

RE: Submission regarding the Residential Tenancies Amendment (Rental Fairness) Bill 2023

Dear Committee Members,

Thank you for the opportunity to provide a submission to the Legislative Assembly Select Committee on the *Residential Tenancies Amendment (Rental Fairness) Bill 2023*.

The lack of affordable, safe and secure housing is a major contributor to homelessness in NSW. Rising rents and low vacancy rates are placing private renters under pressure, which increases demand for government-funded housing and homelessness services. At the 2021 Census, 36% of rental households in NSW were experiencing rental stress, where rent payments amount to more than 30% of household income. This stress increases for people on low incomes and those receiving support payments.

We welcome the NSW Government's legislation to put in place mechanisms to strengthen tenant rights and make renting fairer. The Committee has asked for submissions relating to Clause 22B – a clause which relates to a practice commonly known as 'rent bidding', whereby prospective tenants offer more money than the advertised price for a rental property, either voluntarily or in response to solicitation by agents, owners or third parties.

Homelessness NSW recommends the committee adopt the following recommendation:

- Re-draft Clause 22B to align with the following policy position:
 - A maximum fixed rental price must be advertised at the time a property is put up for rent. This advertised rate would act as a price ceiling.
 - Landlords, real estate agents and potential tenants must not offer, solicit, or accept a higher rental rate than the originally advertised rate.
 - Rental prices paid could be periodically cross-referenced between the original advertised price and the rental price included in the rental bond data to ensure the practice is being followed.

This policy encourages landlords to set the rent at the rate the market will bear – circumventing a regulated auction by setting the price the landlord is willing and happy to accept. Potential tenants can apply in the knowledge that the rent is within their budget and as such compete fairly on price – no time is wasted for either the tenant or agent leading to the most efficient and transparent process possible.

We believe this policy would create a fairer and more transparent rental system, benefiting tenants, landlords and property managers.

We welcome the opportunity to provide this submission and to speak to the committee further. Please contact Joshua Greenwood, Head of Partnerships & Governance at joshua@homelessnessnsw.org.au should you wish to discuss any element of our submission further.

Yours Sincerely,

Trina Jones
CEO, Homelessness NSW

Homelessness NSW – Submission regarding the Residential Tenancies Amendment (Rental Fairness) Bill 2023

Homelessness NSW is a not-for-profit organisation that operates as a peak agency for its member organisations to end homelessness across NSW. We exist to build the capability of people and the capacity of systems to end homelessness. We have a vision for a future where everyone has a safe home and the support to keep it. Our 200 members include specialist homelessness services, people with lived experience, allied organisations and services working to end homelessness. We work with our members, people with lived experience and a broad network of partners to understand drivers of homelessness, advocate for solutions, build skills and knowledge, and scale innovation.

We thank you for the opportunity to provide a submission to the Legislative Assembly Select Committee on the *Residential Tenancies Amendment (Rental Fairness) Bill 2023*.

Homelessness NSW supports strengthening tenants' rights

There is a rental crisis in NSW. Vacancy rates are at an all-time low, 36% of renters are in rental stress, with some Local Government Areas as high as 48%, and renters are continuing to face rising weekly rents – with the latest data showing a 25% increase in median weekly rentals since late 2020. Without access to affordable safe rental homes many people will fall into or become entrenched in homelessness.

We welcome the NSW Government's legislation to put in place mechanisms to strengthen tenant rights and making renting fairer. While the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* will make several improvements for tenants, including advertising fixed amounts of rent rather than “negotiable” rates, and implementing a transferable bond scheme, we are concerned the current drafting will have unintended consequences counter to the intention of the bill, specifically related to clause 22B.

Clause 22B relates to the mechanisms around offers of rent. This is commonly known as ‘rent bidding’, a process whereby prospective tenants offer more money than the advertised price for a rental property, either voluntarily or in response to solicitation by agents, owners or third parties. It is a practice that can create unfair competition and increase rental prices in a tight market – especially problematic in the high-inflation environment we are currently in. It can also lead to discrimination, exploitation and insecurity for tenants, especially those who are vulnerable or disadvantaged. We note this conduct is not condoned by professional real estate agents and not encouraged.

The current draft legislation requires owners and agents to notify applicants of other offers that are higher than the advertised price but does not prevent them from accepting such offers. The unintended consequence of the efforts of these transparency measures will in effect create a regulated rental auction. This means that rent bidding can still occur, and that tenants can still be pressured or driven to pay more than they can afford. We have become aware that the recent media on the practice has also led to increased bids from prospective tenants.

The administrative burden of this process on real estate agents will also further complicate the rental process for tenants. The 24hr notification approach proposed relies on tenants having available internet access, proficiency in English and the financial literacy to engage in the process. The Legislative Assembly Select Committee terms of reference for inquiry into this Bill targets this section. We make the following comments and suggestions:

Terms of Reference – Homelessness NSW comments & suggestions

Terms of Reference	Comment
<p>Whether clause 22B of the Bill will provide sufficient transparency for applicants to enable them to make informed decisions if bids higher than the advertised rental price are received during the application process to secure a residential tenancy.</p>	<p>The issue with rent bidding is not the transparency but the practice itself. Using legislation to ban ‘silent’ rent bidding and instead regulate ‘public’ rent bidding serves only to create additional administrative burden for agents and potentially increase the practice of rent bidding amongst prospective tenants.</p>
<p>The impact of clause 22B on improving disclosure and transparency requirements compared to the current rental application process.</p>	<p>While the current drafting will improve transparency and disclosure, it acts only to legitimise a practice that harms tenants and creates administrative burden for agents.</p> <p>It also could have unintended consequences of increasing rent prices that are already unaffordable for those on low income.</p>
<p>How clause 22B might be expected to influence applicants’ transactional behaviour.</p>	<p>The current Residential Tenancy Act is silent on rent bidding. This means that while it is not illegal, it is not publicly acknowledged as a mechanism a tenant can and should use to secure a property.</p> <p>We are concerned the current drafting will legitimise rent bidding by unintentionally creating a regulated auction process. By legislating this process, it could embed an expectation that tenants should provide higher bids than the advertised price to secure a rental property. In very tight rental markets this is made only more severe.</p> <p>Thus, rather than making renting fairer, the current drafting of clause 22B will likely mean:</p> <ul style="list-style-type: none"> a) Many prospective tenants who applied for a property based on an advertised price assuming it was within their budget will miss out – not only does this waste individuals’ time, it can also be very distressing to people on low income in need of accommodation. b) Agents will need to spend additional time conducting the public auction process – this is an administrative burden that could easily be removed if the advertised rent was set at the rate the landlord was willing to accept.
<p>Whether there are any additional measures to improve transparency for applicants during the rental application process or better protect applicants without formalising an auction process for rental properties.</p>	<p>The issue of transparency has been discussed above. As noted, greater transparency in this situation does not fix the issue but rather unintentionally risks entrenching and exacerbating the problem.</p> <p>HNSW recommends that Clause 22B be re-drafted to reflect the following policy position:</p>

- A maximum fixed rental price must be advertised at the time a property is put up for rent. This advertised rate would act as a price ceiling.
- Landlords, real estate agents and potential tenants must not offer, solicit, or accept a higher rental rate than the originally advertised rate.
- Rental prices paid could be periodically cross-referenced between the original advertised price and the rental price included in the rental bond data to ensure the practice is being followed

This policy encourages landlords to set the rent at the rate the market will bear – circumventing a regulated auction by setting the price the landlord is willing and happy to accept. Potential tenants can apply in the knowledge that the rent is within their budget and as such compete fairly on price – no time is wasted for either the tenant or agent leading to the most efficient process possible.

We believe that this policy would create a fairer and more transparent rental system that would benefit both tenants and landlords. It would reduce stress and uncertainty for tenants, who would know exactly how much rent they need to pay and whether they can afford it. It may also encourage property providers to set realistic and reasonable rents that reflect the market value and condition of their properties and reduce the administrative burden that a regulated rental auction would cause.