pushing international students into more insecure and exploitative rentals that violate tenants' rights.
2. **International students' financial constraints.** Although prospective international students are required to demonstrate they have sufficient financial means to live and study in Australia for the duration of their course, many experience substantial financial strain due to:
 - a. the **cost of tuition and living.** Focus group participants indicated that international students believe affordable rent to be approximately \$150 per week for a shared bedroom, or \$200 for a private room. Although most international students prefer to live close to their campuses, analysis of median rents in those areas suggests they are unaffordable to many international students without overcrowding.
 - b. the **uniquely high cost of public transport in NSW**, the only state that denies student travel concessions to international students. This offsets financial benefits of accommodation further from campus, and compromises the physical safety of those who choose to walk home at night to avoid public transport costs.

⁷ Terry Burke, 'Does Australia Have a Competitive Disadvantage in Student Accommodation?' (Discussion Paper, International Education Association of Australia, 2015), 3.

- c. **visa conditions restricting employment** to 40 hours per fortnight, coupled with widespread and substantial underpayment of international students.⁸ Together, these factors limit international students' capacity to afford adequate housing. They restrict the weekly income students can demonstrate when applying for housing, making them less appealing tenants than other groups seeking low cost housing.

3. Inaccessibility of the formal rental market to international students through real estate agents. In addition to work restrictions, international students often cannot submit competitive tenancy applications as they lack steady income or evidence of their pay through payslips or bank statements because they received their wages in cash. They generally lack local references and documentary evidence of rental history; proof of overseas history, references or funds are often not accepted. This is compounded by the temporary nature of their stay in Australia.

4. Lack of essential information pre-departure and in Australia. Because of the inaccessibility of student housing and the formal rental market, most international students find accommodation through social media and other informal channels. The majority organise their accommodation while they are still overseas, through two main methods: informal platforms for finding share house or sub-lease arrangements (e.g. Gumtree, Facebook, Flatmates.com.au, WeChat), and companies that promise to arrange international students' accommodation. In both cases, students generally pay upfront deposits and with no ability to inspect a property, leaving them highly vulnerable to deceptive conduct, unlawful charges and scams. International students are commonly unable to accurately evaluate potential housing and identify "red flags" because they are unfamiliar with standard practices, real estate terms, and tenancy rights in NSW, and do not know how to find decent affordable housing or where to seek legal advice. This also prevents them from insisting on conditions (such as a written tenancy agreement or bond receipt) that are essential to protecting themselves when problems arise. International students generally get their information on housing from family or friends, but they want to receive more useful information on housing from their education providers via email and social media.

5. Lack of access to justice and help to resolve problems. International students generally do not know where to go for legal assistance when housing problems arise. Cultural and language differences also deter some international students from seeking help. Those who contact legal services often encounter long wait times as the demand for assistance far outweighs organisational capacity in Sydney. Those legal services that advise students on tenancy issues do not have capacity to represent many students in claims against their landlords beyond informing them about their rights and options. As noted above, many international students, including those in share houses without a written agreement and those in boarding houses, cannot access NCAT to enforce key tenancy rights under the *RTA*. International students who have rights as a tenant under the *RTA* face a range of barriers to filing and succeeding in a claim against a landlord in NCAT. The vast majority require legal assistance and representation. They face further barriers including a lack of necessary documentation, cost, and the urgency and/or time-consuming nature of housing claims. International students have limited time available to pursue claims amid significant work and study commitments and pressures, and many return home immediately after moving out which prevents them from pursuing their bond or other claims (a factor built into exploitative landlord business models). International students' inability to enforce their rights is compounded by a lack of government enforcement of relevant laws that protect tenants in NSW. This includes limited exercise of investigation powers by NSW Fair Trading and key local councils (besides City of Sydney), and the Overseas Student Ombudsman's non-acceptance of housing-related complaints.

⁸ Laurie Berg and Bassina Farbenblum, *Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey* (Report, November 2017) 6.

Impact of insecure housing on Sydney's international students

Lack of a safe, adequate and stable place to live profoundly impacts students' physical and mental wellbeing, creating new issues or magnifying existing problems. This includes a significant impact on students' mental health, with housing issues creating high levels of psychological distress that compound students' concerns regarding their studies, finances and work. International students' housing experiences can substantially impact on their perceptions of Australia and their self-perception. Students' academic performance and class attendance are often affected by stress, poor sleep, lack of a safe quiet place to study, or time required to deal with unacceptable living conditions including looking for a new place to live at short notice. Students' academic performance and mental health are affected by the financial impact of housing problems, including the need to work more hours to cover a sudden rent increase, or to secure alternative accommodation when they need to leave poor or unsafe accommodation, even more stressful when they are unable to recover their bond or other money paid. Students face an even greater financial burden if they need to repeat a subject due to inadequate class attendance, which may lead to the ultimate penalty of losing their visa due to unsatisfactory course completion.

Conclusion and Recommendations

A considerable proportion of international students in Sydney (and other Australian cities) do not currently enjoy the basic human right to live in a place that is legally and physically secure, affordable, accessible, habitable, and has the facilities necessary for its occupants to live in security, peace and with dignity.⁹ A range of actions can be taken by the NSW and Commonwealth governments, local councils, education providers and other key stakeholders to reduce students' vulnerability to deceptive and exploitative conduct by landlords and others, and enable them to obtain assistance and swiftly obtain remedies when their rights are violated.

A. Increase Access to Adequate Affordable Housing

- a. Increase availability of quality affordable accommodation for international students.
- b. Improve international students' capacity to pay for better quality accommodation, including by extending eligibility for travel concessions to full-time international students.
- c. Education providers and the NSW government should provide emergency support services to ensure international students have a safe place to stay if they need to leave accommodation.

B. Improve International Students' Access to Information and Tenancy Services

- a. The NSW government (including StudyNSW and Fair Trading NSW) should collaborate with education providers, tenants/legal assistance services, local councils and international student groups to develop and deliver targeted information that enables international students to identify adequate housing, avoid unscrupulous housing practices, and seek help for problems when they arise.
- b. The NSW and Commonwealth governments should substantially increase availability of services to provide international students with tenancy advice and legal assistance to enforce their rights, including through a centrally located NSW-government funded International Student Hub with phone and online chat services.
- c. Universities should provide a dedicated tenancy (and employment) advice and legal service on campus, staffed by supervised international students.

⁹ *General Comment No. 4* (n 2) [7].

C. Establish Accountability of Unscrupulous Accommodation Providers and Enable International Students to Identify Quality Providers

- a. Education providers, local councils, NSW Fair Trading, international student groups and tenancy/legal assistance services should collaborate, ideally in the form of a well-resourced Taskforce, to share information on scams and unscrupulous practices reported by international students, identify repeat offenders, instigate investigations, and publish findings of unlawful conduct by specific providers. In tandem, the Commonwealth government should establish a further Phoenixing Taskforce focused on individuals who provide accommodation and other services to international students (and other temporary migrants), and local councils with significant international student populations should establish their own centralised investigation system similar to the City of Sydney with appropriate referral pathways.
- b. The NSW government should implement a code of practice for commercial student accommodation to establish a clear set of standards regarding quality and enforcement of tenants' rights, and a related accreditation process. The NSW government should also establish a registration scheme for homestay providers.
- c. NSW and Commonwealth regulatory reforms should be implemented to close loopholes that enable unscrupulous landlords to evade accountability.

D. Strengthen Rights and Access to Justice

- a. The NSW government and parliament should adopt measures to ensure international students can easily reclaim their bond. This will reduce financial hardship and enable international students to move from unsafe or inadequate accommodation.
- b. Amend the *Residential Tenancies Act 2010* (NSW) and/or the *Residential Tenancies Regulations 2010* (NSW) to provide rights and remedies to the most vulnerable tenants in the marginal rental sector, including international students in share houses.
- c. Introduce reforms to NSW Civil and Administrative Tribunal processes to increase accessibility for international students.

I. INTRODUCTION

“Accommodation is the foundation of their life”

UNSW Global international student housing advisor

Over the past five years, there has been an exponential increase in the number of young people coming from overseas to study in Australia – whether in university degree programs, vocational courses, English language courses, or schools. In 2018, there were a record 548,000 international students in Australia -- nearly double the number in 2013 (305,000).¹⁰ The vast majority of international students report that they are satisfied with their time in Australia.¹¹ However, education providers, government agencies and others are concerned about mistreatment of international students in areas that profoundly affect their wellbeing during their time in Australia. This includes systemic underpayment of international students at work, which has been the subject of numerous recent studies.¹² It also includes widespread unscrupulous conduct by landlords and others that leave many international students living in poor housing conditions that seriously undermine their physical, emotional and financial wellbeing, and their basic human right to adequate housing.¹³

In contrast to many other international cities with large numbers of international students, Sydney (and other major Australian cities) have very limited dedicated student accommodation.¹⁴ This includes a highly limited supply of accommodation on university campuses (which house only 4% of all domestic and international students in greater Sydney)¹⁵ and commercial PBSA, which accommodates fewer than 15% of international students in Australia’s largest cities.¹⁶ As a result, the vast majority of international students in Sydney are forced to rely on private rental accommodation. The formal private rental market is inaccessible to most international students due to prohibitive rental costs and a range of factors that make international students uncompetitive with local residents when applying to lease properties through real estate agents. A large proportion of international students in Sydney therefore live in share houses, boarding houses and other insecure arrangements in the marginal rental sector, which they commonly find online. As a result, international students are highly vulnerable to deceptive and exploitative conduct both when finding a place to live, and as tenants. Most international students living in share house arrangements do not have a formal tenancy agreement, leaving them without tenancy rights and other protections under the *RTA* or other laws. They are therefore significantly more vulnerable to unscrupulous conduct and unfair evictions because in the face of unfair housing practices, they will generally be unable to access the legal remedies that are available to tenants through the NSW Civil and Administrative Tribunal (‘NCAT’). This includes access NCAT to recover a bond. When international students are unable to recover their bond or obtain remedies for other unscrupulous landlord conduct, leaving accommodation becomes financially stressful or impossible, forcing some to stay in housing that is inadequate or unsafe. Students’ lack of access to NCAT to

10 Natasha Robinson, ‘Australia hosting unprecedented numbers of international students’, *ABC News* (online, 18 April 2018) <<https://www.abc.net.au/news/2018-04-18/australia-hosting-unprecedented-numbers-international-students/9669030>>.

11 Australian Department of Education and Training, *2018 International Student Survey Results – Headline Findings* (Fact Sheet) <https://internationaleducation.gov.au/research/research-papers/Documents/ED19-0079%20-%20INT%20-%202018%20International%20Student%20Survey%20-%20Headline%20findings%20-%20update_02.pdf>.

12 See e.g. Laurie Berg and Bassina Farbenblum, *Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey* (Report, November 2017).

13 *General Comment No. 4* (n 2) [7].

14 Burke (n 7) 3.

15 Savills, *Australian Student Accommodation Report 2018* (Market Report, 2018), 12.

16 Chris Ziguras, *International Student Accommodation Symposium: Outcomes Report* (Discussion Paper, August 2015) 5.

address unscrupulous landlord conduct provides those landlords with impunity and enables them to repeat the conduct with other international students. International students under 18 also encounter a range of problems in unregulated homestay arrangements.

This report focuses on Sydney because of the large number of international students in the city, and the particular challenges to housing affordability in that city. Currently, 38% of international student enrolments in Australia are in New South Wales (NSW) and there are over 35,000 international students studying in the Sydney local area.¹⁷ However many of the problems identified in this report are experienced similarly by international students in other major cities in Australia¹⁸, and further research is needed elsewhere. Indeed, experts have observed that the exponential increase in the number of international students in Australia is 'transforming the rental market' across Australian capital cities.¹⁹

The lack of affordable housing in Sydney is a problem shared by other disadvantaged groups, including local students, who are also pushed into the marginal rental market.²⁰ However the implications of this problem are particularly acute for international students, and warrant specific attention. In particular, international students are especially vulnerable to deceptive and unscrupulous practices when organising their accommodation from overseas as the vast majority do at the outset, with very limited family or community support in Australia when housing problems emerge.

There is undoubtedly a pressing need for increased availability of student accommodation for international students in Sydney – an area in which government, universities and the private sector all have important roles to play. However even if this shortage is ameliorated to some degree, this will take time, and there will always remain a significant group of international students for whom student housing is too expensive, and who will continue to seek accommodation in the marginal rental market. This report therefore focuses primarily on the problems that international students encounter as marginal renters, leaving others to tackle the complex challenges to increasing the availability of student accommodation and affordable housing in Sydney generally.

Drawing on a range of data sources, the report seeks to examine typical accommodation situations for international students (Section II), the types of problems they most commonly encounter (Section III), the drivers of these problems and the factors that make international students especially vulnerable (Section IV), and the implications of these problems for international students' wellbeing (Section V). Across these sections, the report considers the legal frameworks underpinning students' housing arrangements, examining the reasons why students either lack legal rights as tenants or are unable to obtain remedies when they are exploited by unscrupulous landlords.

The report concludes by recommending a range of measures that will reduce international students' vulnerability to exploitation in accommodation and enable them to obtain assistance and hold landlords to account when their rights are violated (Section VI). As university students ourselves, we hope this report provides our fellow international students with a better understanding of their rights and housing conditions, while illuminating for the NSW and Commonwealth governments, local councils, education providers and other key stakeholders the actions they can take in the short to medium term to better protect and empower Sydney's international students.

17 'International Students', *City of Sydney* (Web Page) <<https://www.cityofsydney.nsw.gov.au/community/community-support/international-students>>.

18 See e.g. 'International Students Legal Information', *Inner Melbourne Legal Centre* (Web Page) <<https://imcl.org.au/our-services/community-legal-education/international-students>>.

19 Natasha Robinson, 'Australia hosting unprecedented numbers of international students', ABC News (online, 18 April 2018) <<https://www.abc.net.au/news/2018-04-18/australia-hosting-unprecedented-numbers-international-students/9669030>>, quoting Grattan Institute higher education program director, Andrew Norton.

20 Nicole Gurrán, Madeleine Pill, Sophia Maalsen, Tooran Alizadeh and Pranita Shrestha, 'Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney' (Sydney Policy Lab and the Urban Housing Lab, April 2019), 43, 46.

Methodology

The report draws on a range of primary and secondary data sources.²¹ First, it incorporates a review of previous reports, articles and other publicly available literature on housing rights violations experienced by international students in Australia and Sydney in particular. Research was also conducted on the legal and policy frameworks in NSW and the Commonwealth.

Between May and September 2018, the UNSW Human Rights Clinic conducted 4 focus groups with 16 international students in Sydney. Students were asked about international students' experiences in the housing market and the problems they encounter, whether and how international students seek help to resolve their issues, and suggestions for improving international students' housing experience. Focus group participants were recruited through housing service providers and student university groups. During the same time period students in the UNSW Human Rights Clinic conducted 10 interviews with individual experts who provide housing-related services to international students in Sydney. In addition, a stakeholder advisory group provided guidance through an initial meeting and on an ongoing individual basis throughout the project. This included input in relation to problems encountered by international students, recommendations for reform, and feedback on the draft report. For a list of interviewees, advisory group members, and focus group details see Appendix A.

The report also draws on analysis of Kingsford Legal Centre's tenancy advices for international students from October 2017 to April 2018 in order to determine the most common housing rights violations experienced by international students who sought assistance from that service. The data also revealed what legal advice was given, how international students chose to respond to these issues and what they wanted from service providers.

A key limitation of the research is that, due to resource constraints, primary data from international students was confined to students from three universities, with limited representation of students studying at other universities or at VET and ELICOS institutions. We sought to offset this somewhat by interviewing legal service providers who service international students across the entire international education sector, including Redfern Legal Centre through its International Student Service, the state-wide Tenants Union, and the Eastern Area Tenants Service. Nevertheless, we acknowledge that international students studying at different institutions may have varied experiences in housing in Sydney that are not reflected in this report.

21 Data was collected pursuant to UNSW Ethics approval no. HC15861 and HC15664.

II. INTERNATIONAL STUDENTS' LIVING ARRANGEMENTS AND LEGAL RIGHTS IN SYDNEY

A. Types of Accommodation and Living Arrangements

International students live in several main types of accommodation in Sydney. These include: private rentals; private share houses/flats; 'Purpose Built Student Accommodation' operated by commercial agencies; residential colleges on campus; boarding houses; and staying with friends or family. A 2014 survey of international students in Australia found that over half of international students lived in a private rental (53%); 21% with friends or relatives; 13% in PBSA; and only 9% in university or college residences.²² On arrival in Sydney, some international students also find temporary accommodation from services such as Airbnb or stay in commercial youth hostels until they are able to secure a longer term housing arrangement.²³

Many international students move at some point in their studies and may stay in more than one type of accommodation. The features of each accommodation type are briefly set out in this section, followed by a discussion of the legal frameworks that apply to each (Section II.B.2) and the varying vulnerabilities and problems that international students encounter (Section III).

Though many local students are also forced into Sydney's marginal rental sector, international students are especially vulnerable to deceptive and unscrupulous practices as the majority organise their accommodation from overseas, with limited knowledge of local housing practices and very limited family or community support in Australia when housing problems emerge.

22 Australian Department of Education, *International Student Survey 2014 - Overview Report* (April 2015) 11.

23 Focus Group with International Students (10 September 2018).

Table 1. Features of commercial properties specifically operated for students: Purpose Built Student Accommodation (PBSA) off campus, and Residential Colleges on or near campus.

	Purpose Built Student Accommodation ('PBSA') ²⁴	Residential Colleges
Description	'High quality accommodation, rents inclusive of bills, varying options on tenancy lengths... enhanced internet connectivity, professional management and security.' ²⁵	Small communities which provide accommodation, as well as academic and social support. ²⁶ Range of services, from primarily self-sufficient to all-inclusive catering and cleaning.
Owned	Privately	Either the educational institution or privately
Location	Close to universities, private colleges and accessible transport and amenities. ²⁷	On or near university and college campuses
Usage	13% of tertiary international students live in PBSAs. International students comprise 40% of PBSA tenants. ²⁸ There are currently 87,502 PBSA beds in Australia. ²⁹	In 2018, residential colleges in Sydney accommodated 4.1% of all students, domestic and international. ³⁰ Staff at one university in Sydney observed the ratio of international to domestic students in university accommodation is approximately 60:40. ³¹
Tenant Rights	Rights under the <i>Residential Tenancies Act 2010</i> (NSW), and governed by company-specific Residential Agreements and 'house rules'.	Not covered by the <i>Residential Tenancies Act 2010</i> (NSW); governed by their own rules and regulations. ³²

24 For example, properties owned by Iglu, Urbanest, and UniLodge.

25 Natalie Breen and Emily Fell, 'The growth of student accommodation as an asset class in Australia' (Blog Post, 24 July 2015) *Norton Rose Fulbright* <<http://www.mondaq.com/australia/x/414982/wealth+management/The+growth+of+student+accommodation+as+an+asset+class+in+Australia>>.

26 'What's a Residential College?', *Insider Guides* (Blog Post) <<https://insiderguides.com.au/residential-colleges/>>.

27 Breen and Fell (n 25).

28 Ziguras (n 16).

29 Carolyn Cummins, 'Student accommodation is in high demand' *The Sydney Morning Herald* (online, 11 April 2019) <<https://www.smh.com.au/business/companies/student-accommodation-is-in-high-demand-20190408-p51c1c.html>>.

30 Savills, *Australian Student Accommodation Report 2018* (Market Report, 2018), 12.

31 Interview with staff member in accommodation services of a Sydney university.

32 *Residential Tenancies Regulations 2010* (NSW), cl 20(1)(c).

Table 2. Features of accommodation in the private rental market: individual tenancy agreements, share houses, boarding houses and homestays.

	Head tenant/ Individual tenancy agreement	Share Houses	Boarding Houses	Homestays
Description	Private rental involving one person on a tenancy agreement as the head tenant.	Private rental involving either: 1) Co-tenants: multiple people on the tenancy agreement who are typically not in a personal relationship. ³³ 2) Subtenants: share the accommodation with the head tenant who sublets part of the premises to the subtenant under a separate agreement. The head tenant is the subtenant's landlord.	Boarding house residents (known as boarders or lodgers) sign an occupancy agreement rather than a tenancy agreement and have fewer rights than tenants. Boarding houses must be registered if they have over 5 residents who pay a fee for a bed. Hotels, motels, hostels, trade premises and residential colleges are not boarding houses. ³⁴	Students, especially those under 18 years old, pay an amount to stay in the host family's home. Usually organised by commercial homestay services.
Features	The head tenant has exclusive occupancy of the premises, and provides their own furniture.	Each tenant usually has their own private bedroom, provides their own furniture, and shares common areas.	The resident usually only has the right to occupation of one room, which is usually furnished, and they share the remainder of the facilities (such as bathrooms and kitchens), and it is usually furnished. ³⁵ There may be house rules.	The arrangement is designed to position the student as if they were part of the family, including abiding by any rules and/or curfews, eating meals together and contributing to chores. ³⁶
Rights	Written tenancy agreement: rights under the <i>RTA</i> apply.	Written tenancy agreement: rights under the <i>RTA</i> apply. No written tenancy agreement (particularly common in subtenant arrangements): an informal agreement where price of rent and length of rental are agreed orally, no enforceable rights under the <i>RTA</i> .	Some boarding houses can be registered under the <i>Boarding Houses Act 2012</i> (NSW), which provides only limited protection of rights. Boarders have rights under their written occupancy agreement. Boarders in non-registrable boarding houses are not covered by the <i>Boarding Houses Act 2012</i> (NSW) (' <i>BHA</i> ').	Rights as included in the homestay agreement between the student and the homestay provider. ³⁷

33 'Share housing', *Tenant's Union of NSW*, (Fact Sheet, January 2014) < <https://www.tenants.org.au/factsheet-15-share-housing>>.

34 *Boarding Houses Act 2012* (NSW) s 5(3) ('*BHA*').

35 'Boarding Houses', *Fair Trading NSW* (Web Page) < <https://www.fairtrading.nsw.gov.au/housing-and-property/strata-and-community-living/boarding-houses>>.

36 Colm Hanratty, 'So... what is a homestay?', *Homestay.com* (Blog Post, 1 October 2017) < <https://www.homestay.com/blog/2017/10/01/so-what-is-a-homestay>>.

37 These are governed by the National Code of Practice for Providers of Education and Training to Overseas Students 2018. Note that these standards are voluntary, and are not compulsory.

B. International Students' Housing Rights

Under Australian law international students do not have a legal right to access any particular type of housing, or to have housing provided by their educational provider. Nor do they have rights to financial support for rent or other housing-related costs. However once students are in a housing arrangement, state and federal tenancy laws and consumer laws apply equally to international students and provide them with legal rights that are identical to those of local tenants. Australia also has obligations under international law to fulfil international students' human right to adequate housing while they are in Australia.

1. International Law

Under the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR'), Australia has obligations to ensure everyone within its jurisdiction enjoys the right to adequate housing, including international students.³⁸ This right includes the right to live somewhere that is legally and physically secure, affordable, accessible, habitable, and has the facilities necessary for its occupants to live in security, peace and with dignity.³⁹

2. NSW Tenancy Law

In Australia, housing is governed primarily by state and territory legislation. In NSW, the degree of legal protection and remedies available to tenants for housing rights violations depends on the type of housing arrangement. The two primary housing laws are the *RTA* and the *BHA*. Commonwealth legislation in other areas provides further limited protections.⁴⁰

Residential Tenancies Act 2010 (NSW)

The *RTA* applies to formal tenancy agreements, whether written or oral, but it is difficult to apply if there is no written residential tenancy agreement. Students without a written agreement struggle to access legal remedies in the face of unfair housing practices. As a result, they often must rely on informal avenues or seek remedies under other areas of law, such as contract, consumer law or discrimination law, as discussed in Section II.B.3. As set out in Table 3 below, the *RTA* does not apply to residents of boarding houses, lodgers in private homes, occupants of share houses without a written agreement, or residents of accommodation provided by education providers.⁴¹

38 *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 11.

39 *General Comment No. 4* (n 2) [7]. Australia has an international legal obligation to protect international students' right to housing that is legally and physically secure, affordable, accessible, habitable, and enables them to live in security, peace and with dignity.

40 The *Education Services for Overseas Students Act 2000* (Cth) contains the Education Services for Overseas Students National Code of Practice, which requires university institutions to provide overseas students with access to support services, including housing and tenancy services. However, there is no explicit obligation to guarantee the appropriateness of on-campus accommodation facilities, nor to ensure the provision of adequate dispute resolution processes.

41 *RTA* s 8(1).

Recent amendments to the *Residential Tenancies Act 2010*

In October 2018, the NSW parliament passed a series of amendments following a review of the *RTA*.⁴² The amendments clarify the minimum standard for rental properties to be fit for habitation, which the landlord must maintain for the duration of the tenancy agreement. Rental properties must be:

- Structurally sound;
- Have adequate lighting in rooms, ventilation, plumbing and drainage;
- Be supplied with electricity or gas;
- Be connected to a hot and cold-water supply for drinking, washing and cleaning; and
- Contain private toilet and washing facilities.

The amendments give NSW Fair Trading new powers to investigate and resolve disputes between tenants and landlords on property damage. At the time of writing, a date for the commencement of the amendments is yet to be set. The NSW government is currently conducting a consultation process with affected stakeholders to develop the accompanying regulations.

Boarding Houses Act 2012 (NSW)

Boarding houses are accommodation arrangements where five or more residents (this can include caretakers or their family) pay for a bed in a 'registrable boarding house'. This does not include hotels, motels, hostels, trade premises and residential colleges.⁴³ Under the *BHA*, residents are entitled to a written agreement either in the form of a rental agreement or an occupancy agreement.⁴⁴ NCAT has powers under the *BHA* to resolve certain disputes.⁴⁵

Australia has international obligations to ensure international students enjoy their basic human right to adequate housing. This includes the right to live somewhere that is legally and physically secure, affordable, accessible, habitable, and allows them to live in security, peace and with dignity.

42 *Residential Tenancies Amendment (Review) Act 2018* (NSW).

43 *BHA* s 5.

44 *BHA* s 28.

45 *BHA* s 32.

Table 3. International students' legal rights under different housing arrangements.

Type of housing arrangement	Relevant Legislation/ Regulations	Access to NCAT?	Resident's rights
PBSAs and private rentals (excluding boarding houses, serviced apartments, hotels, motels and backpackers' hostels)	<i>RTA and Residential Tenancies Regulation 2010</i> (NSW). (' <i>RTA Regulations</i> ')	Yes - for alleged breaches of the <i>RTA</i> , such as improper retention of rental bond, rent increases, unpaid rent, termination of tenancy agreements, compensation, repairs and other breaches of the residential tenancy agreement. ⁴⁶	Wide range of housing rights to tenants, co-tenants and subtenants. ⁴⁷ Most extensive coverage, and the protections of the <i>RTA</i> cannot be limited by the residential tenancy agreement ⁴⁸
Boarding house agreement (E.g. boarding and lodging agreements)	<i>BHA and Boarding Houses Regulations 2013</i> (NSW).	Yes - for disputes over issues such as the state of the premises, fees and charges, inspections and repairs, access to goods and notices of eviction.	Limited rights under the <i>BHA</i> .
On-campus university accommodation	Some colleges are covered by specific Acts that apply only to that College. ⁴⁹ Only covered by the <i>RTA</i> if the landlord and tenant agree in writing.	Most universities have an internal complaints and dispute resolution process.	Limited to the arrangement between the student and the university.
Homestay	<i>National Code of Practice for Providers of Education and Training to Overseas Students 2018</i> .	Most agencies or homestay providers have an internal complaints and dispute resolution process.	Limited to the arrangement between the student and the host family/provider.
'Marginal renters' without a formal tenancy agreement, e.g. share house without co-tenant or subtenant written agreement, or where agreement cannot be proven.	General NSW and Commonwealth law (see section II.B.3 below); no tenancy laws.	No.	Limited to general law rights; no specific tenancy rights.

46 'Tenancy: Consumer and Commercial Division', *New South Wales Civil and Administrative Tribunal* (Web Page, 13 March 2018) < <https://www.ncat.nsw.gov.au/Pages/cc/Divisions/Tenancy/tenancy.aspx>>.

47 See Glossary for definition of terms.

48 *RTA* s 219.

49 Specifically excluded under the *RTA* by cl 20(1) of the *RTA Regulations*.

3. Other areas of NSW and Commonwealth law

Students living in share houses and other marginal renters without a formal tenancy agreement are not protected by the RTA, BHA or university agreements. They therefore have no specific tenancy rights under NSW or Commonwealth tenancy laws. In certain situations, they may have very limited rights under general consumer law, contract law or anti-discrimination law, and even these limited rights are difficult to enforce.

Consumer law

For international students with few or no rights under housing law, federal consumer law may offer a limited set of consumer rights.⁵⁰ Marginal renters may be 'consumers' if their landlord supplies rental accommodation in the course of carrying on a 'business'.⁵¹ This includes most boarding house operators but would not include an individual head tenant in a typical share house. However, consumer law only applies to a limited number of tenancy issues. These include misleading or deceptive conduct,⁵² unconscionable conduct⁵³ or unfair terms in a consumer contract.⁵⁴ For example, a landlord falsely representing that a boarding house is operating lawfully may constitute misleading or deceptive conduct.⁵⁵ Unconscionable conduct could arise where a landlord attempted to make a tenant share a single room with another occupant.⁵⁶ Finally, penalty terms for late payment of rent or breaching house rules may constitute unfair terms.⁵⁷ International students are also able to seek limited consumer protection under NSW fair trading laws for the supply of goods and services.⁵⁸

Contract Law

Agreements for living arrangements are often written or verbal contracts that are covered by contract law. Some agreements are also covered by contracts between education providers and accommodation providers that the student may not be aware of (see Sharon's case study below).⁵⁹ If a student's agreement is breached, the international student could potentially pursue a claim in the Small Claims Division of the Local Court NSW (for claims under \$20,000),⁶⁰ though the student would almost certainly require legal assistance to do so.

50 *Competition and Consumer Act 2010* (Cth).

51 *Fair Trading Act 1987* (NSW) s 79D.

52 *Competition and Consumer Act 2010* (Cth) sch 2 cl 18.

53 *Competition and Consumer Act 2010* (Cth) sch 2 cl 20.

54 *Competition and Consumer Act 2010* (Cth) sch 2 cl 23.

55 Chris Martin, 'Tenants' Rights Manual – NSW: A practical guide for renting', *Tenants Union NSW* (August 2016) <<https://legalanswers.sl.nsw.gov.au/tenants-rights-manual-practical-guide-renting-nsw>>.

56 *Ibid.*

57 *Ibid.*

58 *Fair Trading Act 1987* (NSW).

59 Interview with community legal centre solicitor (17 May 2018).

60 'Civil cases', *Local Court of NSW* (Web Page, 18 October 2017) <http://www.localcourt.justice.nsw.gov.au/Pages/cases/civil_cases.aspx>.

CASE STUDY

Sharon was an international student who terminated her contract with her accommodation provider for health reasons. She owed the provider an amount of money, but the provider pursued her for a far greater amount than she owed (thousands of dollars). Sharon received a letter from her university stating that she was not entitled to enroll in her next course of studies because she owed this money to the provider. Sharon had not been aware of an agreement between the university and the accommodation provider, or that her academic standing could be impacted by failure to pay arrears.*

Discrimination Law

International students may experience discrimination in finding housing, in the terms or conditions of their housing, or in the termination of their housing. International students come from a range of racial backgrounds, and both NSW and federal law protect individuals from discrimination on the basis of race.⁶¹ Under federal law it is illegal to refuse to rent, or to rent on less favourable terms or terminate a rental on the basis of race.⁶² Under NSW law it is also illegal to offer accommodation on discriminatory terms, defer or give a lower order of preference for an application for accommodation, or evict on the basis of race.⁶³ However, there are exceptions that mean that it is lawful for a landlord to discriminate on the basis of race if the landlord or a relative is living in the premises.⁶⁴ To enforce these rights an international student would need to make a complaint to the Anti-Discrimination Board of NSW or the Australian Human Rights Commission.

Students living in share houses and other marginal renters without a formal tenancy agreement are not protected by the RTA, BHA or university agreements. In certain situations, they may have very limited rights under general consumer law, contract law or anti-discrimination law, but even these limited rights are difficult to enforce.

61 *Anti-Discrimination Act 1977* (NSW); *Racial Discrimination Act 1975* (Cth); See also, *Disability Discrimination Act 1992* (Cth); *Age Discrimination Act 2004* (Cth); *Sex Discrimination Act 1984* (Cth); *Australian Human Rights Commission Act 1986* (Cth).

62 *Racial Discrimination Act 1975* (Cth) s 12.

63 *Anti-Discrimination Act 1977* (NSW) ss 20(1)(b), 20(1)(c), 20(2)(b).

64 *Anti-Discrimination Act 1977* (NSW) s 20(3); *Racial Discrimination Act 1975* (Cth) s 12(3).

III. HOUSING PROBLEMS ENCOUNTERED BY INTERNATIONAL STUDENTS

International students in Sydney encounter a range of circumstances that breach their fundamental human right to adequate housing. Often, these also amount to a breach of their legal rights under NSW law. This section provides an overview of the most common issues international students encounter in relation to their housing in Sydney. It draws on secondary research including prior studies, as well as primary research from several sources. As detailed in the Methodology section above, these include: interviews with a range of legal service providers and other experts who provide housing-related services to international students; focus groups with international students at various educational institutions in Sydney; and an analysis of advice data from the Kingsford Legal Centre between October 2017 and April 2018.

International students commonly confront multiple housing issues at the same time. The analysis of KLC’s advice file data, which comprised a total of 31 files, revealed that each international student sought help for an average of 3 housing problems.⁶⁵ The most common problem was perpetration of scams including deceptive or exploitative conduct by landlords (38%), followed by problems recovering their rental bond (25%) (Figure 1).⁶⁶ Other issues presented by international students in KLC’s catchment area included poor living conditions, harassment or assault by the landlord, and improper eviction.

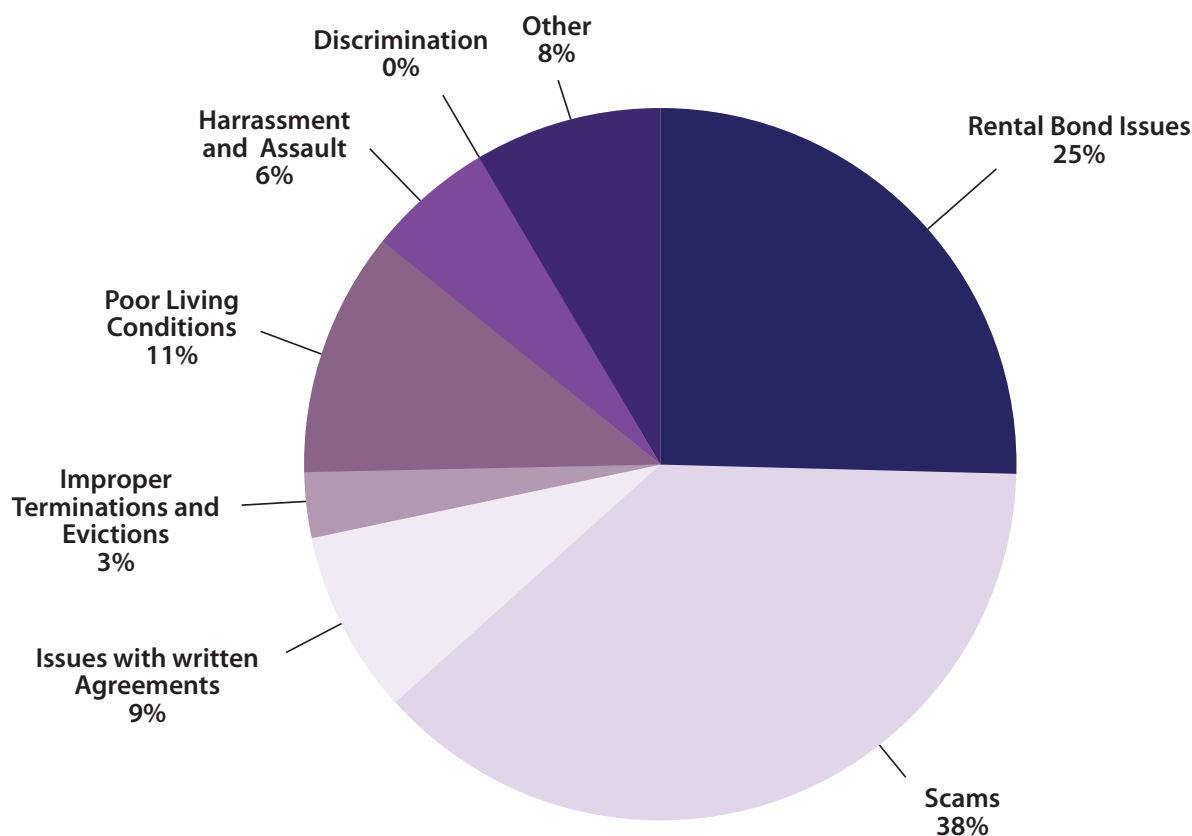


Figure 1 Housing issues for which international students sought advice from Kingsford Legal Centre between October 2017-April 2018, based on analysis of advice files.

⁶⁵ Kingsford Legal Centre case analysis (n 6).

⁶⁶ Ibid.

A. Rental Bonds

A rental bond acts as a security in case the tenant breaches the tenancy agreement. The bond is normally returned to the tenant at the termination of the tenancy agreement, minus deductions for damage or rent arrears.⁶⁷ Fair Trading NSW provides an online service for the payment, management, and return of bonds,⁶⁸ which means that the bond is paid directly to the Rental Bond Board rather than the landlord. However, many landlords and agents do not offer this option to international students and fail to lodge bonds with Fair Trading NSW. For example, a Sydney Morning Herald investigation found that a company targeting international students had failed to lodge \$400,000 worth of bonds with Fair Trading NSW.⁶⁹

In addition to creating emotional distress, improper withholding of bonds from international students can compel them to remain in poor or dangerous housing, and financially prevent them from seeking alternative accommodation.

1. Withholding of Bond

Stakeholders identified the withholding of bond money by landlords as one of the most common issues faced by international students across Sydney,⁷⁰ with Redfern Legal Centre indicating that 'the retention of bonds is the biggest issue that we are...seeing.'⁷¹ Approximately 80% of the issues with rental bonds seen at Kingsford Legal Centre were in relation to landlords or agents refusing to refund bond money.⁷² According to one university service provider:

*"The most common scenario is [an international student] being told 'no you can't have your bond' or... 'we're going to keep your bond because of repairs' and the repairs are... completely unreasonable [and/or] outrageously costed."*⁷³

Bonds can be particularly difficult to recover if a bond receipt is not provided by the landlord or agent. Although bond receipts are mandatory under the *RTA*,⁷⁴ international students commonly do not receive a bond receipt, as was the case for numerous international students who participated in focus groups for this report.⁷⁵ A student noted that they did not know they should have received a receipt for their bond and as a result, they could not prove they paid their bond and were unable to get it back.⁷⁶ Bond issues are complicated by the classification of the student's living arrangement because a bond is required to be lodged for a residential tenancy, but it is not required if the accommodation is a boarding house.⁷⁷ International students in the marginal renting sector who lack tenancy agreements and are not protected by the *RTA* are the most vulnerable to landlords' improper withholding of their bond.

67 *RTA* ss 157, 166(1). Note that these legislative protections do not apply to people in housing arrangements that are not covered by the *RTA*.

68 Rental Bonds Online, *Fair Trading NSW* (Web Page) <<https://www.fairtrading.nsw.gov.au/housing-and-property/renting/rental-bonds-online>>.

69 Georgina Cooke and Michael Evans, "She disappeared": How high-flying Ashleigh crashed back to earth' *The Sydney Morning Herald* (online) 1 April 2019 < <https://www.smh.com.au/politics/nsw/she-disappeared-how-high-flying-ashleigh-crashed-back-to-earth-20190331-p519d5.html>>.

70 Interview with community legal centre solicitor (2 May 2018); Interview with staff member in accommodation services of a Sydney University (2 May 2018).

71 Interview with a community legal centre solicitor (17 May 2018).

72 Kingsford Legal Centre case analysis (n 6).

73 Interview with staff member in accommodation services of a Sydney University (2 May 2018).

74 *RTA* s 159(3).

75 Focus Group with International Students (10 September 2018).

76 Focus Group with International Students (9 May 2018).

77 Penny Broekhuizen et al, 'Boarding Houses and the Law', *Redfern Legal Centre* (February 2018) 9 <<https://rlc.org.au/sites/default/files/attachments/Boarding%20Houses%20and%20the%20Law.pdf>>.

2. Excessive Bonds

Landlords and agents commonly require international students to pay a bond that is more than four weeks of rent, which is prohibited under the *RTA*.⁷⁸ Several international students raised this issue in focus groups for this report, with one student having been made to pay 8 weeks bond.⁷⁹ Similar amounts have been reported by Redfern Legal Centre.⁸⁰

B. Misrepresentation, Deceptive Conduct and Scams

Unscrupulous landlords and agents are able to perpetrate scams and deceive international students by taking advantage of cultural differences and international students' lack of awareness of their rights or standard Australian housing practices, as discussed at Section IV.D.2. In Judd's Chinese International Student Survey, 25% of students reported they had been the victim of an accommodation scam in Sydney.⁸¹ International students' vulnerability to unscrupulous conduct is exacerbated when they organise accommodation through informal avenues (as most do), including when organising their housing from their home country, as discussed below in Section IV.D.1.

1. Property Does Not Exist

When organising accommodation pre-arrival, international students make decisions based on the online advertisement or the word of their education agent.⁸² International students easily fall for online scams that charge upfront for rental properties that do not exist.⁸³ Perpetrators of these scams know that international students are generally unable to organise an inspection before they arrive and often cannot detect red flags suggesting a problem with the property.

While there are currently no statistics on the rate at which international students are subjected to scams, service providers and media reports suggest these practices are widespread. For example, in 2017 the ABC reported that 100 South American students lost up to \$1 million to an education agent that agreed to provide accommodation and tuition, and then disappeared.⁸⁴

A university stakeholder reported situations where they would arrange an airport pick up for international students, take them to the address and find that it was a construction zone or that the property did exist but that the international student had no agreement with the genuine landlord as the online advertisement was a fake.⁸⁵ A university housing coordinator also noted times where international students had paid deposits on places advertised online that did not exist.⁸⁶

78 Kingsford Legal Centre case analysis (n 6); *RTA* s 159(1).

79 Focus Group with International Students (12 September 2018).

80 A solicitor from Redfern Legal Centre reported that international students have been unlawfully made to pay six to eight weeks of bond. See also Amy McNeilage, 'You Just Take It': The Students at the Sharp End of Sydney's Housing Nightmare, *The Guardian* (online, 20 March 2018) <<https://www.theguardian.com/australia-news/2018/mar/19/you-just-take-it-the-students-at-the-sharp-end-of-sydneys-housing-nightmare>>.

81 Sarah Elisabeth Judd, 'Housing trajectories of Chinese international students in Sydney, Australia' (Masters Thesis, The University of New South Wales, 2013) <<http://unsworks.unsw.edu.au/fapi/datastream/unsworks:12173/SOURCE02>> 119.

82 Jack Paynter, 'Consumer Affairs Victoria warns of new rental scam' *Herald Sun* (online, 25 March, 2017 <<https://www.heraldsun.com.au/news/victoria/consumer-affairs-victoria-warns-of-new-rental-scam/news-story/debc84f3ec1e97d7972663c4e0cafdab>>.

83 Sharon Parkinson, Amity James & Edgar Liu, 'Navigating a changing Private Rental Sector: opportunities and challenges for low-income renters' (Australian Housing and Urban Research Institute, July 2018) <<http://www.ahuri.edu.au/research/final-reports/302>> 75; Council of International Students, Submission No 59 to NSW Legislative Assembly Social Policy Committee, Parliament of NSW, *Inquiry into International Student Accommodation in New South Wales* (18 October 2011), 5.

84 Annie Guest and Katherine Gregory, 'Foreign students allegedly lose up to \$1 million to Brisbane-based education agency Tu Futuro after it disappears', *ABC* (online, 19 January 2017) <<https://www.abc.net.au/news/2017-01-19/foreign-students-allegedly-scammed-by-education-agency/8193212>>.

85 Interview with staff member in accommodation services of a Sydney university (3 May 2018).

86 Interview with staff member in accommodation services of a Sydney university (27 August 2018).

2. Property Does Not Match Description

International students arranging accommodation pre-arrival are not able to personally inspect the property and often find that the accommodation does not match the description.

A stakeholder from a university reported:

“[Some international students have] found the housing to be not what they expected. There could be pictures online but when they arrive, they’re being placed in a shared living room arrangement type of thing or the quality of the place is just not as good as what it may have appeared on the pictures online. So, they’re getting a very different product at the end of the day.”⁸⁷

3. Inaccurate Landlord Details

A solicitor from Redfern Legal Centre notes that frequently, the contact details of the landlord or agent are left out of the written agreement, in contravention of the *RTA*.⁸⁸ Consequently, problems faced by tenants can include being unable to report concerns, request repairs, terminate agreements or seek reimbursement for urgent repairs or return of bond. Furthermore, incorrect or missing contact details of a tenant’s landlord or agent can limit international students’ ability to enforce their rights or recover their bond.⁸⁹ For example, a university housing representative recalled:

“how incredibly difficult it was for [an international student] to recover their bond money because they had just accepted, they had a name of the landlord and a mobile phone number, they had no other contact details. It was the most extraordinary saga [to recover the bond from the landlord].”⁹⁰

International students in focus groups observed that the person to whom they paid money for a property had no control over the housing arrangements. One student trying to recover their rental bond was told ‘I am not the agent, I am the middle man. The other agent has taken your money and I can’t get money from him.’⁹¹

4. Excessive Rent Increases and Charges

International students are frequently charged excessive rent increases and other excessive costs, including for repairs and cleaning fees. This exacerbates the already significant financial burden that they face in Sydney. In a 2016 study, 33% of international students who reported having had issues with landlords indicated that these issues were related to unreasonable rent increases.⁹² While the *RTA* protects against excessive or unreasonable rent increases,⁹³ these protections are limited as they can only be enforced through NCAT.⁹⁴ An international student reported in a focus group:

87 Interview with staff member in accommodation services of a Sydney university (3 May 2018).

88 Interview with a community legal centre solicitor (17 May 2018); *RTA* s 27.

89 Interview with a community legal centre solicitor (17 May 2018).

90 Interview with staff member in accommodation services of a Sydney university (20 August 2018).

91 Focus Group with International Students (16 May 2018).

92 Roberta Ryan et al, ‘The Wellbeing of International Students in the City of Sydney’ (UTS: Institute for Public Policy and Governance, July 2016) app D.

93 The *RTA* does not specify excessive and unreasonable costs. Under the *RTA*, tenants have the right to be given 60 days written notice of a rent increase and tenants have the right not to have the rent payable under a fixed term agreement for a fixed term of two years or more increased more than once in a period of 12 months: *RTA* ss 41(1)(b), 42(2)(a).

94 A tenant may apply to NCAT for an order for the repayment of rent, if it is determined that an increase is excessive, if a written request by the tenant for payment is not complied with by the landlord within 14 days: *RTA* s 47(4).

“November-December is a peak time... the rates go up. My leasing agent sent me a letter saying the rent is \$300 but it's going to be \$420 from next month. You can leave the place, or you can stay if you agree to this. My contract was till March. I consulted the [university's] legal services regarding this and the lawyer said that they can't do this... he drafted an email and sent it to the agency. Within two days I received a reply saying, “we are sorry for that, we are not increasing the rent”. The same case happened with three of my friends, but they chose to leave the place because they didn't consult a lawyer.”⁹⁵

In focus groups international students also reported landlords charging excessive costs for cleaning and repairs. These charges typically arose towards the end of the student's tenancy as part of a claim to recover costs through the rental bond. A common example was highlighted by a stakeholder:

“[Students were] notified by their head tenant that they can't get their bond back. It may be an exaggeration of damage that has occurred in the household and they just make it very difficult and they don't supply any evidence of repairs made or supply invoices for the damage to prove the actual cost that was involved, so they pretty much lose their whole deposit and it's very difficult to get it back from that point in time.”⁹⁶

One stakeholder recalled a situation where a student was asked to pay \$2,500 to fix a faulty door.⁹⁷ A student in a focus group referred to a situation of a friend having recovered less than half of their rental bond returned because they started to complain about paint peeling off the wall.⁹⁸

5. Landlord Phoenixing

Within the marginal rental market, international students generally secure housing in exchange for a bond payment (that is usually not lodged), a certain number of weeks rent in advance, and a security deposit. After this payment is made, some companies steal students' money and evade accountability by 'phoenixing' -- an illegal process by which the company liquidates and transfers its assets to a new company.⁹⁹ Phoenixing may occur at various times. When it occurs before the international student has accessed the rental property the student has no recourse for the company's failure to provide the accommodation. When a company phoenixes at the end of the tenancy the student has no means for recovering their bond. Current laws for addressing phoenixing are severely inadequate, and it is not specifically criminalised under Australian legislation.

95 Focus Group with International Students (16 May 2018).

96 Interview with staff member in accommodation services of a Sydney university (2 May 2018).

97 Interview with staff member in accommodation services of a Sydney university (2 May 2018).

98 Focus Group with International Students (12 September 2018); Focus Group with International Students (10 September 2018).

99 'Illegal Phoenix Activity', *Australian Securities and Investment Commission* (Web Page, 19 July 2018) <<https://asic.gov.au/about-asic/contact-us/how-to-complain/illegal-phoenix-activity/>>.

CASE STUDY

Sophie was a 20-year-old international student. Sophie arranged her accommodation through a company specialising in finding housing for international students prior to arrival in Australia. She signed an agreement to move in as soon she arrived and paid a two-week bond, four weeks of rent and a security deposit. Sophie did not receive a receipt for her bond.*

When Sophie arrived in Australia, she was taken to a hotel and told her rental property was not ready. Sophie paid for the hotel room and was promised reimbursement from the company. Sophie stayed in the hotel for a month, paying \$6,000 in total.

Sophie demanded that the company refund her for the cost of her hotel and the money she paid for the rental property that she never stayed in. After receiving no reply, Sophie found that the company had gone into administration and she was unable to recover any money. Sophie later found that multiple international students had had the same, or a similar, experience with this company, and that the company had re-opened under a new name.

C. Written Agreements

Written tenancy agreements are critical to tenants' ability to enforce their rights under the *RTA*. Although the *RTA* requires landlords to provide a written tenancy agreement, many international students either do not receive a written agreement from their landlord or receive an agreement containing unfair or unlawful terms. Some landlords issue occupancy agreements rather than tenancy agreements to attempt to avoid their obligations under the *RTA*.

1. Lack of Written Agreements

Service providers interviewed for this report and numerous focus groups participants¹⁰⁰ noted that landlords frequently do not provide international students with written agreements.¹⁰¹ This accords with a 2016 study conducted on international students living in Sydney which found that 33% of respondents who reported having experienced housing problems indicated that they did not have a written tenancy agreement for their tenancy arrangement.¹⁰²

Without a written agreement, international students have difficulty accessing their rights under the *RTA*, and in some cases the *BHA*.¹⁰³ A focus group interviewee mentioned a time where "we approached [a legal service], they told us that we don't have a written agreement with him so we can't do anything for you."¹⁰⁴ International students without a written agreement are therefore significantly more vulnerable to unscrupulous conduct and unfair evictions.

100 Focus Group with International Students (12 September 2018); Focus Group with International Students (10 September 2018).

101 See, e.g. Interview with tenants' advocate (24 May 2018).

102 Ryan et al (n 92).

103 Redfern Legal Centre, Submission to NSW Fair Trading, *Statutory Review of Residential Tenancies Act 2010* (12 February 2016) 5. While oral tenancy agreements are enforceable under ss 13(1) and 14(2)(b) of the *RTA*, it is often difficult for international students to pursue these claims.

104 Focus Group with International Students (16 May 2018).

An Eastern Area Tenants Service tenants' advocate explained:

*"If you're in a share house with a head tenant living in there and no written agreement, you're not covered by the [RTA], and if it's under 5 students then it's not a boarding house. So, there's a huge crack where students can fall into and they don't have the capacity to get back their bond or have any rights."*¹⁰⁵

Stories of international students being forced out of share houses are common. A student in one focus groups recounted when her former head-tenant forced her to leave her accommodation with no notice.¹⁰⁶ Another international student in a share house arrangement recalled:

*"The head tenant didn't give anyone written agreement so none of us could prove we had an agreement with the head tenant. At some point she threw out a couple of tenants from the house, she just told them "you have to get out of the house tomorrow", after the two tenants moved out, they [couldn't] prove they were there before, they asked for bond back, she refused, apparently they couldn't show any proof that they paid her the bond and all the rent money."*¹⁰⁷

2. Unfair Terms

Where international students do have written agreements, they may not understand complex legal terms in the agreement and can be more susceptible to unscrupulous conduct by landlords through the incorporation of unfair or unlawful terms within the agreement. This situation is especially common where international students are under pressure to sign an agreement¹⁰⁸ out of fear they will not be able to secure alternative accommodation in the competitive rental market,¹⁰⁹ or due to pressure from landlords to go through the process quickly. In a focus group one international student explained:

*"What happens is [the landlord/provider] ha[s] two pages of the agreement, they say 'Yes, take your time, read it' but they usually hand it over once you have made up your mind, everything is settled on, [they say] 'you have to sign this and this'. Sometimes they don't even ask you to read it, they just say 'sign here, sign here' and say emotional things to make students just sign the paperwork and what might happen is they have a single sentence that would say 'if you leave you won't get your bond money returned' [or] 'if you leave within a month, 13th or 14th of the month, you have to pay the rent until the end of the month'".*¹¹⁰

While there is a standard residential tenancy agreement in the RTA regulations¹¹¹, many landlords don't use this standard agreement and draft agreements that fail to meet the minimum requirements set out in the RTA. A lack of detail in written tenancy agreements creates barriers to international students identifying and enforcing their rights, including:

- Landlords providing insufficient information to identify themselves making it harder for international students to take legal action;

105 Interview with tenants' advocate (24 May 2018).

106 Focus Group with International Students (12 September 2018).

107 Focus Group with International Students (9 May 2018).

108 Interview with community legal centre solicitor (17 May 2018).

109 Interview with community legal centre solicitor (17 May 2018).

110 Focus Group with International Students (9 May 2018).

111 *Residential Tenancy Regulations 2010* (NSW), sch 1.

- Inadequate information to establish whether the student is a tenant or a boarder; and
- Lack of clear terms relating to refund of bonds and fees.¹¹²

Vague and technical terms may also confuse international students and lead to misinterpretations that advantage the landlord/head-tenant. One international student in a focus group recalled:

*“Sometimes what happens is they use technical terms like “bills included”. You think that this means that gas, electricity, water is all included. Some people will say “yes, it says bills are included but it doesn’t say **all** bills are included”. There are some specific terms that they use for that, so you think that [costs] are already [included] but they’re not.”¹¹³*

Another international student recounted a situation where the live-in landlord attached a list of rules to the written agreement. However, the rules were changed at the discretion of the landlord:

“At one point, I was using the oven, but I wasn’t using the oven excessively. She wanted to charge me \$5 a week which I disagree[d] with...I negotiated [with] her to lower her prices so she allow[ed] a certain amount of usage without any charges. But then she retaliated by posting a...stricter rule which is for every single [oven] usage I have to pay \$10.”¹¹⁴

International students may also be unaware of separate agreements between their housing provider and their university and consequent impact of housing disputes on their academic standing, as detailed in Section V.B.

D. Unfair Evictions

Both the Redfern Legal Centre and Macquarie Accommodation noted that improper evictions were common amongst the international students that approached them,¹¹⁵ despite the required notice period under the *RTA*.¹¹⁶ A university housing advisor noted that “sometimes, the landlord gives very short [eviction] notice to students and they come and ask if they are allowed to do that. The student doesn’t want to leave, but sometimes [the landlord] changes the key so students can’t do anything about it.”¹¹⁷ This often occurs where the landlord wants the room for another person. A student in a focus group recounted that his friend Dillon* ‘stay[ed] [in an accommodation] for about a month and a half. The owner of the house told Dillon he needed the room for a friend. He gave Dillon the notice on the Monday and Dillon had to leave by the Thursday.’¹¹⁸ Another student recalled, “One day he [the landlord] told me that another guy is coming, you need to leave at 11pm... [the other guy] was going to pay more rent than us, so [the landlord] wanted to replace us.”¹¹⁹

Landlords also undertake ‘informal evictions’ of international students by harassing the student and/or making the accommodation intolerable. A tenants’ advocate from the Eastern Area Tenants Service tenants recounted how this occurred to a client from Saudi Arabia who had a fixed term tenancy agreement:

112 Interview with community legal centre solicitor (2 May 2018).

113 Focus Group with International Students (9 May 2018).

114 Focus Group with International Students (12 September 2018).

115 Interview with community legal centre solicitor (17 May 2018); Interview with staff member in accommodation services of a Sydney university (27 August 2018).

116 See *RTA* pt 5.

117 Interview with staff member in accommodation services of a Sydney university (3 May 2018).

118 Focus Group with International Students (9 May 2018).

119 Focus Group with International Students (16 May 2018).

“The landlord moved into the bedroom next to him even though she lived next door, then told him to get out. Then when he refused to get out and he wanted to enforce his fixed term, she turned off the hot water then turned off the electricity, then called the police.”¹²⁰

Emergency accommodation is generally unavailable to international students who are suddenly evicted.¹²¹ Evicted international students may sleep in their car for multiple nights, or in common areas at universities, such as libraries and common rooms.¹²²

E. Poor Living Conditions

1. Overcrowding

The Australian media has reported extensively on international students living in overcrowded¹²³ housing arrangements, such as 10 students living in a two bedroom unit.¹²⁴ In 2011, the City of Sydney reported that international students and new migrants have ‘significantly higher rates of overcrowding than the general population.’¹²⁵ The Australian Bureau of Statistics (‘ABS’) estimated that around 20% of international students were living in overcrowded accommodation, compared to 6% of domestic students.¹²⁶ This number has likely increased with people living in severely crowded dwellings in NSW increasing by 74% between 2011–2016, 47% of whom were migrants.¹²⁷ In recent years, there has also been an increasing number of international students “hot bedding” in Sydney, where several international students share a single bed in shifts in a 24 hour period.¹²⁸ Judd’s Chinese International Student Survey found that 41% had lived in a room that was not a proper bedroom,¹²⁹ and 65% had lived in accommodation that was shared by too many people.¹³⁰ A Sydney Policy Lab report on informal housing gave an example of extreme overcrowding experienced by international students:

“[She] rented a three-bedroom unit in the backstreets of Chippendale and then divided it up and had people on mattresses on floors. So, there was a curtain across what was the lounge room and three or four mattresses on the floor. There was also a curtain across the stairwell, underneath the stairs, and a bed there. In total, there was about eight or nine students.”¹³¹

NSW law does not regulate overcrowded premises in the private rental sector, however some local councils,

120 Interview with tenants’ advocate (24 May 2018).

121 Interview with staff member in accommodation services of a Sydney university (23 August 2018).

122 Interview with staff member in accommodation services of a Sydney university (3 May 2018).

123 Though there is no standard legislative or internationally accepted definition of overcrowding, the ABS defines a severely crowded dwelling as one which needs four or more extra bedrooms to accommodate residents adequately. Australian Bureau of Statistics, *2049.0 - Census of Population and Housing: Estimating homelessness, 2016 - Key Findings* (14 March 2018) <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/2049.0>>.

124 Jarni Blakkarly and Leesha McKenny, ‘Ten People in A Two-Bed Unit: International Students Living in “Squalor”’, *SBS News* (online, 23 March 2018) <<https://www.sbs.com.au/news/ten-people-in-a-two-bed-unit-international-students-living-in-squalor>>; McNeillage (n 80).

125 City of Sydney Council, Submission No 66 to the NSW Legislative Assembly Social Policy Committee, Parliament of NSW, *Inquiry into International Student Accommodation in New South Wales* (31 October 2011) 8.

126 Australian Bureau of Statistics, *Hitting the Books: Characteristics of Higher Education Students* (25 July 2013)

127 Australian Bureau of Statistics, *2049.0 - Census of Population and Housing: Estimating homelessness, 2016 - Key Findings* (14 March 2018) <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/2049.0>>; Jarni Blakkarly and Leesha McKenny, ‘Ten People In A Two-Bed Unit: International Students Living In ‘Squalor’’, *SBS News* (online, 23 March 2018) <<https://www.sbs.com.au/news/ten-people-in-a-two-bed-unit-international-students-living-in-squalor>>.

128 Anton Crace, ‘CISA 2018: concerns over accommodation and work rights persist’ *The PIE News* (online, 5 July 2018) <<https://thepienews.com/news/cisa2018-student-concerns-persist/>>.

129 Judd (n 81) 172.

130 Ibid 173.

131 Gurrán et al (n 20) 44.

including the City of Sydney, have imposed development consent conditions on new developments which limit occupation to two adults per bedroom.¹³² Similarly, state regulations dictate that no room in a boarding house can be occupied by more than two adult lodgers.¹³³ Prevention of overcrowding is otherwise left to individual owners, strata schemes or body corporates.¹³⁴

Some students may knowingly choose to live in overcrowded properties because they can only afford rent if it is divided between a larger number of tenants, and would not otherwise have viable accommodation options. Others end up in overcrowded properties through deception, or do not receive the financial benefit of sharing with many tenants because each tenant is overcharged. As one international student noted in a focus group, “two people max can stay in one room, but they let four people.”¹³⁵ Another student observed that landlords “lease the property, one or two units, in bulk and then they... put the ad in Airbnb or something else and they chuck in 6 or 7 people in one unit.”¹³⁶

2. Unsafe Properties

Judd’s Chinese International Student Survey found that 47% had lived in accommodation where they felt unsafe.¹³⁷ The most commonly cited safety risk in international students’ housing is non-compliance with fire safety requirements.¹³⁸ This is particularly problematic as fire safety awareness among international students is low.¹³⁹ In 2012, a Chinese student jumped to her death following a fire in her shared apartment, that did not meet fire safety regulations, including the installation of fire sprinklers.¹⁴⁰ In 2014, 15 international students escaped a fire that broke out in their dilapidated illegal housing in Alexandria.¹⁴¹ Since being formed in 2015, the City of Sydney’s Unauthorised Accommodation Investigation Team has uncovered fire safety defects in overcrowded apartments in Sydney rented by international students, and the Fire and Rescue NSW superintendent has stated that overcrowding, blocked exits and unauthorised modifications compromise the effectiveness of sprinklers and smoke alarms.¹⁴² Overcrowded housing leads to greater risk of safety issues, as a student services staff member at one university in Sydney recounted:

“[This] one place had been illegally altered into providing sort of boarding house accommodation. People were really sleeping in very small spaces. There was no proper fire safety. People were using single power points for multiple charging and heaters.”¹⁴³

132 City of Sydney Council, Submission No 66 to NSW Legislative Assembly Social Policy Committee, Parliament of NSW, *Inquiry into International Student Accommodation in New South Wales* (31 October 2011) 7. This applies to all residential apartment buildings that have adopted these conditions.

133 *State Environmental Planning Policy (Affordable Rental Housing) 2009* (NSW) regs 2, 30. ‘Adequate’ bathroom and kitchen facilities must be available and if the boarding house has five or more boarding rooms, at least one communal living room must be provided. These regulations only apply to boarding houses that gained development approval after 2009.

134 Cathy Sherry, *Strata Title Property Rights: Private Governance of Multi-Owned Properties* (Routledge, 2017).

135 Focus Group with International Students (16 May 2018).

136 Focus Group with International Students (16 May 2018).

137 Judd (n 81) 180.

138 Interview with staff member in accommodation services of a Sydney university (20 August 2018).

139 Jario Argueta et al, ‘An Assessment of Fire Safety in Australia’s International Student Housing’ (Project, Worcester Polytechnic Institute, 2009) <<https://www.aph.gov.au/DocumentStore.ashx?id=7ca8e673-5b6f-4faf-ad5d-0c495bf62ac5>>.

140 *Inquest into the death of Connie Zhang* (2015) NSW Coroner’s Court, 2012/00279934.

141 Rachel Olding, ‘Students living in shipping containers, cubicles and a toilet’ *The Sydney Morning Herald* (online, 5 July 2014) <<https://www.smh.com.au/national/nsw/students-living-in-shipping-containers-cubicles-and-a-toilet-20140704-zsv06.html>>.

142 Esther Han, ‘Illegal accommodation: City of Sydney cracks down on black market Syndicates’ *The Sydney Morning Herald* (online, 16 June 2015) <<https://www.smh.com.au/national/nsw/illegal-accommodation-city-of-sydney-cracks-down-on-black-market-syndicates-20150615-gho8ie.html>>.

143 Interview with staff member in accommodation services of a Sydney university (20 August 2018).

3. Uninhabitable Properties

Under international law, every international student in Australia has a right to adequate housing, including clean water, sanitation, washing facilities, and means for food storage and disposal.¹⁴⁴ Tenants covered by the *RTA* have the right for their landlord to provide and maintain their residential premises in a reasonably clean state that is fit for the tenant to live in,¹⁴⁵ and for the landlord to make repairs when required.¹⁴⁶

Media have reported international students living in shipping containers, abandoned buses, and shops converted into makeshift hostels.¹⁴⁷ Stakeholders and focus group participants did not highlight uninhabitable¹⁴⁸ conditions as a common issue for international students. However, it is likely that participants in this study are not in contact with the most marginal and vulnerable students who would more likely to experience these conditions.¹⁴⁹

F. Bullying, Harassment and Assault

A substantial number of international students experience bullying, harassment and/or assault in connection with their housing.¹⁵⁰ Many stakeholders reported their international student clients feeling threatened or being assaulted by landlords, sometimes resulting in reports to police.¹⁵¹ These situations often arose when the landlord lived with the international student in a head tenant/subtenant arrangement. A solicitor from Kingsford Legal Centre reported a case of a female international student who was sexually harassed by a male head tenant and felt unsafe in her accommodation, despite living with a group of students alongside the head tenant.¹⁵² Another international student in a focus group felt uncomfortable with a head tenant who constantly yelled at them, entered bedrooms and moved their property without permission.¹⁵³ A solicitor from Kingsford Legal Centre recalled a case where a female student had been threatened and felt fearful of the landlord in their boarding house arrangement as she thought she and other lodgers would be physically harmed.¹⁵⁴ In a case handled by the Eastern Area Tenants Service involving a Saudi Arabian international student, 'the owner of the property lived next door, and became behaviourally unstable towards the students in the house, to the point where the landlord was turning electricity and hot water off, scratching the student's car, coming over and abusing him.'¹⁵⁵

In extreme circumstances the tenant-landlord relationship can further deteriorate to the point of physical violence. This is shown in James' situation below:

144 *General Comment No. 4* (n 2) [8].

145 *RTA* s 52(1).

146 A 'reasonable' state of repair depends on the age of the premises, the amount of rent paid by the tenant and the potential life of the premises. '*Repairs and Maintenance*', Tenants Union of NSW (Factsheet, December 2014) <<https://www.tenants.org.au/factsheet-06-repairs-and-maintenance>>.

147 Rachel Olding, 'Students living in shipping containers, cubicles and a toilet', *The Sydney Morning Herald* (online, 5 July 2014) <<https://www.smh.com.au/national/nsw/students-living-in-shipping-containers-cubicles-and-a-toilet-20140704-zsv06.html>>

148 According to the *Building Code of Australia 1996* a habitable room is one used for domestic activities, as opposed to a bathroom, laundry, corridor, hallway. A habitable room within a building should have adequate natural and artificial lighting and must be ventilated with outdoor air: Building Code of Australia 1996 s A1.1.

149 Because those students may not seek help from legal service providers or university housing advisors (including those at VET and ELICOS institutions) and may not come into contact with university students who volunteer to participate in focus groups.

150 Stakeholder Advisory Meeting (UNSW Law Boardroom, 28 March 2018).

151 Stakeholder Advisory Meeting (UNSW Law Boardroom, 28 March 2018).

152 Interview with community legal centre solicitor (2 May 2018).

153 Focus Group with International Students (9 May 2018).

154 Interview with community legal centre solicitor (2 May 2018).

155 Interview with tenants' advocate (24 May 2018).

CASE STUDY

James was an 18-year-old international student who had been living in an apartment with other international students for 6 months. One day the landlord complained that the house was not clean enough. The following day, the landlord told James to move out, without giving any reasons. The same night, James received an email requesting money for the landlord to clean his room and demanding that he move out. The landlord then visited the apartment to inspect it. The landlord was very angry and punched James in the face, breaking his glasses. James suffered facial injuries, including cuts that required hospital treatment. After seeking help from the police, an AVO was granted and James sought alternative accommodation without recovering his bond or rent paid.

International students are especially vulnerable to harassment because of their often desperate need to stay in affordable housing in a saturated rental market, and because of their isolation and lack of local knowledge and connections, exacerbated by cultural and language barriers. In addition to exploiting these vulnerabilities, landlords, agents and head tenants exploit international students' precarious immigration status through threats of deportation.¹⁵⁶ A solicitor from a university legal service recalled a number of international students having had their passports taken by their landlord and told that they would be reported to immigration if they complained.¹⁵⁷ Similar experiences of threats to international students' visa status were also noted by multiple focus group participants. One international student raised that the behaviour of their landlord changed after becoming aware of their visa status.¹⁵⁸ The landlord then pressured the international student to not complain about the housing conditions or they would 'report [the student] to immigration [and] police.'¹⁵⁹ Another international student recalled that their head tenant made threats that "if [we] did something wrong she would report [us] to the school/supervisors [and said] 'I will kick you out of this country'".¹⁶⁰

Students in homestay arrangements have heightened vulnerability due to their age and living arrangements. For example, a focus group participant recounted a homestay arrangement where an international student, Tamar* was harassed by one of the parents they were living with. The parent began to stalk Tamar and purchase her presents and clothes. Tamar initially thought that this was friendly behaviour before she realised it was not right, and contacted her university. The university discussed the issue with the host parent and reported the incident to the police.¹⁶¹

156 Interview with staff member in accommodation services of a Sydney university (20 August 2018); Natalie Karam, Chair, Arc@UNSW Limited Evidence to Social Policy Committee, Parliament of NSW (21 October 2011) 48.

157 Stakeholder Advisory Meeting (UNSW Law Boardroom, 28 March 2018).

158 Focus Group with International Students (9 May 2018).

159 Focus Group with International Students (9 May 2018).

160 Focus Group with International Students (9 May 2018).

161 Focus Group with International Students (10 September 2018).

G. Discrimination

International students may experience racial discrimination in the process of finding, living in and moving out of accommodation.¹⁶² Some private landlords may look for a specific gender or culture for a student tenant.¹⁶³ Others may specifically avoid certain students of certain ethnicities. For example, a student recalled that a friend seeking accommodation called the landlord and “[the landlord] told them that ‘we don’t prefer Indian people... they don’t accept Asians or Indians because we cook the food, the smell is coming that is maybe not pleasant for the neighbouring guys.’”¹⁶⁴ The Judd Chinese International Student Survey found that 25% of respondents had sometimes experienced racism or discrimination in their search for accommodation, and 11% had often experienced racism or discrimination.¹⁶⁵ Service providers interviewed in this study did not receive many requests for help with housing discrimination issues from international students,¹⁶⁶ however this may reflect a lack of awareness among international students about their rights under discrimination law or a reluctance or sense of futility regarding seeking help for these matters. Indeed, international students may knowingly accept unequal terms to secure housing because they perceive this as their only option. One international student in a focus group recounted:

“My two friends... They applied for 40 apartments and they got a reply for 4 and out of that they only got 1 because they said the amount is \$500/week [but] we will pay \$520 and the [contract] will be 12 months. They only asked for 6 months, but they are going to stay for 12 months just because....it is very, very difficult for international students to get a place.”¹⁶⁷

International students are especially vulnerable to harassment because of their need to stay in affordable housing in a saturated rental market. This is exacerbated by cultural and language barriers, lack of local knowledge and connections, and precarious immigration status that can be exploited by unscrupulous landlords.

162 Franklin Obeng-Odoom, ‘Far away from home: the housing question and international students in Australia’ (2012) 34(2) *Journal of Higher Education Policy and Management* 201, 209; There are exceptions to discrimination law which mean it is lawful for a landlord or their relative who is living in the premises to discriminate on the basis of race: *Anti-Discrimination Act 1977* (NSW) s 20(3); *Racial Discrimination Act 1975* (Cth) s 12(3).

163 Interview with staff member in accommodation services of a Sydney university (27 August 2018).

164 Focus Group with International Students (16 May 2018).

165 Judd (n 81) 114.

166 Interview with a community legal centre solicitor (2 May 2018); Interview with staff member in accommodation services of a Sydney university.

167 Focus Group with International Students (16 May 2018).

IV. FACTORS PREVENTING STUDENTS FROM SECURING ADEQUATE HOUSING

International students confront numerous intersecting barriers to finding secure, safe and affordable housing in Sydney. These push students into precarious and inadequate living conditions and render them vulnerable to unscrupulous conduct and mistreatment by landlords who are aware of international students' limited alternatives. A number of these barriers are connected with the Sydney housing market and are difficult to address. Others are the result of factors which government and/or education providers can influence and reform.

A. Limited Availability of Affordable Housing in the Sydney Rental Market and Inaccessibility of Student-Specific Housing

A city-wide shortage of affordable accommodation has led to Sydney being classified as one of the most expensive cities in the world for international students¹⁶⁸ and the second most unaffordable housing market in the world for purchasing.¹⁶⁹ Affordability of housing is paramount for international students: 90% of students identify it as the most important consideration when choosing accommodation,¹⁷⁰ and 64% of international students have reported paying more money for accommodation than what they could afford in Sydney.¹⁷¹ The high cost of accommodation in Sydney is a key factor pushing international students into more insecure rentals,¹⁷² where they are more likely to experience the housing rights violations discussed in Section III.¹⁷³ The Australian Housing and Urban Research Institute (AHURI) has labelled the increased demand for rental housing as creating a "rogue pathway of last resort", with highly exploitative tenancy arrangements that typically violate tenants' rights.¹⁷⁴

On-campus accommodation is inaccessible to the overwhelming majority of international students due to its cost and highly limited availability. Unlike other countries such as the United Kingdom, United States and Canada, Australian university students do not tend to move to other cities to study, and there is consequently no assumption that universities will provide housing for their students. This impacts on international students as Australian campuses do not have significant quantities of accommodation, and international students are then forced into the private rental market. A 2019 report found that only 4.1% of all students, domestic and international, were housed in university accommodation in greater Sydney.¹⁷⁵ Fewer than 15% of international students are housed in commercial PBSA in Australia's largest cities.¹⁷⁶ The lack of PBSA means that international students in Australia are forced to rely on private rental accommodation more than international students studying in the USA, UK, Canada, Singapore, Hong Kong and Malaysia.¹⁷⁷ The majority of international students in Sydney live in share houses, boarding houses, private rentals, homestays and other arrangements in the marginal rental sector.

168 Burke (n 7) 14.

169 David Chau, 'Australian property 'severely unaffordable', Sydney crowned second least affordable market', *ABC News* (online, 23 January 2018) <<https://www.abc.net.au/news/2018-01-22/australian-housing-unaffordability-experts-disagree-on-extent/9349796>>.

170 Survey by the International Student Support Unit, The University of Sydney (2010) cited in Franklin Obeng-Odoom, 'Far away from home: the housing question and international students in Australia' (2012) 34(2) *Journal of Higher Education Policy and Management* 201, 212.

171 Judd (n 81) 185.

172 Ryan et al (n 92) 13. For a discussion of problems arising from share housing in the ACT see also 'Share house renters falling victim to illegal subletting, leaving them financially and emotionally strained', *ABC News* (online 21 May 2019) <<https://www.abc.net.au/news/2019-05-21/canberra-subtenants-exploited-in-a-tight-rental-market/11060310>>.

173 Focus Group with International Students (16 May 2018).

174 Parkinson et al (n 83) 5.

175 Savills, *Australian Student Accommodation Report 2018 (Market Report, 2018)*, 12.

176 Ziguras (n 16).

177 Burke (n 7) 3.

In 2018, the development pipeline in Sydney had decreased from 5,435 student beds in 2017 to 4,787 beds in 2018.¹⁷⁸ Undersupply of student-specific housing remains a key issue. With another 3,600 beds anticipated to be delivered by 2022 in Sydney, Sydney will still have 4.7 international students for every purpose-built student bed.¹⁷⁹ Although there are plans to increase PBSA in Sydney, the City has no requirements or quotas in place for the amount of accommodation that could or should be provided for international students.¹⁸⁰ Similarly, there are “no regulations on policies that require universities or international colleges to provide a certain number of rooms to international students.”¹⁸¹

When asked why they did not choose to live in on-campus accommodation, some international students identified that they had expected the university to provide housing as that was the practice in their home country. Upon realising this was not the case, a student stated that they ‘[couldn’t] even think about staying in the uni’ due to the expense.¹⁸² International students also stated that it was very difficult to access on-campus accommodation, with spots filling up within a day, long waiting lists, and repeatedly denied applications.¹⁸³ International students indicated that they would prefer to live closer to their universities, but due to the cost of housing are often forced to live up to 30 km away where housing is cheaper.¹⁸⁴

B. International Students’ Financial Constraints

1. Cost of Living and Tuition

Although prospective international students are required to demonstrate they have sufficient financial means to live and study in Australia for the duration of their course, the cost of tuition and living in Sydney places many students under substantial financial strain. A 2018 Urbis study found that the differential between student capacity to pay for accommodation and average rent was significant, at 24% for PBSA or on campus accommodation and at -2% for the private rental market.¹⁸⁵ According to the Australian Department for Home Affairs, as of February 2018, the average living costs for an international student were \$20,290 per year, not including course fees.¹⁸⁶ In contrast to domestic students who pay between \$6,000–11,000 a year in course fees,¹⁸⁷ international students can pay anywhere from \$15,000–33,000 a year.¹⁸⁸ While most international students are financially supported by their

178 Savills, *Australian Student Accommodation Report 2018* (Market Report, 2018), 16.

179 Ingrid Fuary-Wagner, ‘Rapid construction of student accommodation won’t absorb demand’, *Financial Review* (online, 9 April 2019) <<https://www.afr.com/real-estate/commercial/development/rapid-construction-of-student-accommodation-won-t-absorb-demand-20190409-p51cep>>.

180 Interview with local council staff member (3 September 2018).

181 Rosie Williams, ‘Australia’s student housing crisis’, *Independent Australia* (online, 19 October 2018) <<https://independentaustralia.net/life/life-display/australias-student-housing-crisis,12003>>.

182 Focus Group with International Students (16 May 2018).

183 Focus Group with International Students (16 May 2018).

184 Focus Group with International Students (10 September 2018).

185 URBIS, *Regional Student Accommodation Assessment* (Report, 2 February 2018) iv.

186 ‘Work conditions for student visa holders’, *Australian Government Department of Home Affairs* (Web Page) <<https://archive.homeaffairs.gov.au/trav/stud/more/work-conditions-for-student-visa-holders>>.

187 ‘Student Contribution Amounts’, *Study Assist* (Web Page) <<https://www.studyassist.gov.au/help-loans-commonwealth-supported-places-csps/student-contribution-amounts>>.

188 ‘Education Costs in Australia’, *Study in Australia* (Web Page) <<https://www.studyinaustralia.gov.au/english/australian-education/education-costs>>.

families back in their home country,¹⁸⁹ “most international students are not fully prepared for how expensive renting and living in Australia can be.”¹⁹⁰

Cost of living in Sydney is a key concern for international students both prior to and after arrival.¹⁹¹ A 2017 survey found that around 50% of international undergraduate students are worried about their financial situation, and 14% regularly go without food or other necessities because they can’t afford them.¹⁹² Almost half (49%) of international undergraduate students have estimated expenses greater than their estimated income.¹⁹³

Focus group participants indicated that international students believe affordable rent to be approximately \$150 per week for a shared bedroom, or \$200 for a private room.¹⁹⁴ Representations have been made by universities to international students that average housing prices are between \$200-300, but international students said they found it difficult to find accommodation within this price range within close proximity to the university.¹⁹⁵ Many international students would like a private room but often cannot afford the rent and end up sharing a bedroom with one or two others.¹⁹⁶ Although most international students prefer to live close to their campuses,¹⁹⁷ median rents may be unaffordable to many students without overcrowding.

On-campus accommodation is inaccessible to the overwhelming majority of international students due to its cost and highly limited availability. A shortage of affordable accommodation in Sydney has led most international students to live in share houses, boarding houses, homestays and other precarious arrangements in the marginal rental sector.

189 Forbes-Mewett et al, *Australian University International Student Finances* (Unpublished Manuscript, Monash University 2011) cited in Franklin Obeng-Odoom, ‘Far away from home: the housing question and international students in Australia’ (2012) 34(2) *Journal of Higher Education Policy and Management*, 201, 208.

190 Parkinson et al (n 83) 56.

191 Ryan et al (n 92).

192 Universities Australia, ‘2017 Universities Australia Student Finances Survey’ (August 2018) <<https://www.universitiesaustralia.edu.au/a/2017studentfinancesurvey>> 13.

193 Ibid.

194 Interview with staff member in accommodation services of a Sydney university (23 August 2018); Focus Group with International Students (10 September 2018).

195 Focus Group with International Students (12 September 2018).

196 Interview with staff member in accommodation services of a Sydney university (3 May 2018); Interview with staff member in accommodation services of a Sydney university (23 August 2018).

197 Survey by the International Student Support Unit, The University of Sydney (2010), cited in Obeng-Odoom (n 162) 212.

Table 4. Median weekly rent by suburb per property.

AREA	SUBURB	MEDIAN WEEKLY RENT (nearest \$AUD) ¹⁹⁸		
		APARTMENT	TOWNHOUSE	HOUSE
Sydney CBD (USyd, UTS, UNSW)	Kensington - Randwick - Kingsford	620	890	950
	Redfern	560	925	795
	Newtown - Enmore - Erskineville	580	750	820
	Marrickville - Dulwich Hill - Petersham - Lewisham	500	730	755
	Haymarket - CBD	800	1000	850
	Ultimo - Glebe	620	850	950
	Annandale	480	760	860
Western Sydney University Campuses	Parramatta - North Rocks	480	560	555
	Westmead - Pendle Hill - Wentworthville - Greystanes	460	490	520
	Bankstown - Revesby - Padstow - Panania	430	635	560
Macquarie University	Ryde - North Ryde - West Ryde	520	650	670
	Marsfield - Epping - Eastwood	530	583	685
	Gordon - Pymble - Turramurra	600	790	920
	Chatswood	600	900	1025

198 Tenants Union NSW analysis of NSW Fair Trading Rental Bonds Data from April-June 2018.

Table 5. Median Weekly rent per bedroom.

AREA	SUBURB	MEDIAN WEEKLY RENT PER BEDROOM (nearest \$AUD) ¹⁹⁹			
		1 bedroom	2 bedrooms	3 bedrooms	4 bedrooms
Sydney CBD (USyd, UTS, UNSW)	Kensington - Randwick - Kingsford	500	325	300	325
	Redfern	484	375	328	266
	Newtown - Enmore - Erskineville	550	375	300	300
	Marrickville - Dulwich Hill - Petersham - Lewisham	440	275	267	253
	Haymarket - CBD	665	485	442	425
	Ultimo - Glebe	570	398	350	299
	Annandale	480	350	317	369
Western Sydney University Campuses	Parramatta - North Rocks	460	245	193	175
	Westmead - Pendle Hill - Wentworthville - Greystanes	410	230	167	158
	Bankstown - Revesby - Padstow - Panania	300	220	180	170
Macquarie University	Ryde - North Ryde - West Ryde	500	290	227	225
	Marsfield - Epping - Eastwood	483	270	220	200
	Gordon - Pymble - Turramurra	485	310	270	242
	Chatswood	514	350	320	309

One factor driving students to seek accommodation nearer to campus is the uniquely high cost of public transportation for international students in NSW. NSW is the only State or Territory that denies travel concessions to international students. International students indicated that a travel concession would improve housing options because savings on accommodation further from campus would not be offset by transport costs.

199 Ibid.

2. Cost of Public Transport

One factor driving students to seek accommodation nearer to campus is the uniquely high cost of public transportation for international students in NSW. NSW is the only State or Territory that denies travel concessions to international students.²⁰⁰ This places international students who are driven to accommodation further from their campus under substantial financial strain.

EXAMPLE: COSTS OF PUBLIC TRANSPORT

An international student considers living further from campus to save money on rent. This would require her to travel 20 km by train in each direction and by bus for 3km. To travel to campus, she would pay approximately \$15.80 per day, compared with \$7.90 paid by a local student (at peak times).²⁰¹ If she attends university or college 4 days a week, her public transport costs would be around \$60 per week, compared with \$32 paid by a local student. For an international student working for \$12 per hour (as is the case for many students), she would need to work an additional three hours each week to cover the premium paid by international students compared with local students.

International students who participated in the focus groups expressed a strong sense of injustice regarding NSW's approach to public transport. They indicated that a travel concession would improve housing options because savings on accommodation further from campus would not be offset by transport costs. Students indicated that it would substantially impact many students' personal safety by allowing them to use public transport instead of walking home late at night to save money, and would reduce financial strain on international students and contribute to their overall wellbeing.²⁰²

3. Employment Restrictions

It is unknown how many international students work in Australia, but a recent government survey places the figure around 50%.²⁰³ International students are heavily constrained by the limitation under their visa which prohibits them from working more than 40 hours per fortnight when their course is in session.²⁰⁴ Based on the federal statutory minimum wage of \$18.93 per hour,²⁰⁵ the maximum an international student may earn in a fortnight is \$757.20 (gross). However, few international students are paid the full wages they are owed. A 2017 national survey found that a quarter of all international students earned \$12 per hour or less, and 43% earned \$15 per hour or less in their lowest paid job.²⁰⁶

200 Survey by the International Student Support Unit, The University of Sydney (2010) cited in Franklin Obeng-Odoom, 'Far away from home: the housing question and international students in Australia' (2012) 34(2) *Journal of Higher Education Policy and Management* 201, 212; Focus Group with International Students (16 May 2018); 'Transport', *Study in Australia* (Web Page) < <https://www.studyinaustralia.gov.au/english/live-in-australia/transport>>.

201 *Opal fares*, NSW Government (Web Page) <<https://www.opal.com.au/en/opal-fares/>>.

202 Focus Group with International Students (9 May 2018); Focus Group with International Students (16 May 2018); Focus Group with International Students (10 September 2018); Focus Group with International Students (12 September 2018).

203 Australian Bureau of Statistics, *Characteristics of Recent Migrants* (14 June 2017) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/6250.0>>.

204 Work conditions for student visa holders, Australian Department of Home Affairs (Web Page) <<https://archive.homeaffairs.gov.au/trav/stud/more/work-conditions-for-student-visa-holders>>.

205 *Annual Wage Review 2017–18* [2018] FWCFB 3500, [101].

206 Berg and Farbenblum (n 8) 6.

This has two significant impacts on international students' ability to secure decent housing. First, it limits the housing options that are affordable to them. Second, international students are generally in competition with other groups seeking low cost housing and are at a significant disadvantage because their work limitation restricts the weekly income they can demonstrate when applying for housing.²⁰⁷ For example, an international student recounted:

*"When I approached [real estate agents] they were saying that I only had a student visa and that they weren't ready to give me [a property] because my student visa was going to expire in the coming months. That [made] it really difficult to find a property. They were asking us for many bank statements. 40 hours [of work] fortnightly... was not sufficient for us to get an apartment or unit. We have to compete with people who are working full time, so our bank statements are... given less priority. Our income can cover the property rent but it's not sufficient because there would be 3 or 4 people competing, their bank statement would be more compatible with the rent. It was really difficult for me to find a studio apartment along with my wife. I found it really hard, I had to travel a lot. I was planning to take an apartment or property around the city, but it is really expensive, so I had to move to western Sydney."*²⁰⁸

C. Inaccessibility of the Formal Rental Market to International Students

Although many international students would prefer to reliably source accommodation through a real estate agent, most are 'locked out' of the formal private rental market.²⁰⁹ In addition to international students' competitive disadvantage in the housing market due to work restrictions, many are unable to complete a tenancy application as they are unable to demonstrate a steady income in Australia and some landlords do not accept proof of sufficient funds from overseas.²¹⁰ Others are stymied by their inability to produce documentary evidence such as rental history and pay slips because their employer in Australia did not provide them.²¹¹ This is a widespread practice among international students who are often paid in cash and paid less than minimum wage.²¹²

Many international students also face insurmountable obstacles to applying for properties through rental agencies due to a lack of local rental history and references.²¹³ Many have not lived away from home in their countries of origin²¹⁴ and others may have a rental history in another language that is not recognised in Sydney.

International students also face difficulties accessing the rental market when they are in Sydney for a period of time that does not align with private rental options on the market. For example, they may be undertaking a 3-month course, or may need to switch accommodation when they have fewer than 12 months remaining on their visa.

207 Focus Group with International Students (16 May 2018); Ryan et al (n 92) 35.

208 Focus Group with International Students (16 May 2018).

209 Parkinson et al (n 83) 55.

210 Focus Group with International Students (9 May 2018).

211 Focus Group with International Students (9 May 2018); Focus Group with International Students (10 September 2018).

212 Berg and Farbenblum (n 8).

213 Focus Group with International Students (9 May 2018); Ryan et al (n 92) 13.

214 Focus Group with International Students (16 May 2018); Focus Group with International Students (10 September 2018).

D. International Students Lack Essential Information Pre-Departure and When in Australia to Secure Decent Accommodation

1. Many Students Find Accommodation Prior to Arrival in Australia, or through Social Media and Informal Channels

The way in which international students seek and secure housing has a direct impact on the types of problems they encounter. Because student housing is expensive and limited and few international students are able to access properties through real estate agents,²¹⁵ the majority find their housing through informal channels.²¹⁶ Finding suitable housing is challenging for international students, particularly on first arrival.²¹⁷ This exposes international students to unscrupulous providers that take advantage of their vulnerabilities and lack of local knowledge, resulting in housing which is often more precarious or poorer quality.²¹⁸

A survey of Chinese international students found that 84% had organised their accommodation in Sydney before they arrived.²¹⁹ This is common among international students generally,²²⁰ despite most universities recommending that international students only engage with the private rental market after arrival.²²¹ International students point to the financial burden of temporary accommodation as the key reason why they do this, even if this results in unsatisfactory housing arrangements.²²²

Among students who encounter housing problems, two methods of sourcing accommodation pre-arrival are particularly common.²²³ The first is the use of informal platforms and mechanisms to find accommodation in a share house or subleasing arrangement. These include unregulated websites, social media, word of mouth, and connections with members of their communities or through friends.²²⁴ Frequently used social media and web platforms include Gumtree, Facebook, and Flatmates.com.au, and for Chinese international students, Yeeyi, 6park and WeChat.²²⁵ It is difficult for international students to determine the accuracy and legitimacy of online advertisements on social media sites, leaving them highly vulnerable to deceptive conduct, misrepresentation of the accommodation, and financial scams as well as other malpractices like non-repayment of bonds and demands for rent to be paid months in advance.²²⁶ International students also use these channels to find accommodation when they are in Australia, however students sourcing accommodation through these platforms pre-arrival are

215 A 2009 survey of 1891 students found that only 15% of international students had used a real estate agent to find their current accommodation: Odoom (n 162) 206.

216 Judd (n 81) 101, where a survey of 431 Chinese international students in Sydney found that the resources most used for finding their first accommodation in Sydney was the internet, followed by family and friends in Sydney.

217 Ryan et al (n 92) 34.

218 Burke (n 7) 10; Focus Group with UNSW Students (UNSW Law Building Room 353, 9 May 2018).

219 Judd (n 81) 136.

220 Interview with staff member in accommodation services of a Sydney university (3 May 2018); Parkinson et al (n 83) 56.

221 'Why it's Important to Arrange Short Term Accommodation First', UNSW Sydney (Web Page) <<https://student.unsw.edu.au/accommodation-short-term>>.

222 Focus Group with International Students (9 May 2018); Sharon Smith, Helen Forbes-Mewett, Simon Marginson et. al, 'The Right to Adequate Housing in the Context of International Education', (Conference Paper, Australian International Education) 2.

223 Interview with a community legal centre solicitor (2 May 2018).

224 Burke (n 7) 10; Focus Group with International Students (9 May 2018). A 2010 survey of international students studying at the University of Sydney found that 34% of respondents found accommodation through a housing website while 26% of respondents found accommodation through advice from friends: Survey by the International Student Support Unit, The University of Sydney (2010), cited in Odoom (n 162) 212.

225 Focus Group with International Students (16 May 2018); Ryan et al (n 92); Interview with staff member in accommodation services of a Sydney university (3 May 2018); Interview with staff member in accommodation services of a Sydney university (27 August 2018).

226 Interview with a community legal centre solicitor (2 May 2018).

especially vulnerable because they are unable to inspect the property prior to agreeing to rental terms and paying upfront deposits. A tenancy solicitor observed that unscrupulous landlords operate in diverse ways across different platforms, however their legal services recommends international students do not use common unmediated social media and sharing platforms to find accommodation.²²⁷

In addition to these sites and social media platforms, some students search for accommodation on purpose-designed renting websites like domain.com.au or realestate.com.au, which some students perceive as offering greater accountability than other social media platforms and are therefore more trusted.²²⁸ However international students face substantial hurdles to obtaining properties on these sites in the formal rental market as discussed above, and may lack confidence to use these sites due to language or cultural barriers. As one university housing advisor noted,

“If it’s shared accommodation, we can refer [international students] to big websites, e.g. realestate.com.au or domain.com.au. But [international students] have to contact them, meet them and sign the contract. I think they don’t really want to go through the process; they might want to take an easier way, such as Chinese students finding Chinese websites. Sometimes they don’t want to speak English all the time, and they think it’s not easy to do it.”²²⁹

A second significant problematic method for finding accommodation pre-arrival is the use of companies that target international students while they are still overseas and promise to arrange their accommodation for them.²³⁰ Though these may appear more formal and legitimate than social media and sharing platforms, international students are commonly exploited by unregulated agencies that often default on promises, charge additional unlawful fees and withhold bonds.²³¹

When international students organise their accommodation from overseas it is difficult for them to determine the accuracy and legitimacy of online advertisements on social media. This leaves them highly vulnerable to deceptive conduct, misrepresentation of the accommodation, and financial scams as well as other malpractices like non-repayment of bonds and demands for rent to be paid months in advance.

227 Interview with tenants’ advocate (24 May 2018).

228 Focus Group with International Students (9 May 2018).

229 Interview with staff member in accommodation services of a Sydney university (3 May 2018).

230 Interview with community legal centre solicitor (2 May 2018).

231 Interview with community legal centre solicitor (2 May 2018).

CASE STUDY: In-Country Recruiting²³²

An Australian company with offices in China actively targets international students before they move to Australia and offers them what appears to be a high end, all-inclusive service – accommodation, airport pickups, restaurant meals, local tours, introductions to Australian culture, etc.

In an attempt to evade their obligations under the RTA, the accommodation is contracted under an ‘occupancy agreement’ rather than a residential tenancy agreement. This includes charging rent three months in advance, charging fees for application, registration, lodgement, cleaning and pest control. The company has a practice of not returning rental bonds.

International students have also experienced instances where upon arrival in Australia, they are informed that their accommodation is not yet ready and that they must stay elsewhere until it is available. Despite being assured of reimbursement, their costs are rarely recovered. International students have also often found that upon finally moving into their arranged accommodation, it does not match the description provided.

The company has liquidated and begun trading under a new name numerous times due to complaints and exposure. This situation was reported by a variety of stakeholders, but there is limited redress for these international students unless they pursue claims at NCAT, and this scam has been operating for a number of years.

2. International Students Lack Knowledge of the Sydney Housing Market and their Legal Rights

International students are commonly unable to evaluate potential housing and identify “red flags” because they are unfamiliar with standard practices and real estate terms in the Sydney housing market, and do not know how to find decent affordable housing. Most also lack knowledge of Australia’s complex housing regime and NSW tenancy rights and responsibilities,²³³ and where and how to seek legal advice. Judd’s Chinese International Student Survey found that 28% of respondents were never aware of their rights and responsibilities under Australian law, 46% were sometimes aware, and 26% were often aware.²³⁴ International students often misunderstand their legal rights in Australia. This renders them vulnerable to deceptive and exploitative practices²³⁵ and also prevents them from insisting on conditions (such as a written tenancy agreement or bond receipt) that are essential to protecting themselves when problems arise. An international student in one focus group commented that he was evicted from their apartment within a matter of hours without notice and was unable to seek legal assistance as he ‘did not know the system in Australia.’²³⁶ Another international student in the same focus group agreed that they were unaware of the housing system, being ‘new in this country.’²³⁷ A service provider pointed out that international students are often exploited due to this lack of familiarity as they believe that ‘if an authority figure (a landlord) says it’s the law... [it] must be the law.’²³⁸

232 Interview with tenants’ advocate (24 May 2018).

233 Interview with tenants’ advocate (24 May 2018); Ziguras (n 16) 10.

234 Judd (n 81) 106.

235 Interview with tenants’ advocate (3 May 2018); Interview with Interview with tenants’ advocate (20 August 2018);

236 Focus Group with International Students (16 May 2018).

237 Focus Group with International Students (16 May 2018).

238 Interview with tenants’ advocate (24 May 2018).

It is difficult for international students to find information on standard practices, red flags and how to find decent accommodation that is accessible and affordable to them. A PaperGiant/Inner Melbourne Community Legal study in supporting international students' legal needs found that information is available, but isn't getting to international students.²³⁹ Though universities commonly send international students information about housing pre-arrival, the information has generally been confined to on-campus accommodation or sometimes PBSA.²⁴⁰ Much of the information and advice that international students receive about housing comes from fellow students and friends, often within their nationality group.²⁴¹ According to one university student,

"During the orientation... they don't tell you about the off-campus [accommodation]. There is no education about that. The students coming, they don't know. I stayed in temporary place with friends and then I moved out to a different place. [The university would be] a proper channel, [instead] you go to Facebook and these other channels."²⁴²

International students want to receive more useful information on housing from their education providers.²⁴³ Indeed Macquarie University disclosed their 'open' rates for emails relating to housing sent via electronic distribution marketing as averaging out at 72.74% for July 2017 to June 2018.²⁴⁴ International students have recommended that in addition to emails, education providers should use Facebook, WeChat, Instagram and other social media websites to distribute reliable information about housing options and methods of resolving problems,²⁴⁵ including videos with subtitles, along with seminars about housing rights in Orientation Week and on an ongoing basis. In 2019 a range of stakeholders are collaborating on a research project²⁴⁶ funded by the NSW government to identify the content and forms of information that education providers could most usefully disseminate on housing and when how it should be distributed.

E. International Students Cannot Access Institutions and Assistance to Enforce Rights and Resolve Problems

International students experiencing housing problems in Sydney often lack access to justice.

Access to justice includes:

- Getting the right information about the law and how it applies to an individual's situation;
- Understanding when there is a legal problem and what to do about it;
- Getting the right help for a legal problem, including from a lawyer;
- Being able to deal with the legal problem and being able to understand the outcome; and
- Ensuring individual voices are heard when the law is made.²⁴⁷

239 PaperGiant and Inner Melbourne Community Legal, 'Student-Led, Student Centred: Better Supporting International Students' Legal Needs' (Conference Paper, ISANA Conference, 7 December 2018).

240 Smith et al (n 222) 6.

241 Interview with Interview with staff member in accommodation services of a Sydney university (23 August 2018); Interview with Interview with staff member in accommodation services of a Sydney university (3 May 2018); A survey of Chinese International students in Sydney found that respondents saw friends and relatives living in Sydney as the most helpful resource for survey respondents dealing with problems in accommodation in Sydney, followed by international students at university: Judd (n 81) 120.

242 Focus Group with International Students (16 May 2018)

243 Ryan et al (n 92) 29.

244 Email from staff member in accommodation services of a Sydney university, 5 September 2018.

245 Focus Group with International Students (10 September 2018).

246 *Information for Impact: Enabling education providers to address exploitation of international students in students in accommodation and at work*, funded by StudyNSW's Partner Project Scheme <<https://www.mwji.org/international-students-in-australia>>.

247 Law Council of Australia, *Access to Justice: The Justice Project* (August 2018) <<https://www.lawcouncil.asn.au/justice-project/final-report>>.

1. International Students Do Not Know How to Access Assistance and Availability of Assistance is Limited

Numerous focus group participants indicated that international students generally do not know where to go for legal assistance when housing problems arise²⁴⁸ and are unaware of the existence of legal services.²⁴⁹ A 2013 survey of Chinese international students in Sydney (**Judd Chinese International Student Survey**) found that 44% reported that they sometimes had difficulty resolving problems with their accommodation, and 12% often had difficulty.²⁵⁰ If international students are aware of the help available, it is usually through a friend or fellow student that they were made aware of the service - not through university or community legal centre advertising. One international student observed that '[i]f no one told me I could go to the legal centres or something like that I wouldn't know there is such place that exists here.' When asked if they were aware of the free university legal service for students with housing problems, another student said, 'I'm pretty much shocked that there's something for free.'²⁵¹

Even when international students are aware of legal assistance services, many encounter long wait times for an appointment due to inadequate capacity to serve the significant demand for assistance.²⁵² According to a Redfern Legal Centre solicitor, the volume and frequency of international students seeking advice is putting a strain on Community Legal Centres. As a result, Redfern Legal Centre has placed a disclaimer on its website stating: 'due to high demand, we are not able to advise on every tenancy matter. If we are not able to advise you, we will refer you to the factsheets... or to NSW Fair Trading.'²⁵³ Appointment availability was raised by a student in a focus group who stated 'every time [I] tried to book an appointment, [Redfern Legal Centre] is usually very packed.'²⁵⁴ A Kingsford Legal Centre solicitor also commented that 'Kingsford Legal Centre, [the university student legal service], Eastern Area Tenants Services, Redfern Legal Centre International Students Service...are all really busy, packing out advice appointments with international student tenancy issues...the volume is too much.'²⁵⁵ In fact, it is estimated that services, specifically the Tenancy Advice and Advocacy Service, are only able to assist with around 5% of the matters that arise and that appointments for such services book out instantly.²⁵⁶ Private solicitors are generally too costly for international students and in many cases would cancel out the financial benefit to the student of seeking to enforce their rights.

A university service provider also observed that a lack of resources has resulted in an inability to be proactive and educate international students, and confined service providers to responding reactively. She observed that 'you're really waiting for people to have the problem and then to come to you in having it already occurred.'²⁵⁷

248 Focus Group with International Students (9 May 2018).

249 Focus Group with International Students (9 May 2018); Focus Group with International Students (16 May 2018); Focus Group with International Students (10 September 2018); Focus Group with International Students (12 September 2018).

250 Judd (n 81) 147.

251 Focus Group with International Students (10 September 2018).

252 Focus Group with International Students (9 May 2018).

253 Tenancy & Housing', *Redfern Legal Centre* (Web Page) <<https://rlc.org.au/our-services/tenancy-housing>>.

254 Focus Group with International Students (9 May 2018).

255 Interview with community legal centre solicitor (2 May 2018).

256 Interview with tenants' advocate (20 August 2018).

257 Interview with staff member in accommodation services of a Sydney university (20 August 2018).

2. Culture and Language Barriers

Cultural and language differences can contribute to international students' lack of knowledge or misunderstanding of rights or standard housing practices in NSW. They may also deter international students from seeking help when problems arise. A university service provider observed:

"Often...the shift in culture and how things operate in Sydney, coming from their home places is so enormous...and they don't necessarily have any contacts from their own background who can kind of act as intermediaries. So that's where I've certainly seen [international] students get into real strife...not then knowing how to access support to talk through what they think is happening."²⁵⁸

Many international students in focus groups indicated they would be more comfortable accessing help with their housing problems if staff providing these services could speak their language. While Community Legal Centres and Tenancy Advice Services have access to accredited interpreters, the extent to which these are used by other types of services such as university support services is unclear.²⁵⁹ Compounding language barriers, legal staff commonly lack 'cultural competency' to relate appropriately to an international student. This creates a barrier to seeking legal assistance, and can foster distrust of the service provider when it occurs.

Language barriers can also prevent access to legal information which may already be difficult to access in English. To combat this, legal services such as Tenancy Advice and Advocacy Services have provided information in multiple languages, but more niche information such as share house factsheets are generally only provided in English and Chinese. Service providers have indicated '[it is] absolutely key for there to be greater legal education and legal information available in languages relevant to international students before and as soon as students arrive.'²⁶⁰

Even where international students are aware of their housing rights, cultural barriers may also impede access to justice mechanisms such as NCAT and create an even greater need for legal assistance because 'tribunal' can be a 'scary word' in some cultures.²⁶¹

International students generally do not know where to go for legal assistance when housing problems arise and are unaware of the existence of legal services. Even when international students are aware of legal assistance services, many encounter long wait times for an appointment due to inadequate capacity to serve the significant demand for assistance.

258 Interview with staff member in accommodation services of a Sydney university (20 August 2018).

259 Interview with community legal centre solicitor (2 May 2018).

260 Interview with community legal centre solicitor (2 May 2018).

261 Interview with community legal centre solicitor (2 May 2018).

3. Further Challenges to Pursuing Remedies Through NCAT

As discussed in Section II, NCAT is the main mechanism through which a tenant can enforce their housing rights.²⁶² A range of barriers impede international students' ability to pursue a claim in NCAT:

- Despite NCAT being a tribunal designed for self-representation, **international students generally require legal assistance** and representation to succeed in their claim. For example, most international students would be unable to identify relevant sections of the legislation to support their claim, as is required in an application.²⁶³ Service providers have found that many international students, particularly younger international students, require 'handholding and support'.²⁶⁴ Further, NCAT often employs an inflexible case management system, which is unsuitable for self-represented international students who are likely to require adjournments for legal advice.²⁶⁵ Current service providers and Community Legal Centres generally do not have the capacity to represent international students in the NCAT, making it likely that they will have to seek paid representation to assist with their claim.²⁶⁶
- International students frequently **lack necessary documentation for an NCAT application** including the landlord's contact details, a written tenancy agreement and rent receipts²⁶⁷ (see Section III.C.1.).
- **Cost** may deter an international student from using NCAT. Where legal representation is required, the cost of representation may outweigh the potential recovery if the claim is small. In fact, multiple international students in focus groups specified that they would be more likely to pursue a smaller claim if they had access to free lawyer at NCAT.²⁶⁸ In addition to legal fees, the current fee to lodge an application with NCAT is \$50 for residential proceedings, with international students ineligible for a concession price.²⁶⁹
- **Timing** may prevent international students from accessing NCAT (see Section IV.E.4 International Students' Time Constraints)
- NCAT's **jurisdiction is limited to residential tenancies** and excludes boarding houses.²⁷⁰ Tenancy arrangements may be misrepresented as boarding houses in an attempt to limit international students' rights of access to NCAT. As reported by a tenants' advocate at the Eastern Area Tenancy Service, some companies 'charge 3 months' rent in advance, application fees... only 2 weeks bond in the hopes of keeping up the ruse of being a boarding house agreement.'²⁷¹

4. International Students' Time Constraints

The urgency and/or time-consuming nature of housing claims present significant challenges for international students.²⁷² Between studies and work commitments international students have very limited time available and

262 'About NCAT', *NSW Civil and Administrative Tribunal*, (Web Page) <https://www.ncat.nsw.gov.au/Pages/about_us/about_us.aspx>.

263 Tenancy', *NSW Civil and Administrative Tribunal*, (Web Page) <<https://www.ncat.nsw.gov.au/Pages/cc/Divisions/Tenancy/tenancy.aspx>>.

264 Interview with community legal centre solicitor (2 May 2018).

265 Interview with tenants' advocate (20 August 2018).

266 Interview with community legal centre solicitor (2 May 2018).

267 Interview with community legal centre solicitor (2 May 2018).

268 Focus Group with International Students (10 September 2018).

269 'Fees and charges', *NSW Civil and Administrative Tribunal*, (Web Page) <https://www.ncat.nsw.gov.au/Pages/apply_to_ncat/fees_and_charges/fees_and_charges.aspx>.

270 Tenants Union of NSW, Boarders and lodgers (Factsheet, January 2014) <<https://www.tenants.org.au/factsheet-14-boarders-and-lodgers>>.

271 Interview with tenants' advocate (24 May 2018).

272 Focus Group with International Students (12 September 2018).

value this time very highly given the investment that many have made in their time studying in Australia. Service providers and university students in focus groups indicated that they would therefore be unlikely to spend time pursuing a claim through NCAT for a small amount of money.²⁷³

The temporary short-term nature of international students' stay in Australia presents further obstacles to enforcing their rights. Some may not have time to follow through with any legal claims before returning to their home country once their studies are complete. Many students return home two to five days after moving out of their rental property,²⁷⁴ which is commonly a problem for the return of bonds. As it is difficult to engage with the NCAT from overseas, international students 'do not bother even if they...have had a legitimate claim.'²⁷⁵ A tenants' advocate from the Eastern Area Tenants Service commented that exploitative accommodation business models prey on this situation.²⁷⁶ A solicitor from Kingsford Legal Centre also noted:

*"There needs to be speedier assistance. Some international students are only here for a year or two before returning home. KLC has had issues where they have agreed to assist clients in the long-term, but they have to act fast as they will return home and you can't be half-way through a tribunal proceeding and your student has to go [home]."*²⁷⁷

5. Inadequate Penalties and Ineffective Enforcement of Laws by Government

International students' inability to enforce their rights is compounded by a lack of government enforcement of relevant laws that protect tenants in NSW. For example:

- Statutory penalties are not applied for the operation of illegal boarding houses,²⁷⁸ or for written residential agreements that do not meet the requirements of the *RTA*.²⁷⁹
- **NSW Fair Trading** has regulatory powers to combat housing rights violations including by appointing an investigator for potential breaches of legislation.²⁸⁰ However, powers of entry do not extend to residential premises without the landlord's consent.²⁸¹ Although an investigator may apply to the police for a search warrant²⁸² there is limited evidence of Fair Trading NSW using these powers effectively to address the problems faced by international students in housing. The low numbers of penalties and civil actions by NSW Fair Trading under the *RTA* suggests that NSW Fair Trading is failing to exercise its regulatory powers in this area effectively:

273 Interview with tenants' advocate (24 May 2018); Interview with tenants' advocate (20 August 2018); Focus Group with International Students (12 September 2018). Focus Group with International Students (10 September 2018).

274 Interview with tenants' advocate (24 May 2018).

275 Interview with tenants' advocate (20 August 2018).

276 Interview with tenants' advocate (24 May 2018).

277 Interview with Interview with community legal centre solicitor (2 May 2018).

278 The present penalties for operating an illegal boarding house are \$750 - \$1,500 for individuals and \$1,500 - \$3,000 for corporations under the *Environmental Planning and Assessment Act 1979* (NSW) and *Environmental Planning and Assessment Regulation 2000* (NSW) sch 5.

279 A written residential agreement that does not conform to the requirements of the *RTA* or attempting to contract out of these requirements can attract a penalty of \$2,200: *RTA* ss 22, 159, 219.

280 *Fair Trading Act 1987* (NSW) pt 2A; *RTA* s 18(1).

281 *RTA* s19.

282 *RTA* s19A(2). A search warrant may be granted if there is a reasonable belief there is a contravention of the law or potential for activities to cause injury.

Table 6. NSW Fair Trading enforcement action under the RTA from October 2017-September 2018.

Period	Number of enforcement actions	Type	Value of Penalty
October – December 2017 ²⁸³	2	Penalty Notice	\$930
January – March 2018 ²⁸⁴	4	Penalty Notice	\$1,980
April – June 2018 ²⁸⁵	3	Penalty Notice	\$1,540
July – September 2018 ²⁸⁶	6	Penalty Notice	\$2,860
TOTAL	15		\$7,310

- **Local councils** are authorised to enter registered boarding houses for the purposes of conducting inspections, asking questions and taking photographs to ensure compliance with the *BHA*.²⁸⁷ However councils rarely inspect other residential premises because they may only do so with the landlord's consent or pursuant to a search warrant, which they rarely pursue.²⁸⁸
- In a positive development, the **City of Sydney** launched an anonymous online reporting and investigation process in March 2015 called the "Unauthorised Accommodation Investigation Team".²⁸⁹ It targeted illegal or non-approved accommodation, letting to multiple people at the same time, illegal building works and illegal subdivisions. The Taskforce was defunded and inoperative for over a year, however a new appointment has recently been made.²⁹⁰
- The **Overseas Student Ombudsman** can receive complaints from prospective, current and former overseas students and others about an action or decision by a private school, college or university in Australia.²⁹¹ Complaints can be also made regarding perceived maladministration at a public educational institution, including all public universities, TAFE colleges, institutes and schools.²⁹² The Ombudsman could provide an important forum for complaints about on-campus housing that is not covered by the *RTA*.²⁹³ however it currently does not accept housing-related complaints.

283 NSW Fair Trading, 'October – December 2017 Quarter' (Enforcement Action Report, 2018) 5.

284 NSW Fair Trading, 'April – June 2018 Quarter' (Enforcement Action Report, 2018) 5.

285 NSW Fair Trading, 'April – June 2018 Quarter' (Enforcement Action Report, 2018) 4 < https://www.fairtrading.nsw.gov.au/__data/assets/pdf_file/0006/414663/Quarterly-Enforcement-Actions-Report-April-June.pdf>.

286 NSW Fair Trading, 'July – September 2018 Quarter' (Enforcement Action Report, 2019) 8.

287 *BHA* div 4.

288 Alexander Singh, *Local Government Enforcement – New Powers Under the Environmental Planning and Assessment Act 1979*, Environment and Planning Law Association Conference 2015 < <http://epla.org.au/media/2015-epla-conference/Talk%20-%20Local%20Government%20Enforcement%20-%202015%20EPLA%20Conference.pdf>>.

289 'Unauthorised Accommodation', *City of Sydney* (Web Page) < <https://www.cityofsydney.nsw.gov.au/live/report-local-issues/unauthorised-accommodation>>.

290 Interview with local council staff member (3 September 2018).

291 'Overseas Students', *Commonwealth Ombudsman* (Web Page) < <https://www.ombudsman.gov.au/How-we-can-help/overseas-students>>.

292 'State Universities', *NSW Ombudsman* (Web Page) < <https://www.ombo.nsw.gov.au/what-we-do/our-work/universities>>.

293 The Ombudsman can make recommendations to an education provider but does not have power to compel an education provider to act: 'Overseas Students', *Commonwealth Ombudsman* (Web Page) < <https://www.ombudsman.gov.au/How-we-can-help/overseas-students>>.

V. IMPACT OF INSECURE HOUSING ON SYDNEY'S INTERNATIONAL STUDENTS

International students confront a range of challenges as they adapt to living and studying in new social, cultural, educational, economic and language contexts in Australia, often without the proximate support of family and community.²⁹⁴ Lack of a safe, adequate and stable place to live profoundly impacts students' wellbeing, creating new issues that the student must address or magnifying existing problems.²⁹⁵ In particular, the overcrowding and cleanliness of housing impacts on the wellbeing of international students in Sydney.²⁹⁶ Service providers see the direct effects of housing issues on international students' mental health, academic performance and financial wellbeing.²⁹⁷

A. Health Impact

Service providers and international students in focus groups underscored the significant impact of international students' living situation on their mental wellbeing.²⁹⁸ This is consistent with findings of a study at two major Australian universities which identified high levels of psychological distress associated with housing among international students.²⁹⁹ This was higher for those in living in shared accommodation than those living in university housing or with family,³⁰⁰ however younger students may also experience mental distress in homestay situations if they feel uncomfortable or unsafe.³⁰¹

International students in focus groups highlighted the stress that many international students experience when trying to balance the demands of their academic studies, finances and searching for and securing accommodation. One student highlighted that "some students have their contracts [ending] in June and their exams in June, they are in stress [and] they have to find a new place ... it is really difficult."³⁰²

International students' housing experiences can substantially impact on their perceptions of Australia and their self-perception. Noting the impact of "culture shock" on international students, one service provider observed that unreasonable or exploitative behaviour by a housing provider often represents the first serious challenge that an international student faces, 'so, it can really [shake their] sense of how much they can trust other people ... they can start to get the sense that they're vulnerable in this country.'³⁰³

294 See Baohua Yu and Ewan Wright, "Socio-Cultural Adaptation, Academic Adaptation and Satisfaction of International Higher Degree Research Students in Australia" (2015) 22(1) *Tertiary Education and Management*, 49; Ryan et al (n 92) i.

295 Obeng-Odoom (n 162) 201.

296 Ryan et al (n 92) 72.

297 Interview with staff member in accommodation services of a Sydney university (20 August 2018); Interview with staff member in accommodation services of a Sydney university (3 May 2018).

298 One service provider noted that they generally see housing issues associated with short term mental health disorders, with cases of longer term anxiety and depression being rare. Interview with staff member in accommodation services of a Sydney university (20 August 2018).

299 Helen Stallman, 'Psychological Distress in University Students: A Comparison with General Population Data' (2010) 45(4) *Australian Psychologist* 249, 255–6.

300 Helen Stallman, 'Psychological Distress in University Students: A Comparison with General Population Data' (2010) 45(4) *Australian Psychologist* 249, 255–6.

301 For example, an international student in a focus group mentioned a friend who lived in a homestay arrangement where the host parent was an alcoholic and an illicit drug-user and the student was so fearful they could not sleep at night. Focus Group with International Students (12 May 2018).

302 Focus Group with International Students (16 May 2018).

303 Interview with staff member in accommodation services of a Sydney university (20 August 2018).

Students' physical health may also be directly impacted by poor housing conditions, particularly in overcrowded properties and shared facilities that lack of private spaces.³⁰⁴

B. Academic Impact

Service providers and focus group participants also underscored the strain that housing issues place on academic performance. Academic performance may be affected by stress, poor sleep or time required to deal with unacceptable living conditions, or by financial pressures to maintain accommodation that demand they work more hours, in turn resulting in reduced university attendance.³⁰⁵ This can affect international students' visa status as education providers are obliged to notify the Department of Home Affairs if international students drop below a specific attendance level.³⁰⁶ As a service provider from UNSW Global describes the situation,

*"Accommodation is the foundation of their life – sometimes students have to spend lots of time to find accommodation... [and so] have less time to study. Sometimes, their teachers even come and tell us that students are not focusing in their class. Teachers have to approach students to ask what's happening, and students explain that they miss class because they are going to apartment inspections – they miss class and they are tired and worried... They know they have to study, but if they have nowhere to live, study doesn't really become their first priority."*³⁰⁷

Judd's Chinese International Student Survey found that 64% of survey respondents indicated that problems with accommodation had negatively impacted their studies at some point.³⁰⁸ Multiple service providers observed that where international students do not feel safe in their accommodation, they will tend to spend less time at home and only go home to sleep.³⁰⁹ Because they do not have a comfortable place to study or rest, their academic performance can suffer. For example, one service provider was contacted by two international students who were unable to do a take home exam because they had nowhere safe and quiet to go.³¹⁰

C. Financial Impact

Many international students confront significant financial pressures when entering the Sydney housing market and while living in Sydney (see Section IV.B). Housing problems can substantially exacerbate these pressures, with direct impacts on international students' mental health and their studies. For example, if a student leaves her accommodation and does not get her \$2000 bond returned as expected, she may not have the financial means to secure alternative safe accommodation.³¹¹ This may force the student to live in unsafe or precarious conditions, and/or to work many more hours to make up the shortfall - in turn, impacting upon the student's mental and physical wellbeing and her academic performance. Continuing this cycle, where housing issues impact on a

304 City of Sydney Council, Submission No 66 to NSW Legislative Assembly Social Policy Committee, Parliament of NSW, *Inquiry into International Student Accommodation in New South Wales* (31 October 2011) 8.

305 Interview with community legal centre solicitor (17 May 2018).

306 *Migration Act 1958* (Cth) s 268BD.

307 Interview with staff member in accommodation services at UNSW Global (3 May 2018).

308 Judd (n 81) 166.

309 Interview with staff member in accommodation services of a Sydney university (20 August 2018); Interview with staff member in accommodation services of a Sydney university (27 August 2018); Interview with community legal centre solicitor (2 May 2018).

310 Interview with community legal centre solicitor (2 May 2018).

311 Interview with community legal centre solicitor (17 May 2018).

student's academic performance this can have an exponential financial impact. A service provider observed that 'to lose a bond is one thing but to fail a [subject] and have to repeat it is even more financially burdensome.'³¹²

Even where problems do not arise, entry into some parts of the Sydney rental market may require students to work and earn substantial income in Australia rather than relying on financial support from their family overseas as many intend to do.³¹³ As one focus group participant noted,

"If you can prove you have sufficient funds, but you are getting them from back home that's not good enough. The [housing providers] want to see that you are working or getting income...from Australia. They don't believe in funds coming from overseas."³¹⁴

Service providers and focus group participants underscored the strain that housing issues place on academic performance. This includes the effects of stress, poor sleep or time required to deal with unacceptable living conditions, or financial pressures to maintain accommodation that compel international students to work more hours, in turn resulting in reduced university attendance.

312 Interview with staff member in accommodation services of a Sydney university (20 August 2018)

313 Interview with tenants' advocate (22 August 2018).

314 Focus Group with International Students (9 May 2018).

VI. Conclusion and Recommendations

A considerable proportion of international students in Sydney (and other Australian cities) do not currently enjoy the basic human right to live in a place that is legally and physically secure, affordable, accessible, habitable, and has the facilities necessary for its occupants to live in security, peace and with dignity.³¹⁵ There are pressing needs to both increase the availability of dedicated student accommodation in Sydney, and to address the systemic drivers and consequences of exploitation of international students in the marginal rental market. In the short and medium term, a range of actions can be taken by the NSW and Commonwealth governments, local councils, education providers and other key stakeholders to reduce students' vulnerability to deceptive and unscrupulous conduct by landlords and others, and enable them to obtain assistance and swiftly obtain remedies when their rights are violated.

A. Increase Access to Adequate Housing

1. Increase availability of quality affordable accommodation for international students.

- a. Universities should increase availability of on-campus housing for international students, ideally providing international students an accommodation guarantee for their first semester or first year, similar to guarantees in place at Wollongong University and the Australian National University.
- b. Local Councils should work with developers to incentivise construction of quality and affordable housing for international students, ideally in conjunction with a licensing scheme that creates commercial reputational incentives for quality licensed accommodation providers (see Recommendation 4).
- c. Services provided by a centrally located international student hub (see Recommendation 2a) and each university (see Recommendation 2c) should include a housing office to take student enquiries and work as a liaison between students and real estate agents to advise and assist international students to prepare necessary documentation and engage in negotiations to secure quality private rentals.

2. Improve international students' capacity to pay for better quality accommodation.

- a. The NSW Government should extend eligibility for transport concessions to all full-time international students enrolled at a NSW education provider. This would improve student safety by enabling them to take public transport rather than walking home at night and would reduce congestion by financially incentivising students to live further from urban centres.
- b. The Commonwealth and NSW government and parliaments should adopt measures to improve affordability of housing in Sydney.³¹⁶
- c. The Commonwealth government should consider removing the 40-hour fortnightly work limitation³¹⁷ within the student visa, ensuring that students' studies remain uncompromised by maintaining a requirement of satisfactory class attendance as a condition of the visa.

315 *General Comment No. 4* (n 2) [7].

316 This report does not examine appropriate measures to improve housing affordability. This is being considered by others. See e.g. Australian Council of Social Service and National Shelter, *Housing Australia's people: a serious plan* (Issues Paper, 2017) <https://www.acoss.org.au/wp-content/uploads/2017/04/ACOSS_National-Shelter_housing-affordability-issues-paper_final.pdf>.

317 Work conditions for student visa holders, Australian Department of Home Affairs (Web Page) <<https://archive.homeaffairs.gov.au/trav/stud/more/work-conditions-for-student-visa-holders>>.

3. Education providers and the NSW government should provide emergency support services to ensure international students have a safe place to stay if they need to leave accommodation.

- a. Universities should make available free or affordable emergency and short-term accommodation for international students who are experiencing issues with their housing arrangement to provide them with somewhere to live while they source alternative, safe accommodation. The NSW government should work with VET and ELICOS providers to do the same, including providing increased funding to organisations that provide emergency crisis accommodation. There should be no age criteria for accessing emergency crisis accommodation for international students.
- b. In addition to providing emergency housing, universities should develop a program of short-term crisis loans for international students who are subject to unfair evictions, are homeless, or need safe accommodation due to experiencing bullying and/or harassment.

B. Improve Access to Information and Tenancy Services

4. The NSW government (including StudyNSW and Fair Trading NSW) should collaborate with education providers, tenants/legal assistance services, local councils and international student groups to develop and deliver targeted information that enables international students to identify adequate housing, avoid exploitative housing practices, and seek help for problems when they arise.

- a. There should be a single consistent package of information (online written materials, short videos and podcasts available in multiple languages with subtitles). These should be authorised by the NSW government and distributed by all stakeholders including education agents who engage with international students pre-departure, education providers, student associations, tenant/legal assistance services, commercial student guides and local councils. Development of these materials should be informed by the Information for Impact³¹⁸ study funded through the StudyNSW Partner Project Scheme.
- b. Materials should include information on international students' rights and obligations as tenants (and potentially as landlords or head tenants) and where to get help if they experience problems. This should include information on where and how to find decent accommodation that is practically accessible to students (beyond university housing and PBSA), how the rental process works in Sydney and standard practices, red flags, common scams or unacceptable practices of which students should be aware, information about student visas (including that tenancy matters will generally not lead to visa cancellation), students' rights and responsibilities as tenants and how these can be enforced, and a list of key contacts for international student support services.
- c. Information should be disseminated via email, in-person information sessions throughout the year, and via social media platforms. This should occur pre-departure, soon after an international student's arrival, and on an ongoing basis throughout the year as many international students move to alternate accommodation.
- d. Information should be delivered and disseminated through international student peer to peer networks. This includes having international students featuring in informational material, and having international students deliver and disseminate information in person and through social media.

³¹⁸ *Information for Impact: Enabling education providers to address exploitation of international students in students in accommodation and at work*, funded by StudyNSW's Partner Project Scheme <<https://www.mwji.org/international-students-in-australia>>.

5. Substantially increase availability of services to provide international students with tenancy advice and legal assistance to enforce their rights.

- a. The NSW government should establish a centrally-located International Student Hub which provides students with information, contacts, support, and a free confidential legal service for tenancy issues (and employment and other issues) along with free interpreters. This should be accessible in person, via phone and via online chat. Staff should include trained international students as advisors.
- b. The NSW and Commonwealth governments should increase availability of legal assistance to meet unmet legal needs of international students, including providing greater funding to existing tenancy/legal services for international students.³¹⁹
- c. Universities should provide dedicated tenancy services for international students staffed by trained supervised international student advisors. Services should include assisting students in finding suitable accommodation, informing students about their rights, helping students understand the provisions of their tenancy agreement, advising students about their options when problems arise, and providing legal assistance and representation to enforce rights in collaboration with university student legal services.
- d. Legal assistance services should provide free interpreters for international students, funded by the NSW government.
- e. The NSW government should work with legal assistance services and education providers to increase awareness of existing services among international students.

C. Establish Accountability of Unscrupulous Accommodation Providers and Enable International Students to Identify Quality Providers

6. Education providers, local councils, NSW Fair Trading, international student groups and tenancy/legal assistance services should collaborate, ideally in the form of a well-resourced Taskforce, to:

- a. Share information on scams and exploitative practices reported by international students, identify repeat offenders, instigate investigations, and notify international students of common scams to avoid including publishing findings of unlawful conduct by specific providers. This should include NSW Fair Trading monitoring online platforms to identify discriminatory and rogue practices in accommodation advertising targeting international students.³²⁰
- b. Identify and investigate cases of poor living conditions.
 - i. NSW Fair Trading should more frequently use its power to conduct investigations into alleged breaches of housing law and utilise appropriate enforcement powers. The NSW government should adequately resource NSW Fair Trading to carry out these functions.

319 The Productivity Commission has recommended an immediate injection of \$200 million for civil law services: Australian Government Productivity Commission, *Access to Justice Arrangements* (2014) <<https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>>.

320 Parkinson et al (n 83) 83.

- ii. NSW Fair Trading should develop educational materials for landlords, including in community languages, to outline their obligations under the *RTA*.
- iii. Local councils should establish their own centralised investigation system similar to the City of Sydney's Unauthorised Accommodation Investigation Team with referral pathways from education providers, legal assistance services and international student representative bodies.
- iv. Additional resourcing should be allocated to multi-agency approaches to tackle unsafe student accommodation, such as the collaboration between the City of Sydney, ATO, NSW Fair Trading and Police, Fire and Rescue.

7. The NSW government should implement a code of practice for commercial student accommodation to establish a clear set of standards regarding quality and enforcement of tenants' rights, and a related accreditation process. This has been done in other jurisdictions, e.g. United Kingdom Student Accommodation Code, and has been recommended by a student accommodation industry body in Australia.³²¹

- a. The Code and accreditation body should be regulated by government rather than industry self-regulation. The NSW government should, in consultation with relevant stakeholders, consider the best regulatory model for enforcing the Code, including an accessible well-resourced complaints process and investigation capacity that result in de-accreditation and sanctions for egregious or repeat non-compliance, and remedies for affected students. This could either involve establishing a new regulatory agency or expanding the jurisdiction and resourcing of an existing government agency. It may also be accompanied by greater regulatory powers and corresponding resources for local councils.

8. The NSW government should establish a registration scheme for homestay providers. The scheme should include standard approval criteria, an accessible complaints mechanism, and the power for inspections and investigations to be commenced by a relevant authority such as Fair Trading NSW resulting in de-registration and sanctions for egregious or repeat non-compliance, and remedies for affected students. The government should consider whether this is part of the Code and its regulatory framework or separate from it.

9. The Commonwealth government should establish further Phoenixing Taskforces with a specific focus on identifying and monitoring individuals who provide accommodation and other services to international students (and other temporary migrants).

10. NSW and Commonwealth regulatory reforms should be implemented to close loopholes that enable unscrupulous landlords to evade accountability.

- a. Organisations with appropriate expertise, such as Tenants Advisory Services and community legal centres should be given standing and the power under the *RTA* to run representative actions against repeat offenders in NCAT, rather than the current highly resource-intensive model requiring individual actions for each international student affected by the same or similar conduct.
- b. The NSW government should consider establishing a compulsory licensing scheme for landlords which requires them to register with NSW Fair Trading, considering experiences of similar schemes other jurisdictions in the UK. The scheme should include mandatory minimum conditions for the

³²¹ This is a core strategic objective of the recently established South Australia Student Accommodation Association: 'National Property Accreditation Scheme', *South Australia Student Accommodation Association* (Web Page) <<https://studentaccassoc.com.au/National-Property-Accreditation-Scheme>>.

granting of a licence, including fire safety requirements, habitability requirements and the provision of a written tenancy agreement. If a landlord consistently breaches the *RTA*, their licence should be suspended. Penalties should be imposed for failing to obtain a licence, and for breach of the licence.

- c. The Commonwealth parliament should enact the Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2018 (Cth).

D. Strengthen Rights and Access to Justice

11. The NSW government and parliament should adopt measures to ensure international students can easily reclaim their bond. This will reduce financial hardship and enable international students to move from unsafe or inadequate accommodation.

- a. Fair Trading NSW should take enforcement action under the *RTA*³²² when informed that a landlord or agent did not provide a bond receipt or lodge a bond.
- b. Increase transparency and accountability by requiring all bond payments to be made online, with associated sanctions against landlords and agents for noncompliance.

12. Amend the *Residential Tenancies Act 2010 (NSW)* and/or the *Residential Tenancies Regulations 2010 (NSW)* to provide rights and remedies to the most vulnerable tenants in the marginal rental sector, including international students in share houses, as follows:

- a. Redraft section 10 of the *RTA* which expressly excludes share house occupants from application of the statute if they do not have a written sub-tenancy agreement. The revised provision should establish that if a named tenant under a residential tenancy agreement grants to a person for value a right of occupation of the premises, the subtenant has all the rights of a tenant as determined by section 13 of the *RTA*. The agreement between the subtenant and the named tenant may be express or implied and may be oral or in writing.
- b. Consider consolidating existing legislation to provide comprehensive coverage of the main types of housing arrangements and simplify the legislative regime, including the *RTA*, the *BHA* and common law protection. This consolidated Act should provide the highest standard of protection available under existing legislation. The consolidated Act should also fill in existing gaps. It should apply whenever a person grants to another person a right for value to occupy premises for use as a residence. This should include subtenants, boarders, lodgers and those residing in residential colleges.
- c. Reduce uncertainty by amending the *RTA* to include definitions of terms, such as subtenant, boarder and lodger.
- d. Reduce unfair evictions by amending ss 84 and 85 of the *RTA* to remove 'no grounds' termination of a tenancy agreement.
- e. The NSW government should immediately set proclamation dates for the amendments under the *Residential Tenancies Amendment (Review) Act 2018* (NSW) that are yet to come into force.

322 *RTA* s 162.

12. Introduce reforms to NSW Civil and Administrative Tribunal processes to increase accessibility for international students, including:

- a. Give increased consideration to the visa status of international students in case management to ensure matters are heard and/or resolved before the international student departs Australia where possible. Urgent applications should not be required to be filed in person by international students.
- b. Facilitate the lodging of disputes online and conduct hearings either online or via teleconference to allow students to apply to NCAT without fear of missing work or class, or to be better able to pursue a claim after they have left Australia. International students should be able to indicate what time they are available to accommodate time differences if they have returned to their home country.
- c. Increase funding for duty services in the NCAT Tenancy Division to ensure that all international students are able to access legal representation, and ensure a duty solicitor is on staff at NCAT.
- d. Give NCAT expanded powers to recommend that NSW Fair Trading conduct an investigation where NCAT has identified systemic issues with specific landlords.

There are pressing needs to increase the availability of dedicated student accommodation in Sydney, and to address the systemic drivers and consequences of exploitation of international students in the marginal rental market. In the short and medium term, a range of actions can be taken by the NSW and Commonwealth governments, local councils, education providers and other key stakeholders to reduce students' vulnerability to deceptive and unscrupulous conduct by landlords and others, and enable them to obtain assistance and swiftly obtain remedies when their rights are violated.

GLOSSARY OF COMMONLY USED TERMS

Access to Justice	Ensuring that individuals receive appropriate advice and assistance with legal problems, independent of how they became involved in the justice system. ³²³
Boarder (Marginal Renter)	A person who pays for the right to occupy, and live in, boarding premises, but does not have the right to exclusive occupation of the premises. This person is not covered by the <i>RTA</i> . ³²⁴ Generally, this type of agreement will be inclusive of meals, ³²⁵ and the premises is shared with a landlord or live-in manager or caretaker. ³²⁶ This type of agreement is also known as a licence.
Boarding Premises	Premises that are wholly or partly a boarding house, rooming or common lodgings house, hostel or let in lodging. Rooms are provided to accommodate one or more boarders or lodgers with a principal place of residence. The premises may have shared facilities or services. ³²⁷
Co-tenant	A person who shares rights and obligations with others occupying the same residential premises. The co-tenant has signed the residential tenancy agreement, along with other co-tenants. ³²⁸
General Boarding House	A premises that provides beds, for a fee or reward, for use by 5 or more residents (not including residents who are proprietors or managers of the premises, or their relatives), ³²⁹ excluding hotels, motels, hostels, trade premises and residential colleges. ³³⁰
Head-tenant	A tenant living at a premises who sublets part of the premises to another person under a separate written agreement. The head-tenant is considered to be the landlord of a subtenant and responsible for the actions of the subtenant. ³³¹
Homestay	Accommodation on the premises of a family home that houses students, normally under 18 years of age in exchange for payment to the host family.
International student	A person enrolled in a course of study that is registered on the Commonwealth Register of Institutions and holding a student visa (subclasses 570-576 and 580). The Commonwealth Register of Institutions includes universities, colleges, training centres, and language schools.
Lodger (Marginal Renter)	A person who pays for the right to occupy, and live in, boarding premises, but does not have the right to exclusive occupation of the premises. This person is not covered by the <i>RTA</i> . ³³² Unlike boarders, meals are not included as part of the housing arrangement for lodgers. ³³³
Marginal Rental Sector	A tenant living at a premises who sublets part of the premises to another person under a separate written agreement. The head-tenant is considered to be the landlord of a subtenant and responsible for the actions of the subtenant. ³³⁴ Unlike boarders, meals are not included as part of the housing arrangement for lodgers.
NCAT	The New South Wales Civil and Administrative Tribunal which is an independent state body that hears a wide range of legal matters including tenancy disputes and consumer claims.
Purpose Built Student Accommodation	Accommodation that is specifically built for occupation by students having regard to their specific needs including being close to universities and/or colleges, public transport and providing appropriate amenities. ³³⁵ Rent payable for PBSA accommodation generally includes bills, a fully-furnished room inclusive of utilities, Wi-Fi, amenities such as study rooms, computer labs, gym and barbecue areas, professional management and security. ³³⁶
Rental Bond	The amount of money paid or payable by the tenant as security against any failure by the tenant to comply with the terms of a residential tenancy agreement. ³³⁷

Residential Colleges	Small, on-campus communities which provide accommodation and academic and social support to students. ³³⁸ This arrangement provides a range of services and can be anywhere from primarily self-sufficient to all-inclusive catering and cleaning.
Residential Tenancy Agreement	A contract through which one person gives another person the right to exclusively possess their residential premises, usually in return for a regular payment of money. This contract can be for a fixed amount of time, or include options to renew the length of the contract. Also referred to as a rental agreement or lease.
Share house	Accommodation that houses multiple persons at any one time, who are all included on the Tenancy Agreement as tenants. These persons are typically unrelated and not in a personal relationship. ³³⁹
Subtenant	The person to whom a tenant (referred to as the head-tenant) sublets a part of the residential premises under a separate agreement. The subtenant shares the premises with the head-tenant and owes rights and obligations to them as though they are the landlord. ³⁴⁰ There is no contractual agreement between the subtenant and the official landlord.
Tenant	A person who has the right to occupy a residential premises under a residential tenancy agreement. ³⁴¹ A tenant has exclusive possession of the premises, meaning that they are able to use the premises to the exclusion of anyone else, including the landlord. ³⁴²

323 'Access to Justice', *Australian Attorney-General's Department* (Web Page) <<https://www.ag.gov.au/LegalSystem/Pages/AccessToJustice.aspx>>.

324 Tenants Union of NSW, Boarders and lodgers (Factsheet, January 2014) <<https://www.tenants.org.au/factsheet-14-boarders-and-lodgers>>.

325 Ibid.

326 Ibid.

327 *BHA* s 4.

328 'Types of Housing Arrangements', *UNSW Sydney* (Web Page) <<https://student.unsw.edu.au/accommodation-arrangements>>.

329 *BHA* s 5(2).

330 *BHA* s 5(3).

331 'Sharing a rented home', Fair Trading NSW (Web Page) <<https://www.fairtrading.nsw.gov.au/housing-and-property/renting/during-a-tenancy/sharing-a-rented-home>>; Tenants Union of NSW, Share Housing (Factsheet, January 2014) <<https://www.tenants.org.au/factsheet-15-share-housing>>.

332 Tenants Union of NSW, Boarders and lodgers (Factsheet, January 2014) <<https://www.tenants.org.au/factsheet-14-boarders-and-lodgers>>.

333 Ibid.

334 Tenants' Union of NSW, *Policy Paper: Reforming Marginal Renting* (2018) <<https://www.tenants.org.au/tu/policy-paper-reforming-marginal-renting>>.

335 Breen and Fell (n 25).

336 Kristina Mastrullo, Guy Wells and Christopher Milou, 'Australian Student Accommodation Research Report: An Asset Class of Distinction' (Research Report, Colliers International, 2016) 12.

337 *RTA* s 157.

338 'What's a Residential College?', *Insider Guides* (Blog Post) <<https://insiderguides.com.au/residential-colleges/>>.

339 Tenants Union of NSW, Share Housing (Factsheet, January 2014) <<https://www.tenants.org.au/factsheet-15-share-housing>>.

Appendix A – Focus groups and stakeholder interviews

Focus groups

Date of Focus Group	Countries of Origin
9 May 2018	3 international students from China, Pakistan and Taiwan
16 May 2018	3 international students from India
10 September 2018	1 student from Vietnam, 2 international students from India
12 September 2018	1 student from Malaysia, 5 international students from China

Stakeholder interviews

Date of interview	Interviewee
2 May 2018	Community legal centre solicitor
3 May 2018	Staff member in accommodation services of a Sydney university
3 May 2018	Staff member in accommodation services of a Sydney university
17 May 2018	Community legal centre solicitor
24 May 2018	Tenants' advocate
20 August 2018	Staff member in accommodation services of a Sydney university
23 August 2018	Staff member in accommodation services of a Sydney university
23 August 2018	Tenants' advocate
27 August 2018	Staff member in accommodation services of a Sydney university
3 September 2018	Local council staff member

340 'Types of Housing Arrangements', UNSW Sydney (Web Page) <<https://student.unsw.edu.au/accommodation-arrangements>>.

341 *RTA* s 3.

342 Derek Cassidy et al, *Australian Tenancy Law and Practice* (Lexis Nexis, 2017) [2.1.040].



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