

**Submission  
No 19**

## **RESIDENTIAL TENANCIES AMENDMENT (RENTAL FAIRNESS) BILL 2023**

**Organisation:** Department of Customer Service

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# NSW Fair Trading Submission: Residential Tenancies Amendment (Rental Fairness) Bill 2023

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May 2023

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## Acknowledgement of Country

The NSW Department of Customer Service acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and emerging and acknowledge the Aboriginal and Torres Strait Islander people that work in the NSW public sector.

*NSW Fair Trading Submission: Residential Tenancies Amendment (Rental Fairness) Bill 2023*

NSW Fair Trading

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# Contents

<b>Residential Tenancies Amendment (Rental Fairness) Bill 2023 .....</b>	<b>1</b>
What does the Bill do?.....	1
<b>Secret Rent Bidding .....</b>	<b>2</b>
What is secret rent bidding? .....	2
What is the purpose of banning secret rent bidding? .....	2
How does s 22B of the Bill stop secret rent bidding? .....	2
Monitoring the impact of s 22B.....	3
NSW Fair Trading compliance and enforcement.....	3
Expected implementation timeframe.....	3
Rent bidding complaints, compliance and enforcement since December 2022.....	3

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# Residential Tenancies Amendment (Rental Fairness) Bill 2023

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## What does the Bill do?

The Residential Tenancies Amendment (Rental Fairness) Bill 2023 (the Bill) amends the *Residential Tenancies Act 2010* (the Act) to implement two of the NSW Government's election commitments:

- banning secret rent bidding to ensure more transparency for renters, and
- enabling the establishment of a portable rental bond scheme.

Since December 2022, real estate agents have been banned from soliciting higher rent offers from rental applicants, under Schedule 1 of the Property and Stock Agents Regulation 2022. This includes a requirement that agents advertise a rental property at a fixed rent, rather than as a range or by negotiation.

Section 22A of the Bill will extend the ban on soliciting higher rent offers to landlords and other third parties (such as online rental application tools). This includes requiring that a landlord or their agent advertise their property at a fixed rent.

Section 22B of the Bill implements the ban on secret rent bidding.

The Bill also expands the regulation-making powers in s 186A of the Act to support the design and roll out of a portable rental bond scheme. A portable bond scheme will allow tenants to transfer a rental bond from their old rental property to a new rental property, before the first bond is released. This should help reduce financial strain and cost of living pressure on renters when moving between rental properties.

Lastly, the Bill has a minor change to clarify that rental bonds held by the Government are held on trust. This is a minor legal clarification only, as in practice these bonds are already held on trust, ready to be paid out at the end of a tenancy agreement.

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# Secret Rent Bidding

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## What is secret rent bidding?

Rent bidding occurs when renters offer more than the advertised rent price for a rental property.

While s 22A of the Bill bans solicited rent bidding, agents and landlords can still accept an 'unsolicited' higher rent offer that a rental applicant makes voluntarily.

These unsolicited offers currently operate as 'secret' rent bids, as a landlord or agent is not required or permitted to tell other rental applicants about them. These 'secret' bids are given and accepted without other applicants ever knowing an offer was made or being given a chance to make their own higher offer.

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## What is the purpose of banning secret rent bidding?

Section 22B of the Bill implements the Government's election commitment to ban secret rent bidding to ensure more transparency for renters.

Section 22B aims to make the rental application process more open and transparent for renters. It will give rental applicants knowledge about rent offers made by other applicants and agents/landlords, and a chance to make their own offer if they wish to do so.

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## How does s 22B of the Bill stop secret rent bidding?

Section 22B of the Bill puts in place a notification process to stop secret rent bidding and make the rental application process transparent for rental applicants. The section provides that:

- landlords or their agents are to advise all rental applicants in writing of any higher offer made by an acceptable applicant. An acceptable applicant is one with whom the landlord or agent would be prepared to enter into a tenancy agreement, and therefore whose offer they are genuinely considering,
- written notice of a higher offer from an acceptable applicant must be given within 1 business day after the higher offer is received and before either:
  - a holding deposit is accepted, or
  - the acceptable applicant is notified that the landlord intends to enter into a residential tenancy agreement with them,
- landlords or their agents are to keep a copy of the written notices they give about higher rent offers for at least 3 years.

The obligation to notify of higher offers from an acceptable applicant continues to apply until a holding deposit is accepted, or a tenancy agreement is entered into (section 22B(1)).

To further support transparency in the rental application process and minimise situations where prospective renters attend an open house inspection, or apply for a property, where the rent is now above their budget, s 22B also requires landlords or their agents to:

- tell prospective renters who enquire about a property or attend any open house inspections about the highest rent offer that has been received from an acceptable applicant at that time,
- take reasonable steps to update the rental property's advertisements with the highest rent price offer that has been received, if further open houses for the property are proceeding.

Non-compliance with the obligations in s 22B carry a potential maximum penalty of 50 penalty units (\$5,500) for an individual or 100 penalty units (\$11,000) in all other cases.

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## Monitoring the impact of s 22B

Section 22A(5) of the Bill provides a regulation-making power which enables the Secretary to require a person (such as landlords and agents) to supply information to the Secretary to support monitoring and evaluation of the effects of the rent bidding reforms including those in s 22B.

This power can be used to collect data on rent and the rental market that is not publicly available.

Monitoring the operation of the rent bidding reforms, including s s22B, will be one of the responsibilities of the incoming Rental Commissioner. NSW Fair Trading is in the process of recruiting the Rental Commissioner.

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## Other jurisdictions

Victoria, Queensland, Tasmania, the Australian Capital Territory and New Zealand have all banned solicited rent bidding by landlords and real estate agents. These bans do not extend to third parties. South Australia is also in the process of passing a Bill to ban landlords or their agents from soliciting rent bidding.

No other State or Territory has banned secret rent bidding.

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## NSW Fair Trading compliance and enforcement

### Expected implementation timeframe

NSW Fair Trading expects s 22A and s 22B of the Bill to commence by proclamation one month after the Bill receives assent. Following commencement, NSW Fair Trading will take an educative approach to compliance for the first two months, focusing on giving information about the reforms while the industry adjusts to them. After this time, penalties for non-compliance with the rent bidding provisions will start to be issued.

This approach allows enough time for all parties to adjust to the new process while ensuring it is brought in as soon as possible to support renters in the current competitive rental market.

### Rent bidding complaints, compliance and enforcement since December 2022

Since the commencement of the ban on agents soliciting rent offers from rental applicants on 17 December 2022, NSW Fair Trading has:

- received a total of 53 complaints about rent bidding, including complaints that landlords or agents were not advertising a property for a fixed price or were asking rental applicants for rents higher than the advertised price,
- between 18 to 24 December 2022, reviewed 12,000 property advertisements, found 994 non-compliant advertisements, and sent out letters to educate agents about their new obligations,
- between March and May 2023:
  - found 52 non-compliant property advertisements,
  - completed 76 undercover inspections,

- issued 51 penalty infringement notices with a total value of \$52,250 against agents for not complying with their obligations not to solicit higher rent offers from prospective renters.

In September 2023, NSW Fair Trading intends to complete another compliance program to ensure that agents are complying with their obligations not to solicit rent bids. The program will include covert inspections at open homes to observe agents interacting with prospective renters.

Once the Bill is approved by Parliament, NSW Fair Trading will take appropriate compliance and enforcement action to ensure agents, landlords and third parties comply with their obligations under s 22A and s 22B.



