



## **Coroner's Court of Victoria**

**Inquest concerning the deaths of Mr  
Sunil Patel, Jignesh Sadhu and Deepak  
Prajapati**

**Submissions by the Public Interest Law  
Clearing House Homeless Persons' Legal  
Clinic and the Tenants Union of Victoria**

24 December 2012



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## **CORONER'S COURT OF VICTORIA**

### **INQUEST CONCERNING THE DEATHS OF MR SUNIL PATEL, JIGNESH SADHU AND DEEPAK PRAJAPATI**

#### **SUBMISSIONS ON BEHALF OF THE TENANTS UNION OF VICTORIA AND PILCH HOMELESS PERSONS' LEGAL CLINIC**

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##### **1. Introduction**

The Coroner is investigating the deaths of three international students, Sunil Patel, Jignesh Sadhu and Deepak Prajapati who died in a house fire at 216 Ballarat Road, Footscray (**Dwelling**) on 3 January 2008.

On 26 November 2012, the Coroner requested that the Tenants Union of Victoria (**TUV**) and the Public Interest Law Clearing House Homeless Persons' Legal Clinic (**HPLC**) provide written submissions within 21 days (by 17 December 2012) in relation to whether an inquest should be held and if not, on what findings, comments and/or recommendations ought to be made on the facts of the matter. Both organisations were granted an extension to file the submissions by 21 December 2012.

These submissions are filed on behalf of TUV and HPLC and where there is any difference of opinion between the two organisations, it is made clear in the body of this submission.

HPLC provides free legal assistance and advocacy to people who are homeless or at risk of homelessness within a human rights framework. Pro bono lawyers at homelessness assistance services provide legal assistance in order to facilitate direct access by clients. HPLC also undertakes significant law reform, public policy, legal education and community development activities to promote and protect the fundamental human rights of people experiencing homelessness.

TUV was established in 1975 as an advocacy organisation and specialist community legal centre, providing information and advice to residential tenants, rooming house and caravan park residents across the state. TUV assists about 18,500 private and public renters in Victoria each year. TUV's commitment is to improving the status, rights and conditions of all tenants in Victoria.

##### **2. Summary of Submissions, Comments and Recommendations**

The deaths of these international students are a tragedy. They died in a three-bedroom house located in the inner west suburb of Footscray, which at its peak, was occupied by ten people. Four, and for a period of time, five, international students (including the three deceased) lived in a single bedroom.

The Dwelling was overcrowded, the power boards were overloaded, there was inadequate electrical circuitry, no electrical safety checks had been conducted and there may not have been any electrical circuit breakers or safety switches or any working smoke alarms in the Dwelling. No inspection of the Dwelling had been conducted for over two years. In

addition, all occupants of the Dwelling were recent arrivals to Australia, financially disadvantaged and had little to no knowledge about their rights and responsibilities or about basic fire safety.

The Coroner has a unique opportunity to acknowledge these issues and make recommendations that may prevent future tragedies from occurring in similar circumstances. We submit, however, that there is little to be gained in examining and cross-examining witnesses. In our view, the facts are relatively clear and uncontentious (see section 3). While there are important legal and policy changes required in light of the deaths, TUV and HPLC submit that the Coroner could effectively and efficiently make findings, comments and recommendations in chambers based on the Inquest Brief and written submissions from relevant organisations (see section 4).

We submit that the Coroner should acknowledge and take into account the broader social trends and policy issues that this matter raises (see section 5) as well as the legislative gaps that exist in relation to fire safety (see section 6). Based on these factors, we recommend that the Coroner make the following comments and recommendations (see section 7 for further detail).

#### COMMENTS

**Comment 1:** The international students who occupied the single bedroom were homeless.

**Comment 2:** The Dwelling was being operated as a rooming house.

**Comment 3:** The Dwelling was unsafe.

**Comment 4:** The lack of affordable and adequate housing available to those on low income in Victoria as well as access barriers faced by international students in particular, are factors that can lead people to live in overcrowded situations and/or in rooming houses.

**Comment 5:** Vulnerable people, including international students, need support to locate, access and sustain safe rental tenancies as well as access to better education about their rights and responsibilities and basic fire safety.

#### RECOMMENDATIONS

**Recommendation 1:** The *Residential Tenancies Act 1997 (Vic) (RTA)* be amended to make the landlord and rooming house owner responsible for ensuring that the premises are safe at the beginning of a tenancy or residency respectively.

**Recommendation 2:** The RTA be amended to clarify who is responsible for checking the correct installation, maintenance and replacement of smoke alarms to residential tenancies and rooming house arrangements.

**Recommendation 3:** The RTA be amended to:

- 1) prevent rooming house owners from being able to avoid compliance with the rooming house standards by entering into tenancy agreements with rooming house resident; and
- 2) ensure that the fire and safety standards that apply to rooming house owners also apply to landlords.

**Recommendation 4:** The Consumer Affairs Victoria (CAV) guidebooks for tenants and rooming house operators/residents be simplified, made more accessible (including to people from non-English speaking backgrounds) and include clear information about fire safety and different types of living arrangements.

**Recommendation 5:** CAV conduct an education campaign that appropriately and effectively communicates information about fire safety, health and housing rights and obligations to international students and recent arrivals.

**Recommendation 6:** CAV take a more active role in ensuring compliance and enforcement of rooming house legislation.

**Recommendation 7:** The Real Estate Institute of Victoria (REIV) and Registered Accommodation Association of Victoria (RAAV) conduct an education campaign for real estate agents, landlords and rooming house operators respectively about their obligations in relation to fire safety. As best practice, we also recommend that they identify ways that their membership can better communicate to people at the beginning of their tenancy or residency about basic fire safety and their rights and obligations.

### 3. Relevant facts

Based on the Inquest Brief, including the case *Pham & Ors v Parissis Pty Ltd* [2012] VCC 895 (*Pham v Parissis*), TUV and HPLC consider the relevant facts to be as set out below.

#### 3.1 *The contractual arrangements*

On 5 July 2005, Phong Tan Nguyen, his sister, Hue Thi Nguyen and girlfriend, Nhi Thuy Pham bought the Dwelling jointly as an investment property for \$240,000 through Ray White Real Estate agency (**Ray White**).<sup>1</sup>

On 8 September 2005, Ray White was engaged to lease out and manage the Dwelling.<sup>2</sup> As part of this, there appeared to be an oral agreement between the owners of the property and Ray White that Ray White would undertake 6 monthly periodic inspections on the Dwelling.<sup>3</sup> Ms Pham did not have any experience in leasing a property.<sup>4</sup>

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<sup>1</sup> Witness statement of Phong Tan Nguyen, 3 January 2008, 1; Witness statement of Hue Thi Nguyen dated 10 December 2008, 1; Witness statement of Nhi Thi Thuy Pham dated 10 December 2008, 1.

<sup>2</sup> Exclusive Leasing and management Authority executed between Ray White and Ms Pham signed on 8 September 2005; Witness statement of Nhi Thi Thuy Pham dated 10 December 2008, 1.

<sup>3</sup> *Pham v Parissis*, 7, 9-10, 29. Justice Saccardo found that both Ms Pham and Ms Kovosic, property manager at Ray White, had discussed and agreed that Ray White would conduct 6 monthly periodic inspections.

<sup>4</sup> *Pham v Parissis*, 8.

On 31 October 2005, Bhavin Zinzuwadia signed a 12 month tenancy agreement which provided that the rent payable was \$230 per week or \$997 per calendar month.<sup>5</sup>

On 3 March 2006, Bells Real Estate agency (**Bells**) took over the management of all of the rental properties on Ray White's "rent roll" which included the Dwelling.<sup>6</sup> As this was less than 6 months from the date of the Tenancy Agreement, no one at Ray White had undertaken an inspection at the Dwelling prior to the takeover.<sup>7</sup> It appears that Bells was not aware of any obligation under the management agreement to undertake periodic inspections but did believe it had an obligation to carry out at least one general inspection after it had taken over management of the Dwelling.<sup>8</sup> In any case, between 3 March 2006 and the date of the fire, Bells did not undertake any inspections of the Dwelling.<sup>9</sup>

The Tenancy Agreement was renewed numerous times, the last renewal being on 1 December 2007, which included a rental increase from \$997 to \$1083 per calendar month to take effect from 31 December 2007.<sup>10</sup>

### *3.2 The number of occupants at the Dwelling*

The Dwelling was a three-bedroom timber weatherboard house with a living room, kitchen, bathroom and, at the rear, a garage, toilet, sunroom and backyard.<sup>11</sup>

On 22 October 2005, Mr Zinzuwadia had signed a tenancy application form which declared that 3 residents would live at the house. The Tenancy Agreement (dated 31 October 2005) did not state how many people would reside at the Dwelling.<sup>12</sup> Clause 7(a) of the Tenancy Agreement provided that the tenant must not assign or sub-let the whole or any part of the Dwelling without the consent of the landlord.

From 31 October 2005 to the date of the fire on 3 January 2008, Mr Zinzuwadia lived at the Dwelling with his wife Kinjal, together with the following additional persons:

- Mr Zinzuwadia's brother-in-law, Ashish Patodia, together with his wife, Grishma Patodia from March 2006 to June 2007;
- Darshan Mandaliya from March 2006 to 3 January 2008;
- Jignesh Sadhu from October or November 2006 to 3 January 2008;
- Deepak Prajapati from October or November 2006 to 3 January 2008;

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<sup>5</sup> Residential Tenancy Agreement for 216 Ballarat Road, Footscray between Ms Pham, Ray White and Mr Zinzuwadia dated 31 October 2005 (**Tenancy Agreement**). Cf Witness statement of Marina Kovacic dated 18 March 2008, 1 in which Ms Kovacic recalled that there were 3 tenants from India who signed tenancy agreements. The Inquest Brief only contains two tenancy applications, one from Jagdeesh Chethan signed on 22 October 2005, another from Mr Zinzuwadia signed on an unknown date and one tenancy agreement signed by Mr Zinzuwadia on 31 October 2005.

<sup>6</sup> *Pham v Parissis*, 4; Stella Kyriakou, Letter to Mr Zinzuwadia, 4 March 2006.

<sup>7</sup> *Pham v Parissis*, 9.

<sup>8</sup> *Ibid* 32.

<sup>9</sup> *Ibid* 4.

<sup>10</sup> *Ibid* 3; Schedule to Residential Tenancy Agreement for 216 Ballarat Road, Footscray between Ms Pham, Bells and Mr Zinzuwadia dated 20 October 2007.

<sup>11</sup> Witness statement of Phong Tan Nguyen dated 3 January 2008, 2 (see also attached drawing); Tenancy Agreement.

<sup>12</sup> Note that the brief states that Mr Zinzuwadia's wife Kinjal and daughter Diya were also named on the tenancy agreement, however, there is no evidence of this in the documents provided in the brief.

- Mr Zinzuwadia's five-year-old daughter, Diya, who moved from India to Australia and lived in the house from November 2006 to 3 January 2008;
- Sabhar Thakar from October or November 2006 but who had gone back to India for a holiday in December 2007; and
- Mr Sunil Patel from March 2007 to 3 January 2008.<sup>13</sup>

This means that at its peak from March 2007 to December 2007, there were approximately 10 people living at the Dwelling.

Mr Zinzuwadia, his wife and his daughter all occupied the bedroom in the middle of the western side or centre left side of the house. Mr Zinzuwadia's brother-in-law and wife lived in the south west corner of the house or front left side of the house but on the night of the fire, the room was unoccupied. The other four residents, Sunil Patel (deceased), Jignesh Sadhu (deceased), Depak Prajapati (deceased) and Darshan Mandaliya lived in a single room on the south east corner or front right side of the house.<sup>14</sup> Sometimes, some of them slept in the front left room but they had not chosen to do so on the night of the fire.<sup>15</sup>

Neither the real estate agents nor owners of the property were aware of any additional residents in the house. Mr Nguyen was of the belief that only a "couple with a kid" were renting the house.<sup>16</sup> If Ms Pham had been aware of the additional tenants, she would have only consented to one or two additional tenants on the condition that additional rent would be paid to cover any additional wear and tear on the house.<sup>17</sup>

In *Pham v Parissis*, Saccardo J found that Mr Zinzuwadia did not appreciate that in allowing a number of occupants to share the front bedroom, he was acting either inappropriately, against the wish of his landlord, or in breach of the terms of his lease.<sup>18</sup> However, with respect to His Honour's findings, we do not believe that Mr Zinzuwadia was acting contrary to clause 7 of the Tenancy Agreement or the RTA because he was neither assigning nor subletting the Dwelling and accordingly did not need to obtain the landlord's consent.

### ***3.3 The relationship between the tenants and the residents***

As at January 2008, Mr Zinzuwadia was 29 years old, Mrs Zinzuwadia was 27 years old, Mr Mandaliya was 22 years old, Mr Sadhu (deceased) was 24 years old, Mr Prajapati (deceased) was 32 years old and Mr Patel (deceased) was 24 years old. All of the people living at the Dwelling had recently arrived to Australia from India, most of them to study.<sup>19</sup>

Mr and Mrs Zinzuwadia described the students as "friends of friends".<sup>20</sup> Mr Zinzuwadia said that he did not really know any of them before they lived in the house but that he had

<sup>13</sup> Witness statement of Bhavin Zinzuwadia dated 14 January 2008, 2; *Pham v Parissis*, 10.

<sup>14</sup> Witness statement of Bhavin Zinzuwadia dated 14 January 2008, 2.

<sup>15</sup> Witness statement of Kinjal Zinzuwadia dated 3 January 2008, 3; *Pham v Parissis*, 12.

<sup>16</sup> Witness statement of Phong Tan Nguyen dated 3 January 2008, 1.

<sup>17</sup> Witness statement of Nhi Thi Thuy Pham dated 10 December 2008, 2-3.

<sup>18</sup> *Pham v Parissis*, 42.

<sup>19</sup> Mr Zinzuwadia arrived in Australia in 2005 on a student visa. Mr Patel was studying hospitality, Mr Sadhu was studying horticulture at Victoria University, Mr Prajapati was studying aged care; Mr Mandaliya was studying a Masters of Accounting at Central Queensland University and all had recently arrived in Australia: Witness statement of Bhavin Zinzuwadia dated 14 January 2008, 1; Inquest brief, 3.

<sup>20</sup> *Pham v Parissis*, 11; Witness statement of Kinjal Zinzuwadia dated 3 January 2008, 1.



invited them to live at the house because it was hard for overseas students to find a place to stay in Melbourne.<sup>21</sup> Mr Mandaliya said that they all got along together in the house and that he did not have any problem living together with the other students in the same room.<sup>22</sup> Mr Zinzuwadia said that there was no restriction on the students to only stay in their room or only use parts of the house; they lived together “as a family”.<sup>23</sup>

At the time of signing the tenancy application, Mr Zinzuwadia was earning approximately \$200 per week.<sup>24</sup> The rent for the Dwelling was \$230 per week. The occupants shared the cost of the rental, power and other costs.<sup>25</sup> Mr Zinzuwadia considered all the occupants of the house to be like “housemates”.<sup>26</sup>

### 3.4 *The night of the fire and cause of deaths*

On 2 January 2008 (the night of the fire), there were 7 people living at the house – Mr and Mrs Zinzuwadia and their 5 year old daughter lived in the bedroom on the middle left side of the house, the four students lived in the bedroom on the front right side of the house and the bedroom on the front left hand side of the house was unoccupied.

The students’ bedroom contained the following items:

- A double bed and three mattresses on the floor which covered most of the eastern half of the room.<sup>27</sup> Two of the mattresses appeared to have remnants of electric blankets;<sup>28</sup>
- Clothing for four people and some items of luggage;<sup>29</sup>
- A number of electrical devices which were connected to a six-point power board including two microwave ovens, a pedestal fan, one desktop computer monitor, one processor and one television signal booster.<sup>30</sup> The six-point power board was connected to an original single power point in the southern wall;<sup>31</sup> and
- Another original double power point was located on the northern wall of the bedroom with a double adapter connected to each power point. While not entirely

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<sup>21</sup> *Pham v Parissis*, 11.

<sup>22</sup> Witness statement of Darshan Mandaliya dated 3 January 2008, 2; *Pham v Parissis*, 12.

<sup>23</sup> *Pham v Parissis*, 11; see also Witness statement of Kinjal Zinzuwadia dated 3 January 2008, 1.

<sup>24</sup> Tenancy Application Form of Mr zinzuwadia signed on an unknown date.

<sup>25</sup> It is unknown how much rent each of the students contributed or if Mrs Zinzuwadia also earned money and contributed to rent or if Mr Zinzuwadia’s relatives contributed to rent while they were living in the house.

<sup>26</sup> *Pham v Parissis*, 10-12; witness statement of Ms Zinzuwadia dated 3 January 2008. Note that it is unknown how much rent each of the students contributed.

<sup>27</sup> *Pham v Parissis*, 5; Witness statement of John Desmond Kelleher, undated, 3; Melbourne Fire Brigade (MFB) Fire Investigation Report (**Report**) undated, 3 (Inquest brief, 146). Note that Mr Kelleher and the MFB Report states only that there were three mattresses while Saccardo J states that there was a double bed and three mattresses.

<sup>28</sup> MFB Report undated, 3 (Inquest brief, 146).

<sup>29</sup> *Pham v Parissis*, 5.

<sup>30</sup> Witness statement of John Desmond Kelleher, undated, 3. Note that neither the MFB Report (on page 3) or Justice Saccardo in *Pham v Parissis* (on page 5) mention the pedestal fan. Further, Justice Saccardo states that the television signal booster unit was not connected to a power source at the time of the fire whereas the MFB Report and Mr Kelleher implies that all of these items were connected to a six point power board.

<sup>31</sup> *Pham v Parissis* (pg 4); witness statement of John Kelleher; fire investigation report by the Melbourne Fire Brigade.

clear what was connected to the double adapters, it appears that it could have included a laptop battery charger and/or mobile phone charger, a fan heater and two electric blankets.<sup>32</sup>

That night, Mr Mandaliya had left to go to work at approximately 10:15pm and was not at the Dwelling at the time of the fire. Mr Prajapati, Mr Sadhu and Mr Patel were last seen alive in their room watching a DVD on the desk top computer and old style monitor inside the bedroom by Mr Zinzuwadia at around 11:50 to 11:55 pm.<sup>33</sup>

Mr Zinzuwadia, his wife and daughter all went to sleep a short time after midnight. Both Mr and Mrs Zinzuwadia woke up sometime later at around the same time, sensing that something was wrong and realised that there was a fire in the house. They did not recall hearing the sound of smoke alarms. Mr Zinzuwadia smashed their bedroom window open and climbed through. He then helped his wife and daughter to climb through the window.<sup>34</sup>

Wayne Gooch, a neighbour, first noticed the fire at the Dwelling and called the fire brigade.<sup>35</sup> The MFB has records to show that they received an exchange call at approximately 12:44 am about the fire.<sup>36</sup> Wayne Gooch then woke up his brother, Ian Gooch, who went to the house and tried to kick open the front door, which was locked. Mr Ian Gooch smashed the front left side window and called for people to get out. While he was at the front window, the Zinzuwadia family came running out of the house.<sup>37</sup>

Mr Zinzuwadia managed to kick down the front door but it was impossible for anyone to go in because of the intensity of the flames.<sup>38</sup> A short time later, Mr Zinzuwadia saw one of the students who was later identified to be Mr Prajapati come out of the front right bedroom engulfed in flames screaming and then fell over in the hallway. The MFB arrived at approximately 12:49am and they managed to get the fire under control at approximately 1:08am.<sup>39</sup> The body of Mr Prajapati was found lying face up approximately 5 metres from the front door. Two other bodies identified as Mr Patel and Mr Sadhu were later found lying face down in the northern half of the bedroom.<sup>40</sup>

The cause of all three deaths was determined to be smoke inhalation.<sup>41</sup> The Inquest brief states that all three deceased were overcome by smoke from the fire and were accordingly unable to safely exit from the Dwelling and perished in the subsequent fire.<sup>42</sup>

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<sup>32</sup> Witness statement of John Desmond Kelleher, undated, 4; MFB Report, undated, 3. Note that the MFB report only mentions one mobile phone and charger and two electric blankets whereas Mr Kelleher mentions a fan heater and a laptop type battery charger/power supply.

<sup>33</sup> Witness statement of Bhavin Zinzuwadia dated 14 January 2008, 4.

<sup>34</sup> Ibid. 5.

<sup>35</sup> Witness statement of Wayne Gooch dated 3 January 2008, 1.

<sup>36</sup> Witness statement of Damian Foletti dated 8 April 2008, 1.

<sup>37</sup> Witness statement of Ian Gooch dated 3 January 2008, 1; Witness statement of Wayne Gooch dated 3 January 2008, 1.

<sup>38</sup> Witness statement of Bhavin Zinzuwadia dated 14 January 2008, 5.

<sup>39</sup> Witness statement of Damian Foletti dated 8 April 2008, 1.

<sup>40</sup> Witness statement of John Desmond Kelleher, 2.

<sup>41</sup> Victorian Institute of Forensic Medicine, Autopsy Report of Mr Patel, 8 January 2008, 10; Victorian Institute of Forensic Medicine, Autopsy Report of Mr Sadhu, 8 January 2008, 9; Victorian Institute of Forensic Medicine, Autopsy Report of Mr Prajapati, 8 January 2008, 9.

<sup>42</sup> Summary of Inquest brief, 4.

### 3.5 *The cause of the fire*

The police investigation concluded that there were no suspicious circumstances.<sup>43</sup> The MFB Report determined the cause of fire to be electrical as a result of an unspecified short circuit to the computer monitor in the bedroom that was connected to the six point power board.<sup>44</sup>

Mr Zinzuwadia recalls that the computer monitor was purchased 4 to 5 months before the fire by two of the students at a swap meet market. It was an older style monitor and it looked like a television.<sup>45</sup> The MFB Report noted that the computer monitor was regularly used to watch DVDs and when the students finished watching, the computer would be “shut-down” without turning off the terminal, which meant that the terminal was still active.<sup>46</sup>

Justice Saccardo stated that the cause of the fire was electrical most likely due to overheating and possible short circuit of the computer monitor.<sup>47</sup> Further, Saccardo J noted the view of the MFB in *Pham v Parissis* that:

- the outbreak of the fire was probably contributed to by the fact that the computer monitor was powered through its connection to a six-outlet power board; and
- the connection of the monitor, together with a number of other appliances to the power board, would have contributed to the monitor overheating given the inadequate electrical circuitry within the Dwelling.<sup>48</sup>

### 3.6 *The fire and safety elements of the Dwelling*

Before Ray White was engaged to manage the Dwelling, Ms Pham believed that there was at least one smoke detector in the house because she recalled making a comment to one of the other owners that the battery should be checked, but she did not check it herself. She could not recall which room that smoke alarm was.<sup>49</sup> Mr Nguyen thought that there was a smoke alarm in the kitchen.<sup>50</sup> Ms Nguyen did not know if there were any smoke alarms as she had never visited the Dwelling.<sup>51</sup>

Ms Kovacic of Ray White said that when she attended the property on 27 October 2005 to complete a condition report, she could recall seeing a smoke detector in the hallway in front of the lounge room on the roof area.<sup>52</sup> The condition report has three ticks next to the item “smoke detectors” to indicate that they were clean, undamaged and working.<sup>53</sup>

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<sup>43</sup> Ibid.

<sup>44</sup> MFB Report, undated, 3.

<sup>45</sup> Witness statement of Bhavin Zinzuwadia dated 14 January 2008, 2-3.

<sup>46</sup> MFB Report, undated, 3.

<sup>47</sup> *Pham v Parissis*, 5.

<sup>48</sup> *Pham v Parissis*, 21.

<sup>49</sup> Witness statement of Nhi Thi Thuy Pham dated 10 December 2008, 2.

<sup>50</sup> Witness statement of Phong Tan Nguyen dated 3 January 2008, 2.

<sup>51</sup> Witness statement of Hue Nguyen dated 10 December 2008, 1.

<sup>52</sup> Witness statement of Marina Kovacic on 18 March 2008, 1.

<sup>53</sup> Condition report signed by Marina Kovavic on 27 October 2005.

Ms Kovacic said that she gave the condition report to the tenant to comment on it within 3 days if there were any problems.<sup>54</sup> Mr Zinzuwadia received a copy of the condition report but said that he could not recall signing it and played no part in filling out the form or checking anything in the house.<sup>55</sup>

Clause 35 of the Tenancy Agreement provided that it was the responsibility of the tenant to check the smoke detector weekly to confirm that it was kept fully operational.

None of the surviving occupants of the fire knew what a smoke alarm was at the time of the fire and were not aware if any smoke alarms were installed in the Dwelling or were working. In his witness statement, Mr Zinzuwadia said:

*I was not 100% sure of what a smoke alarm looked like until the policy showed me pictures of them on the Google search facility. I can say that I do not recall seeing anything similar to these plastic round alarms on the roof anywhere inside the house. I do not recall a smoke alarm being set off at any time inside the house. I do not recall replacing any batteries in a smoke alarm inside the house unless someone was aware of a smoke alarm inside the house that I am not aware of. Also on the night of the fire I do not recall hearing any screeching siren like sounds in the house.<sup>56</sup>*

Mr Mandaliya said:

*Firstly, in relation to smoke alarms I can say that in India where I came from they are not normally used in any of the houses or buildings that I am aware of so I was not familiar with smoke alarms before I came to Australia. I was not aware of what they looked like prior to the fire. I was not aware that they would normally be fitted inside a house.<sup>57</sup>*

There were no remains of a smoke alarm found at the Dwelling after the fire, however, this may have been due to the extensive damage caused by the fire.<sup>58</sup>

Ms Pham said in her witness statement that she did not visit the Dwelling after engaging Ray White to manage the property and left all inspections and maintenance up to Ray White (and later Bells). She had given Ray White authority to spend up to \$1,000 on any repairs that might have been done at the property.<sup>59</sup>

Ms Pham and the other owners did not have the electrical wiring or electrical fitting in the house checked after purchasing the Dwelling and she was not aware if there were electrical protection devices or circuit breakers installed in the house.<sup>60</sup> In March 2007, Bells issued a maintenance order in relation to electrical work that needed to be done on the Dwelling. An electrician from Collett Electrical attended the Dwelling, and with the landlord's consent, replaced two power outlets and burnt wires.<sup>61</sup>

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<sup>54</sup> Witness statement of Marina Kovacic on 18 March 2008, 1.

<sup>55</sup> Witness statement of Bhavin Zinzuwadia dated 14 January 2008, 1.

<sup>56</sup> Witness statement of Bhavin Zinzuwadia dated 14 January 2008, 1.

<sup>57</sup> Witness statement of Darshan Mandaliya dated 11 December 2008, 1. See also Witness statement of Kinjal Zinzuwadia dated 6 February 2009, 1.

<sup>58</sup> Inquest Brief summary, 4.

<sup>59</sup> Witness statement of Nhi Thi Thuy Pham dated 10 December 2008, 3.

<sup>60</sup> Ibid.

<sup>61</sup> Witness statement of Ms Stella Kyriakou dated 29 June 2010, 2; Bells Maintenance Order dated 31 March 2007.

Mr Roderick East, a fire investigator employee of the MFB stated that the inadequate electrical circuitry within the Dwelling, together with the connection of a number of appliances to the six-outlet power board would have caused its overheating, which in turn, would have contributed to the outbreak of the fire.<sup>62</sup> During cross-examination of Ms Stella Kyriakou, director of Bells, she admitted that she was not aware that six-point power boards were notorious for being able to be overloaded.<sup>63</sup>

#### **4. Whether the Coroner should hold an inquest**

##### ***4.1 The role of the Coroner's Court in investigating deaths and fires***

The role of the Coroner's Court when investigating deaths and fires is outlined in the *Coroners Act 2008 (Vic) (CA)*. Section 67 of the CA provides that:

- 1) *a coroner investigating a death must find, if possible:*
  - a) *the identity of the deceased; and*
  - b) *the cause of the death;*
  - c) *unless subsection (2) applies, the circumstances in which the death occurred; and*
  - d) *any other prescribed particulars.*
  
- 2) *whether it is possible or not, a coroner need not make a finding with respect to the circumstances in which a death occurred if*
  - a) *an inquest into the death was not held; and*
  - b) *the coroner finds that –*
    - i. *the deceased was not, immediately before the person died, a person placed in custody or care; and*
    - ii. *there is no public interest to be served in making a finding regarding those circumstances.*
  
- 3) *A coroner may comment on any matter connected with the death, including matters relating to public health and safety or the administration of justice.*

Section 68 of the CA provides that:

*A coroner investigating a fire must find, if possible –*

- a) *the cause and origin of the fire; and*
- b) *the circumstances in which the fire occurred.*

Pursuant to s 72(2) of the CA, the Coroner may make recommendations to any Minister, public statutory authority or entity on any matter connected with a death or fire which the coroner has investigated, including recommendations relating to public health and safety or the administration of justice. Section 72(3) obliges a public authority to provide a written response within 3 months detailing intended actions to address the recommendations and for the Coroner to disseminate the response on the internet and to interested parties. Section 73 and 72(5) of the CA also obliges the Coroner to make both the reports that contain recommendations, and the response of a public statutory authority or entity accessible on the internet.

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<sup>62</sup> *Pham v Parissis*, 21.

<sup>63</sup> *Ibid.*

The Coroner has the same powers to comment or make recommendations for legal and policy changes which may avert future deaths regardless of whether an inquest is held.

The Coroner's powers during an inquest, specifically those contained in s 55(2) of the CA, include requiring an individual to appear and subject themselves to questioning and order that a person submit any written materials or other evidence.

#### ***4.2 The utility of further examination and cross-examination***

In the previous inquest relating to the deaths of Leigh Sinclair and Christopher Giorgi (case no 37227/06), there were considerable evidential advantages to the cross-examination, most particularly the operators of the rooming house businesses, the rooming house residents and staff of Moreland City Council. The cross-examination and review of documents relating to the business illustrated the practices of a type of rooming house operator running unregistered and unsafe dwellings and earning large profits through the use of a complex array of company structures to evade detection. In particular, the recall and cross-examination of Adam Giles resulted in his informing the inquest of his previous false evidence and providing further important details about the legal structures and business practices of Dignity Homes, Northern Suburbs Accommodation and Edge Housing. Significant problems were also identified by the Coroner regarding the safety inspection regimes of Moreland City Council.

In contrast to the Sinclair and Giorgi inquest, we agree with Counsel assisting the Coroner that little can be gained from examining and cross-examining the surviving residents of the Dwelling, the owners or real estate agents of the Dwelling. The recent negligence action in *Pham v Parissis* brought by the owners of the Dwelling against the real estate agents provided a considerable, though by no means complete, airing by way of counsel examination of a number of important matters pertaining to the case, particularly in relation to the practice of periodic inspections in the real estate industry.

Further, there does not appear to be a great deal of contention in relation to the facts of this matter (as summarised in section 3). It is difficult to see what further information could usefully be obtained from any witness in relation to the broader policy and legislative issues that this matter raises.

#### ***4.3 The Coroner could make findings and recommendations in chambers***

Accordingly, in light of the objectives outlined in Part 2 of the CA, including avoiding unnecessary duplication and expediting the investigation of deaths and fires,<sup>64</sup> TUV and HPLC submit that the Coroner could effectively and efficiently make findings and recommendations in chambers.

While there are important legal and policy changes required in light of the deaths, based on the Inquest Brief (as summarised in section 3) and written submissions from relevant organisations and bodies, we respectfully submit that the coroner ought be able to:

- make findings about:
  - the identity of the deceased pursuant to s67(1)(a);

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<sup>64</sup> Section 7 of the CA.

- the cause(s) of the deaths pursuant to s67(1)(b);
- the circumstances in which the deaths occurred (given the public interest to do so) pursuant to s67(1)(c);
- the cause and origin of the fire pursuant to s68(a);
- the circumstances in which the fire occurred pursuant to s68(b);
- make comments about the deaths of the three students, particularly in relation to matters concerning public health and safety or the administration of justice pursuant to s67(3); and
- make recommendations about the public health and safety of rooming houses and tenanted properties pursuant to s72.

## 5. Social trends and policy context

The Dwelling was a three-bedroom house located in the inner west suburb of Footscray, which, at its peak from March 2007 to December 2007, was occupied by ten people. Four, and at times five, international students (including the three deceased) lived in a single bedroom room. Contrary to the views of Counsel assisting the Coroner, these circumstances meant that the Dwelling fell under the definition of a rooming house under the RTA, despite the fact that the Zinzuwadias did not intend to operate a rooming house business.<sup>65</sup>

In addition, the relevant facts of this matter as outlined in section 3 reveal that the Dwelling was not safe – it was overcrowded, there was inadequate electrical circuitry, no electrical safety checks had been conducted, the power boards were overloaded and there may not have been any electrical circuit breakers or safety switches or any working smoke alarms. No inspection of the Dwelling had been conducted for over two years. Further, all occupants of the Dwelling were recent arrivals to Australia, financially disadvantaged, vulnerable and had little to no knowledge about their rights and responsibilities or about basic fire safety. The situation of overcrowding and lack of secure tenure meant that the students were homeless as defined by the Australian Bureau of Statistics (ABS) and Chamberlain and McKenzie.<sup>66</sup>

These circumstances reflect the rise in international students living in overcrowded situations and/or in small suburban rooming houses.<sup>67</sup> The main reason for this trend is that international students are unable to access affordable housing and face additional access barriers to the housing market.<sup>68</sup>

TUV and HPLC submit that the Coroner should acknowledge these social trends and broader policy issues when making his final comments and recommendations.

Each of these issues is dealt with in detail below.

### 5.1 *The international students were homeless*

The ABS has a “statistical definition” of homelessness, which is when a person does not have suitable accommodation alternatives and their current living arrangement:

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<sup>65</sup> See section 5.3.

<sup>66</sup> See section 5.1.

<sup>67</sup> See section 5.2 and 5.4.

<sup>68</sup> See section 5.5.

- a) is in a dwelling that is inadequate; or
- b) has no tenure, or if their initial tenure is short and not extendable; or
- c) does not allow them to have control of, and access to space for social relations.<sup>69</sup>

The ABS states that its “definition of homelessness is informed by an understanding of homelessness as ‘home’lessness, not rooflessness. It emphasises the core elements of ‘home’ in Anglo American and European interpretations of the meaning of home as identified in research evidence. These elements include: a sense of security, stability, privacy, safety, and the ability to control living space. Homelessness is therefore a lack of one or more of the elements that represent ‘home’.”<sup>70</sup>

The students living in the single bedroom fall under this definition of homelessness because:

- they did not have any knowledge about their rights, let alone how to enforce them;
- Mr Zinzuwadia did not have any idea about his responsibilities;
- their tenure was insecure as they did not have a formal arrangement with Mr Zinzuwadia;
- the students did not have the ability to maintain their own privacy or exclusive access to their bedrooms, kitchen facilities or bathrooms;
- while it is not clear how small or large the single bedroom that the students were living in was, it is certain that it was not designed for 4 or more people; and
- this situation of overcrowding sustained for such a long period of time (since at least October/November 2006) prevented them from having control of, or access to space for social relations and ultimately had disastrous health and safety implications.

The widely accepted cultural definition of homelessness proposed by Chamberlain and McKenzie focuses on people staying in accommodation that falls below minimum community standards.<sup>71</sup> The minimum community standard is a small rental flat with a bedroom, living room, kitchen, bathroom and secure tenure. According to this model of homelessness, people living outside of the minimum standard of housing are classified as:

- marginally housed: people in housing situations close to the minimum standard;
- tertiary homelessness: people living in single rooms in private boarding houses without their own bathroom, kitchen or security of tenure;
- secondary homelessness: people moving between various forms of temporary shelter including friends, emergency accommodation, youth refuges, hostels and boarding houses; and
- primary homelessness: people without conventional accommodation (living in the streets, in deserted buildings, improvised dwellings, under bridges, in parks, etc).<sup>72</sup>

Given the four students were living in an overcrowd situation, did not have secure tenure and were living in a rooming house on a long-term basis, the students also fall under this

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<sup>69</sup> ABS, *Information paper – a statistical definition of homelessness* (4 September 2012), ABS, 7  
[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/B4B1A5BC17CEDBC9CA257A6E00186823/\\$File/49220\\_2012.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/B4B1A5BC17CEDBC9CA257A6E00186823/$File/49220_2012.pdf)

<sup>70</sup> Ibid.

<sup>71</sup> Ibid 19.

<sup>72</sup> ABS, *Position Paper - ABS Review of Counting the Homeless Methodology* (4 August 2011) ABS, 1  
<http://www.abs.gov.au/ausstats/abs@.nsf/0/90db868e528d3eebca2578df00228cee?opendocument>.



cultural definition of homelessness and could be classified as either being marginally housed or experiencing tertiary homelessness.

### *5.2 There has been an increase in homelessness*

The situation of overcrowding at the Dwelling reflects a broader trend of people who are born overseas living in overcrowded situations.

In the most recent homelessness estimates compiled from the 2011 ABS census released on 12 November 2012, there were 105,237 people in Australia and 22,789 people in Victoria classified as homeless on census night.<sup>73</sup> This represents an 8% increase in homelessness compared to 2006 and a 20% increase in Victoria. Most of the increase in homelessness was reflected in people living in severely crowded dwellings (up from 31,531 in 2006 to 41,390 in 2011 in Australia and up from 3,345 to 6,041 in Victoria).<sup>74</sup> In fact, the largest homeless group for the last three censuses has been people living in severely crowded dwellings.<sup>75</sup> People arriving from China, New Zealand, Afghanistan and India accounted for about half the rise in the overseas born estimate for this homelessness group.

The issue of overcrowding has particularly affected international students.<sup>76</sup> TUV has received a growing number of complaints from international students regarding severe overcrowding in rental properties. In one complaint received by TUV, 48 Nepalese students were living in a six-bedroom property; and in another property, 12 international students were living in a single room.<sup>77</sup>

### *5.3 The Dwelling fell under a definition of a rooming house*

At the directions hearing on 26 November 2012, Counsel assisting the Coroner submitted that the Dwelling did not fall under the definition of a rooming house because Mr Zinzuwadia was not “in the business of operating a rooming house”. Rather, he submitted that the Dwelling was a “share house”, and that Mr Zinzuwadia had “sublet” the room to the four students.

TUV and HPLC respectfully disagree with both of these submissions.

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<sup>73</sup> ABS, *Census of Population and Housing, Estimating homelessness 2011* (12 November 2012) ABS, 12 [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/EB59F237159F7102CA257AB100170B61/\\$File/20490\\_2011.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/EB59F237159F7102CA257AB100170B61/$File/20490_2011.pdf) (ABS Estimating Homelessness Report)

<sup>74</sup> Ibid 11-12, 17 and 21. Severe crowding conditions are defined to mean living in a dwelling which requires 4 or more extra bedrooms to accommodate the people who usually live there, as defined by the Canadian National Occupancy Standard. The concept of crowding is based upon a comparison of the number of bedrooms in a dwelling with a series of household demographics such as the number of usual residents, their relationship to one another, their age and their sex. See ABS, *ABS fact sheet on overcrowding* (5 September 2012) ABS, 1 [http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/2049.0.55.001Main%20Features62012?opendocument&tabname=Summary&prodno=2049.0.55.001&issue=2012&num=&view=.](http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/2049.0.55.001Main%20Features62012?opendocument&tabname=Summary&prodno=2049.0.55.001&issue=2012&num=&view=)

<sup>75</sup> ABS Estimating Homelessness Report, 6.

<sup>76</sup> Senate Education, Employment and Workplace Relations References Committee, Parliament of Australia, *Report into the Welfare of International Students* (2009) (**Senate Report on the Welfare of International Students**), 34.

<sup>77</sup> TUV, Submission to the Senate Education, Employment and Workplace Relations References Committee, *Inquiry into the Welfare of International Students*, 27 August 2009, 4.

In order to be a subtenant, the subtenant must have exclusive possession to part or all of the Dwelling which means the right to exclude others (including the head tenant and landlord) from the rented premises. The students did not have exclusive possession of their room since they could not exclude each other or the Zinzuwadia family from the room, nor does it appear that they had locks on the bedroom door. Further, Mr Zinzuwadia did not have the right to enter into a sub-lease without the consent of the landlord.

Section 3 of the *Residential Tenancies Act 1997* (Vic) defines a rooming house as a building in which there is one or more rooms available for occupancy on payment of rent in which the total number of people who may occupy those rooms is not less than 4.

The definition of a rooming house owner under s3(1) of the RTA is a person who conducts the business of operating the rooming house (which, includes the lessee if the rooming house is leased). Section 17 of the RTA precludes the rooming house provisions from applying to rooms used or intended to be used as a residence by the rooming house owner, a member of the owner's family or an employee of the owner.

In order for the premises to fall under the definition of a rooming house, it is not relevant if the rooming house owner has a subjective or objective intention to be in the "business of operating the rooming house". All that is required is a building in which one or more rooms are available for at least four people on the payment of rent. Accordingly, the rooming house provisions can be deemed to apply without the knowledge of tenant/rooming house owner, the residents, the landlord/agent or the owner of the premises.

From March 2006 to the date of the fire, there were at least four non-family members living in the Dwelling (with 5 non-family members living on the Dwelling from March 2007 to December 2007). Accordingly, the Dwelling fell under the definition of a rooming house and the rooming house provisions in the RTA applied to the Dwelling (except for the rooms occupied by Mr Zinzuwadia and his family members in accordance with s17 of the RTA.)

Further, the students living in the single bedroom fell under the definition of a rooming house resident. Mr Zinzuwadia's brother-in-law and wife would have been a licensees since they did not have an agreement with the landlord, did not have exclusive possession of their room, lived at the Dwelling with the Zinzuwadia family and were not rooming house residents.<sup>78</sup>

As Mr Zinzuwadia was the person who arranged with the students to live in the house in exchange for rent, it appears that he was the rooming house owner pursuant to s3(1), notwithstanding that he was unaware of the provisions in the RTA and did not intend operate a rooming house business.

#### ***5.4 There has been an increase in small rooming houses***

The type of housing arrangement that the Zinzuwadia family had with the students is not uncommon and reflects the rise of international students living in small rooming houses in suburban Melbourne.

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<sup>78</sup> For distinction between tenant, resident or licensee, see Homeless Law, Housing and Tenancy (2011) HPLC <http://www.homelesslaw.org.au/page/803/is-your-client-a-tenant-resident-or-licensee->.

The recent homelessness estimates compiled from the 2011 ABS census reported that there were 17,821 homeless people in boarding houses (which is the term the ABS uses to refer to rooming houses) on census night in 2011, up 15% on the estimate for 2006.<sup>79</sup> Of those, 4397 were in Victoria (up from 2,050 in 2006.)<sup>80</sup> However, in his report, Chris Chamberlain found that the rooming house population in Melbourne had been underestimated in previous studies, including in the ABS census homelessness estimates.<sup>81</sup>

By using a different methodology based on reviewing council records and consulting with councils instead of relying on ABS census collectors, Chamberlain estimated that the rooming house population in Melbourne had actually increased dramatically from between 2,946 and 3,739 in 2006 to 12,568 in 2011, mostly in suburban Melbourne.<sup>82</sup>

Part of the reason for the undercounting was that census collectors misclassified rooming houses as other types of dwellings such as hotels or “other”. This is not surprising given the sheer diversity of rooming houses, ranging from large, 50 room premises to suburban homes, and because the latter type of rooming house often looks no different from any other properties in the same street. Chamberlain states that the most important reason for undercounting is that rooming houses often do not come to the council’s attention until there are complaints about the property.<sup>83</sup> Council officials told Chamberlain that only a minority of rooming house operators register their properties voluntarily. There are usually rooming house operators who have a commitment to staying in the industry longer term and they often have a number of properties. However, ‘Mum and Dad’ operators are often unaware of the regulation.<sup>84</sup> Another reason for undercounting was that councils were under-resourced and some kept inadequate records.<sup>85</sup>

Chamberlain found that most of the growth in rooming houses was in suburban Melbourne with a sixfold increase in the rooming house population in the inner and outer Melbourne suburbs.<sup>86</sup> Chamberlain also found that 82% of the rooming houses in suburban Melbourne were small rooming houses accommodating between four and nine people.<sup>87</sup> This is supported by the Department of Human Services (**DHS**), which stated that:

*The new model emerging in the rooming house sector is characterised by small rooming houses, operated for profit. In many cases, this accommodation utilises suburban homes with multiple bedrooms – or sometimes commercial properties not designed as residential accommodation – which are lawfully or unlawfully modified to accommodate larger numbers of people ... This segment of the rooming house market is growing rapidly, particularly in*

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<sup>79</sup> ABS Estimating Homelessness Report, 5.

<sup>80</sup> Ibid 11-12, 17-17.

<sup>81</sup> Chris Chamberlain, ‘Counting Boarding Houses: Reflections on Homelessness Research in Australia’ (Paper Presented at the Homeless Research Conference, Melbourne, 19-20 April 2012) <<http://www.homeground.org.au/assets/microsoft-word-conference-paper-ahuri-rmit-v2.pdf>> (**Chamberlain Report**).

<sup>82</sup> Ibid 18. Note that Chamberlain states in his conclusion that it is possible that the census undercounted the boarding house population in 2006 which means that the increase was less, however, it is not possible to test this proposition because local councils did not start registering all rooming houses until 2008.

<sup>83</sup> Chamberlain Report, 7.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid 8.

<sup>86</sup> Ibid 12.

<sup>87</sup> Ibid, 14-15.

*suburban areas that have previously not been traditional rooming house territory. Much of this growth is difficult for enforcement agencies to monitor if owners do not willingly comply with regulatory requirements as these premises often appear indistinguishable from other forms or residential or commercial property.<sup>88</sup>*

Unlike the ABS, which found that the homeless boarding house population is overwhelmingly male (75%) and much older than the rest of the homeless population (46% aged 45 years and over),<sup>89</sup> Chamberlain found that the population of rooming houses has become more diverse, with a range of disadvantaged people such as international students now in rooming houses.<sup>90</sup>

The DHS Report stated that international students are increasingly residing in rooming houses due to the significant increase in overseas students being enrolled in Victorian educational institutions.<sup>91</sup> While the number of international students in Victoria has declined in the past few years (143,282 in 2012 down from 190,634 in 2009),<sup>92</sup> the dramatic increase in overseas student enrolments over the past decade (an average increase of 15% every year from 2002 to 2009) has increased demand in affordable housing, particularly close to tertiary education institutions.<sup>93</sup> The DHS Report cited one example of the number of registered rooming houses near a university campus (which almost all targeted international students) growing by over 150% in the six months to April 2010.<sup>94</sup>

As a regular three-bedroom residential property in the suburbs accommodating up to 10 people, the majority of which are international students, the Dwelling reflects the trends identified in the Chamberlain and DHS reports. Given the local council, landlord, real estate agents, the Zinzuwadia family or the students were not aware that the Dwelling fell under the definition of a rooming house, it is unlikely that the Dwelling would have ever been counted as a rooming house either in census data or by Chamberlain, which suggests that the number of unregistered small suburban rooming houses could be even higher than Chamberlain's estimate.

### ***5.5 There is a lack of adequate and affordable housing***

A lack of adequate and affordable housing available for those on low income is a significant cause of homelessness,<sup>95</sup> and is one of the main reasons that international students are living in overcrowded situations or in rooming houses.

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<sup>88</sup> Department of Human Services, Parliament of Victoria, *Proposed Residential Tenancies (Rooming House Standards) Regulations Regulatory Impact Statement* (August 2011) (**DHS Report**) 17.

<sup>89</sup> ABS Estimating Homelessness Report, 7.

<sup>90</sup> Chamberlain Report, 20.

<sup>91</sup> DHS Report, 16.

<sup>92</sup> Australian Government Australian Education International, International Student Data Pivot Tables 2012 and 2009, Australian Education International, [www.aei.gov.au/research/international-student-data/pages/internationalstudentdata2012.aspx](http://www.aei.gov.au/research/international-student-data/pages/internationalstudentdata2012.aspx)

<sup>93</sup> DHS Report, 16.

<sup>94</sup> Ibid.

<sup>95</sup> Deb Batterham, 'The Structural Drivers of Homelessness: Exploring the relationships between housing market, labour market, demographics, service availability and homelessness in Victoria' (Paper presented at the 6<sup>th</sup> Australasian Housing Researchers' Conference, Adelaide, 8-10 February 2012.)

Both HPLC and TUV recently commented on the state of affordable housing supply for those on low incomes in their submissions to the Victorian Government's review of social housing.<sup>96</sup> Both submissions stated that there is a chronic shortage of available and affordable private rental properties for low-income earners in Victoria, particularly in areas of employment opportunity and social services infrastructure.<sup>97</sup> Melbourne has been experiencing record low rental vacancy rates and it is currently at 2.0% in metropolitan Melbourne and 2.3% in regional Victoria.<sup>98</sup> Median rents for a one bedroom flat in metropolitan Melbourne are \$300 per week and \$370 for a two bedroom house;<sup>99</sup> in regional Victoria median rents are \$150 and \$230 per week respectively.<sup>100</sup>

The DHS June 2012 Rental Report estimates that only around 10% of dwellings in metropolitan Melbourne are affordable.<sup>101</sup> However, HPLC noted in its submission that "there is *no* affordable and appropriate rental housing in Melbourne available for single people earning a minimum wage or living on Newstart, Youth Allowance or Austudy or for couples with two children on Newstart."<sup>102</sup> TUV's quarterly *Affordability Bulletins* are consistent with HPLC's point: analysis in the March 2012 Bulletin shows, for example, that a person receiving Newstart renting a one bedroom flat in Brunswick and St Kilda East would be paying almost 91% or 99% respectively of their income in rent.<sup>103</sup> Similarly, a person on Austudy would be paying approximately 107% and 114% for the same dwelling in those locations. Even in locations on the fringe of the city such as Sunshine, a person receiving Newstart would still be paying 66% of their income on rent for a one bedroom dwelling and paying approximately 73% in Dandenong.<sup>104</sup>

Further, there is an acute undersupply of public housing with over 36,000 people currently on the public housing waiting list.<sup>105</sup> Over the past decade, there has been a decrease in the proportion of public housing relative to the population and in the next four years, there will be over 10,000 public housing properties reaching obsolescence.<sup>106</sup>

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<sup>96</sup> HPLC, Keeping Doors Open Submission in response to 'Pathways to a Fair and Sustainable Social Housing System' Public Consultation Discussion Paper, July 2012 (**HPLC submission**); TUV, Submission in response to Pathways to a Fair and Sustainable Social Housing System: Discussion Paper, July 2012 (**TUV submission**).

<sup>97</sup> National Supply Council, *Housing Supply and Affordability – Key Indicators, 2012* (2012) 28; National Supply Council, *State of Supply Report* (2010) 103; Wulff M, Dharmalingam A, Reynolds M and Yates J, *Australia's Private Rental Market: Changes (2001-2006) in the Supply of, and Demand for, Low Rent Dwellings*. Australian Housing and Urban Research Institute (2009) 36-7 as cited in TUV's submission, 1-2.

<sup>98</sup> Department of Human Services, *Rental Report: June Quarter 2012*, (June 2012), Department of Human Services <[http://www.dhs.vic.gov.au/\\_\\_data/assets/pdf\\_file/0004/736618/Rental-Report-June-Quarter-2012-v01.pdf](http://www.dhs.vic.gov.au/__data/assets/pdf_file/0004/736618/Rental-Report-June-Quarter-2012-v01.pdf)> (**DHS June 2012 Rental Report**) 2.

<sup>99</sup> Ibid 5.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid 2.

<sup>102</sup> Anglicare Australia, *Anglicare Australia Rental Affordability Snapshot* (2012) 50 as cited in HPLC's submission 3.

<sup>103</sup> TUV, *Private Rental Affordability Bulletin Melbourne: March 2012*, TUV <[http://www.tuv.org.au/articles/files/bulletins/Melbourne\\_Metro\\_Affordability\\_Bulletin\\_March\\_Quarter\\_2012.pdf](http://www.tuv.org.au/articles/files/bulletins/Melbourne_Metro_Affordability_Bulletin_March_Quarter_2012.pdf)>.

<sup>104</sup> Ibid.

<sup>105</sup> DHS, *Public Housing Waiting and Transfer List* (September 2012) DHS <[www.dhs.vic.gov.au/about-the-department/documents-and-resources/research-data-and-statistics/public-housing-waiting-and-transfer-list](http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/research-data-and-statistics/public-housing-waiting-and-transfer-list)>.

<sup>106</sup> HPLC submission, 3.

The significant undersupply of affordable housing available to low-income earners is also a major factor contributing to the rise in marginal forms of housing such as long-stay caravan parks and informal rooming houses.<sup>107</sup>

These housing accessibility issues are made worse for international students as:

- they generally cannot access social security payments or public housing;
- they may only work on a part-time or casual basis and have very low incomes;
- they may experience language and cultural barriers;<sup>108</sup>
- they may be living away from home for the first time;<sup>109</sup>
- they may not understand the different prices and accommodation options;<sup>110</sup>
- they may not understand how to access the private rental market and lack certain requirements such as relevant rental histories;<sup>111</sup>
- they may have specific requirements that reduce the pool of available rental accommodation (for example, needing to live in an area that is accessible to the educational institution by public transport);<sup>112</sup>
- there is no requirement for educational institutions to ensure that adequate accommodation is available for those they enrol;<sup>113</sup>
- they may lack awareness of or understanding of their rights and obligations;<sup>114</sup>
- they may feel unable to exercise their rights due to fear of not gaining access to housing or being evicted and lacking any real alternative;
- they may lack awareness of the social, health and safety consequences of living in overcrowded situations;
- they are vulnerable to exploitation from unscrupulous operators;<sup>115</sup> and
- they may experience discrimination when trying to access private rental market.<sup>116</sup>

In response to these housing accessibility issues, the Senate Report on the Welfare of International Students recommended that:

- international students be provided with more detailed information about their accommodation options prior to arriving in Australia;
- the *Study in Australia* website include information relating to tenancy rights and links to state and territory tenancy unions; and

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<sup>107</sup> Tenants Union of Victoria, *Private Rental Affordability Bulletin: Capital Cities* (December Quarter) (2011) 1; Chamberlain Report, 18 as cited in TUV submission 2.

<sup>108</sup> Senate Report on the Welfare of International Students, 34.

<sup>109</sup> Ibid 33.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid 36.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid 34 and 36.

<sup>114</sup> Ibid 34.

<sup>115</sup> Ibid.

<sup>116</sup> TUV, *Access to the Private Rental Market; Industry Practices and Perceptions* (June 2008) TUV [http://www.tuv.org.au/articles/files/housing\\_statistics/Research\\_Report\\_Access\\_to\\_the\\_private\\_rental\\_market.pdf](http://www.tuv.org.au/articles/files/housing_statistics/Research_Report_Access_to_the_private_rental_market.pdf); Victorian Equal Opportunity and Human Rights Commission (VEOHRC), *Locked Out Discrimination in Victoria's Private Rental Market* (August 2012) VEOHRC [http://www.humanrightscommission.vic.gov.au/index.php?option=com\\_k2&view=item&id=1735:locked-out-discrimination-in-victorias-private-rental-market-aug-2012&Itemid=690](http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&id=1735:locked-out-discrimination-in-victorias-private-rental-market-aug-2012&Itemid=690).

- every education provider provide a link on their webpage to information on housing options, tenancy rights and obligations and where to go for assistance from a reputable website such as the Study in Australia website.<sup>117</sup>

While it appears that the Study in Australia website has since been updated to include some information about accommodation options, it does not contain information about tenancy rights and links to state and territory tenancy unions or sufficient information about the rooming houses and the issues that many international students face in accessing affordable housing.<sup>118</sup> Further, it is unknown how effective the Study in Australia website has actually been in educating international students about their accommodation options, rights and obligations.

Many of the access barriers listed above appear to have applied to the occupants at the Dwelling. The reason that Mr Zinzuwadia invited the students to live at the Dwelling was because he said it was hard for overseas students to find a place to stay in Melbourne.<sup>119</sup> While it is not clear what the exact financial position of all of the students living at the Dwelling were at the time, they were all studying full-time and were working on either a casual or part-time basis.<sup>120</sup> As at October 2005, Mr Zinzuwadia was also studying on a full-time basis and earning only \$200 per week (which is less than Newstart), despite the weekly rent being \$230 per week. While Mr Zinzuwadia had managed to enter the private rental market, the rent was not affordable based on his income at the time (assuming that Mrs Zinzuwadia was not earning an income) and needed to share the expenses of the Dwelling with the students in order to sustain the tenancy.

## 6. Legislative context

There are numerous legislative frameworks that regulate different aspects of rooming houses and residential tenancies, making compliance and enforcement of the legislation confusing and complex. As the fire occurred at the Dwelling on 2 January 2008, the versions of the relevant legislation that applied at the time are as follows:

- *Residential Tenancies Act 1997* (Vic), Version 44 (incorporating amendments as at 1 July 2007 (**old RTA**));
- *Residential Tenancies Regulations 1998* (Vic), Version 11 (incorporating amendments as at 27 February 2007) (**old RTR**);
- *Health Act 1958* (Vic) (**HA**) Version 113 (incorporating amendments as at 1 October 2007);
- *Health Act (Prescribed Accommodation) Regulations 2001* (Vic) (**HAR**) Version 1, (incorporating amendments as at 15 May 2001);
- *Building Code of Australia 1996* (**BCA**);<sup>121</sup> and

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<sup>117</sup> Senate Report on the Welfare of International Students, 37-38.

<sup>118</sup> See <http://www.studyinaustralia.gov.au/en/Study-Costs/Accommodation>.

<sup>119</sup> *Pham v Parissis*, 10.

<sup>120</sup> Inquest brief, 3: Sunil Patel was studying hospitality and worked part time as a kitchen hand; Jignesh Sadhu was studying horticulture and had a part time job at a pizza shop; Deepak Prajapati was studying aged care; and Darshan was studying a Masters of Accounting and was doing a cleaning job at Coles.

<sup>121</sup> It is unknown as to the version that applied at the time. For the purposes of this submission, we have assumed that the current version of the BCA applies.

- *Building Regulations 2006* (Vic), Version 3 (incorporating amendments as at 1 November 2007).

Since then, major reforms have been enacted in relation to rooming houses, and legislation has been amended and renamed. The versions of the legislation that currently apply are:

- *Residential Tenancies Act 1997* (Vic), Version 70 (incorporating amendments as at 14 November 2012 (**current RTA**));
- *Residential Tenancies Regulations 2008* (Vic), Version 7 (incorporating amendments as at 11 May 2012) (**current RTR**);
- *Residential Tenancies (Rooming House Standards) Regulations 2012* (Vic), Version 1 (incorporating amendments as at 31 March 2012) (**Rooming House RTR**). Note that these regulations commenced operation on 31 March 2012 but the prescribed standards for rooming houses only apply on and from 31 March 2013;
- *Public Health and Wellbeing Act 2008* (Vic) (**PHWA**) (which replaced the HA);
- *Public Health and Wellbeing Regulations 2009* (Vic), Version 4 (incorporating amendments as at 26 July 2011) (**PHWR**) (which replaced the HAR);
- BCA; and
- *Building Regulations 2006* (Vic), (**BR**) Version 22 (incorporating amendments as at 27 July 2012).

Some of the fire safety protection issues that existed at the time of the fire at the Dwelling, such as overloaded power boards and switchboard safety circuits, are now covered by the rooming house standards that are due to come into force in March 2013. Nevertheless, there are still gaps in the legislation that should be addressed. In particular, the current legislation does not specify who is responsible for maintaining, repairing and replacing smoke alarms in residential tenancies or rooming houses, and what role, if any, landlords or rooming house owners should play in ensuring that smoke alarms are properly installed and effectively working at the commencement of an agreement. Further, the current legislation reveals an unwarranted discrepancy between the fire safety protections that apply to rooming house residents as compared to residential tenants that should be addressed.

TUV and HPLC submit that the Coroner should take into account the legislative context and the current gaps when making his final comments and recommendations.

### **6.1 The rooming house obligations in the RTA and RTR**

At the time that the students became rooming house residents at the Dwelling (from 2006 and 2007), Mr Zinzuwadia, as the rooming house owner had obligations under the old RTA, including to:

- Give each proposed resident a notice of residency right which had to, amongst other things:
  - specify the room capacity of the room;
  - state that the resident will be notified before another resident takes up occupancy of the room;
  - state that the rooming house owner will choose the other residents who will be permitted to take up occupancy of the room; and



- specify the rent payable by the resident for a shared room right and the rent that would have been payable if the resident had an exclusive occupancy right;<sup>122</sup>
- Display a written statement setting out the rights and duties under the RTA and a copy of the house rules;<sup>123</sup>
- Provide every new resident with a copy of the house rules and a guide for rooming house residents produced by CAV;<sup>124</sup> and
- Maintain in good repair the rooming house and its rooms and any facilities, fixtures, furniture or equipment.<sup>125</sup>

These obligations remain in the current RTA and still apply to rooming house owners.

Since the Inquest into the deaths of Sinclair and Giorgi, amendments have been made to the RTA to address the reported rise of fires in rooming houses and the issues with fire safety. The DHS Report stated in 2011 that:

*Unpublished data provided by the MFB to the Taskforce demonstrated a 20 per cent increase in fires in rooming houses between 2004 and 2008. The MFB identifies excessive use of power boards, the presence of multiple pieces of the same type of electrical equipment (e.g. televisions, portable heaters) and use of cooking devices in rooms other than the kitchen as contributing risk factors in rooming houses. Stakeholders report that these risks exist because residents will often use kettles, toasters, frypans, microwaves or camp stoves to prepare food in their rooms when kitchen facilities are inadequate or unsafe. Because rooming houses are not cooperatively formed households, residents do not readily share electrical equipment. This creates problems associated with both power overload and fire safety.<sup>126</sup>*

In order to address these issues, s 142C was inserted into the RTA, allowing the Governor in Council to make regulations in relation to the privacy, safety, security and amenity standards. Section 142B was also inserted into the RTA to require rooming house owners to comply with these prescribed standards.

In March 2012, the Rooming House RTR which prescribed standards in relation to rooms, facilities and services and rooming houses were enacted, however, they are not due to come into force until 31 March 2013.

In relation to fire safety issues, the prescribed standards will require the rooming house owner to:

- Fit the doors used for entrance and exit to a rooming house room with a locking device that is operated by a key from the outside and can be unlocked from the inside without a key;<sup>127</sup>
- Install at least two electrical power outlets that are in working order;<sup>128</sup>

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<sup>122</sup> Section 92C of both the old RTA and current RTA.

<sup>123</sup> Section 124 of both the old RTA and the current RTA.

<sup>124</sup> Ibid.

<sup>125</sup> Section 120 of both the old RTA and the current RTA.

<sup>126</sup> DHS Report, 25-26.

<sup>127</sup> Rooming House RTR, s 6.

- Prepare and prominently display in each residents' room, an evacuation diagram for the rooming house in accordance with section 3.5 and Appendix E of AS 3745 Planning for emergencies in facilities;<sup>129</sup>
- Connect all power outlets and lighting circuits of or in a rooming house to:
  - a switchboard type Circuit Breaker that complies with AS/NZS 3000 Electrical installations, as published from time to time; and
  - a switchboard type Residual Current Device that complies with –
    - AS/NZS 3190 approval and test specification – Residual current devices (current-operated earth-leakage devices), as published from time to time; or
    - AS/NZS 61008.1 Residual current operated circuit-breakers without integral over current protection for household and similar uses (RCCBs): Part 1: General rules, as published from time to time; or
    - AS/NZS 61009.1 Residual current operated circuit-breakers with integral over current protection for household and similar uses (RCBOs) Part 1: General rules, as published from time to time;<sup>130</sup>
- Conduct a gas safety check at least once every 2 years by a licensed gasfitter of all gas installations and fittings at the rooming house;<sup>131</sup>
- Conduct an electrical safety check at least once every 5 years by a licensed electrician of all electrical installations and fittings at the rooming house;<sup>132</sup>
- Ensure that each external window of the rooming house is able to be securely fixed in a closed or open position without a key;<sup>133</sup> and
- Ensure that entrances to a rooming house are fitted with a locking device that is operated by a key from the outside and that can be unlocked from the inside without a key.<sup>134</sup>

A provision was also inserted into the current RTA obliging an owner of a building (who is not a rooming house owner) or that owner's agent, to notify the local council if that person has reason to believe that the building is being used as a rooming house but is not registered under the PHWA.<sup>135</sup>

While these additional obligations could have contributed to reducing the risk of fire at the Dwelling if they were in force at the time the students lived there, the issue is that:

- neither Mr Zinzuwadia as the rooming house owner nor the students would have been aware of their rights and obligations; and
- neither the owner nor the real estate agents would have had any reason to suspect that the building was being used as a rooming house since no periodic inspections were conducted during the tenancy.

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<sup>128</sup> Ibid s 7.

<sup>129</sup> Ibid s 15.

<sup>130</sup> Ibid s 16.

<sup>131</sup> Ibid s19.

<sup>132</sup> Ibid s 20.

<sup>133</sup> Ibid s 21.

<sup>134</sup> Ibid s 22.

<sup>135</sup> Section 142D of the current RTA. The CAV has produced a guide to assist real estate agents under this obligation: see <http://www.consumer.vic.gov.au/businesses/licensed-businesses/estate-agents/running-your-business/professional-conduct/reporting-unregistered-rooming-houses>.

## 6.2 *The rooming house obligations in the HA, HAR, the PHWA and PHWR*

At the time the students lived at the Dwelling as a rooming house, the proprietors (defined as the rooming house owners) were required to register prescribed accommodation which included rooming houses, with the local council.<sup>136</sup> Further, the HAR imposed health and safety obligations relating to overcrowding, maintenance and cleanliness and supply of basic services on prescribed accommodation.<sup>137</sup> However, the definition of prescribed accommodation excluded “any premises in which, other than the family of the proprietor, not more than five persons are accommodated”.<sup>138</sup>

As such, since there were less than five students aside from the Zinzuwadia family living at the Dwelling, it was not covered by the HA and HAR. Accordingly, Mr Zinzuwadia would **not** have had to register the rooming house or comply with the health and safety obligations. Even if the Real Estate Agents, owners or local council had known at the time that the Dwelling fell under the definition of a rooming house under the RTA, they would not have been obliged to notify the council.<sup>139</sup>

After the Inquest into the deaths of Sinclair and Giorgi at a rooming house in Brunswick where the proprietors told the council that there were only five residents in order to avoid registration, the legislation was amended to ensure that rooming houses would have the same definition as under the RTA (a premise in which one or more rooms are available for at least four people on payment of rent).<sup>140</sup> Accordingly, if the PHWA and PHWR were in force at the time the students lived at the Dwelling, it would have meant that Mr Zinzuwadia would have had to register the rooming house with local council. The local council would have then had to inspect the rooming house to ensure that it met the minimum standards set out in the PHWA and current BA before being registered.

Further, the health and safety obligations under the PHWA and PHWR would have applied to the rooming house, including that a bedroom in a rooming house must have a minimum floor area of 7.5m<sup>2</sup> or 12m<sup>2</sup> for two people and an additional 4m<sup>2</sup> for every additional person (meaning that the bedroom the students were living in would have had to have been at least 20m<sup>2</sup>.)<sup>141</sup>

## 6.3 *Obligations under the BCA, BA and BR in relation to smoke alarms*

The BA and BR require premises to comply with the standards contained in the BCA. These laws require smoke alarms to be installed in all types of residential buildings and must meet the Australian Standard AS 3786-1993.<sup>142</sup> The owner of the dwelling is responsible for installing the smoke alarm(s).

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<sup>136</sup> Section 210 of the HA.

<sup>137</sup> Regulations 6-14 of the HAR.

<sup>138</sup> Regulation 5(h) of the HAR.

<sup>139</sup> This is because at the time, there was no obligation placed on the owner of the premises or real estate agents to report a rooming house to a council since s142D did not exist in the old RTA.

<sup>140</sup> See regulation 4 of the PHWR.

<sup>141</sup> Regulation 17 of the PHWR.

<sup>142</sup> Victorian Building Commission, *Smoke alarms for residential buildings* (June 2010) Victorian Building Commission, 1

[http://www.buildingcommission.com.au/resources/documents/Smoke\\_alarms\\_for\\_residential\\_buildings.pdf](http://www.buildingcommission.com.au/resources/documents/Smoke_alarms_for_residential_buildings.pdf) (Smoke Alarm guideline).

The BCA defines different residential dwellings as follows:

- Class 1a: Detached houses, row houses, town houses, terrace houses or villa units;
- Class 1b: Some boarding houses, guest houses or hostels;
- Class 2: Buildings containing sole-occupancy units (e.g. apartments, blocks of flats); and
- Class 3: Backpacker accommodation, residential parts of hotels or motels, residential parts of schools, accommodation for the aged, disabled or children.

Small rooming houses are Class 1b buildings when they accommodate 12 occupants or less or have a total floor space of not more than 300 square metres.<sup>143</sup> Larger rooming houses which accommodate 13 or more and have a total floor area of more than 300m<sup>2</sup> are classified as Class 3 buildings. It is unknown what the floor space of the room in which the deceased resided was but for the purpose of this submission, we have assumed that the Dwelling would fall under the definition of a Class 1b dwelling.

In all new residential buildings constructed on or after 1 August 1997, the smoke alarm must be “hard-wired” to the main power source and contain batteries in case of power failure.<sup>144</sup> Buildings built prior to this date can be fitted with a self-contained smoke alarm which can be battery-powered.<sup>145</sup>

For class 1b buildings, smoke alarms are required to be located:

- ‘between each area containing bedrooms and the remainder of the dwelling’ which generally means in any hallway or corridor connected with a bedroom;
- if there is no corridor or hallway and the rooms are not grouped in a common area, the smoke alarm must be located within 1.5 metres of the entrance to each bedroom; and
- on each storey of the dwelling.<sup>146</sup>

It is unknown when the Dwelling was built and if the owners fulfilled their obligation by properly installing the correct type of smoke alarm in the right location. It is also unknown if Ray White checked whether the smoke alarm had been properly installed in the correct locations pursuant to the BR and BCA.

#### ***6.4 The duty of real estate agents to conduct periodic inspection***

In *Pham v Parissis*, the owners of the property sought damages against Bells for the loss suffered as a result of the fire by reason of:

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<sup>143</sup> BCA.

<sup>144</sup> For class 1b dwellings, see s709 of the BR.

<sup>145</sup> For class 1b dwellings, see s707 of the BR.

<sup>146</sup> Section 707 and 709 of the BR; Smoke Alarm guideline; Building Commission, *Practice Note 2006-27*, Victorian Building Commission

[http://www.buildingcommission.com.au/resources/documents/PN\\_2006\\_27.pdf](http://www.buildingcommission.com.au/resources/documents/PN_2006_27.pdf); Cf City of Monash, ‘Requirements for Shared Accommodation: Building, Health & Town Planning’ <http://www.monash.vic.gov.au/building/documents/BLD0390REQUIREMENTSFORSHAREDACCUMMODATION.pdf>> 1 which suggests that Class 1b buildings must have a smoke alarm in every room. It is unclear where the Monash Council has sourced this information. The City of Monash guide also states that “evacuation lighting” is to be installed in Class 1b buildings to assist evacuation of occupants in the event of a fire and must be connected to, and triggered by, a smoke alarm but we believe that this applies only to class 3 buildings (see s 710 of the BR).

- breach of the management contract between the real estate agent and the owner of the property; and
- the breach by the real estate agent of the common law duty of care which it owed to the plaintiffs in managing the property.

Justice Saccardo found that “appropriate practice within the industry mandates regular inspections of properties which are under management unless there is an agreement to the contrary.”<sup>147</sup>

It was not at issue that real estate agents owe a duty to the owners to take reasonable care not to expose the plaintiffs to a foreseeable risk of loss and damage (as described in High Court decision *Adeels Palace Pty Ltd v Moubarak & Ors* (2009) 239 CLR 420). Based on the particular facts of the case, including that the owners believed that the real estate agent would carry out periodic inspections of the property, and that industry practice involved an obligation to undertake periodic inspections, Saccardo J found that Bells owed a duty of care to the owners to undertake periodic inspections of the property every twelve months.<sup>148</sup>

Saccardo J also found that:

- there was an express term in the management agreement between Ray White and then Bells and the owners for them to conduct periodic inspections;
- that Bells breached its duty of care and the express term in the contract as it had not conducted an inspection on the property since it took over the management of the property from Ray White on 3 March 2006;
- it was foreseeable to Bells that a breach of its duty to inspect the property may expose the owners to the risk that the property may be damaged by reason of such an occurrence;
- the property should have been inspected in May 2006 and May 2007;
- at least at the latter inspection, it is likely on the balance of probabilities that Bells would have discovered the additional residents and would have had a conversation with the owner which would have resulted in the number of people occupying the bedroom to be reduced to two;
- on the balance of probabilities, periodic inspections would not have led to the detection of either the six-point power board or high-wattage appliances; and
- on the balance of probabilities, occupation of the front right bedroom by only two residents instead of four would not have necessarily prevented the overloading of the power board or the electrical fault with the computer monitor.

Justice Saccardo also stated that:

*Given the state of the evidence, it is, in my opinion, a matter of speculation as to whether the occupation of the bedroom by only two occupants would have resulted in a relevant alternation in the activity that was responsible for the fire.*

*I express the above view for the following reasons:*

- *While it is likely that the presence of four people within the room increased the probability that all the ports of a six-port power board would be made use of, in the*

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<sup>147</sup> *Pham v Parissis*, 28.

<sup>148</sup> *Ibid* 31-32.

*absence of any evidence as to which two of the four residents of the bedroom at the time of the fire would have vacated the premises but for the defendant's negligence, or the particular habit of the two tenants who would have continued to reside in the bedroom, vis-à-vis, the use of electrical items, the question as to whether a reduction in the number of tenants would have made a material difference to the tendency of the occupants of the bedroom to overload the electrical circuitry of the house, remains a matter of conjecture.*

- *There is no evidence as to:*
  - *which of the tenants would have vacated the premises; and/or*
  - *whether purchase of the computer monitor was related to or dependant upon the occupation of the bedroom by four tenants and not by two; and/or*
  - *whether the purchase of the computer would have occurred if the bedroom was occupied by only two people.*

Accordingly, Saccardo J held that the owners failed to establish factual causation under s51(1)(a) of the *Wrongs Act 1958* (Vic) and common law causation for the purposes of the contract claim. Consequently, the owners failed to establish that the fire, and accordingly the loss, was caused by Bells breach of its contractual duty or common law duty of care.

### **6.5 Legislative gap in relation to smoke alarms**

The RTA does not impose any obligation on landlords or rooming house owners to check if smoke alarms have been properly installed and are working at the beginning of a tenancy. There are also no obligations on landlords or rooming house owners to ensure that premises are generally safe prior to a tenant assuming possession. There is only a general duty under s 65 on landlords to “ensure that on the day that it is agreed that the tenant is to enter into occupation, the rented premises are vacant and in a reasonably clean condition”. There is no equivalent provision that applies to rooming houses.

There are also no clear obligations under the RTA on landlords or rooming house owners (or even tenants or rooming house residents) to regularly check and maintain smoke alarms during their periodic inspections or otherwise.

Sections 68 and 120 of the RTA require a landlord and rooming house owner respectively to maintain a dwelling “in good repair”, although it is unclear whether this would encompass an obligation to replace a smoke alarm that was in the dwelling and working when the occupant took possession. No reported decision of either the Supreme Court of Victoria or VCAT has addressed this issue. Sections 72 and 129 of the RTA impose an obligation on landlords and rooming house owners to effect repairs which are deemed “urgent”. It is arguable, but by no means certain, that repairing a defective smoke alarm that was working at the commencement of a tenancy/residency agreement would fall within the definition or “urgent repair” in s 3 as “any fault or damage that makes rented premises ... unsafe or insecure”. This issue has not been the subject of consideration by the Supreme Court of Victoria. There also appear to be no *reported* cases of VCAT which have considered the issue of smoke alarms in the context of a landlord’s duty to undertake repairs.

Interestingly, in the Registered Accommodation Association of Victoria (RAAV), “Running a better rooming house: a best practice handbook for operators”, RAAV recommends that a rooming house owner check that smoke alarms are correctly located within the rooming house and do a regular monthly full check of all smoke alarms, planned battery replacement

and maintain inspection reports on file. By contrast, the CAV guidebooks in relation to rooming houses and residential tenancies do not provide any guidelines as to who would be responsible for checking, maintaining and replacing smoke alarms.

The CAV guidebook in relation to residential tenancies does, however, state that landlords are responsible for fitting smoke alarms (however, unless the landlord is also the owner, the RTA and BR do not actually prescribe this obligation on to all landlords).<sup>149</sup> The CAV guidebook in relation to rooming houses states that “operators must have adequate and well-maintained hard-wired smoke alarms to protect residents” (however, unless the rooming house operator is the owner and the building was built after 1997, the BR and RTA do not actually prescribe this obligation on all rooming house owners).<sup>150</sup>

This is a problematic gap in the current legal framework regulating both residential tenancies and rooming houses arrangements in Victoria and should be remedied, particularly for people like Mr Zinzuwadia, who would have unwittingly fallen within the definition of tenant and rooming house owner.

### **6.6 Legislative gap in relation to fire safety**

There are no equivalent provisions in the RTA or RTR that apply any safety standards like those that apply to rooming houses to residential tenancy agreements.<sup>151</sup> This represents a significant gap in fire safety for residential tenants. Further, the discrepancy in the obligations for rooming house owners and landlords has created an absurd incentive for rooming house owners to enter into tenancy agreements with their residents in order to avoid the operation of the rooming house standards. HPLC has anecdotally heard of rooming house owners doing this. This is because s94(1A) of the RTA states that:

*If a tenancy agreement is entered into by a resident and a rooming house owner in respect of a room in a rooming house, the rooming house provisions do not apply to the occupation of that room by that resident while the tenancy agreement continues.*

While it states that the rooming house provisions do not apply to the occupation of that **room** (as opposed to the rooming house as a whole), it is not clear whether the rooming house standards are precluded from applying altogether.

Given that small rooming houses (that are often not structurally any different to dwellings subject to residential tenancy agreements), it seems that at least some of the key fire safety protections, particularly in relation to electrical and safety checks and the installation of electrical circuit breakers and safety switches, should apply equally to residential tenancies to rectify this unwarranted discrepancy.

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<sup>149</sup> CAV, *Renting a home: A guide for tenants* (2012) CAV, 15.

<sup>150</sup> CAV, *Rooming Houses A Guide for Residents and Operators* (2012) CAV, 14

<http://www.consumer.vic.gov.au/library/publications/housing-and-accommodation/renting/rooming-houses--a-guide-for-residents-and-operators.pdf>.

<sup>151</sup> Rooming House RTR. The prescribed standards will come into force from 31 March 2013 (see section 6.1 for a summary.)

### *6.7 The interaction between rooming house/residential tenancy legislation*

The current interaction between the RTA, PHWA and the BA/BR is exceedingly complex and the obligations for ensuring that the dwelling is safe fall onto different persons (in the case of the BA/BR, the dwelling owner, in relation to the RTA and PWHA either the landlord, the rooming house owner, or the tenant). Enforcement of the various duties under these different legislative frameworks also rests with separate bodies. While local councils oversee compliance and enforcement of the standards contained within the BA/BR and the health standards within the PHWA, the CAV is responsible for enforcing the provisions of the RTA. This makes it difficult to educate people about their rights and obligations, comply with the laws and enforce them.

## **7. Comments and recommendations sought**

In light of the broader social trends and policy issues that this matter raises (see section 5) and the legislative gaps that exist in relation to fire safety (see section 6), TUV and HPLC respectfully request that the Coroner make the below comments and recommendations pursuant to s 67(3) and s 72 of the CA in relation to the fire and resulting deaths at the Dwelling.

### **7.1 Comments**

#### **COMMENTS**

**Comment 1:** The international students who occupied the single bedroom were homeless.

**Comment 2:** The Dwelling was being operated as a rooming house.

**Comment 3:** The Dwelling was unsafe.

**Comment 4:** The lack of affordable and adequate housing available to those on low income in Victoria as well as access barriers faced by international students in particular, are factors that can lead people to live in overcrowded situations and/or in rooming houses.

**Comment 5:** Vulnerable people, including international students, need support to locate, access and sustain safe rental tenancies as well as access to better education about their rights and responsibilities and basic fire safety.



## 7.2 Recommendations

### RECOMMENDATION 1 - ENSURING THAT DWELLINGS ARE SAFE

In relation to private rental properties, the RTA imposes no obligations on either landlords or agents or rooming house owners, to ensure that the premises or rooming houses are generally safe prior to a tenant or rooming house resident assuming possession. TUV and HPLC recommend that the RTA be amended to ensure that the rented premises or rooming house room is safe at the beginning of a tenancy.

In relation to **residential tenancies**, we recommend an amendment to s 65(1) to be as follows:

*A landlord must ensure that on the day that it is agreed that the tenant is to enter into occupation, the rented premises are vacant, **safe** and in a reasonably clean condition.*

In relation to **rooming house arrangements**, we recommend a provision to be added to Part 3 of the RTA to be as follows:

*A rooming house owner must ensure that on the day that it is agreed that the rooming house resident is to enter into occupation, the rooming house room is safe, vacant and in a reasonably clean condition.*

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### RECOMMENDATION 2 - CLARIFY WHO IS RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF SMOKE ALARMS

Victorian law is not clear in specifying the obligations of owners, landlords, rooming house owners and tenants with respect to smoke alarms. TUV and HPLC recommend that legislative amendments be made to the RTA to clarify who is responsible for installing, checking, maintaining and replacing alarms in residential tenancies and rooming house arrangements.

Proposed amendments have been developed with regard to the *Fire and Rescue Service Act 1990 (Qld)*.

In relation to **residential tenancy arrangements**, we propose the following sections to be added into Part 2 of the RTA:

(1) *At the beginning of a tenancy agreement and every year thereafter, a landlord or agent must certify that each and every smoke alarm at the rented premises:*

- a) *has been properly installed in the correct location (as required by the Building Code of Australia or Building Regulations 2006 (Vic));*
- b) *has been tested and cleaned in accordance with the manufacturer's instructions; and*
- c) *is working effectively.*

(2) *During a tenancy, a landlord or agent must replace any smoke alarm before the end of its service life, or if it reaches the end of its service life, replace it immediately.*

*(3) A tenant must advise the landlord or agent if the tenant becomes aware that the smoke alarm is not working.*

We also propose an amendment to s 86 (grounds for entry for rented premises) that an additional sub-clause be inserted which reads:

*For the purposes of an inspection under subsection 1(f), the landlord or estate agent check that the smoke alarms are working and that power boards are not being overloaded.*

In relation to **rooming houses**, we propose the following sections to be added into Part 2 of the RTA:

*(1) At the beginning of a residency agreement and every year thereafter, a rooming house owner must certify that each and every smoke alarm:*

- a) has been properly installed in the correct locations (as required by the Building Code of Australia or Building Regulations 2006 (Vic));*
- b) has been tested and cleaned in accordance with the manufacturer's instructions; and*
- c) is working effectively.*

*(2) During a residency agreement, a rooming house owner must replace any smoke alarm before the end of its service life, or if it reaches the end of its service life, replace it immediately.*

*(3) A resident must, in relation to any smoke alarm in the residents' room, advise the rooming house owner if the resident becomes aware that a smoke alarm is not working.*

We also propose an amendment to s 137 (grounds for entry of a room) that an additional sub-clause be inserted which reads:

*For the purposes of an inspection under subsection 1(e), the rooming house owner or agent check that the smoke alarms are working and that power boards are not being overloaded.*

Further, we recommend that the definition of urgent repairs in 3(1) of the RTA be amended to include a "smoke alarm that is not working" so that it is clear that the landlord or rooming house owner or their respective agents are responsible and liable for repairing any smoke alarms immediately

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### **RECOMMENDATION 3 - ENSURE THAT ROOMING HOUSE OWNERS CANNOT OPT OUT OF THE ROOMING HOUSE STANDARDS**

Once the rooming house standards made pursuant to s142C come into force on 31 March 2013, there is a large discrepancy between the fire and safety obligations of rooming house owners under s142C, as compared with rented premises covered by the tenancy provisions of the RTA. This creates an incentive for rooming house owners to enter into tenancy agreements with rooming house residents in order to avoid these standards.

We recommend that this be rectified by inserting an amendment into s 94(1A) of the RTA that:

*If a tenancy agreement is entered into by a resident and a rooming house owner in respect of a room in a rooming house, the rooming house provisions do not apply to the occupation of that room while the tenancy agreement continues save for any standards made pursuant to s142C of the RTA and the obligation to comply with those standards under s142C.*

In addition, we recommend that, at a minimum, the fire and safety standards that apply to rooming house owners also apply to landlords. We recommend inserting a provision into Part 2 of the RTA or RTR that states:

- 1) *At the beginning of a tenancy agreement, a landlord or agent must certify, that all power outlets and lighting circuits are connected to:*
  - a) *a switchboard type Circuit Breaker that complies with AS/NZS 3000 Electrical installations, as published from time to time; and*
  - b) *a switchboard type Residual current Device that complies with –*
    - (i) *AS/NZS 3190 Approval and test specification – residual current devices (current-operated earth-leakage devices), as published from time to time; or*
    - (ii) *AS/NZS 61008.1 Residual current operated circuit-breakers without integral overcurrent protection for household and similar uses (RCCBs): Part 1: General rules, as published from time to time.*
- 2) *A landlord or agent is required to conduct:*
  - a) *a gas safety check at least once every 2 years by a licensed gasfitter of all gas installations and fittings at the premises.*
  - b) *an electrical safety check at least once every 5 years by a licensed electrician of all electrical installations and fittings at the premises.*

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#### **RECOMMENDATION 4 - AMEND THE CAV GUIDEBOOKS**

A central issue in this matter is the lack of education and understanding by the occupants of the Dwelling about fire and safety issues. As one of the residents, Darshan Mandaliya said in his Witness Statement *“[I]n relation to smoke alarms I can say that in India where I came from they are not normally used in any of the houses or buildings that I am aware of so I was not familiar with smoke alarms before I came to Australia. I was not aware of what they looked like prior to the fire. I was not aware that they would normally be fitted inside a house in Australia.”*<sup>152</sup>

We recommend that the CAV, “Renting a home: A guide for tenants” booklet be amended to include the following information:

1. a diagram of a smoke alarm and easy to understand instructions about where they should be located in the premises, how to test and clean them and how to change the batteries;
2. the rights and obligations of landlords or agents and tenants in relation to the installation, maintenance, repair and replacement of smoke alarms;
3. the fire and safety risk of having multiple appliances connected to individual power points on multi outlet power boards without any safety switches; and
4. basic fire and safety information if a fire occurs at the premises.

<sup>152</sup> Witness statement of Darshan Mandaliya dated 11 December 2008, 1.

We recommend that the CAV, "Rooming houses: a guide for residents and operators" booklet be amended to include the following information:

1. a diagram of a smoke alarm and easy to understand instructions about where they should be located in the premises, how to test and clean them and how to change the batteries;
2. the rights and obligations of rooming house owners and residents in relation to the installation, maintenance, repair and replacement of smoke alarms;
3. the fire and safety risk of having multiple appliances connected to individual power points on multi outlet power boards without any safety switches; and
4. basic fire and safety information if a fire occurs at the premises.

Further, it appears that there is lack of awareness and understanding amongst the broader public about the different types of living arrangements, whether it is a residential tenancy, a subtenancy, a rooming house, or a licence, and the different rights and obligations that would then apply.

As such, we recommend that the both CAV guidebooks are updated to contain an easy-to-understand explanation of the different types of living arrangements, the characteristics of each arrangement and the various rights and obligations that then apply (including the obligation that rooming house owners register the premises with council).

In addition, the current guidebooks, especially the "Renting a home: A guide for tenants", should be simplified and made more accessible. Event tenants who speak English as a first language find it difficult to understand and it is therefore under-utilised as a potential resource.

It is also crucial that the guidebooks are translated into as many different languages as possible, including the first language of the residents of at the premises.

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#### **RECOMMENDATION 5 - EDUCATION CAMPAIGN FOR INTERNATIONAL STUDENTS**

There is a significant risk that many potential tenants and rooming house residents either do not receive the guides, or cannot read and understand it. (It is unknown, for example, if the Zinzuwadia family received a CAV guidebook at the beginning of their tenancy.<sup>153</sup>)

We recommend an education campaign should be conducted that manages to appropriately and effectively communicate information about fire, health and safety and housing rights and obligations to international students and recent arrivals.

We consider that the best way to do this is:

<sup>153</sup> In the Schedule to Residential Tenancy Agreement for 216 Ballarat Road, Footscray between Ms Pham, Bells and Mr Zinzuwadia dated 20 October 2007, it appears that Mr Zinzuwadia has signed to acknowledge that he has received a copy of Statement of Rights and Duties.

1. for CAV to conduct a consultation with international students, housing support groups, recently arrived migrants and any other interested party about their level of understanding of housing rights and obligations, particularly in relation to fire, health and safety and the most effective and appropriate ways to communicate such information to different cultural groups; and
2. develop and implement an education strategy and campaign based on the findings of the consultation.

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## RECOMMENDATION 6 - ROLE OF CAV IN THE REGULATION OF ROOMING HOUSES

The Coroner's report into the deaths of Sinclair and Giorgi recommended that CAV play a "leading role in the administration of the Health Act Prescribed Accommodation and related matters" [now the PHWA].

Specifically, the Coroner recommended that CAV: "*personnel be given powers of search and entry and with the support of suitably qualified Municipal employees and MFB officers, take the lead in ensuring compliance with the Health Act Prescribed Accommodation Regulations [now the PHWA], the Planning and Environment Act and the Building Code fire safety provisions, in regard to all class 3 boarding house premises. This recommendation anticipates that having first identified unregistered premises, CAV would then monitor the registration process and further advise Municipal Councils concerning possible closures and/or prosecutions, in appropriate cases.*"<sup>154</sup>

While CAV has taken a greater role to lead councils since the amendments were made to the rooming house provisions, there remains a significant (and growing) issue with:

1. unregistered rooming houses;
2. unscrupulous and exploitative rooming house owners;
3. rooming houses that are unsafe, unclean and overcrowded; and
4. lack of enforcement action taken by CAV against rooming house owners in breach of the legislation.<sup>155</sup>

Accordingly, we recommend that CAV:

1. consult with local councils, housing referral agencies, HPLC, TUV and any other relevant party about rooming houses that are not complying with the laws;
2. in cooperation with local councils, develop and implement a compliance strategy based on the findings of the consultation; and
3. take enforcement action against those rooming house operators who are notorious in the industry for breaching the laws and operating unsafe, unclean and overcrowded rooming houses.

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<sup>154</sup> Peter White, Record of investigation into death Case No 3727/06, 29 September 2009, 31.

<sup>155</sup> See the following article in The Age about a rooming house owner who, despite being named as having contributed to the deaths of Sinclair and Giorgi, is still operating dangerous and exploitative rooming houses across the State. Marika Dobbin, 'Darebin's Houses of Shame' *The Age (online)* 10 December 2012

<http://www.theage.com.au/victoria/darebins-houses-of-shame-20121209-2b3ts.html>

## RECOMMENDATION 7 - ROLE OF REAL ESTATE INSTITUTE OF VICTORIA AND REGISTERED ACCOMMODATION ASSOCIATION OF VICTORIA

As the peak professional association for real estate agents, Real Estate Institute of Victoria (REIV) can play a significant role in educating real estate agents and landlords about their obligations under the RTA as well as producing best practice guidelines. Similarly, the Registered Accommodation Association of Victoria (RAAV) is a membership based association for privately owned and operated rooming houses in the registered accommodation sector that produces a best practice handbook for operators.

Generally, real estate agents, landlords and rooming house owners have a good opportunity at the beginning of tenancy or residency agreements to communicate to tenants or rooming house residents about their rights and responsibilities and basic fire safety.

It may have, for example, made a critical difference to this matter if Ms Kovacic from Ray White had pointed out to Mr Zinzuwadia what a smoke alarm is in their initial inspection of the Dwelling together, or if she had explained in plain language to Mr Zinzuwadia what his rights and obligations were under the tenancy agreement.

In the MFB Report, the MFB stated:

*The lack of smoke detector protection as early warning devices for tenants in rental properties is a major concern for the Fire Services across Australia. Overseas students studying in Australia are sometimes unaware of all the relevant legislation and/or tenancy regulations that cover rental properties in Australia. Multiple appliances being connected into individual power points by the use of multi outlet power boards is another major concern that visiting students need to be made aware of especially when student accommodation is offered using old and sometimes run-down properties that are normally inexpensive to rent.<sup>156</sup>*

Accordingly, we recommend that REIV and RAAV:

1. conduct an education campaign (including training sessions) for real estate agents/landlords and rooming house operators respectively about their obligations in relation to fire safety;
2. identify ways that their membership can better communicate to people at the beginning of their tenancy or residency:
  - a) what a smoke alarm is, how to clean, test that it is working and replace batteries;
  - b) who is responsible for installing, maintaining and repairing smoke alarms;
  - c) the fire risk of overloading power boards;
  - c) their basic rights and obligations; and
  - d) the tenancy agreement/rooming house agreement.

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<sup>156</sup> MFB Report, 5.