

**Submission
No 17**

RESIDENTIAL TENANCIES AMENDMENT (RENTAL FAIRNESS) BILL 2023

Organisation: Murra Mia AC- Aboriginal Resource Unit- Aboriginal Tenant Advice and Advocacy Services

Date Received: 31 May 2023

Submission on the draft Residential Tenancies Amendment Rental Fairness Bill

Thank you for the opportunity to provide a submission in relation to the Select Committee's inquiry into the *Residential Tenancies Amendment Rental Fairness Bill 2023* ('the Bill'). This submission is made on behalf of the Aboriginal Tenants' Advice and Advocacy Services in NSW ('ATAASs').

The ATAASs along with the Aboriginal Resource Unit provide access to support, representation, advice, information, conciliation and education for Aboriginal and Torres Strait Islander renters.

The ATAASs welcome the introduction of the Bill and the present inquiry, which both represent crucial steps in addressing the ongoing NSW housing crisis which is having profound effects on individuals, families and communities.

Our submission is focussed on the proposed provisions within the Bill which relate to banning rent bidding, and specific concerns about the impact of rent bidding on Aboriginal and Torres Strait Islander renters.

Proposed approach to banning 'rent bidding'

Solicited v unsolicited offers

The Bill prohibits landlords from soliciting or otherwise inviting an offer of rent that is higher than the advertised amount of rent for the premises. The Bill also proposes a requirement for landlords and their agents to inform other applicants when a renter makes an *unsolicited* offer higher than the advertised rent. However, the proposed amendments in the Bill do not prohibit landlord or their agents from *accepting* unsolicited offers of higher rent amounts. In practice, this could mean that when other prospective tenants become aware of a higher bid or are encouraged by the agent or landlord to submit higher offers, the agent or landlord could exploit this bidding process by receiving escalating offers of rent until accepting the highest rent possible. This model would imbed rental auctions within the rental application process.

Accordingly, we do not support the proposed amendments outlined in clause 22B of the Bill in their current form. Instead, we agree with the view of the Tenants' Union of NSW, the peak non-government organisation advocating for the interests of tenants and other renters, that any proposed measure intended to ban rent bidding must:

1. Include a prohibition on landlords and their agents from entering into an agreement for an amount of rent that is higher than the advertised amount of rent for the premises.
2. Impose appropriate penalties for individuals and companies that fail to comply

In the experience of ATAAS tenant advocates, rent bidding can cause exploitation of renters at the application stage. Rent bidding can also distort the rental market by driving up prices beyond what is considered 'fair market value', making it challenging for renters to find any affordable housing options. We consider that these are issues which must be appropriately addressed by any legal mechanism for reform in this area. Therefore, if a rent auction model such as that set out in clause 22B of the Bill is to be introduced, we further echo the view of the Tenants' Union of NSW that further consultation should be undertaken to ensure adequate and appropriate safeguards are in place prior to implementation.

Who is covered by the restrictions on rent bidding

The changes to the *Property and Stock Agents Regulation 2014*, which were implemented in December 2022, currently apply to restrict the practice of rent bidding by real estate agents and not landlords.

We support the proposed changes to the *Residential Tenancies Act 2010* ('the Act') to expand the restrictions on rent bidding to also include landlords and other persons.

Impact of Rent Bidding Practices on Indigenous Renters:

Data obtained from the 2021 ABS Census shows that 34.2% of households which include Aboriginal and Torres Strait Islander people are rented privately.¹

In New South Wales, there is a severe shortage of housing for Aboriginal and Torres Strait Islander People. Historical experiences of disadvantage and the ongoing impacts of colonisation have had a significant impact on Aboriginal and Torres Strait Islander housing conditions and rates of homelessness. Rent bidding disproportionately affects vulnerable groups, further exacerbating housing inequality, and it poses an additional risk for Aboriginal and Torres Strait Islander people already facing disadvantage in the housing market.

We understand that this Bill is part of a government process aimed at setting up a fairer renting system, and we have concerns in respect of the disproportionate impact of rent bidding and the approach adopted by the proposed Bill on Aboriginal and Torres Strait Islander renters. This could occur in the following ways:

1. **Statistical likelihood of discrimination:** Aboriginal and Torres Strait Islander renters statistically face higher levels of discrimination during the application process.² Rent bidding or 'rent auctions' exacerbate this discrimination by prolonging the application process, forcing further engagement with landlords and real estate agents, and intensifying competition with other rental applicants, making it even more challenging for Aboriginal and Torres Strait Islander individuals and families to overcome discriminatory barriers and secure suitable housing.
2. **Limited access to affordable housing:** The Bill defines '*acceptable applicants*' as applicants with whom the landlord would be willing to enter into a residential tenancy agreement. In circumstances of rent bidding, the pool of '*acceptable applicants*' is limited only to those applicants on higher incomes. The competitive nature of rent bidding and auctions places renters on lower incomes at a significant disadvantage with little prospect of becoming 'acceptable applicants', and unable to secure housing against competitors with the capacity to pay exorbitant rents above the advertised price. Rent bidding makes affordable housing even scarcer for Aboriginal and Torres Strait Islander renters who already face financial disadvantage at disproportionate rates.
3. **Displacement from traditional lands:** Aboriginal and Torres Strait Islander renters may face displacement from their traditional lands due to the financial pressures created by rent bidding. As rental prices increase, they may be forced to seek housing outside their traditional Country, disconnecting them from their communities and culture.
4. **Barriers to stable housing:** Rent bidding can create instability in the housing situation of Aboriginal and Torres Strait Islander renters. The intense competition and uncertainty associated with rent bidding make it difficult for renters to secure appropriate housing, leading to higher rates of housing instability and transience within Indigenous communities.

We thank the Select Committee for the invitation to provide a submission, and look forward to further opportunities to contribute to this critical law reform work.

¹ Australian Bureau of Statistics 2021

² Birdsall-Jones, C, Corunna, V, Turner N, 'Indigenous Homelessness', Australian Housing and Urban Research Institute, Final Report No. 143, 5 March 2010, accessed 30 May 2023 <<https://www.ahuri.edu.au/research/final-reports/143>>; Stone, L, Peters A, Veeroja P, Goodall Z 2022, 'Think Private Renting is Hard? First Nations People can be excluded from the Start', *Swinburne University of Technology*, 20 October 2022, accessed 30 May 2023, <<https://www.swinburne.edu.au/>>.