

**Comments on the Landlord and Tenant (Consolidation) (Amendment) Bill 2021
August 2021**

Justice Centre Hong Kong appreciates this opportunity to provide submissions to the Bills Committee on the Landlord and Tenant (Consolidation) (Amendment) Bill 2021. Our submission focuses on the situation of refugees and asylum seekers, who are referred to as non-refoulement claimants under the Unified Screening Mechanism.

While we welcome the proposed framework of tenancy control in the Bill, which aims to afford greater protection to tenants of subdivided units (SDUs), we also invite the Bills Committee and the Government to consider the unique circumstances of refugees and asylum seekers to ensure these measures would benefit all SDU tenants equally.

1. Humanitarian assistance provided to non-refoulement claimants

To provide context, the Social Welfare Department has commissioned the International Social Service Hong Kong Branch (ISS) to offer humanitarian assistance to non-refoulement claimants to “prevent them from becoming destitute during their presence in Hong Kong” since 2006¹. The existing level of humanitarian assistance was last revised in February 2014², which includes³:

Assistance Item	Assistance received by each claimant per month
Food	\$1,200 (in the form of top-up supermarket food card)
Accommodation (Rent Allowance)	\$1,500 (adult); \$750 (child) (Paid directly to landlords by ISS)
Utilities	\$300
Transportation Allowance	\$200 to \$420
Other Basic Necessities	Provided in kind

Since 2014, the Government has also provided, through ISS, claimants with rental deposits of \$3,000 or an amount equivalent to two months of the rent, whichever is the less. And generally, each claimant is eligible for this deposit for one time only.

¹ Government Press Release, “LCQ3: Humanitarian assistance for non-refoulement claimants”, 2017. Available at <https://www.info.gov.hk/gia/general/201702/15/P2017021500554.htm>.

² Audit Commission, “Provision of Humanitarian Assistance to Non-Refoulement Claimants by the Social Welfare Department”, 2020. Available at https://www.aud.gov.hk/pdf_e/e75ch10sum.pdf.

³ Government Press Release, “LCQ3: Humanitarian assistance for non-refoulement claimants”, 2017. Available at <https://www.info.gov.hk/gia/general/201702/15/P2017021500554.htm>.

Under current policy, tenancy agreements are entered into between claimants and landlords, whereas rental deposit agreements are entered into between ISS, claimants and landlords⁴. The policy also states that if landlords request to forfeit such deposits according to tenancy agreements, they must provide justifications and relevant proofs for the consideration and approval by ISS, while requiring ISS to investigate, seek legal advice or report to the Police in suspicious cases.

As of 30 September 2020, there were approximately 13,000 claimants in Hong Kong across all stages of their claims⁵. It is likely that many live in SDUs due to meagre rental allowance.

2. Response to likely “pre-emptive” actions by landlords

As the Task Force has taken note that SDU landlords would “very likely take ‘pre-emptive’ actions, such as immediate rent increase and eviction of tenants, before the tenancy control measures come into force”⁶, we call on the Bills Committee to work with relevant Authorities, including the Social Welfare Department (SWD), to devise contingent plans to protect the interests of current SDU tenants, especially refugees and asylum seekers.

Refugees and asylum seekers are not entitled to the right work and most have no means to support themselves⁷. Hence, if landlords are to immediately increase claimants’ rents before such measures come into effect, claimants would very likely be unable to afford the new rents, leading to evictions and even homelessness.

We urge the Bills Committee to work with the Government to draft plans preventing and, when needed, remedying the potential mass eviction and homelessness of some of the SDU tenant population, which is over 226,000 people, before passage of the Bill.

3. Rent level and level of rent allowance

According to the Transport and Housing Bureau (THB)’s Legislative Council Brief (LegCo Brief), there are some 111,000 SDUs in Hong Kong providing accommodation to over 226,000 persons, with the median monthly rent of SDUs being \$4,800.

Assuming the average household size of SDUs as 2 persons based on the above information, the median rent of SDUs is drastically higher (60%) than the amount of monthly rent allowance that 2 adult claimants would receive, which is \$3,000. For a single parent with a young child,

⁴ Ibid.

⁵ Information request to the Security Bureau, 2020. Available at https://accessinfo.hk/en/request/number_of_non_refoulement_claims_9.

⁶ Transport and Housing Bureau, “Legislative Council Brief, Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2021”, 2021. Available at https://www.legco.gov.hk/yr20-21/english/brief/thb20210706_20210706-e.pdf.

⁷ Substantiated claimants could apply to the Immigration Department to take up employment but as of February 2019, only 39 such individuals were granted this permission at least once, according to LC Paper No. CB(2)874/18-19. Available at <https://www.legco.gov.hk/yr18-19/english/hc/papers/hc20190301cb2-874-e.pdf>.

their rental allowance is \$2,250 per month, making it virtually impossible to find suitable accommodation given Hong Kong's housing market is the world's least affordable.

Hence, we concur with Audit Commission's recommendation that the Director of Social Welfare should, in consultation with the Security Bureau, continue to review the level of assistance provided to non-refoulement claimants with the aim of ensuring that "the Government meets the aim of providing the assistance", which is to prevent claimants from becoming destitute⁸.

Considering any likely rent increase before the Bill takes effect, we call on the Bills Committee to work with relevant Authorities in exploring options to regulate the level of rent across SDUs in addition to measures proposed in the Bill, as well as increasing the rental allowance provided to claimants.

4. Reporting non-compliance to the Rating and Valuation Department

While the Bill has formulated several new offences to deter non-compliance with the tenancy control measures specified therein and designated the Rating and Valuation Department (RVD) as the public authority responsible for administering such new provisions, there exists a lack of clarity on how SDU tenants should report non-compliance to the RVD.

For instance, claimants, landlords and ISS are all parties to the rental deposit agreements (as explained above) and when a landlord commits an offence under proposed section 120AAZK to request a rental deposit exceeding 2 months' rent under the tenancy, it is not clear whether the claimant should report such non-compliance to ISS or directly to the RVD, and whether ISS as the service provider and a party to this agreement should instead report such to the RVD.

In terms of handling suspicious requests from landlords to forfeit part/all the deposits, it is also not clear how the new provisions would affect the current policy of requiring ISS to investigate, seek legal advice or report to the Police, especially in dealing with *prima facie* violations of proposed section 120AAZK.

In the scenario of tenants being overcharged for utilities, which is an offence under proposed section 120AAZL, there again lacks clarity on whether the claimant should report non-compliance to their ISS caseworker or the RVD for mediatory services⁹, and if ISS has a responsibility in monitoring such events under their contract with the SWD.

These examples only serve to exemplify the lack of clarity and are not exhaustive. Therefore, the THB should work with both the RVD and SWD in devising a guideline for ISS/claimants to report suspected non-compliance, so as to ensure enforcement actions where appropriate.

⁸ Audit Commission, "Report No. 75 of the Director of Audit on the results of value for money audits - October 2020", 2020, P.863 and P.919. Available at <https://www.legco.gov.hk/yr20-21/english/counmtg/papers/cm20201125-sp033-e.pdf>.

⁹ Para. 28 in the LegCo Brief states that the RVD would provide advisory and mediatory services.

5. Language barriers

Claimants are from dozens of countries of origin and speak a variety of languages. They often face language barriers in accessing public services as many do not speak either of the two official languages in Hong Kong.

As the proposed tenancy control measures are technical and SDUs may not be prevalent in other countries/regions, claimants may not recognise the fact that they live in SDUs and understand how they could benefit from such measures, coupled with language barriers in accessing relevant information and news.

According to the Administrative Guidelines on Promotion of Racial Equality issued by the Constitutional and Mainland Affairs Bureau, public authorities should “introduce the availability of and proactively offer language services to service users”¹⁰.

Hence, the THB and RVD should work with the SWD and ISS to promote awareness of the new regulatory regime especially among non-refoulement claimants and other ethnic minorities, while providing sufficient language services, through various channels such as information pamphlets and community briefing sessions, in order to equally protect all SDU tenants.

Please contact Preston Cheung (preston@justicecentre.org.hk), Senior Advocacy and Communications Officer at Justice Centre Hong Kong, for any questions regarding this submission.

About Justice Centre Hong Kong

Justice Centre Hong Kong is a non-profit organisation focused on the promotion of human rights through our legal, psychosocial, research, policy and awareness-raising work. We are committed to driving change for a just and fair society.

Founded in 2007 as The Hong Kong Refugee Advice Centre, over seven years we helped over 2,000 men, women and children on the road to a new life.

Building on our expertise in refugee issues, in 2014 we identified a clear need for an increased response to tackling forced labour and human trafficking in Hong Kong, and expanded our remit to fill this gap and rebranded as Justice Centre Hong Kong. We now help around 300 people each year through our direct services and aim to benefit many more through our research, policy and awareness-raising work.

¹⁰ Constitutional and Mainland Affairs Bureau, “*Administrative Guidelines on Promotion of Racial Equality*”. Available at https://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/agpre/adm_guidelines.pdf.