

**Submission
No 16**

RESIDENTIAL TENANCIES AMENDMENT (RENTAL FAIRNESS) BILL 2023

Organisation: People with Disability Australia

Date Received: 31 May 2023

31 May 2023

Mr Clayton Barr MP

Chair

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

Legislative Assembly

Parliament House

Macquarie St

SYDNEY NSW 2000

Delivered by email to residentialtenanciesbill@parliament.nsw.gov.au

Dear Mr Barr

Rental fairness for people with disability

Thank you for inviting People with Disability Australia (PWDA) to contribute to the inquiry on the *Residential Tenancies Amendment (Rental Fairness) Bill 2023* (the Bill).

PWDA is Australia's national peak disability organisation, representing the 1 in 6 Australians with disability. PWDA is also the NSW state cross-disability peak disability organisation funded under the NSW Disability Advocacy Futures Program, providing cross-disability systemic advocacy for people with disability in NSW.

We welcome the NSW Government's intention to provide better protection to renters and improve the functioning of the rental market. However, we are concerned that the proposed reforms could lead to discrimination, exploitation, and insecurity for tenants with disability.

We wish to see an end to the practice of rent bidding. Our concerns with the Bill are outlined in a joint that PWDA has signed on to with the Tenants Union of NSW, Homelessness NSW, the NSW Council of Social Service and others, which has been

provided to this inquiry. However, we attach the joint letter to our submission here letter (see *Appendix*).

Further, we note the inquiry terms of reference are specific to transparency, impact and transactional behaviour related to clause 22B of the Bill, and as well as additional measures to improve transparency and protection for applicants. In addition to proposing a fairer and simpler process, in this submission we also wish to highlight the housing issues that people with disability experience despite it falling out of scope for this inquiry.

Accessible, affordable and secure housing options are crucial for people with disability to live independently – safe from violence, abuse, neglect and exploitation. However, many people on income support payments in NSW would have a hard time finding affordable and appropriate private rental properties.

The housing issues experienced by people with disability are often overlooked yet they are highly relevant to the issue of housing and rental unaffordability. Based on data from our NSW individual advocacy services, housing is the number one issue driving people with disability to seek advocacy support. Additionally, almost 1,300 people using NSW Specialist Homelessness Services in 2021-22 have a disability.

Therefore, we need to see the NSW Government ensure the focus on housing and unaffordability is inclusive of people with disability. To that end, we would also like to take the opportunity to inform you about our [2023 NSW election platform](#), which proposes a range of asks that will support the NSW Government's commitment to the [Australian Disability Strategy 2021-2031](#) (ADS).

If you wish to discuss our submission, please contact my Senior Manager of Policy, Mx Giancarlo de Vera, at giancarlo@pwd.org.au or via telephone on 0413 135 731.

Yours sincerely



Sebastian Zagarella
Chief Executive Officer
People with Disability Australia

Attachment: [PWDA 2023 NSW election platform](#)

Appendix - Joint Letter

To: Legislative Assembly Select Committee on the Residential Tenancies Amendment (Rental Fairness) Bill 2023

Dear Committee Members

We are writing to you as representatives of the below signed organisations. We are concerned about the current draft legislation on rental reform that aims to eliminate secret rent bidding and instead replace it with a regulated rental auction process.

While we welcome the government's intention to provide better protection to NSW renters and improve the functioning of the rental market, we believe that the proposed reforms have unintended consequences that will have further negative impacts on tenants and the rental market.

Rent bidding is when 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 a high-inflation environment that 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. This means that rent bidding can still occur, and that tenants can still be pressured or tempted 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.

We urge you to amend the current draft legislation to remove rent bidding altogether and instead put in place a fair and administratively simple process whereby:

- A fixed rental price must be advertised at the time a property is put up for rent. This advertised rate would act as a ceiling.
- Landlords, real estate agents and potential tenants must not offer, solicit, or accept a higher rental rate than the originally advertised rate.

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 landlords 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.

We appreciate your attention to this matter and hope that you will consider our proposal. We are happy to meet with you or your staff to discuss this further.

Sincerely,



Trina Jones
CEO Homelessness NSW



Leo Patterson Ross
CEO Tenants Unions



John Engeler
CEO Shelter NSW



Yolanda Saiz
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CEO Redfern Legal Centre



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President New England and Western Tenants' Advice and Advocacy Service



**PEOPLE WITH DISABILITY
AUSTRALIA**

A Progressive Disability Agenda for NSW

2023 NSW Election Platform

**A voice of
our own**



Contents



| | |
|-----------------------------------|----|
| About us | 2 |
| Introduction | 3 |
| Inclusive homes | 4 |
| Inclusive communities | 5 |
| Health and wellbeing | 7 |
| Education and learning | 8 |
| Employment and financial security | 9 |
| Safety, rights and justice | 10 |
| Community attitudes | 12 |

About us

People with Disability Australia (PWDA) is Australia's national peak advocacy organisation by and for people with disability. PWDA is also a cross-disability peak organisation, representing the systemic interests of all people with disability in New South Wales (NSW).



Since 1981, we've been advancing and protecting the rights, health and wellbeing of the people and communities we serve.

Led by people with disability, PWDA represents the interests of people with all kinds of disability. We're a not-for-profit community-based organisation and our members comprise a diverse range of individuals and organisations from across Australia.

We work both nationally and internationally, and our work is grounded in a human rights framework that recognises the **United Nations Convention on the Rights of Persons with Disability¹** (CRPD) and related mechanisms as fundamental tools for advancing the rights of people with disability.

We deliver our programs, services and activities in partnership with thousands of members and supporters as well as a variety of stakeholders across the government, disability, education and research sectors. We receive funding from a range of sources including the Australian Government, the NSW Government and donations from our supporters.

Introduction

People with Disability Australia wants a progressive disability agenda from the New South Wales (NSW) Government.



Australia's Disability Strategy 2021–2031 (ADS) outlines key outcome areas that all levels of Government, including the NSW Government, have committed to. The outcome areas in the ADS include inclusive homes and communities, health and wellbeing, education and learning, employment and financial security, safety, rights and justice and community attitudes.

This election platform proposes a range of asks that will support the NSW Government's commitment to the ADS and promote the full and equal participation of all people with disability in NSW.

Inclusive homes

The commitments we're seeking from the NSW Government:

1. make all new homes accessible for people with disability, by incorporating the **Livable Housing Design Standard** found in the **National Construction Code** into NSW legislation in line with the **Building Better Homes** campaign
2. assist people with disability to obtain secure, affordable and accessible housing, by:
 - committing to ongoing funding for the Department of Communities and Justice **Together Home program**⁴
 - providing the \$2.6 billion a year for the next 10 years to build 5,000 new social housing properties each year in line with Homelessness NSW's **Tip the Scales** campaign. PWDA recommends all new social housing properties must be accessible. Along with our social sector partners including the **NSW Council of Social Service** and the **NSW Women's Alliance**, PWDA notes the importance of increasing social housing for women and children – including women and children with disability – experiencing domestic and family violence (DFV)
 - investing sufficient funds to provide timely home modifications in social housing properties
 - providing at least \$500,000 in targeted funding to minimise delays repairing existing social housing properties, in line with the Homelessness NSW **Tip the Scales** campaign.⁵

People with disability have a right to choose where they live. Like anyone, we also have a right to choose who we live with. Data from PWDA's NSW individual advocacy services shows that housing is the number one issue driving people with disability to seek advocacy support. The need for accessible, secure and affordable housing is also reflected in the fact that almost 1300 people using NSW Specialist Homelessness Services in 2021–22 have a disability.² As Anglicare found in its most recent regional **Rental Affordability Snapshot**,³ many people on income support payments in

NSW would have a hard time finding affordable and appropriate private rental properties.

The NSW disability community needs our NSW Government to ensure we have accessible affordable and secure housing options so we can live independently with who we want – safe from violence, abuse, neglect and exploitation. Housing is also important as it can mean the difference between whether we use or lose disability supports.

Inclusive communities

The commitments we're seeking:

1. adopt the principles of the **End Segregation Position Statement**
2. transfer NSW Government responsibility for disability inclusion from the Department of Communities and Justice to the Department of Premier and Cabinet, in line with the Council for Intellectual Disability's **Everyday for Everyone** inclusion campaign⁷
3. respect our right to enjoy legal capacity on an equal basis with others by transitioning away from our state's guardianship and administration regime to a supported decision-making model that is fully compliant with the United Nations CRPD
4. improve the accessibility of transport information, in line with the Council for Intellectual Disability's **Everyday for Everyone** inclusion campaign⁸
5. ensure that access to DFV services is informed and driven by women with disability, including those with lived experience of DFV, by continuing to fund the PWDA **Building Access Project** beyond 30 June 2023. This will provide DFV services with access to training and expert advice on how to increase the accessibility of their services to people with disability
6. create a fund to support people with disability to access DFV services, such as shelters, and use it to improve accessibility, including by funding physical modifications.



Inclusive communities continued.

Segregation of people with disability breaches our human rights under Article 19 of the **United Nations CRPD**⁶ which confers the right to full inclusion and participation in the community, and under Article 9 which confers a right to access the physical environment, transport, information and communications.

Therefore, the full inclusion of people with disability is a human right, affirmed, protected and promoted under the CRPD. In our joint **End Segregation** Position Statement we identified the following principles to end segregation:

1. Human rights cannot be limited or denied, and segregation cannot be justified based on the existence or degree of impairment, diagnosis or disability
2. Segregation and segregated facilities for people with disability need to be recognised and conceptualised as inherently unequal and discriminatory
3. Full and effective participation and inclusion in society for people with disability is dependent on the end of segregation and upholding individual autonomy
4. The individual autonomy, will and preferences of people with disability must be respected and upheld by replacing substitute decision making arrangements with fully supported decision-making arrangements.



To ensure we end segregation in all settings, we need the NSW Government to take the lead by having the responsibility for disability inclusion driven by the NSW Premier.

Key to ending segregation in all settings is facilitating the individual autonomy of people with disability, whereby the will and preference of people with disability is respected and upheld.

In addition, key transport and domestic and family violence services remain inaccessible, and so we are seeking practical solutions.

Health and wellbeing

The commitments we're seeking:

1. prevent infection, reinfection, and death from COVID-19 for people with disability by reintroducing protective public health measures, including mandatory preventative measures in residential services funded by the NSW Government, and reintroducing public health orders for mask-wearing in closed settings such as public transport, and healthcare facilities
2. provide additional support for people with disability impacted by COVID-19, similar to the Victorian **COVID Positive Pathways** program
3. create a fund that can be tapped into to resource local community organisations engaged in emergency and natural disaster responses to support people with disability. For example, Resilient Lismore **helps Lismore and the Northern Rivers region recover** from 2022 floods.¹²

Like anyone, the 1.4 million people with disability in NSW⁹ can experience health and wellbeing issues. As 17% of the population¹⁰, our state government needs to support good health and wellbeing outcomes for people with disability. This is especially important given the impact of natural disasters and the COVID-19 pandemic on people with disability.

The Royal Commission into Violence, Abuse, Neglect and Exploitation (Disability Royal Commission) has reported concerns that governments have eased restrictions without adequate measures in place to protect people with disability from contracting COVID-19.¹¹ As a result, many people with disability are presently in a shadow pandemic of ongoing isolation, due to the high risk of health complications, or death, from contracting COVID-19.



Education and learning

The commitments we're seeking:

1. implement the six key pillars of the Australian Coalition for Inclusive Education's **Driving Change** roadmap, including by phasing out segregated education for students with disability in our state and supporting teachers to deliver on inclusive education to improve educational outcomes for students with disability, in line with Family Advocacy's **Same Classroom, Same Opportunity – Securing Better Futures Through Inclusive Education** campaign
2. follow the **Driving Change** roadmap and develop a plan to prevent the use of suspensions, expulsions, gatekeeping and restrictive practices in our state's educational settings, so students with disability have a fair chance of achieving educational outcomes
3. invest in a work-transition pilot project to improve the transition of young people with disability from education to employment, in line with Family Advocacy's **Same Classroom, Same Opportunity – Securing Better Futures Through Inclusive Education** campaign.

People with disability have a right to education, where we're treated equally. However, many of us still experience discrimination at all levels of the education system.

The **Disability Royal Commission** has heard – particularly in *Public hearing 2: Inclusive education*, *Public hearing 7: Barriers experienced by students with disability in accessing and obtaining a safe, quality and inclusive school education and consequent life course impacts*, and *Public hearing 24: The experience of children and young people with disability in different education settings* – that many children and young people with a disability are being excluded, unfairly suspended, forced to attend part-time, or subjected to a heightened risk of abuse, neglect and low expectations.¹³

Article 24(2) of the CRPD sets out the right of children with disability to access inclusive education, which involves learning in the same classroom and school as their peers without disability. However, in NSW, 11% of public school students with disability learn in separate **support classes** in mainstream schools and 3% in schools for specific purposes (SSPs).¹⁴ Far from moving away from segregated education, the NSW Department of Education has committed \$37 million annually in additional funding for SSPs until 2024.¹⁵

This sets children and young people with disability up for a life pathway with poor employment outcomes and social isolation from the general community. Children and young people with disability in NSW deserve better.

We need the NSW Government to respect our right to an inclusive education under the CRPD and make the education system in NSW truly inclusive.

Employment and financial security

The commitments we're seeking:

1. set key performance indicators to track and reduce the unemployment rates of people with disability in our state over time
2. more than double the **2.5% state public sector participation rate in 2021**¹⁷ of people with disability in the NSW public sector. We need to exceed the **Premier's Priority disability diversity target**¹⁸ of 5.6% people with disability by 2025 and ensure that the proportion of people employed in the public sector reflects the fact that people with disability make up 17% of the NSW population¹⁹
3. increase the participation rate of people with intellectual disability in the public service, in line with the Council for Intellectual Disability's **Everyday for Everyone** campaign's disability target of at least 1% of public sector roles held by people with intellectual disability by 2025.²⁰

It's expensive to live with disability and chronic illness. People with disability are twice as likely to be unemployed, having 10% unemployment rates in Australia.¹⁶

The NSW Government can help fill the gap with employment opportunities in the public sector.

We need better jobs and income-earning opportunities at all levels, in all industries, so we can manage our health and wellbeing and take part in society, fully and equally.



Safety, rights and justice

The commitments we're seeking:

1. designate and implement NSW's National Preventative Mechanism as a matter of urgency, with broad powers to monitor disability group homes, aged care homes and mental health facilities and ensure that the United Nations' Subcommittee on Prevention of Torture, can access all places of detention in NSW
2. appoint a **Deputy Children's Guardian for children and young people with disability** to support the work of the Office of Children's Guardian as it relates to people with disability (both children and parents), and as an identified role held by an appropriately qualified person with disability²⁷
3. prevent ongoing barriers to access by competitively reimbursing approved practitioners (such as psychologists, counsellors and psychiatrists) providing support to survivors of institutionalised childhood sexual abuse including **National Redress Scheme** participants who are struggling to access professional support through Victims Services
4. take action to increase the number of approved practitioners providing support to survivors of institutional child sexual abuse in regional, rural and remote areas where people are facing huge struggles to access support – especially where face-to-face support is needed to provide accessibility and choice
5. make reforms to the **Official Community Visitors Scheme** in NSW that:
 - improve the remuneration of, and increases the number of visitors in, the Official Community Visitors Scheme
 - ensure the Official Community Visitors Scheme has sufficient geographical coverage across NSW and proportion of services visited tracks up in a sharp trajectory year on year
 - increase the number of allocated visits to visitable services in the Official Community Visitors Scheme, including the capacity for visitors to undertake return visits
 - improve the scope of what constitutes a visitable service in the Official Community Visitors Scheme, so all settings that are susceptible to a high risk of violence, abuse, neglect and exploitation can be visited.

Safety, rights and justice continued.

People with disability are at increased risk of violence at home and in the community. Statistics show that 1 in 2 (47%) of adults with disability have experienced violence after the age of 15.²¹ Violence against people with disability is most often perpetrated by someone they know.²²

The Disability Royal Commission

has heard harrowing stories of how the segregation that people with disability experience in education, homes, employment and day programs can become drivers of violence, abuse, neglect and exploitation.

We need to feel safe and be safe in the places we live, work and take part in everyday activities and we need access to justice and support where abuse has occurred. We need to ensure that decision-makers within our state hold a contemporary understanding of disability that fosters choice and control, and dignity of risk. We need to leave behind ideas about people with disability that are overly protective

and guided by low expectations about commonplace roles, including parenting.

Currently there is a shortage of **Official Community Visitors** in NSW who monitor an increasing number of visitable facilities where we live (2,394 facilities last financial year). This shortage needs to be addressed urgently to ensure a seven-year trend towards a declining proportion of services visited each year (49%) is quickly turned around.²³

NSW has also failed to implement its National Preventative Mechanism under the *Optional Protocol to the Convention Against Torture*²⁴ (OPCAT), which means people with disability are missing out on an important safeguard against violence, abuse and torture.²⁵ NSW also refused to grant the UN Subcommittee on the Prevention of Torture access to places of detention in NSW last year, causing the Subcommittee to suspend their visit to Australia.²⁶



Community attitudes

The commitments we're seeking:

1. review the state's **Anti-Discrimination Act**, ensuring sufficient time is allocated for the review to facilitate meaningful co-design of reforms with people with disability.

People with disability encounter ableism and discrimination every day. For the disability community to have a level playing field, we need to be embraced in all settings and welcomed with the reasonable adjustments we need to participate equitably in our society.



The **Anti-Discrimination Act 1977** (NSW) was ground-breaking when it was first introduced but has fallen behind the times when compared to Commonwealth and other state and territory anti-discrimination laws. It is out of step with community standards and expectations, with its failure to make sure educators, employers and goods-and-services providers have a positive obligation to provide reasonable adjustments for people with disability.²⁸ The Act needs comprehensive reform to effectively protect people against discrimination and disability discrimination and promote equality of opportunity and participation for all people, including people with disability.²⁹

The NSW Government must take positive actions to prevent and eliminate discrimination³⁰ and address ableist attitudes, and to help people with disability to become more involved in society.

End notes

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Contact

We welcome enquires and feedback about our 2023 NSW Election Platform from our members, supporters and sector partners.

Policy Team

To discuss any relevant issues, please contact our Policy Team:

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