

**Submission
No 9**

RESIDENTIAL TENANCIES AMENDMENT (RENTAL FAIRNESS) BILL 2023

Organisation: Disability Advocacy NSW

Date Received: 31 May 2023



Submission to Select Committee on the Residential Tenancies Bill 2023

Residential Tenancies Amendment (Rental Fairness) Bill 2023



About Disability Advocacy NSW (DA)

DA has over 35 years of experience providing individual advocacy to people with disability (PWD) of any age. The organisation services over two thirds of NSW, making it the largest individual disability advocacy organisation within NSW.

While DA has a presence in Sydney, it has a strong commitment to regional, rural and remote (RRR) areas in NSW. With local disability advocates – on the ground - in Western Sydney, Armidale, Bathurst, Broken Hill, Ballina, the Blue Mountains, Coffs Harbour, Dubbo, Newcastle, Central Coast, Port Macquarie, Tamworth, Gosford, Taree, Ballina – DA has firsthand insights and observations of the lived experiences of PWD and their families living in these areas.

DA's systemic advocacy draws on coalface information from clients, disability advocates, and the disability sector more broadly to identify and address emerging policy issues. In this submission, we focus on issues surrounding disability and housing to discuss how the proposed changes in the Residential Act Bill may impact on PWD.

Contact

Dr. Cherry Baylous

Policy and Communications Lead at DA

[Redacted]

[Redacted]

[Redacted]



Introduction

Disability and housing

DA welcomes the opportunity to make this submission relating to the [Residential Tenancies Bill 2023](#).

In this submission, we highlight how people with disability, particularly those that live in RRR areas, struggle to secure affordable and accessible housing. We have discussed at length in our housing report, [Beggars can't be choosers: the impact of the housing crisis on PWD](#), that PWD are among the most disadvantaged in the rental market.

In this housing report, we highlight that there is a dire shortage of accessible *and* affordable rental properties. It is estimated that only 1% of the private rental market is affordable for people on low incomes¹. Many PWD are financially disadvantaged due to broader issues of social exclusion surrounding their disability that can impede their employment opportunities. This can also limit their financial capacity to compete in the rental market.

We are seeing drastic increases in rental prices alongside high demand within a rental market where there is scant supply of affordable properties. This means that securing an affordable and accessible home can be nearly impossible for PWD, particularly when other renters can make higher bids.

While the proposed residential tenancy bill will prevent secret bidding, there are possible inadvertent consequences that may arise from amendments. Most notably inflated rental prices. The proposed changes will still enable renters to bid - albeit with more transparency - as there is a requirement for owners and agents to notify other 'acceptable applicants' of higher offers.

Ultimately, applicants with greater financial capacity are vastly privileged in this process in comparison to those with limited financial resources. The point to emphasise here is that PWD on low incomes will be significantly disadvantaged in the bidding process, even if there is

¹ Hartley, C., T. Writer, and E. Barnes, Moving beyond crisis management: The need for investment in new social housing in New South Wales. Parity, 2021. 34: p. 22 - 23



greater transparency. Many will not have the option to offer higher rent due to financial constraints. Additionally, this will arguably impact on people seeking properties at the lower end of the market. We address this issue in greater detail in this submission, addressing each of the terms of reference for this Inquiry.



Will the clause 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?

The clause will provide greater transparency if bids are received. However, the power to make informed decisions will be limited to those with the financial means who have the option to decide as to whether they would like to offer a higher amount or seek another property elsewhere. For those who do not have the financial capacity to offer a higher a bid, this system imposes a decision upon them to not proceed in the bidding process.

Ultimately, the process of bidding - either openly or behind closed doors - will detrimentally impact those looking for properties at the lower end of the market. These properties need measures in place to ensure their availability for the people who need them, and who cannot afford to live elsewhere.

The impact of clause 22B on improving disclosure and transparency requirements compared to the current rental application process.

While acknowledge that clause 22B will prevent secret bidding, and promote greater transparency compared to the current rental application, it will not prevent unfair and inequitable outcomes for more marginalised members of the community.

For people with disability on low incomes, clause 22b will create a more transparent system, but one that is still laden with disadvantage and unfairness. The changes do not address issues of affordability. In fact, it may inflate rental prices as bidding information can be used as a guide to increase rental value.

Additionally, proper documentation and records of bids offered are needed to deter landlords and agents from creating false bids - where there is no applicant offering a higher bid. These documents need to be monitored, and mechanisms should be put in place to enforce penalties if an agent or landlord create false bids.



How clause 22B might be expected to influence applicants' transactional behaviour?

Clause 22B will promote transparent and competitive auctioning behaviours in the rental market. It will create conditions where only applicants with the financial means can compete in a 'bidding war' for a property, which will exclude those who lack the same financial resources. It will continue to prevent access to affordable homes for people with disability on low incomes.

Within this, is the issue of applicants offering 6-month's rent in advance to secure properties. Again, this disadvantages people who do not have the same financial resources.

Additionally, clause 22B may impact on the landlords' transactional behaviour. If applicants offer higher rents, even if the agent declines to accept the offer, once agents and landlords know the value of the market, they will potentially offer shorter leases and then readvertise at the higher price.

While the bill is looking to put measures in place to end no-ground evictions, tenants are still vulnerable to evictions, particularly if their rent increases and they are unable to afford these. Landlords may be eager to increase rent with the knowledge that they may be able to get a higher rate.

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.

Transparency is only part of the issue with rental fairness and equity. It is important to address issues that are contributing to problems with the rental market such as a lack of investment in low income and affordable housing, tax incentives for investors such as capital gains tax and negative gearing, the impact of short-term accommodation and limited regulation - particularly in desirable RRR areas that draw tourism, and how property owners manage their homes.

The proposed regulation does not stop potential tenants from offering above the amount – it only stops landlords and agents from asking. We do not support applicants offering bids of increased rents, particularly if there is no cap on how much they can offer. This lack of regulation on the bidding amount will exclude PWD on low incomes, and other marginalised members of the community in the application process and rental market more broadly.



Lastly, we anticipate that landlords will find reasons - even when holding deposits have been received - to take up a higher offer of rent. The reality is that currently penalties are seldom enforced. It requires the potential tenant to lodge a complaint to Fair Trading or make an application to the NSW Civil and Administrative Tribunal (NCAT). We anticipate that the best a potential tenant could hope to recover at NCAT would be compensation of any costs they incurred as a result of the landlord's promise. For this reason, there are limited odds that a tenant will pursue a remedy.

We anticipate stipulating that the landlord cannot 'opt for the higher bidder' once a holding deposit is received will have limited practical impact on landlords' actions. In this regard, the clause will be toothless, unless landlords are reliably penalised.

Recommendations

- 1.) Rather than focus on the issue of transparency, we strongly urge the NSW government to introduce additional measures to increase the stock of both affordable and accessible homes. One measure we have advocated for previously is for NSW to sign up to the National Construction Code (NCC) that will enforce a minimum standard of accessibility in all new builds. This will help to increase accessible housing stock for PWD and may help to ease supply and demand issues that contribute to inflated rental prices.
- 2.) We also recommend that the NSW government invest in more social and public housing to increase housing stock for people on low incomes. The wait times for these properties are 10 years for a general build and 15 years for an accessible home². This leaves little option for PWD on low incomes in an impenetrable private rental market.
- 3.) We recommend fixing or at least capping potential increases to rent during the application process. This means banning the acceptance of offers above a certain amount.
- 4.) A robust mechanism to monitor bidding conduct is in place and enforce penalties. These are important regarding both agent and landlords soliciting bids so clarity around

² Howard, A., et al., 'I'm not really sure but I hope it's better': early thoughts of parents and carers in a regional trial site for the Australian National Disability Insurance Scheme. *Disability & Society*, 2015. 30(9): p. 1365-1381.



compliance is crucial. Additionally, as noted earlier this should also include a mechanism to prevent false bidding.