

Select Committee on  
the Residential Tenancies Amendment  
(Rental Fairness) Bill 2023



LEGISLATIVE  
ASSEMBLY

# Residential Tenancies Amendment (Rental Fairness) Bill 2023



Report 1/58 – June 2023

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The motto of the coat of arms for the state of New South Wales is "Orta recens quam pura nites". It is written in Latin and means "newly risen, how brightly you shine".

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# Membership

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## Chair's foreword

The incredible generosity of spirit provided by the various stakeholders cannot be overstated in making this Select Committee the success that it has been, against an incredibly tight timeframe. The pace of this inquiry was driven by the desire to bring a legislative process to Parliament to improve certain elements of rental tenancies, as quickly as possible.

The scope of this inquiry was very tightly constrained. Clause 22B of the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* speaks only to the means by which transparency of rent offers above the advertised price are being made.

Bringing transparency to offers of rent above the advertised price has not been enacted in any other state of Australia. As such, it is not possible to know the exact impact of any such changes. Many of the submissions and hearing witnesses offered their own view of what 'might', 'could' or 'may' happen. In fact, there is no evidence that any of these things will occur, or will happen in the way in which it was first thought.

Throughout the inquiry, it was clear that there is no data currently available to know the level and extent of 'secret rent bidding'. This a direct consequence of the secrecy and unregulated nature of the activity. It is difficult to foresee means by which action could, would and should be taken to make things better without this data being available. Capturing this data requires transparent processes.

It was heartening to have a number of submissions and witnesses clarify that, in the great majority of instances, a tenant is chosen for a property at, or below, the advertised or asking price based on many other factors, not just price.

The establishment of a Rental Commissioner is not a consequence of the Amendment Bill. While outside the scope of this inquiry, it appears highly likely that the work of the Commissioner will ultimately intersect with the question of transparency, and of offers being made above the asking rent price. It is possible that future legislation and/or regulations regarding transparency may come from the work of the Commissioner.

In closing, I would like to thank the Committee secretariat for making it possible to turn this entire inquiry around in such a short time. I know that this required late nights and weekends and the NSW Parliament is greatly assisted by your tenacity. I also commend and thank all participating members of the Committee, who each worked diligently in reading the submissions, and engaging actively and insightfully in the hearing process. We each leaned into, and benefitted from, our collective efforts.

**Clayton Barr MP**  
Chair

## Findings and recommendations

### Finding 1 \_\_\_\_\_ 1

There is a rental crisis in New South Wales. This crisis is driven by many factors and involves a high degree of complexity.

### Finding 2 \_\_\_\_\_ 1

There are existing protections against solicited rent bidding by real estate agents in New South Wales. NSW Fair Trading is currently implementing measures to ensure compliance, but this implementation is in its initial stages.

### Finding 3 \_\_\_\_\_ 2

Alongside the NSW Government's establishment of a Rental Commissioner, the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* includes key legislative reforms to address some elements of the current rental crisis and should be implemented as a matter of urgency.

### Recommendation 1 \_\_\_\_\_ 2

That the Legislative Assembly proceed to debate the *Residential Tenancies Amendment (Rental Fairness) Bill 2023*, omit clause 22B and pass all other provisions of the Bill as a matter of urgency.

### Recommendation 2 \_\_\_\_\_ 2

That the NSW Government prioritise the appointment of New South Wales' first Rental Commissioner.

### Finding 4 \_\_\_\_\_ 4

Secret rent bidding is happening in New South Wales, although more data and monitoring is required to understand the extent of this practice.

### Finding 5 \_\_\_\_\_ 4

Clause 22B of the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* as drafted seeks to make rent bidding transparent.

### Finding 6 \_\_\_\_\_ 5

Inquiry participants expressed concern about the potential unintended consequences that clause 22B of the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* may formalise, such as allowing multiple higher offers of rent above the advertised price.

### Finding 7 \_\_\_\_\_ 6

The selection of a successful tenancy applicant is a decision based on many factors including but not limited to the amount of rent.

## Finding 8 \_\_\_\_\_ 8

During the deliberations of the Committee, the NSW Government announced that it would amend the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* to omit clause 22B. The Committee believes that this approach is consistent with concerns raised during the inquiry process.

## Finding 9 \_\_\_\_\_ 8

While a number of inquiry participants noted the positive intent of clause 22B of the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* to increase transparency regarding secret rent bidding, they expressed a need for more consultation with industry and community stakeholders. The Committee supports the NSW Government's announcement that the incoming Rental Commissioner will be charged with increasing transparency in the rental market.

## Recommendation 3 \_\_\_\_\_ 8

That the NSW Government ensure that the Rental Commissioner consult with stakeholders in the course of overseeing transparency improvements in the rental market.

## Finding 10 \_\_\_\_\_ 10

Applicants from marginalised groups, including Aboriginal and/or Torres Strait Islander peoples, people with disability, older people over 55, people on lower incomes and those at risk of homelessness, already experience inequity and disadvantage in securing residential tenancy agreements. Tenancy applicants from these marginalised groups are further disadvantaged when offers for rent above the advertised amount are made, regardless of whether the higher offers are disclosed.

## Recommendation 4 \_\_\_\_\_ 10

That, in consultation with advocacy groups, the NSW Government consider how best to limit or reduce discrimination for people from marginalised groups when applying for tenancy agreements.

## Recommendation 5 \_\_\_\_\_ 13

That the Rental Commissioner:

- monitor the implementation of the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* as enacted, and
- advise and make recommendations about appropriate regulatory changes and actions in the course of monitoring its implementation.

## Recommendation 6 \_\_\_\_\_ 13

That NSW Fair Trading consider implementing reporting requirements and mechanisms to enable the Rental Commissioner to collect data on rent price increases and rent bidding.

## Recommendation 7 \_\_\_\_\_ 13

That the NSW Government consider implementing a standardised tenancy application form to improve transparency and disclosure in the tenancy application process.

Finding 11 \_\_\_\_\_ 14

Many stakeholders expressed a preference that there be no process for offering an amount of rent that is above the fixed amount advertised, however this was outside the focus and work of this inquiry.



# Chapter One – The need for reforms in the NSW rental market

## The rental crisis in New South Wales

### Finding 1

**There is a rental crisis in New South Wales. This crisis is driven by many factors and involves a high degree of complexity.**

### Finding 2

**There are existing protections against solicited rent bidding by real estate agents in New South Wales. NSW Fair Trading is currently implementing measures to ensure compliance, but this implementation is in its initial stages.**

- 1.1 During the inquiry, stakeholders indicated there is currently a rental crisis in New South Wales. Inquiry participants advised that unique financial pressures facing both tenants and landlords teamed with rising interest rates have resulted in rent prices increasing and vacancy rates falling.<sup>1</sup> Mr John Engeler, CEO of Shelter NSW, told the Committee that New South Wales has not faced a rental crisis like this before.<sup>2</sup>
- 1.2 The Committee accepts that there is currently a rental crisis in New South Wales. It further acknowledges that this crisis is driven by many different factors in a highly complex manner.
- 1.3 As an initial step to combat this crisis, a ban was introduced to prohibit real estate agents from soliciting or inviting a person to offer or pay an amount of rent higher than the amount advertised. Since this ban came into effect in December 2022, NSW Fair Trading has received 53 complaints about 'rent bidding', including complaints about landlords and agents not advertising a property for a fixed price, or asking applicants for rent amounts higher than the advertised price. The Department also confirmed that they have issued 51 penalty infringement notices to agents.<sup>3</sup>
- 1.4 While recent enforcement actions are welcomed, Ms Natasha Mann, Commissioner of Fair Trading at NSW Fair Trading, advised the Committee that these infringement notices only began being issued in March 2023. This is because the Department 'generally try and give the industry time to catch up with what's happening'.<sup>4</sup> The Committee notes that the *Residential Tenancies*

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<sup>1</sup> Mr Brendan Ross, Tenants Advice and Advocacy Service (TAAS) Coordinator, Northern Rivers Community Legal Centre (CLC), [Transcript of evidence](#), 2 June 2023, p 6; Mr John Engeler, Chief Executive Officer, Shelter NSW, [Transcript of evidence](#), 2 June 2023, p 16; Ms Trina Jones, Chief Executive Officer, Homelessness NSW, [Transcript of evidence](#), 2 June 2023, p 31.

<sup>2</sup> Mr Engeler, Shelter NSW, [Transcript of evidence](#), 2 June 2023, p 16.

<sup>3</sup> [Submission 19](#), Department of Customer Service, pp 1, 3-4.

<sup>4</sup> Ms Natasha Mann, Deputy Secretary, Better Regulation Division, Commissioner for Fair Trading and Head of SafeWork NSW, NSW Fair Trading, [Transcript of evidence](#), 2 June 2023, pp 40, 46.

*Amendment (Rental Fairness) Bill 2023 (the Bill)* seeks to extend the ban on solicited rent bidding to similarly prohibit landlords and third parties.

- 1.5 The Committee acknowledges that NSW Fair Trading has already started enforcement actions to ensure compliance with existing protections against solicited rent bidding. However, it notes that this enforcement is in its initial stages.

## **The Bill and the establishment of a Rental Commissioner**

### **Finding 3**

**Alongside the NSW Government's establishment of a Rental Commissioner, the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* includes key legislative reforms to address some elements of the current rental crisis and should be implemented as a matter of urgency.**

### **Recommendation 1**

**That the Legislative Assembly proceed to debate the *Residential Tenancies Amendment (Rental Fairness) Bill 2023*, omit clause 22B and pass all other provisions of the Bill as a matter of urgency.**

### **Recommendation 2**

**That the NSW Government prioritise the appointment of New South Wales' first Rental Commissioner.**

- 1.6 The Bill was introduced on 10 May 2023 by the Hon. Anoulack Chanthivong MP, the Minister for Better Regulation and Fair Trading. In his second reading speech, the Minister stated that the Bill's aim is to ensure renters have access to 'secure, safe and affordable housing'. Under clause 22B, the Bill seeks to add transparency around the making of higher offers of rent above the amount advertised in order to eliminate 'secret bidding'.<sup>5</sup>
- 1.7 In its submission, the Department of Customer Service advised that clause 22A of the Bill extends the existing ban on solicited rent bidding to landlords and third parties, including online rental application tools, and requires rental properties be advertised at a fixed rent.<sup>6</sup> A number of inquiry participants expressed support for this extension of the existing ban on soliciting higher offers of rent.<sup>7</sup>
- 1.8 The Department further highlighted that the Bill would enable a rental bond roll-over scheme to be established under regulations. This reform measure received support from other inquiry participants in their submissions.<sup>8</sup>

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<sup>5</sup> New South Wales, Legislative Assembly, [Parliamentary Debates](#) (proof), 10 May 2023 (Anoulack Chanthivong, Minister for Better Regulation and Fair Trading), pp 17-20.

<sup>6</sup> [Submission 19](#), Department of Customer Service, p 1.

<sup>7</sup> [Submission 17](#), Murra Mia AC- Aboriginal Resource Unit- Aboriginal Tenant Advice and Advocacy Services, p 2; [Submission 20](#), Tenants' Union of NSW, pp 4, 6, 7; [Submission 22](#), Shelter NSW, p 5.

<sup>8</sup> [Submission 19](#), Department of Customer Service, p 1; [Submission 2](#), Dr Chris Martin, p 5; [Submission 13](#), NSW Council of Social Service, p 4; [Submission 21](#), Ageing on the Edge NSW Forum, p 2.

- 1.9 However, many stakeholders expressed concerns about the disclosure requirements under clause 22B of the Bill, which is examined in greater detail in Chapter Two below. Despite these concerns, the Committee recognises that the Bill sets out key reforms which may help address some elements of the current rental crisis and urges the Legislative Assembly to proceed to debate the Bill and pass it as a matter of urgency.
- 1.10 The Department of Customer Service confirmed in its submission that it is in the process of recruiting the first ever Rental Commissioner for New South Wales.<sup>9</sup> In his second reading speech, the Minister advised that the Commissioner would gather data on renting and identify barriers to increasing housing supply for tenants as well as the gaps and practices that limit tenants' rights.<sup>10</sup>
- 1.11 While their role was not detailed in evidence provided to the Committee, several stakeholders expressed support for the appointment of a Rental Commissioner.<sup>11</sup> Likewise, the Committee is encouraged by the current recruitment for a Rental Commissioner and recommends the NSW Government prioritise their appointment as a matter of urgency.

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<sup>9</sup> [Submission 19](#), Department of Customer Service, p 3.

<sup>10</sup> New South Wales, Legislative Assembly, [Parliamentary Debates](#) (proof), 10 May 2023 (Anoulack Chanthivong, Minister for Better Regulation and Fair Trading), pp 17-20.

<sup>11</sup> Mr Leo Patterson Ross, Chief Executive Officer, Tenants' Union of NSW, and Mr Engeler, Shelter NSW, [Transcript of evidence](#), 2 June 2023, p 16.

## Chapter Two – Clause 22B of the Bill

### Transparency and disclosure requirements of clause 22B

#### Finding 4

**Secret rent bidding is happening in New South Wales, although more data and monitoring is required to understand the extent of this practice.**

#### Finding 5

**Clause 22B of the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* as drafted seeks to make rent bidding transparent.**

- 2.1 Witnesses told the Committee that they had received anecdotal claims of secret rent bidding taking place in New South Wales.<sup>12</sup> As noted in Chapter One, NSW Fair Trading has already issued 51 penalty infringement notices for non-compliance. The Commissioner of Fair Trading informed the Committee that the Department is aware that unsolicited rent bidding is already occurring.<sup>13</sup>
- 2.2 The Committee agrees that secret rent bidding is occurring in New South Wales, however there is a lack of data to show the extent of the practice. Dr Chris Martin, Senior Research Fellow at the UNSW City Futures Research Centre, submitted that it is 'plausible that rental bidding has recently become more prevalent, particularly the unsolicited form'.<sup>14</sup>
- 2.3 A number of stakeholders commented that tenancy applicants may be making offers of rent above the advertised price because of uncertainty about housing stability in the current rental crisis. Mr Leo Patterson Ross, CEO of the Tenants' Union of NSW, suggested that pressure is coming from the current imbalanced rental market in NSW. This pressure has contributed to many tenancy applicants making higher offers of rent in order to secure housing. Dr Martin described rental bidding as more a 'symptom' than a cause of the pressured state of the current rental market.<sup>15</sup>
- 2.4 As noted in Chapter One, clause 22B of the Bill seeks to improve transparency around secret bidding. As currently worded, a landlord or their agent would have to notify all applicants of a 'higher offer' received by an 'acceptable applicant' under clause 22B. This notice must be in writing and provided within one business day of receiving that offer. A 'higher offer' is defined as an offer for an amount of rent which is higher than the advertised amount. Under the Bill, a

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<sup>12</sup> Mr Ross, Northern Rivers CLC, [Transcript of evidence](#), 2 June 2023, p. 3; Mr Patterson Ross, Tenants' Union of NSW, [Transcript of evidence](#), 2 June 2023, p 18.

<sup>13</sup> [Submission 19](#), Department of Customer Service, pp 3-4; Ms Mann, NSW Fair Trading, [Transcript of evidence](#), 2 June 2023, p 39; [Answers to questions on notice](#), NSW Fair Trading, 6 June 2023, p 2.

<sup>14</sup> [Submission 2](#), Dr Chris Martin, p 2; Mr Patterson Ross, Tenants' Union of NSW, [Transcript of Evidence](#), 2 June 2023, p 10.

<sup>15</sup> Mr Patterson Ross, Tenants' Union of NSW, [Transcript of evidence](#), 2 June 2023, p 12; Mr Engeler, Shelter NSW, [Transcript of evidence](#), 2 June 2023, p 12; [Submission 2](#), Dr Chris Martin, p 2.

person is an 'acceptable applicant' if the landlord would be willing to enter into a tenancy agreement with them.

- 2.5 Clause 22B would also prohibit a landlord from accepting a holding deposit before they have notified applicants of the higher offer. If a landlord is considering a higher offer before all open inspections are done, the Bill would require them to change the advertisement for that property to reflect the higher offer. The Committee considers that clause 22B as originally drafted seeks to make rent bidding transparent.
- 2.6 Most inquiry participants told the Committee that they recognised the value of improving transparency around secret rent bidding. However, many stakeholders cautioned that the transparency should be balanced against any potential unintended consequences.<sup>16</sup> This is discussed in detail in the next section.
- 2.7 Some witnesses argued that the notification requirement under clause 22B may also reduce transparency around the advertised price.<sup>17</sup> Additionally, several witnesses told the Committee that they recognised the transparency measures could empower some tenancy applicants. However, they contended that higher offers could discourage people with lower incomes or at risk of homelessness from seeking to secure tenancy agreements.<sup>18</sup>
- 2.8 Witnesses informed the Committee that prospective tenants may try to promote their own applications by making offers unrelated to the amount of rent. Mr Patterson Ross observed that applicants may propose to pay rent three or four months in advance, or take on what is otherwise the landlord's responsibility of maintaining the premises or gardens. Ms Maria Milillo, Head of Property Management at Raine & Horne Group, also advised on anecdotal experience that an applicant may secure a tenancy agreement by offering to move in sooner, rather than offering the highest amount of rent.<sup>19</sup>

## **Influence of clause 22B on tenancy applicants' behaviour**

### **Finding 6**

**Inquiry participants expressed concern about the potential unintended consequences that clause 22B of the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* may formalise, such as allowing multiple higher offers of rent above the advertised price.**

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<sup>16</sup> Mr Thomas Chailloux, Policy Officer, Homeless Persons Legal Service, Public Interest Advocacy Centre (PIAC), [Transcript of evidence](#), 2 June 2023, p. 7; Ms Jones, Homelessness NSW, [Transcript of evidence](#), 2 June 2023, p 31.

<sup>17</sup> Mr Patterson Ross, Tenants' Union of NSW, [Transcript of evidence](#), 2 June 2023, p 17; Mr Ben McAlpine, Acting Chief Executive Officer, NSW Council of Social Service (NCOSS), [Transcript of evidence](#), 2 June 2023, p 18.

<sup>18</sup> Mr Chailloux, PIAC, [Transcript of evidence](#), 2 June 2023, p 2; Mr Ross, Northern Rivers CLC, [Transcript of evidence](#), 2 June 2023, p 8.

<sup>19</sup> Mr Patterson Ross, Tenants' Union of NSW, [Transcript of evidence](#), 2 June 2023, p 14; Ms Maria Milillo, Head of Property Management, Raine & Horne Group, [Transcript of evidence](#), 2 June 2023, p 28.

## Finding 7

### **The selection of a successful tenancy applicant is a decision based on many factors including but not limited to the amount of rent.**

- 2.9 Both NSW Fair Trading and Mr Patterson Ross from the Tenants' Union agreed that it is difficult to predict how clause 22B will influence tenancy applicants' behaviour before it is enacted. This is particularly the case as there is no equivalent to clause 22B in another Australian jurisdiction to act as a comparison. The Committee also did not receive any evidence of similar disclosure requirements in any foreign jurisdiction.<sup>20</sup>
- 2.10 Given this uncertainty, most stakeholders argued that clause 22B should not be passed in its current form due to concerns about its potential unintended consequences. Most inquiry participants expressed concerns that, if enacted, disclosures under clause 22B may encourage other applicants to make higher offers in order to secure a tenancy agreement.<sup>21</sup> Some tenancy advocacy service providers contended that an applicant may feel an 'undue pressure' to make a higher offer for a property.<sup>22</sup>
- 2.11 Inquiry participants from both the real estate industry and tenants advocacy groups expressed concerns that, by regulating the process of making higher offers through clause 22B, it may have the effect of formalising the practice. For example, Ms Trina Jones, CEO of Homelessness NSW, cautioned that regulating disclosure of higher offers could motivate applicants to make offers of rent above the advertised amount.<sup>23</sup> Some stakeholders further remarked that individuals may then continue to make higher offers in their future tenancy applications.<sup>24</sup>
- 2.12 Although, the Public Interest Advocacy Centre commented that there could be many reasons why an applicant may feel compelled to make a higher offer. These reasons could include wanting to make sure their application is seriously considered.<sup>25</sup>
- 2.13 Flowing on from these concerns, many stakeholders argued that any potential increase in multiple higher offers taking place is likely to drive up rent prices. Some inquiry participants contended that this risk of increasing rent would extend to existing tenancies, highlighting the potential for landlords or real estate

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<sup>20</sup> [Submission 19](#), Department of Customer Service, p 3; Mr Patterson Ross, Tenants' Union of NSW, [Transcript of evidence](#), 2 June 2023, p 13; Ms Mann, NSW Fair Trading, [Transcript of evidence](#), 2 June 2023, pp 39-40, 45.

<sup>21</sup> [Submission 5](#), Young Labor Left NSW, p 2; [Submission 9](#), Disability Advocacy NSW, p 6; [Submission 13](#), NSW Council of Social Service, p 4; Mr Tim McKibbin, Chief Executive Officer, Real Estate Institute of New South Wales, [Transcript of evidence](#), 2 June 2023, p 21; Mr Thomas Chailloux, PIAC, [Transcript of evidence](#), 2 June 2023, p 5; [Answers to questions on notice](#), Community Legal Centres NSW, 6 June 2023, p 1.

<sup>22</sup> [Submission 20](#), Tenants' Union of NSW, p 10; Mr Patterson Ross, Tenants' Union of NSW, [Transcript of evidence](#), 2 June 2023, p 16; Mr Chailloux, PIAC, [Transcript of evidence](#), 2 June 2023, p 6.

<sup>23</sup> Ms Jones, Homelessness NSW, [Transcript of evidence](#), 2 June 2023, p 33; Ms Hayley Stone, Manager, Disability Advocacy NSW, [Transcript of evidence](#), 2 June 2023, p 33; [Submission 11](#), Homelessness NSW, p 4.

<sup>24</sup> Mr Chailloux, PIAC, [Transcript of evidence](#), 2 June 2023, p 3; [Submission 20](#), Tenants' Union of NSW, p 11.

<sup>25</sup> Mr Chailloux, PIAC, [Transcript of evidence](#), 2 June 2023, p 2; [Submission 10](#), Public Interest Advocacy Centre (PIAC), p 3.

agents to offer shorter leases so that they may readvertise properties at a higher price.<sup>26</sup>

- 2.14 While acknowledging that increased rent prices is a risk, Ms Natasha Mann, Commissioner for Fair Trading, observed that 'nobody knows whether the risk will transpire or not'.<sup>27</sup> This view was echoed by Dr Chris Martin, who stated that clause 22B is 'not unduly encouraging of rent bidding' as the onerous requirements for making an offer may prevent applicants from doing so.<sup>28</sup>
- 2.15 Further to their concerns that clause 22B would encourage the making of higher offers, stakeholders cautioned the Committee that the following potential consequences may follow:
- Greater housing stress and insecurity if applicants offer amounts higher than what they can afford, which may also increase the risk of poverty and homelessness for many people.<sup>29</sup>
  - Applicants making rushed decision to secure a rental property without proper consideration of what is in their best interest.<sup>30</sup>
  - Potential tenants missing out on properties they assumed were in their budget.<sup>31</sup>
- 2.16 During the inquiry process, there was some discussion around how clause 22B will impact a landlord's decision to accept a tenancy application. Stakeholders from the real estate industry and community advocacy groups acknowledged that, while landlords will take into account the amount offered, they will also consider other subjective factors.<sup>32</sup> The Committee accepts that decisions about a successful tenancy application may be based on many factors and not only price.
- 2.17 Some inquiry participants also expressed concerns that enacting clause 22B could create a significant administrative burden on landlords and agents.<sup>33</sup> Mr Tim McKibbin, CEO of the Real Estate Institute of NSW, told the Committee that some landlords may prefer leasing their properties as short-term rental

<sup>26</sup> [Submission 10](#), Public Interest Advocacy Centre (PIAC), p 1; [Submission 9](#), Disability Advocacy NSW, pp 3, 6; Ms Milillo, Raine & Horne Group, [Transcript of evidence](#), 2 June 2023, pp 21-2; Mr McAlpine, NCOSS and Mr Engeler, Shelter NSW, [Transcript of evidence](#), 2 June 2023, p 9.

<sup>27</sup> Ms Mann, NSW Fair Trading, [Transcript of evidence](#), 2 June 2023, p 39.

<sup>28</sup> [Submission 2](#), Dr Chris Martin, pp 3-4.

<sup>29</sup> [Submission 13](#), NSW Council of Social Service, p 3; [Submission 10](#), Public Interest Advocacy Centre (PIAC), p 1; Mr Chailloux, PIAC, [Transcript of evidence](#), p 7.

<sup>30</sup> Mr Patterson Ross, Tenants' Union of NSW, [Transcript of evidence](#), 2 June 2023, p 16; [Submission 20](#), Tenants' Union of NSW, pp 8-9.

<sup>31</sup> [Submission 11](#), Homelessness NSW, p 3; [Submission 20](#), Tenants' Union of NSW, p 11; Mr Patterson Ross, Tenants' Union of NSW, [Transcript of evidence](#), 2 June 2023, pp 10-1.

<sup>32</sup> Ms Milillo, Raine & Horne Group, [Transcript of evidence](#), 2 June 2023, pp 21-2; Mr McKibbin, Real Estate Institute of NSW, [Transcript of evidence](#), 2 June 2023, p 26; [Answers to questions on notice](#), Raine & Horne Group, 5 June 2023, p 1.

<sup>33</sup> Mr McKibbin, Real Estate Institute of NSW, [Transcript of evidence](#), 2 June 2023, p 21; Ms Milillo, Raine & Horne Group, [Transcript of evidence](#), 2 June 2023, p 24, Mr Chailloux, PIAC, [Transcript of evidence](#), 2 June 2023, p 4; Mr Ross, Northern Rivers CLC, [Transcript of evidence](#), 2 June 2023, p 7.

accommodation, or otherwise sell the property.<sup>34</sup> He further cautioned that the potential administrative burden may drive property managers to leave the industry, leading to a greater risk of workforce shortages.<sup>35</sup>

2.18 The Commissioner for Fair Trading, responded to these concerns by noting that the processes for managing multiple offers might be streamlined by integrating them into existing rental platforms used by agents.<sup>36</sup>

2.19 The Committee notes the concerns from various stakeholders regarding the significant administrative burden that could result from enacting clause 22B. It further recognises that the NSW Government may need to give consideration to the process of implementing any disclosure requirements around the tenancy application process.

## Addressing concerns and further consultation

### Finding 8

**During the deliberations of the Committee, the NSW Government announced that it would amend the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* to omit clause 22B. The Committee believes that this approach is consistent with concerns raised during the inquiry process.**

### Finding 9

**While a number of inquiry participants noted the positive intent of clause 22B of the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* to increase transparency regarding secret rent bidding, they expressed a need for more consultation with industry and community stakeholders. The Committee supports the NSW Government's announcement that the incoming Rental Commissioner will be charged with increasing transparency in the rental market.**

### Recommendation 3

**That the NSW Government ensure that the Rental Commissioner consult with stakeholders in the course of overseeing transparency improvements in the rental market.**

2.20 Most stakeholders expressed concerns about enacting clause 22B as currently drafted. However, representatives from NSW Fair Trading agreed under questioning from the Committee that clause 22B(1), as originally drafted, was not clear, and that landlords or agents may accept an offer at or below the advertised price under clause 22B(1), which would not trigger the subsequent disclosure requirements, or would halt the notification process.<sup>37</sup>

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<sup>34</sup> [Answers to questions on notice](#), Real Estate Institute of NSW, 5 June 2023, p 1.

<sup>35</sup> [Answers to questions on notice](#), Real Estate Institute of NSW, 5 June 2023, pp 1-2.

<sup>36</sup> Ms Mann, NSW Fair Trading, [Transcript of evidence](#), 2 June 2023, p 39.

<sup>37</sup> Ms Diana Holy, Director, Real Estate and Housing Policy, and Ms Mann, NSW Fair Trading, [Transcript of evidence](#), 2 June 2023, pp 43-44.



- 2.21 The Committee therefore notes that the intention of the Bill, as drafted, was that the acceptance of an offer under clause 22B(1) would not require the landlord or agent to undertake or halt the process under clause 22B. It accepts that the wording of clause 22B as originally drafted requires further clarification.
- 2.22 On 7 June 2023, the NSW Government announced that it will amend the Bill to remove clause 22B, allowing the other provisions of the Bill to pass through the Legislative Assembly. It highlighted that this decision followed 'constructive engagement with advocacy organisations and crossbench members of the NSW Parliament'. The Government will also be charging the incoming Rental Commissioner with continuing the work of increasing transparency in the New South Wales rental market, in addition to overseeing other areas for rent reform. These steps will be taken in addition to the Government's next tranche of rental reform, which it has already begun work on.<sup>38</sup>
- 2.23 The Committee acknowledges that this omission of clause 22B from the Bill would address the primary concerns raised during the course of this inquiry. In that context, the Committee supports the proposed actions that have been announced by the NSW Government.
- 2.24 As highlighted earlier in this chapter, inquiry participants acknowledged the value of adding greater transparency to the tenancy application process. However, many emphasised that further consultation with stakeholders representing landlords, industry and tenants is needed on any proposed reforms to address this issue.<sup>39</sup>
- 2.25 The Committee accepts that further consultation with industry and community stakeholders is needed to ensure that further reforms to improve transparency in the rental market receives broad support. It also notes that this consultation may help minimise potential unintended consequences of future reforms.
- 2.26 Further to their calls for more consultation, a number of stakeholders advocated for consultation on proposed reforms in the rental market to be referred to the Rental Commissioner.<sup>40</sup> Mr Patterson Ross of the Tenants' Union remarked that an 'adequately resourced and empowered' Rental Commissioner might be able to 'elevate the discussion and the enforcement of the regulation of the law'.<sup>41</sup> The Committee agrees that future consultation on any proposed legislative and regulatory reforms on this subject may be best tasked with the Rental Commissioner once appointed.

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<sup>38</sup> The Premier and Minister for Better Regulation and Fair Trading, [Getting on with tackling the rental crisis](#), media release, 7 June 2023, viewed 7 June 2023.

<sup>39</sup> [Submission 20](#), Tenants' Union of NSW, p 16; [Submission 10](#), Public Interest Advocacy Centre, pp 1, 4; [Submission 13](#), NSW Council of Social Services, p 5; [Submission 17](#), Murra Mia AC, Aboriginal Resource Unit, Aboriginal Tenant Advice and Advocacy Services, p 1; [Submission 12](#), Property Owners Association NSW, p 4.

<sup>40</sup> [Submission 10](#), Public Interest Advocacy Centre, pp 4-5; [Submission 13](#), NSW Council of Social Services, p 5; [Submission 20](#), Tenants' Union of NSW, p 16; [Submission 22](#), Shelter NSW, p 3.

<sup>41</sup> Mr Patterson Ross, Tenants' Union of NSW, [Transcript of evidence](#), 2 June 2023, p 16.

## Limiting particular disadvantage to marginalised groups

### Finding 10

**Applicants from marginalised groups, including Aboriginal and/or Torres Strait Islander peoples, people with disability, older people over 55, people on lower incomes and those at risk of homelessness, already experience inequity and disadvantage in securing residential tenancy agreements. Tenancy applicants from these marginalised groups are further disadvantaged when offers for rent above the advertised amount are made, regardless of whether the higher offers are disclosed.**

### Recommendation 4

**That, in consultation with advocacy groups, the NSW Government consider how best to limit or reduce discrimination for people from marginalised groups when applying for tenancy agreements.**

- 2.27 Submissions from Disability Advocacy NSW and the Aboriginal Tenant Advice and Advocacy Services highlighted concerns that enacting clause 22B could particularly impact marginalised members of the community who already experience inequity and disadvantage when applying for tenancy agreements.<sup>42</sup>
- 2.28 Inquiry participants raised specific concerns for the following groups:
- Aboriginal and Torres Strait Islander applicants who face the risk of being displaced from their traditional lands, due to potential rental increases and inability to secure tenancy agreements.<sup>43</sup>
  - People with disability, for whom there is a 'dire shortage of accessible and affordable rental properties'.<sup>44</sup>
  - Older people over 50 may face discrimination when applying for tenancy agreements on the basis of their age, and the extent of poverty amongst older renters is a growing issue.<sup>45</sup>
  - People in disaster affected areas who may face greater shortages and imminency to secure a tenancy agreement.<sup>46</sup>
  - People on lower incomes or receiving support payments are disadvantaged when seeking tenancy agreements in the competitive rental market, and already experience higher levels of housing stress.<sup>47</sup>

<sup>42</sup> [Submission 9](#), Disability Advocacy NSW, p 5; [Submission 17](#), Murra Mia AC, Aboriginal Resource Unit, Aboriginal Tenant Advice and Advocacy Services, p 2.

<sup>43</sup> [Submission 17](#), Murra Mia AC, Aboriginal Resource Unit, Aboriginal Tenant Advice and Advocacy Services, p 2.

<sup>44</sup> [Submission 9](#), Disability Advocacy NSW, p 3.

<sup>45</sup> [Submission 14](#), Council on the Ageing (COTA) NSW, pp 1-2; [Submission 21](#), Ageing on the Edge NSW Forum, p 2.

<sup>46</sup> Mr Ross, Northern Rivers CLC, [Transcript of evidence](#), 2 June 2023, p 3.

<sup>47</sup> [Submission 17](#), Murra Mia AC, Aboriginal Resource Unit, Aboriginal Tenant Advice and Advocacy Services, p 2; [Submission 22](#), Shelter NSW, p 4; [Submission 11](#), Homelessness NSW, pp 2-3; [Submission 20](#), Tenants' Union of NSW, p 3; [Submission 13](#), NSW Council of Social Service, p 4.

- Without access to affordable rental homes, people may fall into homelessness. People at risk of homelessness may be inclined to enter into tenancy agreements that they cannot afford, in order to avoid homelessness and/or relocation.<sup>48</sup>
- 2.29 Mr Brendan Ross, Tenants Advice and Advocacy Coordinator for the Northern Rivers Community Legal Centre, reinforced the relevance of discrimination in the context of this inquiry. He told the Committee that 'people will feel compelled to offer more to bridge a perceived gap between how they are perceived – for race, disability, cultural background'.<sup>49</sup> This view was echoed by several stakeholders during the inquiry process.<sup>50</sup>
- 2.30 In contrast, other stakeholders advised that clause 22B may not increase instances of discrimination since tenancy applications are assessed subjectively on a number of considerations. Mr McKibbin, CEO of the Real Estate Institute, commented that clause 22B would have a 'neutral effect' on the issue of discrimination.<sup>51</sup>
- 2.31 The Committee accepts that tenancy applicants from marginalised groups currently experience discrimination in some instances.
- 2.32 A number of inquiry participants argued that if the price of rental properties or the level of competition increase as an unintended consequence of clause 22B, it may further disadvantage tenancy applicants from marginalised groups in the community. This is because they will often lack the ability to offer higher amounts due to financial constraints. This was identified as a bigger problem for applicants who may have particular accessibility or location requirements.<sup>52</sup>
- 2.33 Homelessness NSW also submitted that clause 22B 'relies on tenants having available internet access, proficiency in English and the financial literacy to engage in the process'.<sup>53</sup> Several stakeholders echoed this view and emphasised that this will create additional challenges for older people, people in rural or remote areas, people with carer responsibilities, and for certain occupations.<sup>54</sup>

<sup>48</sup> [Submission 10](#), Public Interest Advocacy Centre (PIAC), p 3; [Submission 11](#), Homelessness NSW, p 2; [Submission 13](#), NSW Council of Social Service, p 4.

<sup>49</sup> Mr Ross, Northern Rivers CLC, [Transcript of evidence](#), 2 June 2023, pp 3, 5.

<sup>50</sup> Mr Chailloux, PIAC, [Transcript of evidence](#), 2 June 2023, p 4; Ms Michelle McLean, Deputy Chapter Chair and Board Representative, Real Estate Institute of NSW, [Transcript of evidence](#), 2 June 2023, p 23; [Submission 22](#), Shelter NSW, p 2.

<sup>51</sup> [Answers to questions on notice](#), Real Estate Institute of NSW, 5 June 2023, p 1; [Answers to questions on notice](#), Raine & Horne Group, 5 June 2023, p 1; Ms Mann, NSW Fair Trading, [Transcript of evidence](#), 2 June 2023, p 41.

<sup>52</sup> Mr McAlpine, NCOSS, [Transcript of evidence](#), 2 June 2023, p 9; [Submission 13](#), NSW Council of Social Service, p 3; [Submission 9](#), Disability Advocacy NSW, pp 4-5; Ms Dini Liyanarachchi, Advocacy Lead, Housing for the Aged Action Group, Ageing on the Edge, [Transcript of evidence](#), 2 June 2023, p 30; Dr Cherry Baylous, Policy and Communications Lead, Disability Advocacy NSW, [Transcript of evidence](#), 2 June 2023, p 32; Mr Chailloux, PIAC, [Transcript of evidence](#), 2 June 2023, p 4; [Submission 10](#), Public Interest Advocacy Centre (PIAC), p 3.

<sup>53</sup> [Submission 11](#), Homelessness NSW, p 2.

<sup>54</sup> [Submission 14](#), Council on the Ageing (COTA) NSW, p 2; [Submission 22](#), Shelter NSW, p 2; Ms Cathryn Callaghan, Senior Policy Officer, Shelter NSW, [Transcript of evidence](#), 2 June 2023, p 13; Ms Liyanarachchi, Ageing on the Edge, [Transcript of evidence](#), 2 June 2023, p 33.

- 2.34 The Committee recognises these concerns about the particular negative outcome for tenancy applicants from marginalised groups if prices and competition increase in the rental market. These concerns are relevant regardless of whether clause 22B is enacted, or the potential unintended consequences of its enactment occur. As a result, the Committee calls on the NSW Government to consider how best to limit the potential discrimination suffered by these marginalised groups during the tenancy application process.

## Chapter Three – Additional measures

### Enforcement, monitoring and review

#### Recommendation 5

**That the Rental Commissioner:**

- **monitor the implementation of the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* as enacted, and**
- **advise and make recommendations about appropriate regulatory changes and actions in the course of monitoring its implementation.**

#### Recommendation 6

**That NSW Fair Trading consider implementing reporting requirements and mechanisms to enable the Rental Commissioner to collect data on rent price increases and rent bidding.**

#### Recommendation 7

**That the NSW Government consider implementing a standardised tenancy application form to improve transparency and disclosure in the tenancy application process.**

- 3.1 Many stakeholders emphasised the importance of having enforcement measures to ensure compliance. Some witnesses acknowledged the complexity of monitoring and enforcing compliance with existing protections for tenancy applicants.<sup>55</sup>
- 3.2 As previously mentioned, NSW Fair Trading has already started issuing infringement notices for non-compliance. In its submission, the Department of Customer Service highlighted that NSW Fair Trading will complete a compliance program in September 2023. This program will include covert inspections at open homes to observe real estate agents interacting with possible renters to ensure that agents are complying with their obligations.<sup>56</sup> The Committee acknowledges that these initiatives will assist with enforcing compliance.
- 3.3 Mr Patterson Ross, CEO of the Tenants' Union, observed that the extent to which tenancy applicants are making multiple offers of rent above the advertised amount is currently unclear, and that 'data collection in renting is an area that needs great improvement'. He suggested that the incoming Rental Commissioner

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<sup>55</sup> Mr Chailloux, PIAC, [Transcript of evidence](#), 2 June 2023, p 6; Mr Patterson Ross, Tenants' Union of NSW, [Transcript of evidence](#), 2 June 2023, p 12; [Submission 9](#), Disability Advocacy NSW, p 7; Dr Baylous, Disability Advocacy NSW, [Transcript of evidence](#), 2 June 2023, pp 32, 35.

<sup>56</sup> [Submission 19](#), Department of Customer Service, pp 3-4.

could collate different data sources from within Fair Trading and the Bond Board in order to better understand how often higher offers are being made.<sup>57</sup>

- 3.4 Several other stakeholders echoed this view that the incoming Rental Commissioner should be tasked with monitoring the occurrence of rent bidding in NSW. In its submission, the Department of Customer Service confirmed that 'monitoring the operation of the rent bidding reforms' would be part of the Commissioner's role.<sup>58</sup>
- 3.5 Some inquiry participants also suggested introducing a requirement for real estate agents or landlords to notify NSW Fair Trading when a tenancy agreement is entered into for a price above the advertised amount. This could be through a standardised application form provided to NSW Fair Trading that requires landlords or agents to mark the initial advertised amount of a rental property against the amount ultimately agreed to.<sup>59</sup>
- 3.6 Stakeholders also argued that the Rental Commissioner would be the appropriate person to review implementation of the Bill, regardless of the inclusion or omission of clause 22B. They contended that the Rental Commissioner could consult with real estate agents, tenancy advocacy groups and community groups in regularly assessing the Bill's operation.<sup>60</sup>
- 3.7 The Committee supports the additional measures proposed by stakeholders for enforcement, data collection and ongoing monitoring by the Rental Commissioner. Alongside introducing reporting measures, it agrees that these measures could assist the Government to monitor and develop regulatory responses to the issue of rent price increases and rent bidding in New South Wales.

## Improving transparency and disclosure in the tenancy application process

### Finding 11

**Many stakeholders expressed a preference that there be no process for offering an amount of rent that is above the fixed amount advertised, however this was outside the focus and work of this inquiry.**

- 3.8 Many stakeholders called for a legal requirement that the advertised price be the highest amount of rent that a landlord or agent could offer and accept. This would effectively prohibit the making of offers for rent higher than the amount advertised.<sup>61</sup> While the Committee acknowledges these views were expressed by

<sup>57</sup> Mr Patterson Ross, Tenants' Union of NSW, [Transcript of evidence](#), 2 June 2023, p 12.

<sup>58</sup> [Submission 20](#), Tenants' Union of NSW, p 16; [Submission 9](#), Disability Advocacy NSW, pp 7-8; [Submission 10](#), Public Interest Advocacy Centre, pp 4-5.

<sup>59</sup> [Submission 20](#), Tenants' Union of NSW, p 16; Ms Jones, Homeless NSW, [Transcript of evidence](#), 2 June 2023, p 35.

<sup>60</sup> Mr Chailloux, PIAC, [Transcript of evidence](#), 2 June 2023, p 2; Mr Engeler, Shelter NSW, [Transcript of evidence](#), 2 June 2023, p 15; Mr McAlpine, NCOSS, [Transcript of evidence](#), 2 June 2023, p 9.

<sup>61</sup> [Submission 11](#), Homelessness NSW, pp 3-4; [Submission 13](#), NSW Council of Social Service, pp 4-5; [Submission 22](#), Shelter NSW, p 3; Mr Chailloux, PIAC, [Transcript of evidence](#), 2 June 2023, p 2; Mr Engeler, Shelter NSW, [Transcript of evidence](#), 2 June 2023, p 9; Ms Liyanarachchi, Ageing on the Edge, [Transcript of evidence](#), 2 June 2023, p 30; Ms Michelle Cook, NSW Lived Experience Advocacy Group, Ageing on the Edge, [Transcript of evidence](#), 2 June 2023, p

many submission makers and witnesses, it notes that this issue falls outside the focus and work of this inquiry.

3.9 Aside from this, several stakeholders also put forward a number of additional and alternative measures for improving transparency in the tenancy application process. In summary, these included:

- requiring the use of a standardised tenancy application form,<sup>62</sup>
- introducing a mechanism for tenancy applications to acquire information about the property owners or managers of potential rental properties,<sup>63</sup>
- requiring landlords or agents to give notice and reasons for an unsuccessful tenancy application.<sup>64</sup>

3.10 The Committee acknowledges that these suggestions could improve transparency and disclosure in the tenancy application process and better protect applicants.

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30; Ms Jones, Homelessness NSW, [Transcript of evidence](#), 2 June 2023, pp 31, 34, 38; Dr Baylosis, Disability Advocacy NSW, [Transcript of evidence](#), 2 June 2023, p 35.

<sup>62</sup> [Submission 20](#), Tenants' Union of NSW, pp 5, 17-18; Mr Thomas Chailloux, Policy Officer, Homeless Persons Legal Service, Public Interest Advocacy Centre, [Transcript of evidence](#), 2 June 2023, p 4; Mr Brendan Ross, Tenants Advice and Advocacy Service Coordinator, Northern Rivers Community Legal Centre, Community Legal Centres NSW, [Transcript of evidence](#), 2 June 2023, p 4.

<sup>63</sup> Mr Ross, Northern Rivers CLC, [Transcript of evidence](#), 2 June 2023, p 4; [Submission 20](#), Tenants' Union of NSW, pp 5, 17-18; Ms Stone, Disability Advocacy NSW, [Transcript of evidence](#), 2 June 2023, p 35.

<sup>64</sup> [Submission 20](#), Tenants' Union of NSW, pp 5, 17-18; Mr Chailloux, PIAC, [Transcript of evidence](#), 2 June 2023, p 4.

## Appendix One – Terms of reference

The Bill be referred forthwith to a Select Committee for consideration and report, for the purpose of inquiring into:

- (a) 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.
- (b) The impact of clause 22B on improving disclosure and transparency requirements compared to the current rental application process.
- (c) How clause 22B might be expected to influence applicants' transactional behaviour.
- (d) 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.



## Appendix Two – Conduct of inquiry

On 23 May 2023, the Legislative Assembly resolved that a Select Committee on the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* be appointed. The terms of reference for the inquiry is at Appendix One.

Submissions to the inquiry closed on 31 May 2023. The Committee received 22 submissions from private individuals, government departments, tenants' advocacy service providers, industry peak bodies, private firms, community groups and academics. Due to the short timeframe for this inquiry, the Committee resolved to receive public submissions but only publish those submissions from organisations and subject matter experts.

A list of submissions appears at Appendix Three, and submissions are available on the inquiry's [webpage](#).

A public hearing was conducted at Parliament House on 2 June 2023. The public hearing was broadcast live on the Parliament's website. Representatives from tenants advocacy groups, community advocacy groups, the real estate industry and NSW Fair Trading attended to give evidence both in person and by videoconference.

A list of witnesses who appeared at the public hearing is at Appendix Four. The transcript of the public hearing and answers to questions on notice are available on the inquiry's [webpage](#).

## Appendix Three – Submissions

<b>No.</b>	<b>Author</b>
1	Confidential
2	Dr Chris Martin
3	Confidential
4	Confidential
5	Young Labor Left NSW
6	Confidential
7	Confidential
8	Confidential
9	Disability Advocacy NSW
10	Public Interest Advocacy Centre (PIAC)
11	Homelessness NSW
12	Property Owners Association NSW
13	NSW Council of Social Service
14	Council on the Ageing (COTA) NSW
15	Confidential
16	People with Disability Australia
17	Murra Mia AC - Aboriginal Resource Unit - Aboriginal Tenant Advice and Advocacy Services
18	Country Women's Association of NSW
19	Department of Customer Service
20	Tenants' Union of NSW
21	Ageing on the Edge NSW Forum
22	Shelter NSW

## Appendix Four – Witnesses

**02 June 2023**

**Parliament House, Macquarie Room, Sydney, NSW**

<b>Witness</b>	<b>Position and Organisation</b>
Mr Thomas Chailloux	Policy Officer, Public Interest Advocacy Centre (PIAC)
Mr Brendan Ross	Tenants Advice and Advocacy Service (TASS) Coordinator, Northern Rivers Community Legal Centre
Mr Leo Patterson Ross	Chief Executive Officer, Tenants' Union of NSW
Ms Lehana De Silva	Solicitor, Aboriginal Support, Tenants' Union of NSW
Mr John Engeler	CEO, Shelter NSW
Ms Cathy Callaghan	Senior Policy Officer, Shelter NSW
Mr Ben McAlpine	Acting Chief Executive Officer, NSW Council of Social Service
Mr Tim McKibbin	Chief Executive Officer, Real Estate Institute of NSW (REINSW)
Ms Michelle McLean	Deputy Chapter Chair and Board Representative, Property Management Chapter, Real Estate Institute of NSW (REINSW)
Ms Maria Milillo	Head of Property Management, Raine & Horne Group
Ms Hayley Stone	Manager Specialist Advocacy, Disability Advocacy NSW
Dr Cherry Baylous	Policy and Communications Lead, Disability Advocacy NSW
Ms Dini Liyanarachchi	Ageing on the Edge Advocacy Lead, Ageing on the Edge NSW Forum
Ms Michelle Cook	NSW Lived Experience Advocacy Group (LEAG), Ageing on the Edge NSW Forum
Ms Trina Jones	Chief Executive Officer, Homelessness NSW
Ms Natasha Mann	Deputy Secretary, Better Regulation Division, Commissioner for Fair Trading and Head of SafeWork NSW, NSW Fair Trading
Ms Diana Holy	Director, Real Estate and Housing Policy, NSW Fair Trading

## Appendix Five – Extracts from minutes

### Meeting no. 1

**TIME & DATE: 3.30 PM, 25 MAY 2023**

**LOCATION: CONFERENCE ROOM 1254**

#### MEMBERS PRESENT

Mr Barr (**Chair**), Mrs Quinnell (**Deputy Chair**), Mr Amon, Ms Butler, Mr James, Ms Leong and Mr Li.

#### APOLOGIES

Mr Greenwich.

#### OFFICERS PRESENT

Sam Griffith, Anna Tran, Ashley Kim, Kate McCorquodale, Kayaneh Mouradian, Sukhraj Goraya, Nicolle Gill, Jacqueline Linnane.

#### AGENDA ITEM

### 1. Appointment of committee

The Committee noted the following extract from the Legislative Assembly Votes and Proceedings no. 4:

#### **Legislative Assembly Votes and Proceedings no. 4, 23 May 2023, entry no. 30:**

Mr Ron Hoenig moved, That the motion be amended by omitting all words after the word 'That' and inserting instead:

- (1) The Bill be referred forthwith to a Select Committee for consideration and report, for the purpose of inquiring into:
  - (a) 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.
  - (b) The impact of clause 22B on improving disclosure and transparency requirements compared to the current rental application process.
  - (c) How clause 22B might be expected to influence applicants' transactional behaviour.
  - (d) 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.
- (2) The Committee consist of the following members: Mr Clayton Barr, Mrs Sally Quinnell, Mr Jason Li, Mr Tim James, Mr Alex Greenwich, Ms Jenny Leong, Ms Liza Butler, and Mr Rory Amon.
- (3) Mr Clayton Barr shall be the Chair of the Committee; and Mrs Sally Quinnell shall be the Deputy Chair of the Committee.
- (4) The Committee have leave to sit during the sitting or any adjournment of the

House.

- (5) The Committee have leave to make visits of inspection within the state of New South Wales and other states and territories of Australia.
- (6) The Committee shall report to the House by 12 June 2023.
- (7) The Committee shall be able to table a report out of session with the Clerk.

Mr Ron Hoenig moved, That standing and sessional orders be suspended to provide that:

- (1) The question on the amendment to the motion that this bill be read a second time be put forthwith.
- (2) The resumption of the debate on the second reading of the bill be restored to the Business Paper on the tabling of the report of the Select Committee.

Debate ensued.

Question put and passed.

Question—That the amendment of Mr Hoenig be agreed to—put and passed.

Question—That the motion, as amended, be agreed to—put and passed.

## **2. Inquiry into the Residential Tenancies Amendment (Rental Fairness) Bill 2023**

### **2.1. Terms of reference**

The Committee noted the referral of the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* on 23 May 2023 on the following terms of reference:

- (a) 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.
- (b) The impact of clause 22B on improving disclosure and transparency requirements compared to the current rental application process.
- (c) How clause 22B might be expected to influence applicants' transactional behaviour.
- (d) 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.

## **3. Standard motions**

Resolved, on the motion of Mr Amon, seconded Ms Leong:

That unless the Committee resolves otherwise:

### **Conduct of proceedings**

- 1. During any committee meeting, if a division or quorum is called in the Legislative Assembly, or either House in the case of joint committees, the meeting will be suspended until the committee regains quorum.
- 2. Conditions for the broadcasting, filming or photography of the committee's public proceedings will be determined by the committee on a case-by-case basis. Those

conditions shall be consistent with the Legislative Assembly's resolution of 9 May 2023; and the Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

3. Witnesses appearing before the committee will not be represented by a member of the legal profession or other advocate.
4. Committee members can only use electronic devices unobtrusively during committee proceedings, so that they do not interfere with, or disrupt, the conduct of those proceedings.
5. Media releases on behalf of the committee can only be made by the Chair; and where practicable, following consultation with the committee.

#### **Administrative arrangements**

6. Arrangements that facilitate or support committee proceedings and activities be delegated to the chair and the committee staff, to undertake in accordance with the committee's decisions.
7. Members nominated by the committee to undertake site visits are expected, where practicable, to participate in the full itinerary.
8. The Chair and the Committee Director, through the Clerk of the Legislative Assembly, be authorised to liaise with the Speaker on approvals for committee expenditure.

#### **Communications and engagement**

9. The Legislative Assembly's Engagement Team will support and promote the work of the committee. The Team will implement any agreed media and engagement strategy and coordinate the production of media and other promotional activity with the Chair.

## **4. Inquiry into the Residential Tenancies Amendment (Rental Fairness) Bill 2023**

### **4.1. Submission and stakeholder invitations**

The Committee discussed proposed stakeholders for the inquiry and the public hearing.

Resolved, on the motion of Mrs Quinnell, seconded Ms Butler:

- That the Committee invite the following stakeholders to make a concise written submission by Wednesday 31 May 2023:
  - NSW Fair Trading
  - NSW Civil and Administrative Tribunal (NCAT)
  - Property Owners' Association of NSW
  - Real Estate Institute of NSW (REINSW)
  - NSW Tenants' Union
  - Shelter NSW
  - NSW Council of Social Service (NCOSS)
  - NSW Law Society
  - NSW Bar Association
  - Homelessness NSW
  - Public Interest Advocacy Centre
  - Redfern Legal Centre
  - Community Legal Centres NSW
  - Financial Rights Legal Centre

- People with Disability
- Disability Advocacy NSW
- Ageing on the Edge
- Dr Chris Martin, UNSW City Futures
- Lendlease
- Meriton
- McGrath
- Raine & Horne

Resolved, on the motion of Mr Li, seconded Ms Leong:

- That the Committee invite the following categories of stakeholders be invited to appear at a public hearing on Friday 2 June 2023:
  - NSW Government
    - NSW Fair Trading
    - NSW Civil and Administrative Tribunal (NCAT)
  - Industry interest bodies
    - Property Owners' Association of NSW
    - Real Estate Institute of NSW (REINSW)
  - Community advocacy groups
    - NSW Tenants' Union
    - Shelter NSW
    - NSW Council of Social Service (NCOSS)
  - Corporations with large rent rolls
    - (TBC and to be agreed to via email once submissions have closed)
  - Legal groups
    - Public Interest Advocacy Centre
    - Community Legal Centres NSW
  - Disability and ageing advocacy groups
    - People with Disability
    - Disability Advocacy NSW
    - Ageing on the Edge.
- That the secretariat to circulate a list of available witnesses for the public hearing and the Committee to agree by email to finalise the hearing schedule by Wednesday 31 May 2023.
- That witnesses at the public hearing be requested to return answers to questions taken on notice by Tuesday 6 June 2023 at 4pm.

#### 4.2. Inquiry timeline

Resolved, on the motion of Mr James, seconded Ms Butler: That the Committee adopt the following timeline for the management of the inquiry:

- Wednesday 31 May 2023 – Submissions from selected stakeholders close

- Friday 2 June 2023 – Public hearing, followed by a short private committee report workshop
- Thursday 8 June 2023 – Chair's draft report to be circulated to the Committee
- Friday 9 June 2023, 10am to 12 pm – Report deliberative meeting
- Friday 9 June or Monday 12 June 2023 – Report tabled.

#### 4.3. Submissions process

Resolved, on the motion of Mrs Quinnell, seconded Ms Leong: That the Committee call for submissions to be received by Wednesday 31 May 2023. While all information received is to be provided to the Committee, only submissions from organisations or subject-matter experts be formally published.

#### 5. Next Meeting

The meeting adjourned at 4.35 pm until Friday 2 June 2023 at 9 am.

## Meeting no. 2

**TIME & DATE: 9:00 AM, 2 JUNE 2023**

**LOCATION: MACQUARIE ROOM AND VIDEOCONFERENCE**

### MEMBERS PRESENT

Mr Barr (**Chair**), Mrs Quinnell (**Deputy Chair**), Mr Amon, Ms Butler, Mr Greenwich, Mr James, Ms Leong and Mr Li.

### APOLOGIES

Nil.

### OFFICERS PRESENT

Sam Griffith, Anna Tran, Ashley Kim, Kate McCorquodale, Kayaneh Mouradian, Hayley Jarrett, Sukhraj Goraya.

### AGENDA ITEM

#### 1. Confirmation of minutes

Resolved, on the motion of Ms Leong, seconded by Ms Butler: That the minutes of the meeting of 25 May 2023 be confirmed.



## **2. Pre-hearing deliberative: Inquiry into the *Residential Tenancies Amendment (Rental Fairness) Bill 2023***

### **2.1. Publication of submissions**

Resolved on the motion of Ms Leong, seconded Mrs Quinnell: That:

- the Committee accept and publish the submissions 2, 5, 9-14, 16-19 and 21-22 in full.
- the Committee accept and publish submission 20 as partially confidential with a redaction of an adverse comment on page 20.

Resolved on the motion of Mrs Quinnell, seconded Mr Greenwich: That, in accordance with the Committee's resolution of 26 May 2023, the Committee accept and keep confidential submissions 1, 3-4, 6-8 and 15 received from individual members of the public.

### **2.2. Media orders for public hearing**

Resolved on the motion of Mr Greenwich, seconded Mr James: That:

- the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 2 June 2023, in accordance with the Legislative Assembly's resolution of 9 May 2023; and the Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.
- the Committee authorise a photographer from the Australian Associated Press to take photographs of the public hearing on 2 June 2023 in accordance with the Legislative Assembly's resolution of 9 May 2023 and the Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

### **2.3. Answers to questions taken on notice**

The Committee noted that witnesses at the public hearing be requested to return answers to questions taken on notice by Tuesday 6 June 2023 at 4 pm.

The Committee also noted that, due to the timeframe of this inquiry, no additional questions will be forwarded to witnesses following the public hearing.

## **3. Public hearing**

Witnesses and the public were admitted. The Chair opened the public hearing at 9.15 am and made a short opening statement.

At 9:17 am, the following witness from the Public Interest Advocacy Centre was admitted:

- Mr Thomas Chailloux, Policy Officer, Homeless Persons Legal Service, affirmed and examined.

The following witness from the Community Legal Centres NSW was admitted by videoconference:

- Mr Brendan Ross, Tenants Advice and Advocacy Service (TAAS) Coordinator, Northern Rivers Community Legal Centre, affirmed and examined.

Mr Ross made an opening statement.

Mr Chailloux made an opening statement.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

At 10:01 am, the following witnesses from the Tenants' Union NSW were admitted:

- Mr Leo Patterson Ross, Chief Executive Officer, affirmed and examined.
- Ms Lehana de Silva, Solicitor, Aboriginal Support, affirmed and examined.

The following witnesses from Shelter NSW were admitted:

- Mr John Engeler, Chief Executive Officer, sworn and examined.
- Ms Cathryn Callaghan, Senior Policy Officer, affirmed and examined.

The following witness from the NSW Council of Social Services (NCOSS) was admitted:

- Mr Ben McAlpine, Acting Chief Executive Officer, affirmed and examined.

Mr McAlpine made an opening statement.

Mr Engeler made an opening statement.

Mr Ross and Ms de Silva made an opening statement.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

At 11:32 am, the following witness from the Real Estate Institute of NSW (REINSW) was admitted:

- Mr Tim McKibbin, Chief Executive Officer, sworn and examined.

The following witness from Raine & Horne Group was admitted:

- Ms Maria Mililo, Head of Property Management, sworn and examined.

The following witness from the Real Estate Institute of NSW (REINSW) was admitted by videoconference:

- Ms Michelle McLean, Deputy Chapter Chair and Board Representative, Property Management Chapter, affirmed and examined.

Mr McKibbin made an opening statement.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

At 1:31 pm, the following witnesses from the Disability Advocacy NSW were admitted:

- Ms Hayley Stone, Manager Specialist Advocacy, affirmed and examined.
- Dr Cherry Baylosis, Policy and Communications Lead, affirmed and examined.

The following witness from Homelessness NSW was admitted:

- Ms Trina Jones, Chief Executive Officer, affirmed and examined.

The following witness from Ageing on the Edge was admitted:

- Ms Michelle Cook, NSW Lived Experience Advocacy Group, affirmed and examined.

The following witness from Ageing on the Edge was admitted by videoconference.

- Ms Dini Liyanarachchi, Advocacy Lead, Housing for the Aged Action Group, affirmed and examined.

Ms Liyanarachchi and Ms Cook made an opening statement.

Ms Jones made an opening statement.

Dr Baylosis made an opening statement.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

At 2:31 pm, the following witnesses from NSW Fair Trading were admitted:

- Ms Natasha Mann, Deputy Secretary, Better Regulation Division, Commissioner for Fair Trading and Head of Safework NSW, affirmed and examined.
- Ms Diana Holy, Director, Real Estate and Housing Policy, affirmed and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.22 pm.

**4. Post-hearing deliberative: Inquiry into the *Residential Tenancies Amendment (Rental Fairness) Bill 2023***

**4.1. Publication orders**

Resolved on the motion of Mr Amon, seconded Ms Butler: That the corrected transcripts of public evidence given on today be authorised for publication and uploaded on the Committee's webpage.

**4.2. Audio-visual recording of private report workshop**

Resolved on the motion of Mr Li, seconded Mr James: That the Committee authorise the audio-visual recording of the private workshop to be accessed by the secretariat only and to be deleted following the report deliberative meeting.

**4.3. Private report workshop**

The Committee discussed information they would like included in the report, including any draft recommendations or findings.

**5. Next meeting**

The meeting adjourned at 4:43 pm until Friday 9 June 2023, at 10 am.

## Unconfirmed Minutes of Meeting no. 3

**TIME & DATE:** 10:02 AM, 9 JUNE 2023

**LOCATION:** CONFERENCE ROOM 1043  
**AND BY WEBEX**

### MEMBERS PRESENT

Mr Barr (**Chair**), Mrs Quinnell (**Deputy Chair**), Mr Amon (by videoconference), Ms Butler (by videoconference), Mr Greenwich, Mr James (by videoconference), Ms Leong (by videoconference) and Mr Li.

### APOLOGIES

Nil.

### OFFICERS PRESENT

Sam Griffith, Anna Tran, Ashley Kim, Kate McCorquodale, Kayaneh Mouradian, Sukhraj Goraya, Hayley Jarrett.

**AGENDA ITEM****1. Confirmation of minutes**

Resolved, on the motion of Mr Greenwich, seconded Mrs Quinnell: That the minutes of the meeting of 2 June 2023 be confirmed.

**2. \*\*\*****3. Inquiry into the Residential Tenancies Amendment (Rental Fairness) Bill 2023****3.1. Answers received to questions taken on notice**

The Committee considered responses received to questions taken on notice at the public hearing held on 2 June 2023.

Resolved, on the motion of Mr Greenwich, seconded Mr Li: That the Committee accept and publish the following answers to questions taken on notice at the public hearing held on 2 June 2023:

- Mr Tim McKibbin, Real Estate Institute NSW, received 4 June 2023
- Ms Maria Milillo, Raine & Horne Group, received 5 June 2023
- Mr Brendan Ross, Northern Rivers Community Legal Centre, received 6 June 2023
- Ms Natasha Mann and Ms Diana Holy, NSW Fair Trading, received 6 June 2023.

**3.2. Consideration of Chair's draft report**

The Committee considered the Chair's draft report.

Resolved, on the motion of Ms Leong, seconded Mrs Quinnell: That the Committee consider the report chapter by chapter.

**Chapter 1**

Resolved, on motion of Mr Greenwich: That chapter one, as read, stand as part of the report.

**Chapter 2**

Resolved, on the motion of Ms Leong: That Finding 10 be amended to insert "people on lower incomes and those at risk of homelessness" after "older people over 55,".

Resolved, on the motion of Ms Leong: That paragraph 2.27 be amended to insert the following two dot points at the end:

- People on lower incomes or receiving support payments are disadvantaged when seeking tenancy agreements in the competitive rental market, and already experience higher levels of housing stress [FOOTNOTE: [Submission 17](#), Murra Mia AC, Aboriginal Resource Unit,

Aboriginal Tenant Advice and Advocacy Services, p 2; [Submission 22](#), Shelter NSW, p 4; [Submission 11](#), Homelessness NSW, pp 2-3; [Submission 20](#), Tenants' Union of NSW, p 3; Submission 13, NSW Council of Social Service, p 4.]

- Without access to affordable rental homes, people may fall into homelessness. People at risk of homelessness may be inclined to enter into tenancy agreements that they cannot afford, in order to avoid homelessness and/or relocation. [FOOTNOTE: [Submission 10](#), Public Interest Advocacy Centre (PIAC), p 3; [Submission 11](#), Homelessness NSW, p 2; [Submission 13](#), NSW Council of Social Service, p 4.]"

Resolved, on the motion of Mr Li: That paragraph 2.20 be amended to insert the following new sentence at the end and to insert the following new paragraph 2.21:

"However, representatives from NSW Fair Trading agreed under questioning from the Committee that clause 22B(1), as originally drafted, was not clear, and that landlords or agents may accept an offer at or below the advertised price under clause 22B(1), which would not trigger the subsequent disclosure requirements, or would halt the notification process.[FOOTNOTE: Ms Diana Holy, Director, Real Estate and Housing Policy, and Ms Mann, NSW Fair Trading, [Transcript of evidence](#), 2 June 2023, pp 43-44.]

The Committee therefore notes that the intention of the Bill, as drafted, was that the acceptance of an offer under clause 22B(1) would not require the landlord or agent to undertake or halt the process under clause 22B. It accepts that the wording of clause 22B as originally drafted requires further clarification."

Resolved on the motion of Mr Greenwich, seconded Mrs Quinell: That chapter two, as amended, stand as part of the report.

### Chapter 3

Resolved, on the motion of Ms Leong: That Finding 11 be amended to omit "process" before "for offering an amount of rent" and insert instead "option".

Resolved, on the motion of Ms Leong: That Finding 11 and paragraph 3.8 be amended to omit "scope" before "of this inquiry" and insert instead "focus and work".

Resolved, on the motion of Mr Greenwich, seconded Mr Li: That chapter three, as amended, stand as part of the report.

Resolved, on the motion of Mrs Quinell, seconded Mr Amon:

- That the draft report, as amended, be the report of the Committee, and that it be signed by the Chair and presented to the Clerk of the Legislative Assembly on Friday, 9 June 2023 at 4 pm.
- That the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.

- That, once tabled, the report be published on the inquiry webpage.

#### **4. General business**

\*\*\*

Mr Greenwich thanked the Chair, Committee Members and the secretariat for all their hard work during this inquiry. The Committee endorsed this comment.

#### **5. Meeting adjournment**

The meeting adjourned at 10.51 am.