

REPORT ON PROCEEDINGS BEFORE

**LEGISLATIVE ASSEMBLY SELECT COMMITTEE ON THE
RESIDENTIAL TENANCIES AMENDMENT (RENTAL
FAIRNESS) BILL 2023**

At Macquarie Room, Parliament House, Sydney on Friday 2 June 2023

The Committee met at 9:15.

PRESENT

Mr Clayton Barr (Chair)

Mr Rory Amon
Ms Liza Butler (Deputy Chair)
Mr Alex Greenwich
Mr Tim James
Ms Jenny Leong
Mr Jason Li
Mrs Sally Quinnell

The CHAIR: The time being now 9.15 a.m., I open proceedings. In advance of everything, I want to thank our participants for making such an incredible effort to turn all of this around so quickly. They say things happen slowly in politics—this might be the exception to the rule. Good morning, everyone. Before we start the public hearing, I would like to acknowledge the Gadigal people, who are the traditional custodians of the land on which we meet. I pay my respects to the Elders of the Eora nation past, present and emerging, and extend that respect to other Aboriginal and Torres Strait Islander peoples who are present or are viewing the proceedings through the public broadcast.

This Committee was appointed on Tuesday 23 May to inquire into matters relating to clause 22B of the Residential Tenancies Amendment (Rental Fairness) Bill 2023. The Committee must report back to the Legislative Assembly by Monday 12 June. Today we are conducting a public hearing for this inquiry. We want to thank the witnesses who are appearing before the Committee today and those stakeholders who made written submissions. We appreciate your input into this inquiry, particularly given its time frame.

Mr THOMAS CHAILLOUX, Policy Officer, Homeless Persons Legal Service, Public Interest Advocacy Centre, affirmed and examined

Mr BRENDAN ROSS, Tenants Advice and Advocacy Services Coordinator, Northern Rivers Community Legal Centre, Community Legal Centres NSW, before the Committee via videoconference, affirmed and examined

The CHAIR: Do either of you have any questions about the hearing process today?

THOMAS CHAILLOUX: No.

BRENDAN ROSS: No.

The CHAIR: I will start with Mr Ross. Would you like to make a short opening statement before we begin questions?

BRENDAN ROSS: Yes, just a brief statement. I'm the coordinator of the Northern Rivers Tenants Advice and Advocacy Services that sits with the Northern Rivers Community Legal Centre. With the proposed reforms, the primary concerns are that it will end up becoming some form of auctioning around rental amounts, which will lead to further strain on tenants. I support the recommendations from the Tenants' Union. Just as a brief statement, that's the summary.

The CHAIR: Mr Chailloux, do you have an opening statement?

THOMAS CHAILLOUX: I have a brief opening statement as well. Thank you for the opportunity to appear. I lead the housing and homelessness policy work of the Public Interest Advocacy Centre. We are a social justice, law and policy organisation working with people and communities who are marginalised or facing disadvantage. The Homeless Persons Legal Service provides free legal assistance for people experiencing or at risk of homelessness. We also address causes of homelessness and broader housing issues through policy work. This is informed by our casework but also by a group of people with lived experience of homelessness called StreetCare.

Reform of rental housing regulation in New South Wales is urgently needed and we've been advocating for many years to make renting fair. That's by reforming laws around evictions, better regulating rental housing, and reform of laws and policies impacting people experiencing homelessness. It's great to see the Government doing this important work early in their term, and we support the provisions of the bill to establish a portable bond scheme and extend prohibiting bid solicitation to landlords and third parties. We support greater transparency in the rental market in general. We are concerned, however, about the negative impacts of formalising rent auctions. Rent auctions will not and cannot deliver cost of living relief to people who rent their home.

We feel that clause 22B is guaranteed to result in properties being rented either at the original advertised price or at a higher price, and that risks triggering bidding wars, if you like, between people who are desperate to secure a home. Rent auctions will mean many people are locked into contracts they should not have entered and they'll be paying rents they cannot afford. It would also mean that people who are concerned they might face discrimination will offer a higher price just so their application has a chance to be on top of the pile. Formalising rent auctions is pouring fuel on the fire of a very hot market, and we are concerned about the impact to people who live on very low incomes who are otherwise vulnerable to homelessness and housing insecurity.

More broadly, we feel that increased rents will affect all people who rent their home. Access to housing is a basic need. It's a human right and an essential service, and we need to regulate it as such. There is a simple solution to achieve the Government's objective, which is to provide greater transparency, cost of living relief and better protections to renters. That solution is to end rent bidding by prohibiting entering into a residential tenancy agreement for a rent higher than the advertised rent price. Thank you.

Mr TIM JAMES: Thank you, Mr Chailloux, for your submission, and for being with us today. Recognising your contention that there should be no law by which a higher offer can be accepted beyond the advertised price, but recognising that that is not the position of either the Government or the Opposition, do you assert that this bill would be improved by removing clause 22B altogether, rather than proceeding with it?

THOMAS CHAILLOUX: Our position is that there needs to be further consultation around rent auctions. Clause 22B does provide slightly more transparency than the current application process, but there are too many unknowns to be able to proceed, so we'd like to see consultation, perhaps led by the Rental Commissioner, around what rules there should be for auctions. Auctions in New South Wales are quite heavily regulated—if you think about the sale of properties, for example. We'd like to see further consultation around what the rules might be around the number of offers you might make and what happens if someone withdraws an offer, because if the

landlord or the real estate agent doesn't disclose that the lead applicant—the person who made the highest offer—has withdrawn their application, this acts as a de facto dummy bid.

We just have a number of concerns around the process. It is a slight improvement and we do support clause 22A, which extends to the prohibition of soliciting rent bids to real estate agents and third parties. So it's a slight improvement, but we'd like to see further consultation. We cannot support clause 22B at this stage.

BRENDAN ROSS: May I make a brief comment on that?

The CHAIR: Yes, please. Go ahead.

BRENDAN ROSS: Just for a bit of context—I apologise that my opening statement was quite short—our service is based in Lismore, so that was impacted by the significant flooding events last year. It did render a lot of premises that were otherwise used for residential tenancies uninhabitable, which is still the case for many of them. Our particular concern is that there is a lot more pressure on prospective tenants to do more to secure a tenancy. Our primary concern with any rent auction model is the pressure falling on the tenants to feel like they need to offer more. It kind of creates an environment where those rent auctions may come about even though that's not the intention. I support any recommendation to remove clause 22B or, in the alternative, refine either the consultation or consideration with that, so that it's minimising the risk of rental auctions or exacerbating rental prices. The primary reason we say that is that there's already a lot of pressure on the rental market across the State, but particularly in this area following the natural disaster. That's my comment.

Mr ALEX GREENWICH: I have two questions. I might start with Mr Ross. The purpose behind the legislation we're dealing with builds on the former Government putting restrictions on secret rent bidding in regulations. This then seeks to legislate them and improve transparency. Where this starts is around the prevalence of secret rent bidding in New South Wales. Could you give us a bit of insight into the extent and impacts of secret rent bidding as your service has supported people?

BRENDAN ROSS: Thank you, I appreciate that. Our service provides advice and advocacy for tenants in the Northern Rivers. We've noted both anecdotally and following the data from the Tenants' Union that rental prices are on the increase. That started perhaps from COVID—a lot more people were moving to the area, so prices were trending up because the demand for rentals was increasing and the supply doesn't match that. Following the floods there was a marked decrease in the actual available amounts, so what we've noticed is rents are increasing. Our primary concern with secret rent bidding is that real estate agents aren't compelled to stop having or not have any conversations with prospective applicants to offer a higher amount. Or there may be conversations where they're proposing it. We don't have any conclusive evidence on it but we know that the rents are increasing.

Without pointing the finger at any agents, our primary concern is that there are no protections or provisions to prevent that or to compel them to not do that. The other side of that is that the pressure on tenants means that they may offer a higher amount. So it is not solicited but because—I'll frame it like this, previously people who had never had the thought of being at risk of homelessness in the area all of a sudden do, even if they're financially comfortable otherwise. Obviously there are people who are more vulnerable who experience that day to day, but the lived experience of people up here of the risk of homelessness is substantially increased, which in turn creates pressure for tenants to either enter into conversations about solicited rent bids, or they're offering more to secure a tenancy. That's our primary concern because we can see it happening in practice, so the proposal that we're suggesting is that there need to be tighter regulations around real estate agents to either not solicit rent bids or not entertain unsolicited rent bids. Underpinning all that, there's increased pressure on tenants to offer more to secure tenancies.

Mr ALEX GREENWICH: Mr Chailloux, do you have any comment there?

THOMAS CHAILLOUX: I would add that it is not only a burden for tenants. It's also potentially a burden for real estate agents and landlords. There is a significant administrative cost that may be incurred when complying with clause 22B, in particular notifying applicants and any sort of records that might be kept of the higher offers and the process. There should be an option, at the very least, for landlords to opt out of the process by saying that there is a fixed price for the tenancy that they are offering to the market and that this is the only offer that they will accept.

The other comment I will make is that, as people miss out and lose on auctions, they'll become increasingly desperate, so we can expect that their future behaviour will be to try to offer a higher bid. This will be as they approach any sort of deadline, whether that deadline be something mildly inconvenient like not having a property to relocate to if you're changing jobs, or whether that deadline might be something dramatic like experiencing homelessness.

Mr ALEX GREENWICH: My second question—I might start with you, Mr Chailloux. As I said, the Government's intention behind this legislation is to prohibit secret rent bidding and to improve transparency in the rental market. I believe they should be commended for that. I draw your attention to paragraph (d) of the terms of reference for this inquiry, which asks whether there are any additional measures to improve transparency for applicants during the rental application process, or to better protect applicants without formalising an auction process for rental properties. I note the strong objection from both of your submissions and other submissions around clause 22B. In terms of additional or alternate measures, what would you recommend to address this transparency issue, which is at the heart of the concern of the legislation?

THOMAS CHAILLOUX: I won't overly labour the point, but obviously the most transparent thing you can do is to just have a fixed advertised price. The second thing that we could do is have a bit of a look at what the application process looks like and maybe regulate the application process more strongly. In particular, I think we want to investigate whether there should be a prescribed standard form to apply for residential tenancies. I think this has the potential to reduce discrimination in the private rental market, just ensuring that when people miss out on a tenancy they know why their application was not selected.

It could also discourage landlords from asking for too much information, or tenants from providing too much information—or not too much, but providing a lot of information of their own volition because they believe that this will assist them in securing a tenancy. So I think we need to look at ways we could regulate the application process a little bit more strongly, whether that's through a prescribed form or other things like providing reasons for accepting or declining applications.

Mr ALEX GREENWICH: Mr Ross, any comment there?

BRENDAN ROSS: Yes, thank you. I concur with the comments just made. The only thing I would add is, in terms of transparency, I strongly agree with the prescribed standard application form because it will ensure consistency and any kind of monitoring or assessment will be in line with a consistent process. This will make it easy to determine whether it's effective or not, or if any improvements can be made. Another point I would make is I would support any recommendation for more information provided to prospective tenants on the part of landlords. This could be specified in terms of rental history, if there's a high turnover, or any tribunal applications or orders that have been made against them. Primarily part of this is just to provide some transparency on landlords' financial capacity to meet their obligations in terms of a residential tenancy agreement, and it will allow tenants to have a further understanding of who they're entering into an agreement with, especially as real estate agents often act on behalf of landlords, so tenants aren't aware of any of that information.

I do also support reasons to be given if someone is unsuccessful and specific information requested in terms of any reasons why—for example, if a higher amount was accepted or if they were deemed unacceptable for a specific reason. At this stage it's referred to any listing on a database, but if it's simply due to a higher offer being made, the tenant should have that information provided for them in a timely manner. If there's any other specific reason that the real estate is basing their decision on, tenants have the right to be informed so they're aware for future applications.

Ms JENNY LEONG: Thank you both for coming in and for the contributions you've made so far. I wanted to turn briefly to the Public Interest Advocacy Centre submission, specifically the comments made around the risk that may see tenants who know they may be discriminated against, as a result of age or disability or race or being a single parent et cetera, use this as an opportunity to try and overcompensate. I wonder if you could speak briefly, Mr Chailloux, to what you believe would be a risk for applicants who have either specific dwelling needs or who know they might be discriminated against in relation to clause 22B, if it was to be put in place?

THOMAS CHAILLOUX: Our concern is that people would try to compensate for what they perceived to be a disadvantage when they are looking for a new home. They will put in a higher offer just to make sure that their application is considered. When you attend an inspection, you can usually assess who the other applicants might be. Let's say that you attend an inspection and everyone is or seems to be a heterosexual couple and you are in a same-sex relationship. You might think that the landlords will not consider the application unless you make a higher bid. Those would be circumstances in which people feel compelled to make a higher bid, but it's not really—it is an informed decision, but they've been coerced in that situation in a sense. And I think that is why we need to have a look at things like prescribed tenant application forms and provision of reasons to sort of reduce the potential for discrimination.

It's also recognising that, when people make a higher offer for a property, it might be for trivial reasons, just because they really like that property, but it could also be for really serious reasons that impact their life, like having a specific need for certain things in a dwelling. One applicant might just like where that dwelling is located, but another applicant—it might be very important for them because it's quite rare to find a dwelling that is

accessible for their needs, for example, because they have a disability. This is particularly important because in New South Wales we have not adopted into the National Construction Code things like the silver level of universal design, which is outside of the scope of this inquiry. But just saying that there's quite limited stock of appropriate dwellings for people with disability.

Ms JENNY LEONG: Mr Ross, did you want to comment on that further in the context of other needs around shortage of housing, particularly in the region that you're working with?

BRENDAN ROSS: Yes. Thank you, Ms Leong. I appreciate that. Just referring back to what I said before, one of our primary concerns is there's—I refer to it as increased pressure for tenants in relation to a very congested rental market. I appreciate the question because concerns around any kind of bias, discrimination is absolutely relevant, and it's another layer. It makes it much more complex for tenants when applying for a tenancy. Obviously, the primary goal of this is transparency. It's not strictly about affordability at this stage. However, there is a primary issue of—I agree with the assertion that people will feel compelled to offer more to bridge a perceived gap between how they are perceived—for race, disability, cultural background, anything like that.

So nothing more specific to add apart from I support the comment, and it is something that needs further consideration, particularly in terms of the reasons because, even if reasons are provided, there are reasons that can justify a decision for a tenancy going to another tenant but issues of discrimination or any kind of bias are much harder to tease out. Our understanding is, just from clients we speak to—I know this is anecdotally, but—people saying they're going to inspections where there are 30 to 40 people there and they're just saying, "I'm not going to get a look-in" because of their personal circumstances. Thank you.

Ms JENNY LEONG: I might come back to a question by the member for Willoughby, if I can, Mr Chailloux, just in relation to 22B. Mr Ross, feel free to jump in as well. Specifically, obviously, we all recognise that some form of rent bidding is happening now. People are offering more. I think, even though we know the regulations changed at the end of last year, we all have heard anecdotal stories of other ways to solicit higher bids, even if it's now put in regulations that those bids shouldn't be solicited. I appreciate, in both of the submissions you made, the preference is for the advertised price to be the advertised price. That's also my preference. Where we're at, I guess, is that 22B, I think, entrenches the risk of a rent auction, which is very different to the current landscape, which is to say it happens, we know it happens, we don't want it to be solicited by agents and landlords but, obviously, if a tenant offers more, that is the way it is.

I ask your preference as to whether or not we go ahead with 22B as it is and allow that to be formalised versus to remain, if you like, in the informal situation that we're in and how you see that as beneficial to tenants. If we have two options on the table now, which is 22B is in or 22B is out, recognising both of your positions, I guess I would be interested to know whether or not you are supportive of the idea of 22B being addressed or fixed by this Committee or, potentially, just removing 22B to allow further discussions and consultations around that.

THOMAS CHAILLOUX: I think this would require further discussion, but our preference, at this stage, would be to remove 22B while we investigate and develop other measures that can address the issues in the private rental market. I am thinking about measures around better regulation of rent increases, better regulation of the application process and around how offers might be made. But, just noting that this is a bit of an answer on the spot, for us, we really require further discussion around this and how we can fix 22B—how the process has to work. What is the definition of an acceptable applicant? What are the limits on the duration of the auction, on the number of offers and counteroffers that might be made, on how you might withdraw those offers and what happens then? What are the opt-out provisions for certain landlords? There are so many questions that need to be answered before we can move ahead with regulation of rental auctions, noting, once again, that this is not our position. Our position is that the advertised price should be the price that is entered in the residential tenancy agreement.

Ms JENNY LEONG: In your submission, you point to what I would suggest sounds like a contradiction or a risk of a contradiction between 22A and 22B—specifically, the fact that the clause in 22A is prohibiting the soliciting of additional offers or higher bids by real estate agents or landlords, if we saw the change applied to both. But, at the same time, 22B is requiring landlords and agents to engage in a process of informing others of bids. Would you speak to that potential risk around the contradictions and the challenges that might exist for how that would be monitored and compliance would be ensured?

THOMAS CHAILLOUX: Absolutely. What the bill does, from our perspective, on the one hand, is it prohibits to solicit bids but, on the other hand, it creates pretty big incentives to solicit bids, because, once you have received a higher offer, this auction process is then triggered and you have a chance of securing a higher rent for the property through the auction process. So you have created pretty large incentives for landlords and real estate agents to engage in soliciting bids or otherwise trying to trigger a higher offer for the property. This is because landlords obviously get a higher rent, but real estate agents also get a higher commission because that is

set as a percentage of the rent. It is particularly concerning when we see that the previous legislation that was put in place prohibiting to solicit bids—and I know it is relatively recent—not a single fine, to our knowledge, has been issued in spite of complaints to real estate agents about this. It is also particularly complicated to monitor and enforce compliance. It is easy to just say a few vague things at the inspection or when the tenant visits the property that it might be a good idea to make a higher offer. So I think an important issue with the legislation is that it does create that incentive for illegal behaviour.

BRENDAN ROSS: I support those comments. Our position is quite similar. I applaud the provisions to prohibit solicited offers from real estates, but I think it needs further consideration and our preference would be to not include clause 22B at this stage—not without further consideration. Another thing that I would make note of is that we have become aware that, alongside of rent bidding—that we know is happening—real estates are accepting six months' rent in advance, and, without making any assumptions, there are potentially other ways that conversations are happening to incentivise tenants to do more, in addition to just offering more rent. In line with that, just noting—without having a clear proposal in mind with anything like that at the moment—that is one of the reasons why we recommend that further consideration is made. So while we applaud that there are steps in relation to that, it is a much more complex area and we would support any recommendation for further consideration.

The CHAIR: It might give you some comfort, Mr Chailloux, that we have got a submission from the Department of Fair Trading saying that they have now issued 51 infringement notices for soliciting higher rents. That is between March and May this year. That is really quite new. That is a submission of the Department of Fair Trading and I do hope they were enforcing the rule.

Mrs SALLY QUINNELL: My question is to both of you in turn but I will start with Mr Ross. Considering that 22B is about improving disclosure and transparency, I am curious as to whether there are any benefits in keeping the current situation where the offers that are made to landlords and real estate agents are kept secret?

BRENDAN ROSS: Just to clarify, are there any benefits at this stage for undisclosed offers of higher rent from prospective applicants?

Mrs SALLY QUINNELL: Yes, for tenants.

BRENDAN ROSS: Not that I—no. Apologies, I will try to be as concise as possible. There are no foreseeable benefits because it creates an environment where the rental market or the amount of rent that is the average median amount of rent across a region, especially up here where there are additional pressures following what I would describe as a catastrophic natural disaster—which happens across the country. It was February last year but the effects are very much still felt. In line with that, no, because it pushes up the rental market in a way that tenants or people searching for a rental are not informed and they are not able to respond but they do feel the pressure and feel compelled to offer more money. That obviously benefits landlords, real estate agents or anyone trying to make rental income. The only other thing I'll make note of is that there are a lot of landlords who have had their properties impacted, or interest rates have gone up, so they have their own financial pressures and they are incentivised to enter into negotiations or any other avenue to increase their rental income. I support any change that improves that transparency and minimises secret rent bidding.

THOMAS CHAILLOUX: I would say that there are benefits to keeping bids secret but they are not very great benefits. The first one is really broad. It puts less inflationary pressure on rents because once one secret bid is made and the other applicants are not informed it is likely that the landlord is just going to take that bid so it won't push the rents up as much. Because it doesn't trigger those auctions as well, the other benefit is that it does not lock people into contracts that they cannot afford. It does not lock people into housing stress situations. We know that people tend to behave quite irrationally during auctions. Auction fever is a thing. It is very common, even from people who are skilled auction bidders, to go above the prices that they had initially set and things like that. I think those are benefits that—we can do much, much better than that. It is not a lot of comfort to know when we know the current situation in the private rental market.

Ms LIZA BUTLER: Thank you both for your submissions today. Just listening to you about monitoring compliance, if somebody doesn't make a complaint to your service, then how do you actually know right now that rent bidding is happening?

THOMAS CHAILLOUX: This will be from data we get from the Tenants' Union. Our service focuses on people who are experiencing or who are at risk of homelessness so we do monitor the housing market and what is occurring with rents and rental bidding. Most of our clients are not in a position to do rental bidding so we would rely on data from colleagues amongst the Tenants Advice and Advocacy Services. I might direct that question—I believe my colleague Mr Ross would be better placed to answer this.

BRENDAN ROSS: I appreciate the question. We receive a very high volume of calls. Part of our intake process is that we make inquiries of the current rent they are paying for their particular rental and we also give advice around rent increases and entering into a new tenancy. There is an element of data collation and collection that we receive. They do not specifically have to go and make a complaint for us to receive that information. It is part of the normal processes. Of course, that is not to say that we are across all instances. But we do speak to tenants regularly whether they become aware through the application process that the advertised price is different to what's finally offered. They refer to conversations they have had with real estate agents where they have made a judgement call to say, "You can't afford this," or there are questions around affordability. I acknowledge it is not a complete picture of everything, but we do regularly engage with tenants as part of that intake process to form our opinion that rent bidding does take place.

Ms LIZA BUTLER: Would it be fair to say that if 22B was left in, we would have transparency and there would be some mechanism to collect that data and then include a review of 22B in 12 months' time?

BRENDAN ROSS: Yes, I agree with that. It would create transparency and it would provide a basis for review and monitoring down the track. I think the primary concern at this stage is that it does create a model in which if a higher offer is made then people will be notified and then compelled to make a higher one beyond that. I think that is the primary concern. Once that's in place, if there are impacts down the track, it might be hard to mitigate the impacts at that stage. If 22B was included, that is where we would recommend that further consideration is made to limit the impacts of any kind of rent auction model, and also for relevant and accurate information to be provided in a timely fashion. That is where I believe that a standard application form be introduced and relevant information be provided to applicants of the landlords as well.

Ms LIZA BUTLER: Do you think that if paperwork was more onerous for real estate agents, they may not take part in rent bidding at all?

BRENDAN ROSS: Yes. It may act as a disincentive if there are more administrative requirements and also more compliance measures if the real estate isn't following the prescribed legislation. Given that real estates act on behalf of the landlords, one concern with that is that the benefit for the landlord for higher rent overall may compel the auction process to take place to a higher rent overall, which might outweigh any administrative costs or delay in receiving rental income while that process takes place. Yes, the additional administrative requirements may act as a disincentive. That is something that we would have to see in practice. But my primary concern is that the benefits of receiving a higher rent over a 12-month agreement, for example, would outweigh any initial administrative burden or costs associated by the real estate and, therefore, the landlord.

Ms LIZA BUTLER: Mr Chailloux, do you have any further comments?

THOMAS CHAILLOUX: Not really. We would like to once again reiterate that we see housing as an essential service and we do not believe that people should access the rental market through auctions. We would like to see more regulation of the market rather than moving towards a free market sort of system, where housing goes to the highest bidder. We know that this does not work and we end up with a lot of people experiencing homelessness.

Ms LIZA BUTLER: Could I just ask you to comment on leaving 22B in so that rent bidding can be measured and then reviewed in 12 months' time?

THOMAS CHAILLOUX: From our perspective the potential for unintended negative consequences by triggering a higher number of rental auctions is too great and we cannot support clause 22B in this current state and at this stage. As I mentioned before, there are a number of things we would like to discuss before we can support such a model. We are opposed to it.

Ms LIZA BUTLER: Thank you.

The CHAIR: We are almost out of time.

Ms JENNY LEONG: Am I able to jump in and ask a follow up question in relation to something the member for Camden asked Mr Ross?

The CHAIR: I have not had an opportunity to ask a question yet. It will be brief and sharp about empowering people with the information. If we report back to people that a higher bid has been made, is that not empowering? They would then know that a bid above the price has been made.

THOMAS CHAILLOUX: It is empowering to a very small number of people and those are the people who have the financial capacity to make a higher bid. But I am here to speak on behalf of the Homeless Persons' Legal Service: this is not the case for our clients. There are benefits in increasing transparency in the market for, say, middle to upper class professionals who might be quite mobile and who do want to secure a specific property

for a variety of reasons. But we are concerned about the consequences for people living on very low and low incomes—the two first quintiles and maybe even the third quintile of income. There are some benefits, but they are for a very small minority of people who rent their home.

BRENDAN ROSS: I have a very brief comment, if I may. I take your point that it would create some transparency and understanding, but I would respectfully note the fact that the possibility for a higher offer to be made is—I would agree with my colleague's comment. The fact that that has occurred in the first place would be very disempowering for people on a lower income scale. That would outweigh any empowerment that they would receive through the transparency—the fact that the higher offer was able to be made in the first place.

The CHAIR: I am sorry, Ms Leong, we are not going to have a chance to come back to you. I thank both witnesses for appearing before the committee today. You will each be provided with a copy of the transcript of today's proceedings for corrections if you think that you have been quoted incorrectly or cited incorrectly. You have not taken any questions on notice, so we don't need to worry about that. Committee staff will now—

Ms JENNY LEONG: Is there potential to put a question on notice to Mr Ross? I want to clarify something quite significant to where we are at, if we don't have time to answer it in the minutes remaining.

The CHAIR: You can ask the question now and Mr Ross can potentially take it on notice and provide the answer in writing.

Ms JENNY LEONG: Mr Ross, I understand that the member for Camden asked you what the benefits are of keeping the current situation: the current situation being that we don't disclose the amounts. Do you think that 22B would result in fixing the concerns you had around the undisclosed amounts, or would they remain the same concerns? I think there is a difference between the idea of having concerns around the current situation, but also whether or not you thought that implementing clause 22B would address the concerns that you raised in relation to the current model, which is that these rental bidding processes are not disclosed.

BRENDAN ROSS: I am happy to take that on notice.

The CHAIR: Thank you, Mr Ross. If you could forward that through, we will need the response by 4.00 p.m. on Tuesday 6 June at the latest. Feel free to send it through any time before that. I thank both witnesses. I really appreciate the tight turnaround and your participation.

(The witnesses withdrew.)

Mr LEO PATTERSON ROSS, Chief Executive Officer, Tenants' Union NSW, affirmed and examined

Ms LEHANA DE SILVA, Solicitor, Aboriginal Support, Tenants' Union NSW, affirmed and examined

Mr JOHN ENGELER, Chief Executive Officer, Shelter NSW, sworn and examined

Ms CATHRYN CALLAGHAN, Senior Policy Officer, Shelter NSW, affirmed and examined

Mr BEN McALPINE, Acting Chief Executive Officer, NSW Council of Social Service, affirmed and examined

The CHAIR: I welcome our next set of witnesses. As I said earlier, we greatly appreciate your ability to turn this all around so quickly. I made the flat joke that Parliament does not always move fast but this might be the exception. Feel free to laugh or not. Would any of the organisations like to make a short opening statement before we begin questions?

BEN McALPINE: Good morning. Thank you for having me here. I would like to first start by acknowledging the country on which we are today, the Gadigal people of the Eora Nation, and pay my respects to their Elders past and present. NCOSS is the peak body for the community service sector. A key part of our role is advocating for a New South Wales that is free from poverty. NCOSS appreciates the Government's swift action and focus on supporting renters by bringing forward this bill and NCOSS recognises that there is a need for urgency to tackle the housing crisis in New South Wales and to support those who are doing it toughest.

Our recent research demonstrated the grim reality of poverty in New South Wales, with almost one million people living below the poverty line. It showed how private renters are amongst the hardest hit. Of all tenures the private rental market has the largest number of people experiencing poverty—over 400,000. In Greater Sydney the rate increased by 10 per cent since 2016, with significant intensification in the south-west of the city. In some parts of New South Wales more than half of the people living in private rental live below the poverty line. So while we acknowledge that we must act quickly, we must also ensure that we do not make changes that lead to unintended consequences with a potential to make the situation worse.

NCOSS is concerned by 22B in that it will require the notification of higher offers to applicants and that this risks creating a rental auction, which will amplify rental price increases and put affordable housing even further out of reach. We are particularly concerned about the impact this could have on people living in poverty and those in low-income households. We have recommended in our submission that either 22B be amended to prohibit all offers higher than the advertised price or, if not, removing 22B and empowering the soon to be appointed Rental Commissioner to perform further review and consultation to improve transparency while still protecting renters.

The CHAIR: Thank you. Shelter NSW?

JOHN ENGELER: Thank you, Mr Chair. I will just jump straight in. Firstly, of course, I would like to acknowledge the traditional owners of the land on which we are meeting, particularly this week, Reconciliation Week. Shelter NSW thanks the Committee for its invitation to attend and for us to give evidence today. We understand that the intent of this bill, as its short title suggests, is to create more fairness in the rental system. There is complexity, however, in the bill's attempt to address the current contradiction where real estate agents cannot ask tenants to offer more than the advertised fixed price for rent but can, however, accept a higher offer made voluntarily by potential tenants.

We are concerned that a bill that allows for prospective tenants to offer a higher rent may trigger an auction-like process with all the price escalation outcomes that most vendors and their agents in any auction process would hope to achieve but which consumers dread. While we endorse the overall goal to make the private rental system more transparent and fairer, and the general aim of eliminating secret rent bidding, we have serious concerns about the proposal to replace it with a regulated rental bid process. We fear that a rent auction process will produce unintended but easy-to-contemplate consequences that may undermine the very well-intentioned goals of increasing a sense of fairness and of reducing stress within the rental application process.

Beyond the issue of administrative complexity and the stress for all involved, we assume that the widespread adoption of this applicant-driven rent bidding approach would surely increase average rent prices. Why would New South Wales formally embed practices that not only enable but in fact encourage one group of renters to more strenuously compete against another for an essential service such as housing? Surely only landlords would be the ultimate winners. Shelter NSW is calling for the current draft legislation to be amended to remove the rent bidding altogether and instead put in place a fair and administratively simple process whereby a fixed rent price must be advertised at the time a property is put up for rent; that the advertised rate acts as a ceiling; and that landlords, real estate agents and potential tenants must not offer, solicit or accept a higher rental rate than that originally advertised. In the event the bill proceeds without amendment, we believe that there has to be some

attention to constraining the worst elements of the auction process. Overall, we suggest—and I am sure we are well in line with our peers here—that an incoming Rental Commissioner will be well placed to explore these types of concerns with the real estate sector, tenant advocates and the community sector more generally.

LEO PATTERSON ROSS: I would like to acknowledge that we are meeting on the Gadigal lands, and also acknowledge all the lands where people rent their homes today. Thank you for the opportunity to appear today. The Tenants' Union of NSW, for those not familiar, is the peak body representing the interest of tenants in New South Wales. We have longstanding expertise in renting law policy and practice. We are a specialist community legal centre focused on this area. We are also the main resourcing body for the statewide network of Tenants' Advice and Advocacy Services in New South Wales. The network assisted more than 35,000 tenants, land-lease community residents and other renters in the previous 12 months. The TAAS network includes a generalist stream of 16 services, including the Tenants' Union, and five Aboriginal-focused and -run services. My colleague Lehana is the solicitor supporting the Aboriginal services and will in a moment share some particular views we heard from those organisations. We thank the tenants, community members, community organisations and workers who shared their views with us over the last six months and we seek here to represent their views.

We recognise this bill is part of a broader suite of rental and housing reforms from the Government and that the intention of those reforms is to create a fair and improved rental system in New South Wales. We recognise renting as an essential service and encourage policymakers, industry and the community to do the same. The primary purpose of the renting sector, therefore, is to ensure that the people of New South Wales are able to find and keep safe, stable and affordable housing in their communities, with all participants a part of achieving this outcome. We must make sure the availability of homes and the regulation of them work together to meet community needs. These current reforms should be considered with respect to that impact on the sector's primary purpose.

We acknowledge and appreciate the positive intention expressed through the bill to provide renters with greater transparency during the application process, which has been an area of great frustration for many years and especially so during the current acute crisis. However, we hold serious concerns that the reforms currently in clause 22B will unintentionally sanction and entrench rent auctions as an acceptable rent-setting measure in the private rental sector. We understand this reform is not intended to be an affordability measure, but nor should we risk worsening affordability with it. The Tenants' Union considers that the most transparent approach to rent is that the price you see on the advertisement is the price you see on the agreement. We also made a number of other recommendations looking at transparency in our submission and generally look forward to your discussion and deliberation. Lehana will have just a few more words to say.

LEHANA de SILVA: Thank you, Leo. Housing stress is increasing for all renters in New South Wales, but particularly for populations more likely to face systemic disadvantage. Approximately 34 per cent of households which include Aboriginal and Torres Strait Islander people are rented privately. I spoke with the coordinator of a regional Aboriginal tenancy advice and advocacy service, who has been assisting Aboriginal renters for more than 20 years. He reported that local house prices have climbed to levels that he did not think were possible and that many people in his community are unable to secure affordable housing. In this type of housing market, rent bidding is an additional, formidable barrier to accessing housing.

As stated in their submission, the Aboriginal Tenancy Advice and Advocacy Services share the Tenants' Union's concerns about clause 22B of the bill and support the Tenants' Union's view that we need to end rent bidding altogether by prohibiting landlords or their agents from entering into a tenancy agreement at a higher rent than advertised. We thank you for your commendable commitment to delivering better and practical outcomes for renters in New South Wales, and thank you for the opportunity to appear today.

The CHAIR: The first question is fairly pointed. All of your submissions talk about the potential to end rent bidding—full stop, in globo. But for the remit of this particular Committee, that is not one of the things that we get to contemplate. We are contemplating the question of transparency. The purpose that you have all referred to is to provide transparency if a bid has been put in, to empower people, I would say—and you might disagree—with the knowledge that a higher bid has been put in. If this Committee does not have the ability to consider many of the other things and if it is just a question about proposed section 22B—the purpose, the intent and the role of people knowing that other bids might have been put in—does that change or alter any of your submissions, thinking or contributions today?

LEO PATTERSON ROSS: We do see a fundamental misalignment between the goal of transparency and the goal of allowing bids coming in unsolicited on a fixed price. It is very difficult to see how you can enable a system of having bids coming in that doesn't make it difficult for the renters from the very beginning. We've got to take that step back and think about the whole process. A renter has seen an advertised price, and they have come to inspect the property on the understanding that that is the price that they are considering. If they are then

told that there are bids coming in, that already means that the original price was not transparent. It wasn't advertised, for instance, as saying, "This will be an auction on such and such a day at such and such a time. You'll all get together and hash out the price." That's not the process they were led into.

What the effect of that is is that it creates a false sense of the demand for that property, and that leverages people into making bids in the first place. So it is not a transparent system of setting a price or leading people to believe that what they are engaging in is a set system. Just as a general statement, we don't think it's appropriate for auctions to be on rents, and we don't have this on other essential services. We don't auction off the doctors' fees. We don't auction off even food at the consumer level. These things are essential services; they are too important for that kind of thing. The reason that that's a problem is that people can be desperate for these services, and that loses the theory of an auction, which is that you're achieving some kind of fair market value where there are two equal parties coming together or multiple parties coming together to try to hash out that price.

The features of fair market value we put in our submission, but there has to be a sense that the person isn't under undue pressure to bid over and that they have all the information that they need to make those bids. These things are not available to renters. Again, there isn't the transparency about, for instance, the quality of the home, the number of other potential re-interested people, particularly at all the different price points, for a person to make a bid that meets that definition of fair market value. That's why it's very difficult to see how we can amend. I would also say that the terms of the reference do ask whether 22B meets these. It does, I think, remain open to the Committee to say that in fact it doesn't meet the transparency intended to be produced. We absolutely acknowledge that the intent is a good and positive one around transparency.

The CHAIR: Thank you. Do either of the other groups want to make a contribution to that?

BEN McALPINE: I would echo what was just said from the Tenants' Union, but I would add even if we took at face value that 22B does improve transparency, notwithstanding some of the comments from Leo, NCOSS' question would be: Transparency at what cost? Is this going to increase transparency at the cost of affordability? While I would agree that the terms of reference are really trying to focus on that question of transparency, I would argue it would still be important to be considering how that increase in transparency, even if we were to agree with that argument, would have impacts on other outcomes that are critical to private renters and the rental market.

JOHN ENGELER: And ours is just to reinforce what both the colleagues have said and just probably to add, in terms of elegance of drafting, if we include and extend the provisions looking at 22A to include not just agents, third parties and landlords, but vendors or potential applicants, it in effect renders 22B null and void. Our main preference would be just to deal with it by suggesting that A goes the whole hog; it doesn't stop halfway. It includes anyone involved in rent bidding, making it an auction, and that includes a potential applicant. I think it just, in terms of elegance and efficiency, it makes 22B not needed.

The CHAIR: Right. Thank you. I will go to Cathy.

CATHRYN CALLAGHAN: Back to your question, Chair, about empowerment. My question would be: Who feels empowered? Certainly, someone with the financial means being alerted to a high bid would feel empowered, but would people without the financial means, having already made an assessment on the advertised market price, I don't know that they would feel empowered. They may feel frustrated and feel stressed. And then there are a lot of the very practical issues about how you find out, when you find out. You think you've put in an application. You think you've entered into a pretty straightforward consumer process. So this question of empowerment, I think it would only be a certain type of applicant. Again, we've made a point: Why would we want to create a process where we encourage and enable one set of usually higher-paid applicants with deeper cash reserves to enter into a bidding process against other applicants?

The CHAIR: Just on that word, "empowerment", isn't empowerment sometimes knowing when you need to walk away because it's beyond you. I know it's also disempowerment because you don't have the financial means, but when you make a choice about the food you buy or something, the price is fixed and set; I take that point. But don't you make those choices based on what's within your power and knowing that is an empowerment in its own right?

CATHRYN CALLAGHAN: I suppose at a systemic level we know that there's a very large and growing group of people who are already entering into rental situations. They are going in with open eyes—okay?—empowered with information, but knowingly entering into highly stressful financially unreasonable and unsustainable arrangements. We just don't know why the State would want to create a process where, even with information, you want to encourage more people into the fever pitch of an auction-type process around an essential service.

LEO PATTERSON ROSS: May I comment on the empowerment?

The CHAIR: Yes.

LEO PATTERSON ROSS: I think that we have to consider, as I said before, that this person has already been induced to come to an inspection, to enter into the application process with one understanding of what the price is, and they're already on the back foot; so more transparency there is not empowering in that sense because what is happening is that they're being told, "You are at a disadvantage. You need to improve your offer to meet the market", but that market is only entertaining the idea of rent bidding because we have a crisis. We don't see rent bidding as a phenomenon in more balanced markets where there is supply meeting that, because in those balanced markets the consumers are empowered. So giving that ability to bid over and to enter into an even more competitive mode is a response to the disempowerment that the sector has already embedded in the system.

The transparency then doesn't act to empower even within that. It's a survival mechanism rather than empowerment. I actually think that even for those higher income renters, what they might experience as empowerment is still them responding to a poor outcome. It is not what they would choose to be doing. They would have preferred to visit the property, know that the price is the price, and proceed on that basis. The walking away should happen at the point that you see an application and that application is more clearly priced at the appropriate level. They can walk away then so that there isn't this induced demand for that property that's not a true reflection of what that place would attract if it had been priced at the level that the owner or agent thought that it should.

So we're trying to fix a broken system through rent bidding—through transparency—but that's not going to address the frustrations that people feel and that renters have been telling us about. We got a mix of views on whether the transparency in clause 22B would help, but even the people who said that it would help were also saying, "It's not the real problem. The real problem is the bidding itself. We dislike that. Yes, it's a little bit more transparent. It's still a very frustrating process. I don't want to engage in it."

Ms LIZA BUTLER: Thank you for your submissions today. What I'm hearing is that we're already having rental auctions but they're secret. They're not transparent and we can't monitor them. We don't actually know the numbers. You mentioned the Rental Commissioner. Wouldn't it be far better to have a formal process that was transparent and that would enable the Rental Commissioner to monitor what is happening to make further recommendations down the track, rather than not knowing what's going on and not being able to gather that data?

LEO PATTERSON ROSS: Data collection in renting is an area that needs great improvement. We can do that without introducing rent auctions. There are a range of things that the Rental Commissioner could and should do in bringing together different data sources from within Fair Trading, the bond board and planning to give a much better idea of what's happening. I think that it's unclear to what extent rent auctions are happening now in the current system. We know that rent bidding was happening prior to December 2022. It's taking on a different form now because it is unlawful. But that is more an issue of enforcement—of resourcing and empowering the regulator to carry out inspections, to educate and to issue compliance actions against people who are breaking the current law.

This is a widespread problem in tenancy generally. We routinely see surveys, including a 15,000-strong survey by the University of Adelaide that shows that the majority of rented homes have repairs and maintenance. That's against the law as well, but the enforcement of the regulation is not sufficient. So I think we have to separate breaches of the current regulatory scheme from the idea that we want to make transparent the action. It would be similar to saying, "Because people keep speeding, we are going to make speeding lawful because at least everyone will know how fast everyone's travelling." We've chosen these breaks because it causes harm to the community, and we need to make sure that those laws are then followed in order to prevent further harm.

Ms LIZA BUTLER: Did anyone else have anything to say on that?

JOHN ENGELER: Just a general comment that, ultimately, it's about making sure that more people have certainty, housing security and stability, irrespective of the transparency that might be occurring around a number of transactions. We really want to see this as a shield, not a sword—even if it's seldom used. But the ultimate thing is to give people the certainty and the security that they need to have for predicting what they're going to be doing in 12 months. Knowing what properties they're looking at and the price they're aiming to get for those, and what the advertised price is, is surely the most certain way you can achieve that.

Ms LIZA BUTLER: Bringing it back to 22B itself, not about banning rent bidding altogether, if 22B were in the bill, in legislation, any additional measures that would improve transparency such as you mentioned—would they have to provide that information to Fair Trading et cetera?

LEO PATTERSON ROSS: There are a range of areas that we identified in our submission that, if 22B were going to continue, would need to be considered. We are concerned that the level of regulatory enforcement action and the level of resourcing won't be provided, and that the administrative burden on agents and property

managers will mean that they'll resist and, again, seek to either comply or seek to undermine, which is the current problem. If rent bidding is happening now—not the one offer from an unsolicited bid but if there is continuing conversation, which people are reporting, to some degree—that is undermining the current regulatory system. So the complexity that would be needed is likely to also be undermined. There are a range of areas that we did suggest should be looked at. We just need to be very conscious that that is not a process of consultation and consideration that is feasible in the next week. It is likely that they should be referred off for further processes to talk it through and to have stakeholders engage with what this might look like in reality.

Ms LIZA BUTLER: Anything further from anyone else before we move on?

CATHRYN CALLAGHAN: Just to note—and, really, just from our own perspective in the past week—when you sit down and look at how this would practically work, it's not hard to come up with 20, 30 or 40 questions. If you think about what would be required practically to implement something like this—and I am sure the real estate sector can comment more credibly on it—there are so many questions if you think about practically how it would work and they're not addressed in 22B. So it seems like there are a lot of questions at a regulation level that would need to be sorted out to practically implement it.

Ms JENNY LEONG: Unsurprisingly, I have some questions. I thank you all for your submissions and the quick turnaround. Particularly, thank you to the Tenants' Union for including the voices of renters and people experiencing rental stress in your submissions. Given the shortness of this inquiry, one of my serious concerns was the fact that we would lose that perspective, so it's really wonderful that, in that quick time period, you were able to include those voices in there and how people are experiencing these challenges right now. Given the scope of all of you in terms of your peak body status and your reach in terms of representation across people in New South Wales and a whole lot of community services, stakeholders, industries et cetera, are you aware of any group—I ask this to all of you—experts, organisations or industries that are advocating for the introduction of rent auctions in New South Wales? The second question to that is in taking this step of introducing 22B, which would establish a form of rental auction, or some risk of it—in all the submissions you've made that is the case—would New South Wales be taking a first with having rental auctions? Are you aware of any other jurisdictions in Australia or other parts of the world that would have a system of having rental auctions?

LEO PATTERSON ROSS: Taking a few steps—and remind me if I missed part of the question. I might go backwards. We are not aware of any other jurisdictions that have this style, including other States and Territories in Australia, where there has been a process of attempting to end at least the solicited rent bidding. None of the States have moved on to ending unsolicited but, in large part, they have all followed New South Wales' lead. So there has been a spreading of the equivalent of 22A but not of 22B. And, internationally, I'm not aware of anywhere that has this style for rent pricing. Can you remind me of the first question?

Ms JENNY LEONG: It was in relation to whether or not you're aware of any groups, organisations or industry experts who are advocating for a rental auction?

LEO PATTERSON ROSS: No, we're not aware of any groups advocating for it. The Real Estate Institute will appear shortly and speak for themselves, but their guidance for many years has been that rent bidding is at least risky under the previous regulation; that it risks misleading and deceptive conduct. That advice is reflected even in our survey. There was a former property manager and renter who referred to that. Rent bidding used to be unlawful; it should be again. I think that the default setting for most people is that rent bidding is not allowed generally and has been loosened up or become a practice because of the crisis, not because it is necessarily good policy.

Ms JENNY LEONG: Can I ask Shelter NSW specifically? Ms Callaghan, I appreciate the comments you made around there being many questions if 22B was to go ahead. One of the ones that you identify is the potential risks around certain professions not being able to access and respond. I wonder if you could talk more briefly to how that might work and start to outline some of those questions that you refer to that remain if 22B in its current form were to pass.

CATHRYN CALLAGHAN: Sure. We just started with the idea of if an alternative higher offer is made by another applicant, where does it end? What if multiple applicants make a higher offer at the same time? Does that practical process of an agent dealing with multiple offers coming in at various time frames go on for days, or does it go on for hours? The point we made in our submission was around the really practical implications. Presumably most of these things—well, I assume everything would be done digitally, so people are being advised, I don't know, by phone or by email. How does that work for people who, for example, in their professions are actually forbidden or even just practically unable to access the real-time updates from agents about this potentially fast-moving auction?

In a sample size of one, I consulted a friend of mine who is a nurse at Westmead Hospital and asked her about the restrictions they have on the use of mobile phones. She is a renter, and she noted that professionally they're pretty well forbidden from using their phones on duty. But even practically, she said, "I might have my arms in somebody's gut, sewing someone up, so I'm not really going to be touching my phone for a number of hours." So we decided to think about the practical implications and what would be the time frames.

I know there is a time frame mentioned in 22B about the one business day, but this thinking through of implications of a rolling bidding process and what would be regarded as a reasonable time for that to go on and just recognising that for many people—we have colleagues in the Ageing on the Edge coalition who talk about a lot of older renters not necessarily having skill or actual physical access to digitally enabled phones to practically participate, so there's that. But then for a lot of people with caring responsibilities, how do you practically get involved in something like this in real time?

Ms JENNY LEONG: A number of submissions have raised the fact an established practice is growing. We heard from Mr Ross earlier from the northern tenants' advice and advocacy service that there is a growing practice in people offering, say, additional rent in advance, or other kinds of value that isn't rent. Can I ask you all to talk about how you would see 22B playing out in relation to that? Would we then have to be sharing information around offers of, "We'll keep the garden maintained," or, "Someone has offered an extra three months' rent in advance. Would you like to offer four months"? If 22B was to pass into law in our next sitting, how would you see that operating in relation to offers of value that aren't about higher rental offers?

LEO PATTERSON ROSS: This is one of those areas where it is difficult to know how this will play out. Rent under the Residential Tenancy Act is defined as value for the occupation. How you assess the value of the rent in advance, in particular, is tricky. Is it the value of the interest potentially earned on holding that money for three or four months? It's likely not. It's likely something around the certainty of the rent payment rather than the use of the finances. It's very unclear. It would constitute an offer, or likely constitute an offer. I don't think the bill considers it in that view.

Similarly with things like carrying out work on the premises, often those offers are actually an offer to contract out of the tenancy law. The landlord is responsible for repair and maintenance of the premises. Gardens is a vexed issue. It's not really settled law what the responsibility to maintain a living thing is. It certainly pushes around the edges, and we hear from tradespeople and handy people who make these offers to contract out of the tenancy law—again, very difficult to assess the value of that. It is, strictly speaking, not a binding term of the contract; it is not a binding offer. There is a certain level of trust to not actually comply with the law embedded in that offer. These things aren't really hashed out in the bill, and I think that's something that would be needed for it to continue because it is quite a fundamental issue.

Ms JENNY LEONG: Again, in relation to 22B, if it was to go ahead, can I ask you to comment on what protections would exist in 22B to ensure that bids were not falsified, so that people who had a financial interest in relation to upping the rent weren't able to engage? What protections would exist if the current 22B passed to ensure that there wasn't risks of people gaming the system?

LEO PATTERSON ROSS: Again, difficult. The definition of "acceptable applicant" is someone who the landlord would be willing to enter into an agreement with. So through litigation you could potentially flesh out what that looks like and say, "Well, with a family member, for instance, there is no genuine intention to enter into an agreement there." So if that was disclosed that that had happened, you could try and seek compliance orders. But we already know that it is very difficult to run litigation in this area because people's housing is at risk when they do—and we welcome the end of no-grounds evictions that will help with that issue. That definition of acceptable applicant is again an area that would need to be fleshed out and it would require quite a lot of work. A positive is that does open up transparency and an understanding of the application process for the first time. It is an area that is not currently regulated and there is no real guidance from government about how to assess an acceptable applicant.

But the other issue is where people are withdrawing offers—so they make an offer and then withdraw—because, unlike other auctions, people will be bidding and engaging in this process on multiple properties at once because they are trying to find a home and because these processes may take weeks. What happens to a person who made an offer, has now withdrawn it and in the meantime someone else has beaten that offer? In terms of informed knowledge of the process so far, that person should be told that the bid has been withdrawn so that they can also withdraw or amend their bid to reflect the true market level. Again, this is not a process that is clear in 22B. It would require a lot of work to think through how this would play out in reality and what safeguards need to be put in place if it was to proceed.

Ms JENNY LEONG: I will just ask for one final comment because I appreciate the Government's desire to address rental fairness. It is something that I am very encouraging of and I think we want to move forward in a

way that we are seeing that happen. I wonder if all of you could talk to some of the things that you think could be transparency and fairness measures. What are some simple additions and fixes to this bill that would improve actually rental transparency and fairness? Given the concerns you've raised around 22B potentially implementing rent auctions, what other things could be put in the mix in relation to 22B and this bill that would improve transparency and deal with the objects of the bill? Noting that the shift we have seen is a shift and focus around secrecy and transparency to what was originally intended to be the desire to ensure the owners of properties, landlords and real estate agents won't be able to solicit a bidding war in order to jack up the price that in effect makes life harder for those who want to live and rent in New South Wales. This is what Premier Minns said on 12 December when he introduced and announced this policy around ending secret rent bidding.

BEN McALPINE: I've got some responses to maybe bring in later, depending on how we go with the questions. But to Ms Leong's question, I would echo what Mr Patterson Ross talked about in terms of there are a number of measures that we could introduce that would potentially contain the risk of rental auction, but we would be very strong in our view that that may require further review and consultation before adding it into the legislation. To give two examples, one may be putting a cap on the number of higher offers that can be accepted to try to minimise that intense fuelling of rental increases, and another might be putting a ceiling on how high above the original advertised price it can eventually go. I mention those two as examples of ways in which we could amend 22B to try to contain the risk that we are all very concerned about. But I would reinforce the message of if we were to go down that path, we would probably need to pause, review, consult and then go forward.

JOHN ENGELER: I echo the comments of both of my colleagues, but also the idea that there might be some "the devil is in the details" stuff, like a quantum limit that says "by x" or "any more than x" might then become the purview of the Rental Commissioner—that sort of idea. There are a number of ways that this could be looked at. But I think the fact that there isn't and they're still needed—more consultation and more ideas about which particular pieces of regulation might be needed to support this is what we would support.

CATHRYN CALLAGHAN: On a broader level around transparency, Leo mentioned no-grounds evictions. There's great intent, and we look forward to the consultation around that end of the rental cycle. But the application process—just taking some feedback from our colleague—is probably the least transparent with the least regulation, generally. Applicants really are on the back foot. For example, so much is asked of applicants to declare so much information about their lives—so there are big privacy issues there—but applicants do not know the track record of landlords on maintenance and other important considerations that you might want to know about as a consumer. There are some really practical things. Again, the Tenants' Union's submission mentions that having a standard application form across the sector would be good—one that is lawful and does not allow discriminatory questions to be asked either directly or indirectly.

We think there are a number of things that could be done to make the application process more transparent and fairer. Perhaps looking across to other consumer processes, the State Government has done a lot over time to simplify things for people around information and interfaces. We think this is a part of the rental cycle that warrants a really good going over in terms of transparency and simplicity. Complexity blocks people out. Complexity costs money, it causes stress and, for a lot of people, it means they just walk away because it's literally too hard for them to understand and compete in. We think there's a lot that could be done.

The CHAIR: In the interest of time, if the Tenants' Union wants to add to that, please do so. But I ask you to keep that succinct so that we can move onto Mr Greenwich.

LEO PATTERSON ROSS: Very succinctly, my colleagues have referred mostly to recommendations 5, 6 and 7 in our submission. The only one that they didn't mention was that landlords provide tenants with a reason when their application is deemed unacceptable and be more transparent about the reason that people are being turned away. That would address some of the concerns and some of the frustrations that people have, alongside more information about the owner and also a prescribed standard rental application form. Tangentially, on the implementation issues if 22B was to go ahead, we've mentioned a couple of times the risk of entrenching. The big risk we see is that industry will be required to expend a significant amount of resources to update their processes and websites. Places like Gumtree do not currently comply with the terms of 22A. They will need to put in significant resources to update all these processes. If we review in three, six or 12 months, they will say, "We have spent millions of dollars doing this. You're not going to wind this back on us." That will become a barrier to a genuine review and consideration of the ability to roll it back if it does turn out that the risks are realised. Just bouncing off them, I mention that.

Mr ALEX GREENWICH: Thank you all for the work you did in your submissions. I have two questions. The first question is: A number of submissions highlight the rental crisis we are in, with an unbalanced rental market and a lack of supply of affordable rental properties. In response to that, the incoming Government made a number of welcomed and very necessary commitments around ending no-grounds evictions, the appointment of

a Rental Commissioner, putting the existing prohibitions on secret rent bidding into legislation, and portable bonds. The big-ticket items, in my view, are ending no-grounds evictions and the appointment of a Rental Commissioner. I wondered if you could speak to the risks of putting in place rental auctions, which were not one of the Government's commitments, without having a Rental Commissioner and without having dealt with ending no-grounds evictions.

LEO PATTERSON ROSS: As we have referred to a couple of times, the presence of no-grounds evictions is such an issue for the current renting system because it undermines the ability for renters to enforce the laws to carry out their parts. The heavy lifting of the Residential Tenancy Act does lie with renters. The modern renting system in New South Wales and in other States and Territories goes back to a law and poverty inquiry under the Whitlam Federal Government that Ronald Sackville chaired. He made 37 recommendations around renting. New South Wales has implemented almost all of them at different points and they designed the tribunal, the Rental Bond Board and minimum standards. The one that was not taken up was no-grounds evictions, and that is why ever since the tenancy laws have not performed to government's intention. Sackville said that would happen in 1975 and it turned out.

It will be similar here. It is slightly different because these are tenants at the beginning of the tenancy; they have not entered into it yet. Where no-grounds places pressure is that people are being evicted and do not yet have somewhere to go but their eviction date is looming. When we refer to fair market value in the submission, that is one of the ways in which the undue pressure will be felt by the renter. They may have a vacate date coming up that limits their ability to truly consider whether the price is in their best interests, whether the property meets their needs or whether they have inspected and understand the condition and the quality of the premises because they have this very real-time pressure before they become homeless.

The Rental Commissioner is obviously a novel aspect of the New South Wales regulatory scheme. We have not had one before, and we certainly hold high hopes that if it is adequately resourced and empowered, like improvements in building that we have seen with the Building Commissioner, that will have somewhat of a transformative effect on the renting sector and really elevate the discussion and the enforcement of the regulation of the law, but that is somewhat to be seen. It will depend on regulation and empowerment.

Mr ALEX GREENWICH: If I could also ask that question to others, in particular, without prohibition on no-grounds evictions in place, whether you see any risk in a landlord potentially evicting a long-term tenant in the hope that they will get a higher price in a free market auction environment.

JOHN ENGELER: To be honest, we generally leave the technicality and operations of this; we rely on the Tenants' Union. I think moreover, the comment was made earlier that we are dealing with such difficult times at the moment where we have such historic lows in our vacancy rates that once upon a time we would not even have been having these discussions. To point to the broader issue, we certainly support the necessary inclusion of reform and improvement of the no-grounds but also the Rental Commissioner's role. As we see it at the moment, it is very clear that the Rental Commissioner, as the role is described at the moment, will have the ability to look at things that historically have not been areas of concern, or we hope in anticipation of the future we can jump in early and do things pre-emptively around security and timing and issues that are not currently dealt with or have mechanisms. A general comment from us is that we very much strongly encourage the Rental Commissioner. Having dealt with the Building Commissioner recently this week, that is a really good example of being able to make a real difference on the ground. We strongly look forward to that. Looking at ways where the more obvious elements of housing insecurity are not addressed, I think that the Rental Commissioner can certainly deal with that.

BEN McALPINE: I would make two comments. One is that making changes such as introducing 22B in isolation from other reforms does risk unintended consequences of how pieces do or do not fit together. I think the point is well made that no-grounds evictions and a rental auction system create the risk of a self-reinforcing loop. You might have that at both an individual property level, as in the situation you outlined, Mr Greenwich, or it could also lead to a contagion effect, where other landlords see the increased rental prices that are being fuelled by rental auction and then they go through that same cycle again.

Mr ALEX GREENWICH: The purpose behind 22B is transparency. That's the intention. I wonder if it could actually create a potential lack of transparency for renters, potentially not knowing that they are entering into an auction? Clause 22B specifies that the application process is around price but tenants may put in additional information beyond that price, which may give them a benefit that does not need to be disclosed to other people making applications.

LEO PATTERSON ROSS: I think that comes back to the question about how to deal with an offer of various aspects, some of which might be considered to be an offer of higher rent and some of which might not, and how to deal with that. Sorry, can you repeat the question?

Mr ALEX GREENWICH: The question was about concerns around a lack of transparency in 22B. Is it limited to price, or are there any other areas in which 22B may facilitate a lack of transparency for people putting in an application for a rental property?

LEO PATTERSON ROSS: I think going back to the basic issue of 22B, being that it creates an auction where an auction does not currently lawfully exist—it's not compatible with the idea of transparency that we have in other pricing. So in other consumer law areas it's very clear that the price you see on the advertisement, when you walk into a shop or when you see it online is the price that you can expect to pay when you go to that shop. That's the fundamental misalignment. Anything that comes after that, particularly in the context that this is an unsolicited bid—so it is not on the advertisement that there will be auctions.

Another area of concern about 22B is that there is no option for an owner to opt out of an auction. Once they receive an offer, even if they don't want to accept it, they have to tell everyone about it. We've been quite strong in saying that if the autonomy of the owner is taken away to say, "Actually, we don't want to engage in this system", that is also going to have unintended consequences. There's a big risk that whatever 22B looked like, people will seek to undermine it because it is not in their interests and they don't want to engage with it. It is already a feature of our renting system.

JOHN ENGELER: Just to reinforce that thing about the opt-out, I think there is a really good opportunity there to be able to look at carrots as well as sticks as ways of rewarding landlords who do not want to go down this path.

Mr TIM JAMES: Recognising that reform was made broadly in this area not that long ago—late last year—can I just start by asking, were you consulted as part of that reform and were you broadly supportive of those reforms of late last year?

LEO PATTERSON ROSS: We were generally informed of the changes coming from both the previous Government and Labor's announcements in December. It was a very rapid turnaround and we had some opportunity to offer some comments, generally after policy decisions had been made, for both the previous Government and the current Government. We have been raising these concerns since December last year. We understood at the time, in December, that there was a significant amount of community pressure to respond. Parliament had already risen and so the only real option available to the Minister was a regulation introduction. We understood that there was the intent to at least consider legislation on that basis coming forward. At the time, there was limited opportunity to consult. We were informed and were able to make at least some brief comment on the proposals.

JOHN ENGELER: We were certainly aware of it, and I remember having conversations just around the general—it was December. At the time, we were quoted very, very often as saying, "It's just grubby." You can put all sorts of technicality around this, but in terms of the whole process of rent bidding, when people are already highly vulnerable about their security, the concept of rent bidding is just grubby. We can have all the various technical arguments about whether it benefits a very small number but at the expense of a great many. That's the general word that I've used to describe the process.

BEN McALPINE: I apologise. I don't know the answer to that question because it was before my time at NCOSS.

Mr TIM JAMES: Not at all. We've got this clause 22B before us. I think your submissions, both in writing and verbally today, are abundantly clear in that you do not wish to see that section proceed. That is how I at least would characterise it. Please correct me if I am wrong. How did we get to this point? Have you been part of the process, design consultation or otherwise, in respect of clause 22B?

LEO PATTERSON ROSS: We again had opportunity to consult. We did offer feedback to the Government on their plans, and some of our recommendations were taken up—and, I understand, other stakeholders' as well. Within the context of a very short turnaround, there was some consultation. It was not the same level of consultation that we would ordinarily expect, as a result of the time frame.

Mr TIM JAMES: Just to be clear, did you know of the design of this particular provision, clause 22B, before you read it, roughly at the time it appeared, when it was presented to the Parliament on 10 May?

LEO PATTERSON ROSS: We knew the content of it. We hadn't seen the final version of the particular words.

JOHN ENGELER: And we were consulted on it. We had a good understanding of the general terms. Time was of the essence, of course, but we certainly were aware of its general thrust.

BEN McALPINE: We echo the same. We've provided those concerns that we did raise both publicly and also privately.

Mr TIM JAMES: We have a provision—and again, correct me if I'm wrong—that you are all saying needs to go. Some sort of broad information was conveyed to you. Obviously, you were aware of a commitment made by the now Government. But with regard to its actual construction, the actual words of this clause 22B—and you are now calling for its removal—you were not directly engaged in the design and construction of those words. Is that a fair comment?

LEO PATTERSON ROSS: The specific phrasing, we hadn't seen. It is not entirely uncommon that there would be a process of back-and-forth and the bill presented to Parliament is somewhat fresh to us in its specificity. We knew the details of the content; we just hadn't seen the specific words.

JOHN ENGELER: And echoing that as well.

Mr TIM JAMES: Presumably, we wouldn't be at this point today had you been effectively, duly, deeply, truly consulted. We wouldn't be at the point where you are sitting here, saying, "Please remove this provision."

LEO PATTERSON ROSS: We offer our advice to Parliament and to governments of the day in good faith, and we understand that not all of our suggestions will always be taken up. It's fairly routine for our position to not be fully reflected in the bill, and that's bipartisan. So I couldn't say for sure that, with longer consultation, we would not be in exactly the same position.

JOHN ENGELER: Our position wouldn't have changed. We think that the idea of outlawing rent bidding, which we knew about last year, just needs to completely go the whole way. It shouldn't stop. It should include the inability for anyone who's a prospective tenant to also not be able to have those solicited or unsolicited bids. It should be outlawed, full stop.

BEN McALPINE: Nothing to add.

Mr TIM JAMES: I have nothing further.

Mr ALEX GREENWICH: This process that we are going through today, is the Government engaged in consultation on this piece of legislation? Also, my question about transparency concerns on 22B was not answered by the representatives from the NSW Council of Social Service. You may wish to take that on notice.

BEN McALPINE: I'm happy to add something now, unless you wanted to wrap up.

The CHAIR: Go ahead, Ben.

BEN McALPINE: This also links to an earlier question and, I apologise, I am paraphrasing, Is this 22B introduction of transparency better than the status quo? The short answer to that, which I think is consistent with everyone here today, is no. We are deeply concerned by the unintended consequences of creating a rental auction process. So when we talk about transparency—perhaps oversimplified—I think that the greatest form of transparency is: What you see is what you get. And this introduction of 22B risks moving us away from that fairly simple principle.

The CHAIR: Mrs Quinnell just skipped her turn. If she has something to ask, we should do that now before we release you.

Mrs SALLY QUINNELL: Yes, I would just like to ask: Do we acknowledge that secret bidding is currently happening? What is to stop someone who walks in and views a property, puts in their application but offers a substantial amount more, or an insubstantial amount? What is to stop that happening now and what is to stop phantom bids being used in discussions? I recognise that it is currently unlawful but, as to your quote, so is speeding.

LEO PATTERSON ROSS: Because there is a crisis, we do know people are bidding over the advertised price. The scale of that, I think, is unknown, and my feeling, from our survey and from what we are hearing, is that it has reduced since December last year, because there is a clearer message that bidding is not lawful. Previously, as I have said, it relied on an understanding of the rules of conduct that agents operate under and that surround the consumer law that it might constitute misleading and deceptive conduct, but there was not an explicit ban on it. So I think that it has probably reduced, although I acknowledge we just do not have the data. I am not sure how we would get the data—I have many broader suggestions about how we might get that data—in a reasonable timeframe. I think that it is happening.

What is not happening, certainly at the scale that it was before, is the agent going back and forth and soliciting further bids. Because that is unlawful now, and very clearly unlawful, that process of bidding up is not occurring at the same scale, and, where it is occurring, it is very clearly unlawful. Again, to refer back to speeding

or other areas, I don't think it follows that we should then permit the unlawful activity because it is happening anyway. We should better regulate, better consider the reasons why it is occurring, but also ensure that there is an active regulator in the space making very clear what the expectations are and, where agents are breaching the rules of conduct on this and any other aspect, making sure that they understand that is not acceptable and that there are consequences for doing so.

But, to your direct question, it is happening. We strongly suspect it is reduced since December. We don't have the data to know exactly how much, and I think the form of it has changed in response to the 22A or the regulation version of 22A. But this is why we were clear, in December last year—and we are still clear now—that the way to end rent bidding is to end solicited and unsolicited bids. That is the effective approach that would be needed and would give the transparency that renters are asking for.

Mrs SALLY QUINNELL: I can see people nodding, so I will take that as an assent. In the same way as being able to see a warning of a speed camera—to continue the analogy—is this not shining a light, making it more transparent and allowing it to be monitored more closely, and for tenants who are maybe new to the system to help them become aware of the legalities and the illegalities around that system?

LEO PATTERSON ROSS: The current phrasing of 22B doesn't give us the insight into the process that would give us that data and that would shine that light. It allows the practice but the recordkeeping is limited to the offers from acceptable applicants. There is not transparency, for instance, on the offers that were made but not by acceptable applicants. There is not transparency around the offers that were withdrawn after being put in. There is not transparency around how long the process took. So there are all these areas where I think it is not quite the analogy of the warning of the speed camera. It is just saying, "You can speed and maybe we will get to look at your odometer if you crash", but it doesn't give us that transparency.

There are other things that we could do. In other jurisdictions people register leases so it is very clear what the pricing on the lease is. They also have to register why the lease is ending. The previous Government introduced transparency around the bond exit survey, for instance, that's starting to give us some of that insight. We could do things like that. We have made an earlier recommendation that if a bond had been made with a bidding process that could be flagged in the bond board system, but that is a very limited data source. It wouldn't tell us about the process that got there—was it one bid or a million bids? I think that's where, if it was to proceed, there is a lot of consideration and we are not confident that we have a set of recommendations or a set of amendments that would be workable and be complied with and so on. It needs a lot more discussion. We are very concerned that there isn't a path to put in place all these safeguards. But if it was to proceed, these safeguards are necessary, both for the consumer protection and for the monitoring and review. But I worry that it will become unworkable for everyone—industry, government and the consumer.

BEN McALPINE: If I may comment, very quickly, mostly to your first question around if secret bidding is happening. It is happening and we agree that we should be doing something about it, but reiterating that 22B in its current form is not the right solution. The trade-off that will be seen between this description of transparency with affordability and stress—particularly impacting people on low incomes—really highlights that there is a problem and we need to respond to it but we need to make sure that we are seeing the full picture of the ramifications. That's why it is difficult for us to support 22B in its current form.

JOHN ENGELER: Just to finish for us at a more macro level, 22A seeks to go halfway. It seeks to include, now, the amendments—agents, third parties and landlords. It seems somewhat odd that we've got a market regulator that seeks to limit supply-side without then saying, "Well, what's the demand-side similarities?" So we are seeking to look to half the job. We would just support going the whole way and outlawing secret rent bidding altogether.

The CHAIR: I thank you all for appearing before the Committee today. You will be provided with a copy of the transcript of today's proceedings for corrections, if you have any concerns about what was recorded in the transcript. Any questions taken on notice today will be forwarded to you by the Committee staff but a reminder that responses will be required by next Tuesday at 4.00 p.m. That is Tuesday 6 June, which is a really tight turnaround. We have touched on the fact that there are going to be a rolling number of changes proposed or anticipated for the current Government. We thank you for being engaged and we hope that you stay engaged in this important process.

(The witnesses withdrew.)

(Short adjournment)

Mr TIM McKIBBIN, Chief Executive Officer, Real Estate Institute of NSW, sworn and examined

Ms MICHELLE McLEAN, Deputy Chapter Chair and Board Representative, Property Management Chapter, Real Estate Institute of NSW, before the Committee via videoconference, affirmed and examined

Ms MARIA MILILLO, Head of Property Management, Raine and Horne Group, sworn and examined

The CHAIR: Thank you for coming to the inquiry today and helping us with our deliberations. I welcome our third panel of witnesses and thank them for their attendance, particularly Ms Milillo because she is on the ground implementing the provisions of the bill every single day. Would a representative from each organisation like to make a short opening statement before we begin the questions?

MARIA MILILLO: No, I won't make an opening statement.

The CHAIR: Mr McKibbin or Ms McLean?

TIM McKIBBIN: I see that the problem in this market, if I can call it that, is supply. That's probably not going to get me any awards for identifying that. But I did see that Philip Lowe from the Reserve Bank on a number of occasions—in fact, this week in budget estimates—said that the problem was supply, supply and supply. What I've seen over the last few years, and I think it is a responsible response, is a symptomatic response to try and address some of the problems that are the symptoms of undersupply. A fundamental question for all of us in this space is to be saying to ourselves, "Whatever action we take, is that going to incentivise investors into the market or is it going to drive people out of the market?" We need additional investors into the market. We're not in a chicken-and-egg scenario here.

An investor has the opportunity to put their money into the share market, commercial property, industrial property or retail, or they can take their money offshore. Even now, they might be looking at term deposits since things have moved around. But they do not have to put their money into residential rental property. So we need to be making it attractive for people to put their money in there. Anything that we do, we have to be asking ourselves, "Is that going to encourage investment or is it going to persuade investors to go elsewhere?" That's the bit that concerns me. I have some data, if that would be of interest. Back in the year ended 31 December 2017, we were looking at an increase in the bonds at the bond board, which, as you know, represents the number of rental properties in the market. It was growing by about 5 per cent a year.

The following year in 2018, it grew by 4 per cent. In 2019 it grew by 3 per cent, 2 per cent in 2020 and 1 per cent in 2021 and 2022. This is something I have never seen before. The bonds actually went down by 700 bonds held between 30 April this year and 31 May this year a couple of days ago. It's the first time I have seen that in my 20 years at the institute, where the number of bonds held has decreased. I appreciate that it's only about 700, so not much. But what I do know over the last seven or eight years is that the amount of rental properties coming into the market is not satisfying the demand. It is not satisfying the 110,000 people we get each year. On top of that, we're going to be increasing our population from 110,000. In addition to that, we're going to be seeing increased immigration. Back to my earlier point, it is about supply, supply and supply. Thank you for the opportunity.

The CHAIR: Specifically about what you were just saying, let's take the 700 as an example. Please, correct me if I'm wrong, but does that essentially mean that there were 700 fewer properties on the long-term rental market on 31 May than there were at the start of April?

TIM McKIBBIN: At the end of April, yes. In the month of May, we lost 700 properties out of the market.

The CHAIR: Given the prices that you were saying—6 per cent, 5 per cent, 2 per cent and 1 per cent—there's a dollar value element there. But is there a total volume?

TIM McKIBBIN: No. They are just rental bonds, so I don't know—

The CHAIR: Is that a dollar value?

TIM McKIBBIN: No, that's the number of properties. Each bond equals one property.

The CHAIR: Okay, thank you.

TIM McKIBBIN: At the end of April, there were 961,946 bonds held at the Bond Board. At 31 May there were 961,225 bonds held at the Bond Board. That means that the number of properties equals the number of bonds. It has gone down, as I said to you—the first time I have seen that in my 20 years in this job.

The CHAIR: Thank you for that. That feels like quicksand under our feet. Mr James, would you like to start off the questioning?

Mr TIM JAMES: Yes, thank you. Thank you all for joining us both online and in person. The bill, and in particular clause 22B of the bill, would oblige real estate agents to do many things within strict time lines. I would like to know to what extent you—agents, the sector—have been engaged in and consulted for the drafting of the bill. Take us through the extent to which you have been brought along the way here, please.

TIM McKIBBIN: We weren't involved in the drafting of the original bill, if I can call it that. We were presented with that bill within a Cabinet-in-confidence environment and invited to make a submission, which we did.

Mr TIM JAMES: When you say "the original bill", to which do you refer?

TIM McKIBBIN: There was a draft bill given to us. I should have called it draft, not original—apologies. The draft bill that was given to us—as I said, it was given to us as Cabinet-in-confidence. We provided a submission on that document. I believe that influenced the bill that then went to Parliament.

Mr TIM JAMES: I see. I haven't seen the draft bill; I have only seen the bill that has been presented to Parliament, but I hear you. Were there changes made to the draft bill—that, again, I know nothing of? Was there a sense that you were being listened to and included, consulted and engaged in some meaningful way?

TIM McKIBBIN: Can I get some guidance, if you don't mind?

Mr TIM JAMES: Sure.

TIM McKIBBIN: For complete disclosure, Tim is my local member. I wouldn't mind some guidance here. The contribution we made was within a Cabinet-in-confidence environment, so I'm a little bit reluctant to respond to that question. I think it may be inappropriate. Can I have some guidance on that, please?

The CHAIR: Mr McKibbin, I would probably be inclined to agree.

Mr TIM JAMES: I'm happy to move on.

The CHAIR: We really need to get to the nub of 22B and what might happen.

Mr TIM JAMES: Let's do that. How would you characterise the views of the real estate sector in respect of clause 22B, given its obligations upon you, the time lines, the steps, and so on and so forth?

TIM McKIBBIN: It is administratively very burdensome. Michelle McLean is a practitioner and probably could answer this question better than me. But I will make this observation from what I know of our practice: It would be very burdensome for an agent. In addition to that, I'm very concerned that when the agent would supply the information that was required, that that would actually create an auction, rather than banning it. I'm also very concerned about how the agent would make that communication without—the agents are banned from soliciting further bids, but I don't know how you would make that communication without doing that. When I saw the bill, I contacted Fair Trading and I said to them that we will want to do all of this in writing now. We will prepare a document that the agents will use. I asked Fair Trading if they would sign that document off so that we knew that we weren't going to be in breach.

Mr TIM JAMES: I see. Given you have said that it would, in effect, create an auction, which one might think is not the intent of the Government here—to be jacking up rental prices—is it your contention that clause 22B would be better off being removed from the bill?

TIM McKIBBIN: I think what the Minister was trying to achieve—and I'm second-guessing the Minister, and I say that respectfully—was to achieve some transparency in the market. I support transparency. I think transparency and transactional hygiene are the foundations of confidence in the market, so we fully support that. The mechanics of how that is being achieved concern me. I don't know that I would be in favour of just throwing it out. I hadn't really contemplated that question before, Chair, I'm sorry.

Mr TIM JAMES: Well, if I can be so blunt as to ask you, is it better than the status quo from your point of view?

TIM McKIBBIN: I might duck that one if I can.

MARIA MILILLO: I'd like to answer that one, actually.

Mr TIM JAMES: Yes, it would be great to hear.

MARIA MILILLO: I think that the current status quo—should a landlord receive multiple application forms, some of which are at the asking rent, some of which are at the higher rent, the property manager would do the checks on those applications and then present them to the client. Now the client won't necessarily make his decision based on price solely. So to answer your question, I do think the removal and the current status quo is a

better option. Because the landlord is considering their rental history, considering the length of the lease, considering the start date of the lease. All of those things are really important for a landlord to consider. I think, by having that 22B in place, the outcome for that is rents going up not just for new properties but also for existing tenancies. I think if agents are then able to say to current tenants, "Well, we've just leased this property at this higher rate and therefore your rent should go up", I just think ultimately it will drive rents up and the status quo is probably a better way to manage it.

MICHELLE McLEAN: If I could also just jump in there as well—being on the ground, I'm located up in the Hunter area and obviously we're not immune to the fact that there is a lack of rental properties as well. I think that, in introduction of this, it has actually, I guess, exacerbated a problem or made a problem worse that wasn't necessarily there to start with. And not all owners are motivated by a price. They obviously want to find the best fit for the property. I think it's just unfortunately—especially in the lower end of the market, where tenants might not normally be able to compete in that price range—putting them in a position where they've got no choice and they feel that they have to actually offer more. Obviously then the obligation is on the agent to go back and be in obviously a little bit of an auction scenario. So I definitely think it's impacted the market and not in a fantastic way.

Mr TIM JAMES: Conscious that the reforms made late last year were not that long ago, to what extent is there awareness, practice, data enforcement and effective bedding down and settling in of those reforms of late last year? To what extent should that be allowed to happen before these sorts of reforms in front of us here, in particular clause 22B, be proceeded with?

TIM McKIBBIN: I'm afraid I'm not at the coalface. Michelle, do you have a view about that?

MICHELLE McLEAN: We did speak about this amongst the committee and also obviously further internally with REI. If there has to be compliance—I guess compliance date and obviously enforcement of it. In order for us to be able to comply and have the best opportunity, I think we sort of threw around the 90-day transitional period.

MARIA MILILLO: I might just add to that also. One of the grey areas, I think, in this bill and some feedback I've had from a few other property managers is that there is no definition of what an applicant is. An applicant could be someone who has submitted an application form but not in full. So it could just be a partial one. There could be an applicant who the landlord has just decided to decline their application. Does that person need to become part of this process and have the rents disclosed to them? For me, there's not really a clear parameter on the definition of an applicant. Also, if a tenant puts in an offer and then withdraws their application, does that need to be disclosed? There are a few scenarios there in the real world that probably haven't been thought of.

TIM McKIBBIN: Can I just make an observation about all of this, though. It seems to be conjuring up a view, at least in the community, to some extent that, by limiting rent bidding, it's going to make it easier for people to get a property. The reality of it is that if all of us around this table were to go out and try and acquire a property—and it is very likely that it would be this number or greater—regardless of what the rent ultimately is, only one of us is going to get that property, just one. If we deal with rent bidding or we don't, it really doesn't matter. This is the point I made earlier about dealing with symptoms of the problem. The other issue that troubles me is that the landlord is trying to maximise their return on their investment. The landlord currently is concerned about increasing interest rates, increasing rates and, for that matter, land tax, for those that pay it. They are concerned about all of those things.

If we are limiting or inhibiting the landlord from being able to maximise their return then that makes it somewhat unattractive to come into the market. I'm a great believer in the market. For it to do what it does, I think there are two times where government becomes involved in a market. The first is for consumer protection and transparency, as we said; I think that's entirely appropriate and has the institute's full support. The next area, where we're talking now, is about getting involved in where the price of the market will sit for rent. That troubles me. I think that we may be fixing something here but causing a problem elsewhere. There's an old saying that says the market never lies. The market does what the market will do. Now, if we interfere with that then there will be adverse outcomes. I don't know what precisely that will be, but I think I can safely predict to you that there will be some adverse outcomes.

Mr ALEX GREENWICH: I will just ask three fairly quick, short questions. Firstly, Ms Milillo, just following on from Mr James' questions, is it your view that the provisions in 22B inappropriately shift the relationship between potential tenants and landlord to the highest price and away from the best fit?

MARIA MILILLO: Yes, I do. Yes.

Mr ALEX GREENWICH: Thank you. Mr McKibbin, you have spoken a lot about the market. A number of submissions highlighted that we're in an unbalanced market. You have also highlighted the lack of supply. A number of submissions talk about a lack of supply when it comes to, particularly, affordable rental properties. We've also heard that this would be the first time such a rental auction system would be put in place in any State or Territory in Australia. Would it be your submission that this would be an inappropriate marketplace, given the supply issues, to implement this sort of new auction system?

TIM McKIBBIN: As I said to you earlier, I think that what we have been dealing with are symptoms of the problem. It always troubles me when we interfere with a free market. I'm getting a little bit off point, Mr Greenwich, if that's okay, but we see subsidies in certain areas where we give protections to markets. It rarely delivers the outcomes that we are seeking.

Mr ALEX GREENWICH: Ms Milillo or Ms McLean, do you have anything about whether this is now the appropriate time to be putting in place a rental auction system?

MARIA MILILLO: I don't personally think any time is a good time to implement an auction system in the rental market—I just don't. I see this as something that is going to drive rents and will cause conflict between applicants and property managers. It's already quite a sensitive thing when you've got people out there who are desperate to find a home and you have to deliver that news that, unfortunately, their application has been rejected. I can imagine then property managers trying to get extra money out of these applicants—who are suitable applicants, but unfortunately there is only one property, as Tim suggested—to then get them to agree to paying a higher price to then only go back and say, "Sorry, you didn't get it." I just think it's not the right thing to do.

MICHELLE McLEAN: I'd definitely have to agree there, and I think that it's going to impact the most vulnerable in that situation and, unfortunately, tenants that don't have the option to be going out there and buying and won't have that any time soon either.

Mr ALEX GREENWICH: Other submissions have said a better transparency mechanism would be to focus on the fixed, advertised price and parameters around there. What are your views on that?

MARIA MILILLO: I think the current system—although it's not perfect, it is a better alternative to the one that's in this rental fairness bill because currently every applicant has an opportunity to put their best offer first. The landlord is then not only making their decision based on that price; they're making that decision based on a number of parameters. There may be instances where an application is submitted and the highest-price applicant is then approved, but then they decide to decline their application and find another property. I know part of this bill suggests that the landlord has to readvertise at the highest price, and I have a problem with that as well. Yes, I see many problems with that; do you agree?

TIM McKIBBIN: Yes.

MARIA MILILLO: Yes, with forcing the landlord to rent their property at the highest bid. The landlord may have not felt that person was suitable and may want to advertise it. They may even want to advertise for less, if it's been vacant for a long period of time, and I don't think we should be interfering in setting that price a second time around.

TIM McKIBBIN: Can I just bring one other thing to your attention? If we're able to regulate this—and let's assume we're successful—the market will move to another dimension to find its way. I'm aware that the desperation out there is such that when a property is sold—let's say in my suburb that there was a one-bedroom unit sold this Saturday, tomorrow. You'll find that people seeking a tenancy will contact the real estate agent and they'll say to the agent, "Is that an investor that's purchased that property, or is it an owner-occupier? Because if it's an investor, can I put in an application now for that property? I'm prepared to pay this." You'll see more of that, I think, to get around the issue.

Ms JENNY LEONG: Thank you all for appearing with us at such short notice today. I might go to you first, Ms Milillo, in relation to the submission that we received from the Property Owners Association of NSW, which noted that the communication with numerous prospective tenants and ongoing bids would be, to quote their submission, "a ridiculous burden". I wonder if you could speak to the administrative challenges around 22B, particularly in terms of the impacts that it would have on the property managers or agents, who I understand in most circumstances tend to be more junior in the hierarchy of things—a very different dynamic to the sale of a property.

MARIA MILILLO: Definitely.

Ms JENNY LEONG: I wonder if you can speak to how you see 22B, if it was to pass into law, playing out and the potential risks and questions around that.

MARIA MILILLO: Yes, it definitely would be onerous on the person who was managing that process. Currently, it is a more junior person who would generally process an application form before they perhaps might pass it on to the property manager, who then might have that conversation with that landlord. If this was passed then, in practice I can see that because this needs to be in writing and this information needs to be stored for three years, as part of this bill, what I think would happen is there'd be multiple emails saved. There might even be property managers who retain applicants who are not approved and might retain some of their data, which is obviously something that we're trying to avoid to minimise data risks in our business. I see this as potentially creating a risk on that side.

But if I think about it, there are probably multiple emails going out. They'd probably have to create a file with printed emails, or perhaps it would be stored on their computer, with the communication that's happened to prove that they've passed on or shared that information. It would be an administrative nightmare, I think. Currently the property management software that property managers use is set up for properties that are active, and active tenancies, active landlords and active properties. There isn't really a provision for a place where you store information about prospective tenants. That usually happens in a different area. For example, realestate.com has an online application form; so application form, information about prospective tenants are held elsewhere. This would mean that property managers would now have to put that information somewhere else and, yes, it wouldn't be an easy thing for them to manage, I don't think.

TIM McKIBBIN: May I make a comment here as well—something probably outside of the scope of this inquiry but it shouldn't be. Neither of these two ladies will say this, so I will. Property managers, over the last few years, have done it really hard. They've been smashed from one side to the other. A lot of them, a lot of property managers, have left the industry—just couldn't deal with the stress, particularly during COVID. I think we lost somewhere around 20 per cent of our property managers. They were having a phone call with a tenant who was in financial difficulty, phone calls from landlords on the other side, financial difficulty. I became very, very concerned about the mental health—and I still am, for that matter—of property managers.

To try and demonstrate that we had some empathy for property managers and to understand the incredible work they do and how busy they are, we declared a property manager day, a celebration of their work, and we picked 24 July, which represented 24/7, which was what they were working at that time. I know this is not part of this Committee's inquiry, but I assure you, without the hard work of property managers this is another thing that will be a problem for this market. If they get further administrative burdens, we're going to see another deterioration in people in this market. I hope I didn't embarrass you two ladies.

MARIA MILILLO: No.

MICHELLE McLEAN: No, Tim.

Ms JENNY LEONG: Thanks, Mr McKibbin. I think in a lot of cases property managers are also renters as well—30 per cent of the market—so they are also feeling the other pressure. Just in relation to that follow-up, Ms Milillo, presumably in that administrative burden that would be required to implement 22B, we've heard a number of submissions already that even if 22B was passed as it is, there's a whole lot of remaining questions that remain unanswered that would need to be addressed.

MARIA MILILLO: Correct, yes.

Ms JENNY LEONG: It is unclear where they would be addressed.

MARIA MILILLO: Yes.

Ms JENNY LEONG: But specifically in relation to the comments around the changes to the process and the requirement to cull data, presumably there'd be a lot of resourcing and training required of property managers and agents, and the change to systems and processes.

MARIA MILILLO: Yes.

Ms JENNY LEONG: One suggestion has been made that potentially this could be trialled for 12 months and then a review could be put into the legislation on 22B. How would that impact the industry from your perspectives—it would be good to hear from Ms McLean as well—in terms of starting with a process that is untested, as we've heard, has never been established in any other jurisdiction, and then having a review in 12 months that would see potentially Parliament decide that it had all the unintended consequences that we've heard and now we're going to repeal it?

MARIA MILILLO: I think that a 12-month trial is one option. Depending on the time frame that we allow for property managers to prepare for this, with assistance from the REI and the Office of Fair Trading, I guess we could come up with a system that may help. But, overall, I believe that most of the correspondence

will happen via email because it would need to be in writing to be able to prove that the property manager has complied, and there probably may even be some of our third-party suppliers—so some of our software suppliers in the industry may come up with a solution. They may assist with a solution, particularly the ones in the application space, so I guess there is that as well.

But if the agent isn't using something online, those providers don't create a product or a system to assist, then it would just be a bunch of emails that would need to be stored, which would be time-consuming, would be difficult to find and, yes, the training requirement on that would be onerous on the property manager and on the office to make sure they are compliant. As I said before, there's a risk of information of tenants being held and lost and that's something that we want to avoid at any cost.

MICHELLE McLEAN: Further to what Maria has just alluded to, I'm concerned about the compliance of it as well. Who is going to be out there making sure that this is done the right way? I feel that it is going to be very cumbersome and burdensome on property managers, and even owners as well. I think that we might actually be setting the industry up to fail in that regard. We're not achieving what we're setting out to achieve here. We need to find the best tenant for the property and try to retain some owners in the market. We want to make things as seamless and easy as they can be, to save having properties on the market any longer than they need to be. We need to have a quick transition, and I feel that this would actually be adding additional time to the process.

MARIA MILILLO: Yes.

MICHELLE McLEAN: And it would not, as I said, achieve what we need to achieve out of this. On the comment in relation to a trial for 12 months, I'd like to think that we could focus on looking at the solution to the supply issue, rather than putting this in place.

Mrs SALLY QUINNELL: Thank you for coming today and thank you for your contribution. I'm a little unsure as to how the transparency of clause 22B is not going to help. I will put my question like this: Ms Milillo, as you outlined earlier, applicants will come, view a property and put in their application with their rental amount stipulated.

MARIA MILILLO: Yes.

Mrs SALLY QUINNELL: As you said, the client—the landlord in that case—will look at that and in most cases find the best fit.

MARIA MILILLO: Yes.

Mrs SALLY QUINNELL: If that is not then communicated to the rest of the applicants, surely the rest of the applicants think that what they offered was not enough money.

MARIA MILILLO: Yes.

Mrs SALLY QUINNELL: If it is then communicated to them that there was a better fit due to length of lease or some other unmitigating, unfinancial reason, that kind of cuts that bidding, if you will—the raising of prices—because it becomes apparent to the applicants that it is not just about price. Whereas if we aren't sharing that with applicants, the natural assumption would be that the price was the reason for their failure. Can I get your thoughts, and everyone's thoughts, on that?

MARIA MILILLO: My understanding of the bill is that the landlord cannot seek a holding deposit from anyone until he has disclosed the rent to all the other applicants. While I understand the need for transparency, I feel that disclosing that amount before the application is approved gives a person—let's call him Joe—an opportunity to increase his price because he has been advised that Katie has offered X. Joe says, "I really want this property, so I'll go a little bit higher." And we'll go to the next person until it reaches its limit. It will keep going until someone's prepared to pay what they're prepared to pay. While I am a believer in being transparent, I think that, in this instance, the outcome for tenants in general for that particular property is not going to benefit the tenants.

I can give you another scenario where you might have two people come to an open home. Not every marketplace in Australia right now is in crisis. Let's remember that we're talking about this market in Sydney and Brisbane. Not every market is feeling that pinch. For example, in our regions in New South Wales, they've seen a decline in applications, a decline in people coming through and a slight decline in the rents that they're seeking. In that scenario, let's say you have two or three people come to an open home. The other people may not apply for the property but may just attend. Let's say one person would like to apply. They may feel obliged to increase their offer because they are assuming that the other two are going to be applying when they actually haven't. So while I'm a believer in transparency, I feel as though it's going to drive prices higher and cause headaches for property managers and—

Mrs SALLY QUINNELL: Can I clarify, what's to stop that happening now? You turn up to a property and there are 25 other people looking at the property. What's to stop you assuming that they're all going to apply anyway?

MARIA MILILLO: You're right.

Mrs SALLY QUINNELL: Surely, if all those applications are due on a specific date, for example, I don't really see what's forcing the landlord to accept someone they don't necessarily want because of the price.

MARIA MILILLO: The bill fails to be clear on what an application is and fails to say that you can take a deposit from a tenant unless everyone else has been advised. I don't think that owners should have to go to applicants who they don't feel are suitable to say, "I've got this application at a higher price. Would you consider paying that amount?" when the landlord has no interest in renting a property to them. I don't think it's going to assist. I think it's going to drive rents higher, and I don't think that's the objective.

Mrs SALLY QUINNELL: To clarify, though, they only have to notify people if it's an acceptable applicant.

Ms LIZA BUTLER: That's the point I was going to make.

Mrs SALLY QUINNELL: So it's not just any applicant; it's people they have weeded out as acceptable.

MARIA MILILLO: Oh, right. Okay. I must have missed that.

Ms JENNY LEONG: Also, to be clear, the legislation provides no detail on what an acceptable applicant is.

MARIA MILILLO: Right.

Mrs SALLY QUINNELL: There is a definition there, though.

Ms JENNY LEONG: I think we've heard in a number of submissions that it's unclear what an accepted applicant would be.

MARIA MILILLO: I haven't seen that. Have you seen that?

TIM McKIBBIN: Yes.

MARIA MILILLO: I haven't seen that.

TIM McKIBBIN: I have one further comment, if I may. The selection of a tenant is—there is not a science to this; it's more of an art, so to speak. There is a lot of subjectivity in it—understanding your landlord and their expectations and understanding the tenant. You're bringing these people together. If the property manager is making some determination at a subjective level—and I'm sure there is, nonetheless, some science in it as well—then a lot of transparency in that market, to that extent where there is that subjectivity, I think could, potentially, at least, open up the door for disputes, which we're not seeing now.

Even if we focus just on the science, if you will, let's assume Mr James earns \$2,000 a week and I earn \$1,000. I'm prepared to pay \$600 a week for a property and Mr James is only prepared to pay \$500 for the same property. He may very well get that property because the property manager may look at my salary and say, "Even though you're prepared to pay the \$600, I'm going to make a subjective determination on you that that is too much money for you. And even though you're offering it to me, it's too much." You can see there where that could lead to a dispute, where the tenant says, "It's got nothing to do with you. I'm going to offer that amount of money and, therefore, I should get the property."

Mrs SALLY QUINNELL: But that problem is probably already happening now, we just don't know about it because there isn't that transparency there of this person has offered this, that person has offered that. It's happening but under a rock. We might not know that Mr James, for example, is a carer. There are a lot of bits and pieces to that but, at the moment, we don't know about that. So these decisions are being made and we don't know about them, is what I'm trying to say.

TIM McKIBBIN: They are.

Mrs SALLY QUINNELL: They could be being made. I'm not casting aspersions on any one organisation.

TIM McKIBBIN: Unquestionably, those decisions are being made and, unquestionably, those decisions are being made in a non-transparent environment. There's no doubt about that. But, again, there's a lot of subjectivity here. The landlord may have particular requirements and so may the tenant. So the whole thing is rarely you're going to see a cookie-cutter outcome here.

Mrs SALLY QUINNELL: Agreed.

MICHELLE McLEAN: Can I jump in? Prior to this becoming legislated late last year, or early this year, in our market—and I obviously respect that we are up in the Hunter area; we've got about 4,000 properties under management—we actually didn't have a problem with people going in and offering more and above. People's applications were assessed, obviously, on their particulars—as Tim alluded to—obviously on different requirements from the owner and, obviously, on the suitability of the tenant. Now, all of a sudden, this first part of the legislation has been brought in and it's actually exacerbated the fact that tenants are now like, "Oh, okay, great, I can actually offer more." That is the hint. The problem here is the fact that people are put in a situation where they wouldn't normally be able to afford the rent but they are actually being forced to because it is out there and it is in the market—that they have got the ability now to keep offering above.

Mrs SALLY QUINNELL: To a certain extent, I agree. But, anecdotally, when I'm out talking to people on the street, we're being told that they are being approached by real estate agents and being asked to increase their offer. So it kind of does go in both directions, too, just as an anecdotal sort of response.

MICHELLE McLEAN: Yes, 100 per cent. We're talking to the market. There's always going to be that proportion of—tenants act in some way and some agents act in another. But it was more of a broad statement as well.

The CHAIR: I am mindful that the time has just ticked over to 12.16 p.m., and we were due to finish at 12.15 p.m. If we could entertain the witnesses for another couple of minutes, I would like to give Ms Butler the chance to ask questions as well.

Ms LIZA BUTLER: Thank you for your time and your submissions. Does the Real Estate Institute actually know what prevalence of rent bidding is out there now? How do you message to real estate agents about rent bidding?

TIM McKIBBIN: We communicate with our members on any new regulatory or legislative instruments that come out. We offer training on those instruments. We seek guidance from the Office of Fair Trading on its expectations, and we communicate that strongly. However, I make the point that it's not real estate agents that are holding an auction here. What's happening is desperate people looking for the property are coming along and offering higher than the rent. Can I also say to you that there was a spike in rent bidding, and that happened immediately after this matter got so much publicity because there was a lot of people applying for rentals. If it was \$500, they said, "Here is my application. It's \$500." Then we educated the entire market to say that rent bidding is prevalent and if you want to get a property, you are going to have to offer over the price. We are now seeing a lot more rent bidding than we were seeing beforehand.

Ms LIZA BUTLER: Ms Milillo, you stated that if somebody had currently put in a higher bid and you felt that they were unsuitable due to their income, you wouldn't offer it to them anyway?

MARIA MILILLO: Ultimately, it's the landlord's decision if they approve or reject an application. But, yes, I think if the landlord felt that the tenant wouldn't be able to financially meet the commitments of paying their rent, then he would probably decline based on that fact.

Ms LIZA BUTLER: If it was clearer who an acceptable applicant was and that you didn't have to go through that process because you didn't feel that they were suitable, would you feel that 22B was better to be included, then?

MARIA MILILLO: If it was for approved suitable applicants only, then, yes.

Ms LIZA BUTLER: Thank you. I will keep that short. I'm mindful of the time.

Ms JENNY LEONG: Chair, I have a question on notice, if I can, unless we are able to extend by another three minutes so I can ask Ms Milillo one more question in relation to that.

The CHAIR: I will ask you to take it on notice, please, Ms Milillo, because I have a couple of questions I want to get out as well. Could you very succinctly put your question, please, Ms Leong?

Ms JENNY LEONG: Ms Milillo, my understanding is that you have said that agents and landlords would not always accept the tenant who is the highest offer of a bid.

MARIA MILILLO: Correct.

Ms JENNY LEONG: In this scenario, we have heard submissions for the fact that people who experience discrimination may offer a higher bid as a desire to try and secure the property.

MARIA MILILLO: Yes.

Ms JENNY LEONG: In that instance, do you see there's a risk of opening up agents or property managers to claims of discrimination if, for example, someone who's disabled or experienced racism offers a higher price and then their higher price is not offered? How do you see that playing out in terms of your situation? I'm not sure if the Chair will give us an extra two minutes to allow you to answer now or whether we need to do it in writing.

The CHAIR: It might play into the question that I wanted to ask. I simply wanted to ask Ms McLean and Ms Milillo, roughly—if I can be so crass—what percentage of landlords are simply chasing top dollar versus chasing the best tenant?

MARIA MILILLO: I'm not in the game, face to face at the coalface at the moment, so I probably can't answer that. Michelle, would you be able to answer that? What percentage?

MICHELLE McLEAN: I would say that it's actually minimal, to be really frank with you. Most of our owners are wanting a long-term tenant. They are wanting someone that can obviously pay the rent and also obviously upkeep the property and be the best tenant for that property. You will have a small percentage, and when I say small maybe 10 per cent or 20 per cent—their motivation is going to be because the interest rates, for instance, have affected their ability to repay their mortgage and they're under the crunch or the property might be substandard and they need to put some work into it. So they're really going to be chasing the higher price to be able to offset their commitments to the property. I guess it comes down to the fact as well that if they are unable to do that then they need to, for instance, look at offloading the property and that's obviously one less in the market for us too.

MARIA MILILLO: I would say most landlords care about quality of tenant, ability to service the rent and look after the property. I think they're important attributes of a tenant for every landlord really, and most I think would care about the quality of the tenant over the rent amount.

The CHAIR: Ms Milillo, based on something you said earlier, are you under the impression that in the bill and the way it's written at the moment the landlord would be forced to take the highest bid, as opposed to any and all other conditions?

MARIA MILILLO: No. What I was referring to was, if the landlord decides to readvertise or place another open home, that they are forced then to adjust it to the highest bid and that, I don't think, is the right way to go forward. I don't think the landlord should be told what to advertise the price at, firstly. But setting it at the higher end—the property may not be worth the higher price, and I don't think the landlord should be forced to advertise the property at a higher bid if they don't want to. They should be able to go less if they want to, for example.

The CHAIR: Just in summary, the bulk of your landlords would probably take the best tenant—balanced with the ability to pay and the price—as opposed to simply chasing the highest price.

MARIA MILILLO: And the least start date. Me, personally, I've rented a property in the last two weeks. I offered less than the market rate but said I would start within a few days. So I started the tenancy very quickly and that was attractive to that client. I offered less rent and started as soon as possible, and I have a very good tenancy history. That is an example of how landlords do favour that type of tenant.

The CHAIR: In some ways the questions I have asked might have covered off some of the stuff that you were asking, Ms Leong. Is that right?

Ms JENNY LEONG: No. Sorry, Chair. I would appreciate if that answer could be taken on notice because I do think there is an intersection with the next evidence that we'll hear around people's disability. I would appreciate if that could be done—

MARIA MILILLO: Sorry, remind me quickly what your question was?

Ms JENNY LEONG: Sorry, you don't have to remember this right now. Someone will send you the question and then you can do it.

Mr ALEX GREENWICH: My quick question—and feel free to take it on notice—is your opinion on whether the administrative burden of 22B could see more property owners, and potentially property managers recommending to property owners, to remove rental properties off the market and turn them into short-term rental properties where the administrative burden does not exist. Feel free to take it on notice.

MARIA MILILLO: Okay, I will.

The CHAIR: Yes, but we do understand that's a hypothetical.

MARIA MILILLO: Yes, it is.

TIM McKIBBIN: What I can say in that space is we are seeing properties that are in the residential market bleeding off to holiday and short-term rentals because it is more attractive—to some landlords and in some locations.

The CHAIR: Can I just clarify for both Ms Leong and Mr Greenwich, the questions you have asked, are you intending them to go to both appearing parties today?

Ms JENNY LEONG: That would be great.

The CHAIR: I cannot thank you enough for appearing before the Committee today and staying with us a little bit longer than expected. Most importantly, I re-emphasise our appreciation that you turned it all around so quickly and made yourself available at such short notice. I also flag that the new Government has a series of changes that they want to make in this space, and we hope that you continue to stay engaged and participate in the process because your wisdom is without doubt of great value. You will each be provided with a copy of the transcript of today's proceedings for corrections about anything that you might be quoted as having said. Any questions taken on notice today will be forwarded to you by Committee staff, so you don't need to remember those questions. However, we are going to have to ask that the responses to those questions be submitted by Tuesday 6 June at 4.00 p.m., which is just next Tuesday, at the latest. Again, I know that is difficult, but we would thank you for anything you could do for us on that front.

(The witnesses withdrew.)

(Luncheon adjournment)

Ms HAYLEY STONE, Manager Specialist Advocacy, Disability Advocacy NSW, affirmed and examined

Dr CHERRY BAYLOSIS, Policy and Communications Lead, Disability Advocacy NSW, affirmed and examined

Ms TRINA JONES, Chief Executive Officer, Homelessness NSW, affirmed and examined

Ms MICHELLE COOK, NSW Lived Experience Advocacy Group, Ageing on the Edge, affirmed and examined

Ms DINI LIYANARACHCHI, Advocacy Lead, Housing for the Aged Action Group, Ageing on the Edge, before the Committee via videoconference, affirmed and examined

The CHAIR: The time being 1.30 p.m., we will start the process of welcoming our next set of witnesses. I say from the start that we appreciate the incredibly tight turnaround and timing of this inquiry. Your participation and assistance at every level is greatly appreciated. Would a representative from each organisation like to make a short opening statement before we begin the questions? I will go in reverse order. If we go to Ageing on the Edge first, would anybody like to make a short opening statement?

DINI LIYANARACHCHI: Chair, I would like to start and then pass on to Michelle. Thank you for the opportunity to give evidence today. Before I begin, I would like to acknowledge that I am joining from the unceded lands of the Wiradjuri people and pay my respects to Elders past, present and emerging, and all Aboriginal and Torres Strait Islander people here with us today. HAAG is a member-based organisation that delivers Home at Last—a housing information and support service for older people in Victoria. We also have a national project, which is building awareness of older people's homelessness in Australia and advocating for people for appropriate policy responses to address this issue.

The NSW Ageing on the Edge Forum, coordinated by HAAG, is a coalition of about 150 organisations and members comprising people with lived experience, advocates, service providers, peak bodies and private sector organisations working together to address housing and homelessness-related issues of older people. We commend the Government for taking proactive action to address some of the key issues in the current rental market. Although we agree that there is a need to increase rental fairness, we are concerned about the unintended consequences of the proposed bill, specifically section 22B.

As highlighted in our submission, older people over 55 on low incomes are likely at increased risk of homelessness. According to our research, there are about 120,000 older people over 55 in the private rental market in the lowest two income quintiles. We also know that older people on lower income support payments are less likely to be able to compete in the current rental market, and they will be particularly at a disadvantage if they have to consider paying higher amounts to match the rental payments that the others are offering. Given the lack of rentals that meet the needs of older people that are accessible and close to health and other amenities, being forced to bid for higher rents will lead them to paying a significant proportion of their income on rent, forcing them to forego essentials such as food and medicine.

Although many older people are tech savvy and use online platforms for rental applications, a significant proportion may experience challenges navigating online application processes or may not have access to devices and internet. Older people who are from migrant and refugee backgrounds are also likely to face additional challenges. As a result of these, they may miss emails or other urgent correspondence from real estate agents and risk missing out on rental properties. Therefore, we support the sector recommendations made by our colleagues to have a fixed rental price that acts as a ceiling. And, secondly, landlords, real estate agents and potential tenants must not offer, solicit or accept higher rental rates than the originally advertised rates.

Considering the current rental crisis and limited availability of social and affordable housing in New South Wales, people who are already experiencing housing challenges are in a much worse situation now than they were before, especially older people who experience multiple challenges. Therefore, we are also proposing that the New South Wales Government fund a service similar to the Home at Last service in Victoria. I will now pass to my colleague Michelle, and then we are happy to answer any of your questions.

MICHELLE COOK: Good morning, and thank you for inviting me to speak today. I am part of the Ageing on the Edge New South Wales lived experience advocacy group and here to present the stories that I am hearing about the issues you are looking into. As we have heard from Dini, our recommendations are a fixed rental price that would act as a ceiling; that no parties should offer, solicit or accept a higher rental price than the originally advertised price; and to fund a specialist older persons' housing information and support service similar to the Home at Last model in Victoria.

As part of the lived experience group, let me tell you why we have these key recommendations. We know rent bidding is happening. One lady said she offered to pay six months in advance to secure her home after a

divorce. She had no tenant history because she was an owner. Another said she had accepted tenancy and then was told it was another \$10 a week. "E", a single mother with two daughters, told me that she was so desperate for a rental that she had to offer over the advertised price just to be in the application pile.

I live in regional New South Wales and spoke to three renters this week knowing I was coming here today. Three out of three said their rental was not advertised. When we look at 22B about transparency on price and offers, what I am finding is that the properties themselves are not being advertised. A man in his 50s was moving out; a new tenant moved in—again, not advertised. Another issue is that the new tenant was asked to pay the bond to the old tenant. To me, that suggests we are not even using the Rental Bonds Board anymore.

The Committee is looking to ensure transparency to better protect renters. A newspaper article from 10 May states, "One of the ways that markets fail is that there is an inadequate supply of information between market participants." One lady, M, said, "It's not who you know that gets you the place." The only reason she got a rental in our town was because the real estate agent knew her and her parents. She is in her forties. Two of the three suggested that agents are now keeping a list of prospective tenants. We're looking at additional measures, and here is the kicker for a renter: The real estate listings that I saw this week on realestate.com and Domain had clauses or comments. I'll read three: All properties are pre-approved on applications before any inspections will be conducted; all rental properties must be applied for before an inspection can be scheduled; and full applications must be submitted before viewing this property. Rentals—sight unseen.

Agents are also getting ready for the proposed changes you are putting forward, with agent disclaimers for any errors, omissions or misrepresentations—express or implied—as to the accuracy or completeness of the listing. And this one—a summary provided by Domain as a courtesy only—"Please verify details with the agent." I would like to talk you through the rental application process, but in the interest of time I will skip to our third recommendation. I can think of at least five older people who have opted out of the system altogether. But, worse, when living in a caravan or a shed is a better option, we are losing the human element of hope. I, myself, am building a tiny house to provide me a forever home.

Rental stress in my local government area has gone from 4.5 per cent to 24.5 per cent between the two censuses. In my age group, there are 14,678 people experiencing homelessness. It is for this reason that we have recommended funding a service similar to the Home at Last model. As Dini said in her submission, nearly 60 per cent of older people who sought housing support are in the private rental market. From what I see, there is only one option for transparency and for better protecting tenants during this application process: having a system that supports, helps and enables older people and a people who can easily engage in the system as it currently is. Thank you.

The CHAIR: Thank you very much. Ms Jones, do you have an opening statement that you would like to share?

TRINA JONES: Yes, please. I would also like to acknowledge the land we are meeting on today and pay my respects to Elders past, present and emerging. Thank you for providing us with the opportunity to submit our recommendations. Homelessness NSW is the peak body for the State for homelessness. We exist to build the capability of people and the capacity of systems to end homelessness. We have a vision for a future where everyone has a safe home and the support to keep it—but we must act together to achieve that vision. The lack of affordable, safe and secure housing is a significant contributing factor to homelessness in New South Wales.

Rising rents and low vacancy rates are placing an immense pressure on renters, leading to increased amounts for social housing and homelessness services. In 2021, 36 per cent of rental households in New South Wales were experiencing rental stress: this is where their rent payments accounted for more than 30 per cent of their household income. The most recent snapshot of rental affordability found less than 1 per cent of properties were available for those on the lowest income—and that's even less for those receiving JobSeeker. For a person receiving the aged pension, there were no properties that were affordable. If you can't afford to rent, sooner or later you are going to be homeless.

We strongly welcome initiatives that put in place mechanisms to strengthen tenants' rights, making renting fair. We commend the Government for quick and swift action to support the rights of tenants to improve secure homes for those at risk of homelessness. While we recognise that the bill makes several improvements that we strongly welcome, we are concerned that the current drafting will have the unintended consequences, counter to the intention of the bill, specifically related to clause 22B. We recommend that the Committee adopt the following recommendations: We recommend that there is an advertised maximum fixed rental price at the time that the property is listed for rent, serving as a price ceiling until a tenant is secured. We recommend that landlords and real estate agents and potential tenants are prohibited from offering, soliciting or accepting a rental rate higher than the originally advertised price. We think that this could be managed by cross-referencing rental prices paid

with the original advertised price using rental bond data to ensure compliance, reduce administrative burden and improve data collection and shared understanding.

This policy would set the rent at a transparent rate that the market can bear. It would bypass a regulated auction process by determining the price that the landlord is willing and content to accept. Potential tenants can then apply with the knowledge and the confidence that the rent is within their budget, enabling fair competition based on price. This streamlined approach eliminates wasted time for both tenants and agents, ensuring the most efficient and transparent rental process possible. We firmly believe that this policy would establish a fairer and more transparent rental system, benefitting tenants, landlords and property managers. It would also help ensure that vulnerable renters and those at risk of homelessness have a genuinely fair opportunity to secure a home. We appreciate the opportunity to provide this submission and would be pleased to engage further with the Committee on this matter. Thank you.

The CHAIR: Thank you. Finally, would Ms Stone or Dr Baylous like to make an opening statement on behalf of Disability Advocacy NSW?

CHERRY BAYLOUS: Yes. I also would like to pay my respects to the traditional custodians of the land we meet on today, the Gadigal people of the Eora nation, and I would like to pay my respects to past, present and emerging Aboriginal people and Torres Strait Islander people. Thank you for this opportunity to speak today. Disability Advocacy NSW, which I will refer to as DA henceforth, provides individual advocacy to over two-thirds of New South Wales, making us the largest individual advocacy provider in New South Wales. We conduct consultations with people with disability, advocates and the disability sector more broadly. It's this information that we use to inform our systemic advocacy.

Last year we took to the road, with a particular focus on housing, to understand what it's like to live with a disability, particularly in regional and rural areas. We spoke to people with disability; we spoke to tenant advocacy; and we spoke to social and public housing providers. From this, we wrote a report, which is entitled *Beggars Can't Be Choosers*, which highlights the impact of the housing crisis. In particular, it points out concerns related to the rental market. What we see and what this report reveals is that the rental market is an extremely unfair playing field. As our friends have pointed out, only 1 per cent of the rental market is affordable for people on low incomes. Adding to this, if you have a disability and require an accessible home—there's even a less amount of accessible and affordable homes. Social and public housing is often not an option, with a 10-year wait for a general home, and an accessible home is a 15-year wait. All this can make finding an accessible and affordable home like a drop in the ocean. It makes competing in this rental market an unfair game.

We also need to consider that people with disability as a demographic are more likely to rent and they're more likely to be recipients of income support. It means they often have to come head to head with people that have more financial resources, to apply for an accessible home, which is often in scarce supply, particularly if you live in a regional, rural and remote town. With the influx of city dwellers into regional areas, there is now an ever-increasing shortage of affordable and accessible homes. While the proposed changes may prevent secret bidding and prohibit agents and landlords from soliciting bids from applicants, they do not address the broader issues of rental inequity, particularly for people with disability on low incomes. We have a housing system that has operated on laissez-faire principles for too long, to the benefit of investors and to the detriment of our most vulnerable members of the community, such as people with disability and our aging population. 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.

We do not support the capacity of rental bidding, particularly unregulated bidding where there is no cap and they contribute to inflated rental prices. Conversely, we support and advocate for the elimination of bidding. We also note that other States, such as Victoria, Western Australia, South Australia and Tasmania, have a cap on rental bids. However, this has not prevented the increase of rent above the advertised price. We therefore advocate that applicants need also to be prohibited from offering higher bids, as well as agents and landlords. Allowing bidding to occur essentially sets up an open auction for rentals. It is fundamentally a transparent rental inequity where people on low incomes have decisions imposed on them not to pursue a property in the bidding war. In an already heated market, we expect the Government to take actions to prevent people from being outbid from renting a home by people who could afford to live elsewhere.

We also want to see enforced penalties against both landlords and tenants. We know that other breaches of the Residential Tenancy Act seldom result in penalties being applied and it being perceived as toothless. It was only two months ago that *The Guardian* released an article drawing on NSW Fair Trading data which shows that, despite multiple complaints, the New South Wales Government has not issued a fine when agents have been found to solicit higher bids. We would like to see that the New South Wales Government does more to ensure that those looking to rent at the lowest end of the market can do so. On top of strengthening the bill to prevent all forms of

rent bidding, more measures are needed to address the issues of affordability and accessibility. Some recommendations we have put forward are caps on the maximum amount of rent increase. There should be a limit on the extent to which landlords can pass on costs to a tenant and rents should be at a fair market value.

We also suggest and recommend the New South Wales Government signs up to the National Construction Code to increase the supply of accessible homes, noting that New South Wales and Western Australia are the only two States that have not signed up to this. We would also like to see the increasing provision of social and affordable housing to meet current and projected demand. The point to emphasise here in relation to the residential tenancies bill is that people with disability on low incomes will be significantly disadvantaged in the bidding process, even if there is greater transparency. We strongly urge the New South Wales Government to amend the bill to prevent all rental bidding practices in New South Wales as well as considering reforms both the rental and broader housing market can do to address the issues of affordability and accessibility and to make the rental market a more fair and more equitable playing field.

The CHAIR: Before I hand over to my colleagues for questions, three things are worth noting. One is that, at the time *The Guardian* wrote that article, it was 100 per cent accurate. But since then—between March and May—there have been 51 infringement notices issued to a value of \$52,000. I think you made the point about it being toothless; I will leave that for you to decide. The other thing is that we are really confined, in this Committee—in the remit and in the terms of reference—to just dealing with this question of transparency, essentially to try to move from secret rent bidding to an acknowledged bidding process or offers. The third thing is—and this is a message to my colleagues—each MP probably has a limit of about five minutes, which includes both questions and answers. So if you could ask your best question first we will get it done as quickly as we possibly can.

Ms LIZA BUTLER: If we look at the terms of reference it is all around 22B. I heard from you today that you acknowledge that rent bidding is currently taking place. Do you feel that it is better for 22B to be included in the legislation so it is transparent and can be monitored?

TRINA JONES: I am happy to respond to that. Under the terms of reference, the issue, as we have outlined, about transparency is noted but it won't actually fix the intention of the bill to make it fair for tenants. We think that the inclusion of 22B will significantly disadvantage already vulnerable renters and will go against the full intention of the bill. We don't think that it can increase transparency in the current form.

Ms LIZA BUTLER: So you feel it's better that it is secret and we don't know that it is happening?

TRINA JONES: We know that the current legislation that prevented real estate agents from soliciting bids had some success in the broader rental market. What we are concerned about is that by regulating the rental bidding process, we are incentivising people to bid for the rentals. We think that this can be strengthened to make it fairer. We're concerned that it lacks transparency because what you sign up for at \$500 a week—for people that we would be supporting—by the end of the process could be \$600 a week. That's not transparent for those on the lowest income and will prevent them from being able to access a safe home.

DINI LIYANARACHCHI: Can I add something to Trina's answer?

The CHAIR: Yes, because that was only two minutes. Ms Butler still had three minutes left.

Ms LIZA BUTLER: I will ask another one if I have time.

DINI LIYANARACHCHI: Thank you. I just wanted to echo Trina and all the other sector colleagues that gave evidence earlier in the day. We are concerned about the implications of this bill if it is implemented. We think that if the Government is planning to go ahead with the transparency measures, there should be further consultation and that should include experts like colleagues from the sector, but also people with lived experience who are putting in applications. The reality is that a person is not applying for one property and waiting for the outcome of that to decide on applying for another. People usually apply for multiple properties. We are concerned about the practical aspects of this whole process where you apply for five properties and all five of them have multiple people offering more money, and all that is communicated to the other applicants. All the people who are already struggling with tech and emails and text messages—going through that process can be quite onerous on them and quite overwhelming. If the Government is considering going ahead with this part of the bill we definitely encourage consultation before implementing it.

HAYLEY STONE: If I could add a comment to that. I think Dini has summed up the situation quite clearly. It is the difference between one person offering an amount which is above the specified rent versus the pressure of having multiple people offer that. I think that that creates a certain atmosphere of competition and might drive people to make decisions around the sorts of rents that they can afford that may not be sustainable. I guess what you might see in a model where you are encouraging people to bid against each other is people

nominating an amount of rent that they think they might be able to afford but later down the track they realise is not sustainable. They bid above what they could afford and then you end up with a situation where a landlord is faced with someone who is asking to terminate the lease on the basis of hardship. I don't see it as being advantageous to a landlord or advantageous to the tenants.

Ms LIZA BUTLER: Even though it's already happening?

HAYLEY STONE: It's happening in a context where it's not public, and I think that's the difference. It doesn't create that pressure cooker situation which, for our demographics, would be really significant because generally there are fewer properties to choose from.

Mrs SALLY QUINNELL: Understanding—which I think we all are—that the current crisis is caused by a lack of rental properties, which is outside the remit of what we are discussing today, I would like to question you all. Dr Baylosis, you said that finding a property like that is a drop in the ocean and, in many cases, it is just a drop in the ocean finding a property. Surely transparency allows for the opportunity to question discrimination based on things that are not financial?

Finding out, for example, that someone has offered a price that is \$10 a week more but they are not successful then the question can be asked what the reason for that was, whereas at the moment there is none of that transparency, so decisions can be made purely in an ad hoc and quite secret way. I want to get your thoughts not necessarily at the bottom end, not the renter or the person who has the least amount—although, I understand that situation—but about the person who may offer more and then still not get the property for other reasons and the opportunity to have that discussion in a transparent way rather than it being, "I don't know why I didn't get it."

CHERRY BAYLOSIS: I'm not sure that transparency around bidding will equate to transparency around discrimination. I'm not sure how you draw that thread together. I think it places the onus of responsibility on landlords and agents to make calls around ethics and social responsibility as to who gets the property. There is a lot of power given to landlords to make decisions based on financial gain.

Mrs SALLY QUINNELL: Sorry, I will give some context. We had representatives earlier today from the Real Estate Institute and property management. They were saying that a very small amount—10 per cent to 20 per cent—of decisions that they feel landlords are making are based on cost. They were saying that 80 per cent to 90 per cent of those decisions are made on best fit for the property and other reasons. That's where I am drawing that connection of non-financial reasons for a choice.

HAYLEY STONE: In terms of how much disclosure you would actually get about that, I wouldn't necessarily think that a landlord is going to disclose all of their reasons for why a person wasn't a suitable applicant, particularly when those reasons—say, in the context of disability—could potentially result in some sort of action under anti-discrimination law, for instance. What you would most likely end up with is landlords specifying reasons that would generally be non-confronting reasons. I think generally what you would find is that there's no way to substantiate the reasons that are given. There's no incentive for them not to just say, "You weren't the right applicant because of X, Y or Z," when actually the reasons are very different. The problem is going to be that there is no evidence to sustain whatever they're saying.

CHERRY BAYLOSIS: I also want to add that there is a lot of stigma for people that are on income support. If you are on a disability support pension, there is an assumption that you may not be able to afford or pay rent, even if someone does offer a higher bid. I'm not sure if transparency around people offering higher bids will necessarily reveal that type of discrimination. If there are issues of discrimination as well, the measures to actually follow through—in our discrimination Act, there are not really many avenues for recourse to happen.

Ms JENNY LEONG: I ask you all to comment on paragraph (1) (d) of the terms of reference. It states:

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.

I wonder, firstly, do you think 22B will have the effect of formalising a rental auction process? Secondly, do you have any additional comments in relation to transparency measures that the Government could look at, given that that is its desire rather than to implement rental auctions?

TRINA JONES: I am happy to go first. We believe that the current draft of the legislation will regulate public rental auctions. We think that it can be strengthened and amended by setting a maximum fixed-price rent advertised at the time the property is put up for rent until a tenant is secured, set by the landlord in consultation with their property manager. This would be the ceiling. Of course, people could offer lower than this and the market would determine whether the property was worth what it was set at. We also think that landlords and real estate agents and potential tenants must not offer or solicit the bids at the higher rent than originally advertised.

We think that we could advocate for improved regulatory reform by requiring property managers to list the advertised rate, and then that could be then checked against the bond register to ensure that we do have transparency about what it was offered for and what it was actually leased at. This would also provide significant data and advice to the Government on where rental prices are at, what people are actually paying, how long they're staying there, and would improve data overall in the system and reduce the administrative burden for the inspectors and those who have to go out and assess if this bidding would occur. It would reduce administration, improve transparency and also just improve the process overall.

Ms JENNY LEONG: Did others wish to comment on that, specifically in the context of both people with disability and older people? I note that we have also received a submission from younger people, in the form of a submission from Young Labor Left, who have also raised concerns about 22B. Given the Government's intention to increase transparency around this, and the concerns around not implementing rental auctions, what other measures could the Government look at in terms of improving transparency around the rental process, in particular for older people and people with a disability?

HAYLEY STONE: I guess there are a number of aspects around the existing model of applying for properties that could be reformed. One of the things is that oftentimes when people are applying for properties, they don't really get much insight into the property itself—like, many elements of the property itself. So, for instance, one thing could be around insulation: You don't know the level of insulation of a property that you're moving into. You can't make an assessment of that, necessarily. It is not something that you can openly observe.

In terms of other things, the landlord's financial status, I think, is often something that tenants would like to have some sort of understanding of. Obviously, you're renting a property—you're intending to rent it for a period of time. You want to know the landlord is able to maintain that property as their investment. You also want to know that they have the capability to pay for any repairs and modifications to the property. One of the things that quite frequently comes up is the idea that repairs don't get done, and I think part of the rationale for why there are delays in repairs is often because landlords don't have the up-front capital to be able to afford those repairs.

If we were able to have access to information that would give tenants a sort of surety of the property that they were investing in, and they could make that wise decision when they're entering into this sort of bidding situation—not that we would advocate for the bidding situation. But I think lot of these things would need to be clarified so that there was less inequity in the balance of power between the parties who are trying to negotiate the agreement.

CHERRY BAYLOSIS: I might add to that. I agree with having a fixed amount that you can bid up to but also having some more transparency around the actual bids to prevent false bidding. A lot of the time, even when you're purchasing a house and you're told that someone else has bid, there is no documentation. How can you actually question if those bids are authentic? Without revealing, obviously, someone's identity, having a clear documentation trail of who has offered those bids can prevent and hinder any false bids from being created.

DINI LIYANARACHCHI: I just wanted to say that I echo the comments. I'll pass on to you, Michelle.

MICHELLE COOK: I was just going to say, from a theory perspective, that we have three tiers of government—three tiers for the separation of power. Today we're looking, in a Parliament, to set rules under the Residential Tenancies Amendment (Rental Fairness) Bill 2023. We have the Executive and the judicial system and the residential tenancy tribunal to interpret and apply the law. We've had a question about discrimination. I also think things like the amount of data that is collected in the application—those processes. We have laws. We have privacy laws. We have discrimination laws. We have tenancy laws. But we don't seem to be implementing the laws that we do have. It's a bit of low-hanging fruit there.

The CHAIR: "Low-hanging fruit" is one of politicians' most popular terms. Well done, Michelle.

Mr ALEX GREENWICH: Thank you all for your submissions and for the work you do for the community. I have a very deep and serious concern about the way in which 22B may impact people who are on rental subsidies, whether it is the private rental subsidy provided to people on the priority housing list who can't access a housing property because there just isn't enough or people on a disability rental subsidy. Effectively, I'm concerned that, should 22B come into effect, the default will be that they will always miss out on a property because that is a fixed price that they cannot increase upon. I would like some sort of discussion about the impact of 22B on some of the most vulnerable in our community who rely on rental subsidies and whether it's your view that this new system could price them completely out of the rental market.

TRINA JONES: I would like to respond to that. We know that there's over 477,000 people in receipt of Commonwealth rental assistance in New South Wales and we have over 6,500 people on the priority waiting list. With 57,000 households on the New South Wales social housing waiting list for 10 years or more, while they wait, they wait in the rental market. If we create conditions for that rental market to become more unaffordable

and more difficult to access, we will see more people experiencing homelessness across the State. When we look at opportunities to increase transparency, we don't have to just talk about what we have now versus a regulated rental auction. We can actually push forward for reform that bans all rent bidding and can set us up for strong clarity so that people have good understanding of what they're going to pay and then they can be assessed on their merit for the property.

DINI LIYANARACHCHI: I just wanted to add from older people's perspective. In New South Wales currently you have to be 80 years old to be added to the social housing priority waiting list, so there's a large proportion of older people who should potentially be on the priority list but aren't because of the current policies and therefore are on the private rental market on very limited incomes. We also know from research that, if you're an older person over 55 and not in employment, your chances of getting into employment are highly unlikely or limited and therefore you are already not an attractive applicant for rental applications. So they experience multiple challenges and then there are the intersections of people from CALD backgrounds who don't speak English as a first language and all the other challenges that come with it.

Like Hayley and others pointed out, if they also need accessible housing, that adds another layer. For example, our Home at Last service in Victoria supported—about 50 per cent of our clients need accessible housing. So when the accessible housing market is very, very tight, they tend to lose out. Just to give you one example, this woman was trying to find affordable housing. She became homeless after a marriage breakdown. She couldn't find anything that was affordable. She found something on Gumtree. It's an unregistered boarding house. She has no rental agreement and therefore no rental protections and she said her landlord comes into her room and goes through her stuff when she's not around, but she said, "That's fine. I still have a roof over my head." So that's just one of the many, many stories that we are hearing of people who are in untenable situations because they simply can't afford rentals. Introducing something—

Mr ALEX GREENWICH: Thank you, Dini. Sorry, my question was specifically about impacts on people on rental subsidies. In the limited time I have left, I just really want to make sure I hear from the disability groups.

CHERRY BAYLOSIS: I'd like to speak about a person I met during our outreach. Her name is Shae and she is a wheelchair user. She is on the disability support pension and her partner is an apprentice mechanic. Despite having rental subsidies and rental assistance, she and her partner really struggle to find a rental property. She said that in her weekly viewings of Domain there may have been two properties that were accessible, but they were often unaffordable because they were newer builds and therefore more expensive. Because her partner, I stress, is an apprentice mechanic, so it is a low-income household, she was unable to be eligible for social and public housing so was reliant on the private rental space. The NDIS did offer accommodation through supported independent living; however, she wouldn't be able to live with her partner and they suggested that she live separately.

After looking for a property for about four months, in a moment of desperation—in her words, she said she became quite depressed, quite stressed—she posted a plea on social media for someone to help her out. It was only through a personal network that she was able to find a rental property. I should also stress that one of the main accessibility requirements for Shae was having an accessible bathroom because she is in a wheelchair. She now has to shower using a hose because the property that she is in is not completely accessible, but that for her is a win—just to have a roof over her head where she can afford to pay the rent. But she lives with the stress of potentially having an increased rent. Adding to that, I just also want to point out that she also highlighted around three years ago—she lives in Dubbo—the rental stress she has now is so much higher in comparison to what she had before. I just really want to point out the drastic rental increases.

Mr ALEX GREENWICH: What would the impacts to Shae be—even in that terrible situation she was in—if she was in a rental auction system?

CHERRY BAYLOSIS: In that climate, she would potentially be outbid, unable to enter the rental market. She practically wasn't able to through the standard ways of just applying. She had to do it privately, as in not through an agent.

Mr TIM JAMES: Thanks for being with us. I'm sorry that time has been so tight and the terms of reference for this Committee are so limited. In fact, many of the issues that you work on every day, and which are central to your concerns and those of the people whom you support, are well beyond the bounds of this Committee. This Committee, rightly or wrongly, is focused upon one particular provision of one particular bill, clause 22B, in respect of which I think, Ms Jones, you essentially said—I won't try and quote you directly, but your concern is that it would significantly disadvantage already vulnerable renters. I'm going to take it that that is broadly the view across the table. Feel free to correct me if I'm wrong. That being the case, and recognising the confines of

this Committee's terms of reference, the bill et cetera, are you all of one view that clause 22B would be best being removed from the bill?

HAYLEY STONE: Yes.

Mr TIM JAMES: Got it. There is no way it can be fixed? It ought to be removed?

TRINA JONES: We think under the part (d) of 22B there could be recommendations from the Committee to end rent bidding and to set the fixed price, and to enable that to be cross-referenced with the bond register. We think that if there is scope within that to have the discussion around ending rent bidding then we would strongly advocate for that. But in the absence of that, the current legislation as it stands will drive up rent prices and further disadvantage vulnerable people, so we can't support it as it currently is.

Mr TIM JAMES: I understand. How do you think we got to the point where there's just such a bad provision in this bill?

TRINA JONES: We strongly welcome the initiative to strengthen renters' rights, and we can see that we would hear stories from people saying that there is rental bidding underway and that people didn't have a full understanding of where that would be happening. But we also know that the unintended consequences of raising this issue—which we commend, raising the issue for renters' rights—actually forced people to start bidding, people who didn't actually know about it. Services started to tell us, "We're bringing our people out and everyone is bidding higher", because the actual attention to the issue drove up rental bidding. We're really concerned that if this is structured and regulated, every single application for a tenancy will now be bid against. Where it was few and far between, we will now have it be the absolute common practice, which we're very concerned about.

MICHELLE COOK: I think, if I could add, that the second part of our ask was that no party should be able to offer, solicit or accept. If you read the rent-bidding guidelines for Fair Trading, it's saying that as long as it's from the tenant, it's allowed. I think that's a big part of the second ask.

HAYLEY STONE: I agree. I think really what has happened here is obviously there's an understanding that a practice is happening which we want transparency on, which is the rent bidding. But I think, with that, there's an attempt to potentially satisfy both real estate investors and tenants, and I think that possibly it's fallen a bit short of pleasing anyone, really. The mechanism under 22B is going to be very difficult to implement, I imagine, from a real estate agent perspective. The idea that they will have to call potentially 60 applicants and let them know about the bids and manage that—I can't imagine that's going to be easy for them. But also from the basis of tenants, as we said, it does have the incentive to drive up prices because of that pressure cooker situation that you're generating. Yes, I think the intention was good, but I think in practice what we're pointing out is that it's just not going to be effective. It won't achieve what the expectation was that it would achieve.

Mr TIM JAMES: Thank you—falling short of pleasing anyone. On that note, I'll hand over to my colleague.

Mr RORY AMON: Thank you all for being here. If you don't mind, I might use your first names because it's more familiar to me. I appreciate that this is a pretty frustrating process because we're almost trying to come up with the least worst outcome in a really difficult situation. There are four things I wanted to touch on, and the first question I have is really a yes-no. Did any of you have input into the drafting of proposed section 22B?

TRINA JONES: No.

MICHELLE COOK: No.

CHERRY BAYLOSIS: No.

HAYLEY STONE: No.

DINI LIYANARACHCHI: No.

Mr RORY AMON: The next question touches upon what the member for Willoughby was referring to. If proposed section 22B is implemented into law, will that make tenants' lives harder or easier?

HAYLEY STONE: Harder.

Mr RORY AMON: If it is implemented into law—and you just alluded to this, Hayley—proposed section 22B (2) (a) requires the landlord's agent to give a written notice of any higher offer. As you said, that could be to 60 different people. There will probably be a prescribed form; it would have to be tailored for each individual and sent out to each individual. It would have to be done within a certain time. Under proposed section 22B, they would then need to update the ads for the offering of the property and then advise everyone who is attending that subsequent inspection of the higher offer. If agents are being asked to do all that additional work, I presume that

will increase the costs of the services they provide to landlords, and they will therefore pass that on. Would that not act to increase the rents that are being asked for, in the sense that if they need to do more work then they will charge the landlord more and will therefore have to put the rent up accordingly? Is that a possible outcome if proposed section 22B is adopted?

HAYLEY STONE: I don't know if I could necessarily comment on that because I don't have enough understanding of how the costs are transferred in terms of rent, but what I would point out in regard to the scenario that you've presented is that oftentimes tenants don't have that time. If you have a tenant, for instance, who has been given a 30-day notice of termination for sale of property, I can't anticipate that they're going to be able to have the time to go through that convoluted bidding process where they're going to be going to-and-fro and to-and-fro, and they're not going to have that certainty that they're going to necessarily get that place. They'll also be looking for other properties as well so they might be putting in multiple bids, so that makes things complicated because, if they're accepted and then they've actually accepted somewhere else, that's going to be complicated as well. Something that needs to be unpacked is the fact that it will be a time-consuming process, we would imagine, but there isn't the luxury of that time. When you've got people who are pressured to move out, or face homelessness, it's going to be really tight for them.

Mr RORY AMON: I think you're all in agreement that 22B as it is will make life worse for tenants. Everyone seems to be in agreement that 22B, if implemented, would have a lot of logistical issues. But the last point is: If you have a rent ceiling, so to speak, that does create greater transparency because people could bid whatever they want and it can never go above. But if you're a landlord, don't you just set an exorbitant ceiling, which could never be exceeded in anyone's wildest imagination, to therefore give yourself the gamut of options within that ceiling? How would you envisage you actually deal with that issue?

TRINA JONES: We're not suggesting that it's a bidding scenario with the ceiling. We're suggesting the price is the price, okay? The market conditions will enable that to correct itself pretty quickly. If somebody lists their property at an exorbitant rate, people won't pay for it. However, an auction-style environment can drive prices up, so what we want to be able to do is to provide as much transparency in a very difficult set of circumstances where we have very limited rental supply, where we don't have affordable housing available to people, and where we have an increasing population with a decreasing supply of affordable properties. What we want to be able to do is say: Is this within your means? If so, then can I have a competitive chance for accessing it?

Mr RORY AMON: Just back to the ceiling, though, if everyone knows that there's new rules in town and everyone sets a ceiling, and the ceiling is always far and above what everyone actually would be prepared to pay, unless you have some independent person who says, "This is the ceiling", then we might not actually solve the issue because everyone will know the ceiling is just a bit of a try-on and people would just put in their offers underneath that ceiling or what is actually in the market, or some higher-than-ordinary amount.

HAYLEY STONE: I don't necessarily think that would be the case. You look at properties and you look at the prices that are determined in terms of buying a property, the real estate agents understand what a property's value is, to an extent. I think that you'd probably end up with a similar situation. I can't image that a real estate agent's going to put up a listing for a property that's massively overpriced because no-one's going to apply for it. Every day that that property isn't let, it's less money for the landlord. They would be incentivised, as the agent for the landlord, to actually have a rent which may be on the higher end and they'll probably be ambitious, but I can't imagine that they would result in skyrocketed rental increases. I just think that, the thing is, if they're bidding below that amount, there's an incentive to make it as close to the amount as possible, not to make it significantly higher.

The CHAIR: In the interests of time, and being on time, I will close this part of the hearing. Again thank you, emphatically, on behalf of the entire Committee and the New South Wales Parliament for appearing, for turning all the information around so quickly, for being available to us and for offering your insights. It's tremendously appreciated. I also have been flagging with other people who have appeared today that the Government has a number of things that they want to do in this space. I would strongly ask and encourage you to stay involved and engaged because your wisdom is appreciated.

Thank you for appearing before the Committee today. You will each be provided with a copy of the transcript of today's proceedings for corrections, in case there's anything that you feel we've misunderstood or misquoted, and that's about it. We will move on to the next set of witnesses. Again, thank you so much. We really appreciate all of the work that you do every single day in your workplace.

(The witnesses withdrew.)

Ms NATASHA MANN, Deputy Secretary, Better Regulation Division, NSW Fair Trading Commissioner and Head of SafeWork NSW, affirmed and examined

Ms DIANA HOLY, Director, Real Estate and Housing Policy, NSW Fair Trading, affirmed and examined

The CHAIR: We are just being joined by our eighth member, Mr Li, whom we were aware couldn't join us until later on this afternoon. It's good to have you. I welcome our final witnesses. Before we proceed, do you have any questions about the hearing process?

NATASHA MANN: No.

DIANA HOLY: Thank you.

The CHAIR: Do either of you have a short opening statement that you would like to make before we begin questions?

NATASHA MANN: No, Chair. We thought we would leave the time for questions and discussion.

The CHAIR: That's dangerous.

Mr RORY AMON: Thank you, Natasha and Diana. I will get straight into it. Have you been watching or have you considered or had the opportunity to have a look at some of the submissions made by other people who have appeared or will appear before the Committee?

NATASHA MANN: I have been able to watch bits and pieces but not the entirety, no.

Mr RORY AMON: The view of a lot of the witnesses seems to be that 22B will have the capacity to increase rents for tenants generally, given that it would tend to encourage a bidding process, even though it is more transparent because everyone knows what will happen. Do you have a view as to whether you agree with those witnesses that it will make rents higher for people who are participating in the process?

NATASHA MANN: The first thing to say is that we know at Fair Trading that unsolicited rent bidding is already occurring. It's already prevalent. We're getting complaints about it. We're getting feedback from consumers who absolutely want more transparency because they're missing out on properties and they don't know why. We've also had complaints from prospective tenants who've gone in and seen rent bidding in practice. So it's happening already. I think the question for this Committee is, is the current policy setting appropriate or do we need to go further? There are certainly concerns that I have heard stakeholders raise with me that 22B may have the impact of increasing prices. We don't know that. I think a lot of this is dealing in hypotheticals, and we don't know that that will be the case. Yes, it is a risk but nobody knows whether that risk will transpire or not.

Mr RORY AMON: I appreciate that your role is to assist the Government to implement its agenda, which I understand.

NATASHA MANN: Can I say that it absolutely is that, but it is also my role as Fair Trading Commissioner to make sure that consumers are protected, so it's a dual role.

Mr RORY AMON: I appreciate that. I didn't mean to offend if I did. In terms of implementing, regulating and enforcing clause 22B, on a standard property you could have 60 offers. You could have a high number of applicants. So, in practical terms, if you require an agent to give a written notice to every one of those acceptable applicants of a higher bid, is that not going to create an inordinate amount of work for those agents in giving the written notice? They've then got to maintain records for three years in a proper form. It can't just be text messages and emails; it's got to be properly filed. Isn't that going to create a lot more work for agents?

NATASHA MANN: We certainly don't want to create more work and a regulatory overburden for agents. What we do know at Fair Trading is that most agents—not all but many—are using platforms to manage this process already. What we have discussed is how those rental platforms may be able to build into that process an option for this to happen in an automated way.

Mr RORY AMON: So it's not anticipated that there would be less work for agents if 22B were implemented because they'd have to give these notices and all these other things? It would be more work for agents?

NATASHA MANN: It's fair to say that it is an additional workload for agents, but that also needs to be balanced against what it means for tenants, which is the transparency piece.

Mr RORY AMON: There is a risk that if agents are doing more work then they may be charging more, and that may be passed on, ultimately, to landlords and, subsequently, tenants?

NATASHA MANN: You would have to ask the REI that; I can't really speak to it. It is a potential that could occur, and we would certainly be monitoring that also.

Mr TIM JAMES: Specifically on clause 22B, what consultations has Fair Trading gone about, with whom and when?

NATASHA MANN: The first thing to say is that this was very clearly an election commitment of the Government: to end secret rent bidding. So, in a sense, there was already a lot of discussion about it in the lead-up to the election. I don't think it was any surprise to stakeholders that it was coming. In terms of consultation, I know there was targeted consultation with a number of stakeholders, many of whom have appeared before you today. I understand that the Minister and the Minister's office also did their own consultation with stakeholders, which I was not a party to. I believe that stakeholders were sent draft provisions of the bill, so they have seen the bill in draft form. It was a truncated process but, as you know, many legislative reforms happen very quickly and we often don't get as much time as we would like to share with stakeholders. This was nothing different to that. It was something that the Government—it was a priority and they wanted to get it through. I think they wanted to say that they wanted better rental fairness for tenants and they wanted more transparency, so I think they were very keen to act in accordance with the commitment.

Mr TIM JAMES: I don't doubt that it was no surprise that it was coming, having been an election commitment, I think, back in December last year. Obviously, though, the focus now is really what form does it take? How do we get a good piece of legislation? I'm trying to understand that because, at this point, not one stakeholder has come forward and said that clause 22B is a good provision. Can you shed any light on how we got to this point?

NATASHA MANN: I think there are a couple of things that I will say to that. In my 20 years in New South Wales government, there is very rarely a piece of legislation that every stakeholder is happy with. Usually, we would say that if we make each stakeholder moderately unhappy, that's probably a good reform. I don't think we would ever expect everyone to be enthused and over the moon about every provision. That being said, we did what we were able to to really give people an opportunity. I know that Diana and the team very much took on board stakeholder comments. There were amendments made in response to those stakeholder comments, and the bill was revised a number of times.

Mr TIM JAMES: I have a final question; I'm conscious of time. Recognising that the reforms made by the previous Government—indeed, in late last year—are still relatively young and that you only really commenced enforcement action in March, is there an argument to say that they just need more time to be bedded down for the market to be aware, for practices to adapt to no data and for, in a sense, us to have a baseline? Is there an argument for due enforcement across the board? Do you think there's an argument to say, "Let's have those very recent reforms settle before we make a change"—in this case, a change that no-one actually appears to agree with?

NATASHA MANN: There are a couple of things, if I can answer the question in parts. The first thing is that those reforms were about ending solicited bidding practices. That is where an agent actually actively goes and asks people for more money. This is different. This is about when tenants are coming and volunteering more money, and this is about transparency. The reforms are pitched quite differently. To your point, whilst our fines started in March this year, we actually did do enforcement action the very next day. We scraped I think it was 12,000 advertisements to look at noncompliance and we found about 1,000 of them were noncompliant. We issued education letters to all of those agents. So we actually did start the compliance action from the very next day.

I think this is a really complex policy problem. I think we all want the same solution. We know that we're in a rental crisis. It's a really difficult situation. I hear it from consumers all the time, and they want help with it. We all want the same outcome. I think it's just a matter of whether we're ready to jump now and try this new policy setting and see how it goes, review it, lead the rest of Australia and see whether it works, or whether we just stay with the status quo and just acknowledge that secret rental bidding happens, consumers are being disadvantaged by it but we're just not going to tell them. We could stick with the status quo, absolutely, and see how the other reforms are bedded down. In my view, it would be worthwhile taking the next step and actually seeing whether some of these unintended consequences do come to bear fruit.

Mr ALEX GREENWICH: Thank you both for appearing today. You made the point that ending secret rent bidding was an election commitment of the incoming Government. Now that it is in government, it is doing its priorities and mandates. Creating a form of regulated rent bidding or rental auctions, I don't remember that being an election commitment of the incoming Government.

NATASHA MANN: I'm not sure that it is doing what you describe it to do. I'm not sure that it is regulating rental auctions and whether that would be the impact. I think what it's trying to do is to say that rental auctions are already occurring, but they're occurring behind closed doors. Are we better shining some light on it and

actually letting consumers make informed choices with information available to them? At the moment, they don't have that information; they just get the rejection letters and don't understand why. Is this reform going to solve affordability? Is it going to solve accessibility? Absolutely not. This is a tiny reform in a much bigger suite and much bigger package. Quite frankly, I think we all around this table appreciate that it's actually about housing supply that is going to solve some of these issues. This provision, 22B, cannot do that and nor does it intend to or try to.

Mr ALEX GREENWICH: Doesn't 22B fundamentally change the way in which a rental application, from the tenant and property management side, occurs today if it were to be implemented? It fundamentally changes it. Would you agree with that?

NATASHA MANN: It may, but I'm not sure that it will in practice is my honest answer. Nothing in this bill forces landlords to make a decision on price. These things could occur and the landlord can still absolutely take into account all the other factors related to a tenancy application. So it may, but I'm not sure that it will. I suppose until we see how it works, I think we're all speaking in hypotheticals.

Mr ALEX GREENWICH: Sure. But the Government has access to Treasury and other forms of modelling. Has there been any modelling done to see if these provisions could potentially drive prices up that you are aware of?

NATASHA MANN: We've certainly spoken to a lot of stakeholders and certainly that risk has been raised. To your question, I'm not aware that there has been Treasury modelling to date, but there may have been.

Mr ALEX GREENWICH: My final question is—you would have sat through the previous session—in the development of this policy of a regulated form of rent bidding where people seeking a tenancy put in a price and then everybody else is notified of that price and there's the opportunity to put in a higher price, was any consultation done with groups, including those who appeared before you, to see the potential impacts on people who rely on rental subsidies to pay their rent and they are unable to increase the amount that they put forward for an application?

NATASHA MANN: I'm not sure whether those particular stakeholders were consulted. I know that issue has been considered. However, I suppose I would just go back to this isn't about trying to address affordability or accessibility. Those people are already disadvantaged and I hear from them a lot as Fair Trading—

Mr ALEX GREENWICH: Sure, but we don't want to make the situation worse. You would think you would consult with people who have a fixed price they can offer for rent before implementing a system where we create a new marketplace and a system where people can outbid those who are on a fixed rate.

NATASHA MANN: I appreciate absolutely what you're saying and obviously, as Fair Trading commissioner, the most vulnerable consumers are the ones that take my biggest attention because I want to make sure that there is a fair marketplace. So I absolutely hear what you're saying. Look, I'm not sure whether the Government consulted with those groups. All I know is that it was an election commitment. It was about transparency and that's how it—

Mr ALEX GREENWICH: But again just on that, there was no election commitment for a regulated system of rent bidding. There was an election commitment to end secretive rent bidding. How that was to be achieved, the detail of that, was not a public—

The CHAIR: It's possibly not appropriate for Ms Mann to comment on election commitments.

Mr ALEX GREENWICH: She started by doing it. Anyway, I've made my point.

DIANA HOLY: Those issues were certainly raised when we spoke to the Tenants' Union and Shelter NSW and also Choice. They were specifically raising those issues, obviously, of people on limited incomes.

Ms JENNY LEONG: Just further to the member for Sydney's comments because I guess I also wouldn't have usually asked people representing the various departments and the commissioner to comment on election commitments, but in the submission by the Government, the Department of Customer Service, it says this explicitly at the beginning of page 2:

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 ...

I just wanted to inquire as to what document or instructions you were acting on in relation to the drafting and the preparation around 22B. The reason for that is because on 24 March the commitment of the Government the day before the election in a social media square—because I appreciate we're relying on election commitments and

they these days get announced in social medial squares—said, "Labor will legislate an end to the practice of rent bidding to curb the spiralling cost of tenancy."

On 12 December, I absolutely agree, there was a commitment by the Government to ban secret rent bidding but the day before the election—presumably after there's been time and a consultation has occurred with stakeholders—the commitment was put forward publicly to say that Labor would legislate to end the practice of rent bidding to curb the spiralling cost of rent. In addition to that, we have other communications. I appreciate it's hard in the context of election commitments that are media releases and other things we're relying on. Because we also have commitments around ensuring that we make housing more affordable for buyers and renters. I wonder which election commitments were you acting on? At what point was that instruction given, in terms of the department being able to act on those draftings? Because I think we're trying to get to the bottom of where we've slipped between the idea of "secret" to concepts around making housing affordable and rent bidding.

The CHAIR: There may be elements to that that are Cabinet in confidence I guess.

NATASHA MANN: Yes. There are certainly conversations that would be Cabinet in confidence but, I suppose, to try and answer your question, I have seen many different versions of election commitments and wordings and things like that. I think perhaps the distinction wasn't made between solicited and unsolicited rent bidding in some of the commitments. I think it is fair to say though that when we met with the Minister it was clear that secret rent bidding is what the Government wanted to implement. There are different ways of doing that, but it was definitely about secret rent bidding and that's how the provisions were drafted.

The CHAIR: Ms Mann, can I just give you a chance to tidy that up? You said secret rent bidding was what the Government wanted to implement?

NATASHA MANN: Yes. And that is how these provisions have been drafted.

The CHAIR: So dealing with or a prohibition of?

NATASHA MANN: Sorry?

The CHAIR: Dealing with or a prohibition of secret rent bidding, was what the Government—

NATASHA MANN: That's correct, yes. Thank you.

The CHAIR: My apologies.

Ms JENNY LEONG: If I could jump in with a couple of questions about how this process might work. Excuse me for the way that I'm going to do this. I will give you the questions because you might need to take some on notice because then time will be up and I won't be able to put them on notice later. The first is in relation to the need to communicate within 24 hours to all acceptable applicants any higher offers of bid. We know now that some people make offers and put in applications before they have viewed a property, and that there could be up to 10 or 20 people who put in applications. How would landlords and property managers review all of those applications within a 24-hour period to then determine who are the acceptable applicants to then be able to go back and communicate with them that a higher offer has been made?

The second one is in relation to an owner being obliged to advertise at a higher rate if an offer has been made at a higher rate, basically taking the power away from the owner to determine what advertised rate they are putting forward. My understanding is that under 22B if a higher offer is made and they want to run an open inspection again, or for the first time, they would need to then advertise it at the higher rate. They may not have even had the open inspection yet, but someone may have put in an application with a higher offer before the open has happened. Is the owner obliged to have to advertise it at that higher rate?

The other one is in relation to the issue of what protections are put in place to ensure that there are no dummy bids being made, and how and where you can point to in 22B that prevents the idea of dummy bids being made. The other question is in relation to the consultation. I totally appreciate your point. Having done a lot of stuff in the tenancy space, I appreciate that no-one is ever agreeing on everything. I wonder, either prior to this Government being elected or following, have you heard from any stakeholders that are wanting to see this reform put in place? Has anyone communicated to you that they are supportive of 22B in its current form? And, in the consultation process, did anyone indicate that they are very keen to see 22B be implemented?

The CHAIR: Just before you answer—Ms Leong, you are gilding the lily here. Everyone else is trying to get their questions down to just one or two. You've just rattled out four or five and dumped them out there. We're under massive time constraints.

Ms JENNY LEONG: With respect, the reason for that is my understanding of how the Committee process usually works is we use our time, we get the answers and at the end we can put any additional questions on notice. I tried to do that in the last session and I was prevented from putting an additional question with clarity on notice.

The CHAIR: No, that question was taken on notice.

Ms JENNY LEONG: I am happy to take them all on notice. But I think it is really important, given the concerns that have been raised around this, that there is the ability to clarify whether or not there is an understanding of how these factors would work. If you want to rule them out of order, I am happy for that to occur.

The CHAIR: I'm not going to rule them out of order. Is there a broader comment you'd like to make briefly in response to all of that, which I think is essentially around defining the way the process works if it is implemented?

NATASHA MANN: Yes. As with all pieces of legislation, often what we find is we can over-engineer all the details of the provisions and things like that but, ultimately, what will happen in practice is Fair Trading will then go away with industry and tenants and nut through how it works in practice. We will issue educative guides to people and we will help them with compliance. I wanted to make the point that there is another big piece after any law gets passed, as you would know. That is really the education and bringing the sector along with those reforms.

In relation to the question about if any stakeholder has asked for 22B, I obviously can't speak to the Minister and the Government around what conversations have been had. What I can say, though, as commissioner for Fair Trading, is I have had multiple consumers complain about the practice, basically saying that it's occurring and there's nothing that they can do about it, that they feel helpless and vulnerable, and that if they actually had the information then they could make better decisions. That transparency piece is really what new section 22B is trying to achieve. Has anyone said 22B is the panacea or the solution? No. But I think it probably goes some way to addressing the problems that we have. There's many more things that absolutely need to be done. This is definitely not the solution for everything.

Ms JENNY LEONG: Chair, taking your point, if I can ask for a specific response in relation to the issue around ensuring and checking acceptable applicants within a 24-hour period to be able to then make that offer, and how you would see that working in practice, if there were, say, 10 or 12 applicants that all needed their referee checks done before it could be determined whether they were acceptable applicants.

NATASHA MANN: I might ask Diana who was closer to the drafting of that.

DIANA HOLY: Yes, sure. It is up to a real estate agent obviously how they assess applicants. They may just look at some people and look at their income and say, "Okay, they are not going to be someone that I am willing to enter into a tenancy agreement with because I think they cannot afford it." But they only have to decide on who is acceptable, and it is up to them to decide what criteria they apply to that decision. They do not necessarily have to check the references for every single person, the same way it is now.

It does not change the fact that there is a lot of discretion to decide who they are going to enter into a tenancy agreement with. I think the key thing is that where there is someone and they are going to enter into a tenancy agreement and that person has offered more, that then other people get a chance to know that in fact there is a higher offer on the table. Do they want also to put in a higher offer or not? We have not had specific feedback that the one day is too short. It would be a minor amendment to make that a slightly longer time frame if that was needed, but we did not have feedback that it was too short.

Mr JASON LI: My question relates to the intent behind the drafting of 22B (1). I struggled with this provision. I wonder if you could elaborate on what was actually intended by 22B (1) and its operation in relation to 22B (2).

DIANA HOLY: New section 22B (1) is meant to be the provision that indicates when there is an end to the notification obligation. If a landlord has accepted a holding deposit or if they have entered into a tenancy agreement—clearly, because then they are bound by the contract—then they are no longer obliged to notify of higher offers from acceptable applicants. It is sort of like the endpoint of the entire notification process.

Mr JASON LI: I see. It is a stop to the process.

DIANA HOLY: Yes.

Mr JASON LI: I am thinking of a situation where in order to prevent having to go through the administrative burden of going through the notification process, an agent or a landlord simply goes, "I have a bunch of acceptable applications at the advertised price, so I will just accept the most suitable of those. An

application has been accepted at that price and, therefore, even if I were to get an offer at a higher price, then 22B (2) would not apply because I have already accepted an offer."

DIANA HOLY: Yes, that is right. A landlord does not have to entertain bids higher than the advertised price if they do not want to. They can say, "This is the price. I am not seeking higher bids."

Mr JASON LI: I guess what I am driving at is I wondered whether the drafting of 22B (1) was actually misinterpreted by a group of the people making the submissions, and this is what I thought when I read it the first couple of times. The whole of clause 22B forced a formal rent bidding situation when, in fact, that is not the intent. With respect, a clearer drafting of 22B (1) would mean that an agent just accepted an offer at or below the advertised price and then would be able to avoid all the notification period. From a practical perspective, it actually encourages the acceptance of prices within the advertised price and it discourages, from an admin burden perspective, agents and landlords going through the whole application process. I wonder if that interpretation of 22B (1) was what you had in mind, or not at all.

NATASHA MANN: It absolutely is. I think there's probably some drafting tightening that Parliament could do to make that clearer, yes.

DIANA HOLY: This was how our instructions were and this is how the Parliamentary Counsel drafted it, but obviously it was drafted with a short turnaround. If the Parliament would like to, there are clearly amendments that might make it clearer.

Mr JASON LI: It was just my concern that a bunch of the respondents with submissions might have interpreted the whole provision as requiring a formalised process when, in fact, that wasn't the intent of 22B (1).

DIANA HOLY: As Ms Mann said, there is also the opportunity of course for us as Fair Trading to put out education about how the provisions would work in practice as well.

Mr JASON LI: Just as an example, if the wording was slightly changed to say, "This section does not apply if a landlord or landlord's agent already holds a holding deposit that is at or below the advertised price," then it's essentially saying to an agent, "If you accept something at or below the advertised price, then that's fine. There's no notification required, even if you got a higher bid." I just wasn't sure if that was the intent behind that provision. If that was the intent, I'm concerned that it's been misinterpreted by a number of the stakeholders making submissions.

The CHAIR: It's a point well made, Mr Li. We need to move on. Ms Butler?

Ms LIZA BUTLER: I have two questions. In regard to the administration burden, if there's a higher bid offer from an acceptable applicant—and say there's 12 applicants but there are only three suitable applicants—then why are we asking that the real estates advise all rental applicants? They may only have to advise the two. It's saying that they can only accept a rent bid from an acceptable applicant yet they have to tell even the people that weren't acceptable tenants about the bid.

NATASHA MANN: Yes, I hear you. I believe that that was an amendment made based on stakeholder feedback and the concept of acceptable applicants and things like that. But I agree that there are probably some tweaks that could potentially be made to clarify that and change that.

DIANA HOLY: I think the aim was, because the reform was about transparency, about giving transparency to all the people who had actually put in an application.

Ms LIZA BUTLER: The Government has an intention to have a Rental Commissioner. If 22B is not in there and secret rent bidding goes on, as status quo as it is now, would he have the ability to monitor what was happening?

The CHAIR: Or she.

Ms LIZA BUTLER: Or she, sorry.

NATASHA MANN: No. I think that's the point that I was making earlier—that particularly 22A (5), where the regulations provide for the provision of information, is quite a significant step forward because we actually have a clearer picture of what is happening out there. As you said, when the Rental Commissioner comes on board it will give her or him the opportunity to actually be able to interrogate that data, see what's happening and course correct if we need to. Without that, we just don't have clear line of sight as to what's going on, other than the complaints that we're receiving and the anecdotal information that we have.

Ms LIZA BUTLER: Do you think it would be an idea to put a 12-month review with 22B so that it could be monitored over a 12-month period for further recommendations?

NATASHA MANN: I think I'd be very much attracted to that idea. I think the intention would be for the Rental Commissioner to keep it under close and ongoing review. But I am attracted to the idea that after 12 months is really a check-in point and all the data we can have a look at and see actually what's happening out there in practice. Data is so powerful. We're a little bit blindfolded at the moment.

Mrs SALLY QUINNELL: Clause 22B (3) says "a landlord or landlord's agent who gives written notice". Does that include email?

DIANA HOLY: Yes.

NATASHA MANN: Yes.

Mrs SALLY QUINNELL: I just wanted to double-check just because something was said earlier about doing a letter or whatever. I just wanted to check email was included in that. Given that secret rental bidding is already happening and somewhat entrenched, do you believe that 22B will bring into the light of day and empower tenants, future tenants, prospective tenants with the information they need to know where they stand on any single property transaction? Do you believe that's part of an outcome that will come out of that—the empowerment of those tenants?

NATASHA MANN: Consumers consistently say that they want the information and that they want the transparency. So I think, insofar as this provides transparency, it is a positive step forward for consumers. Will it solve the issue of the fact that we have vulnerable consumers who are going to miss out on these properties? They're already missing out. Will this provision change that? No. But what it will do is it will give transparency, which is what consumers are begging for.

The CHAIR: I just want to go to the concept of written notification again. We've heard from some of the groups today, obviously, that some constituents out there in the rental market don't have email, they're not online, they don't have smartphones, et cetera. Australia Post isn't all it used to be. How do we get around that—for written notifications to be endorsed or accessible if people are not online?

DIANA HOLY: It doesn't mean they can't call them as well. I just add that.

NATASHA MANN: I think the intention of that provision was to make sure that our compliance officers are able to go in and see the records.

The CHAIR: Obviously.

NATASHA MANN: Again, we could probably—Parliament could look at tweaking that provision to make it clearer that you could call somebody and make a file note of that call. That would satisfy the written provision notification requirements.

The CHAIR: Obviously, an email is instantaneous, whereas a letter in Australia Post could be anywhere up to two weeks these days. No-one wants a process to be delayed by two weeks every time there's an offer.

NATASHA MANN: That's certainly not the intention, nor is it—

The CHAIR: I just wanted to touch on one other thing and this will have to almost bring us to an end. All of our submissions are essentially talking about the fact that this may, might, possibly or could result in multiple offers, which has been called an auction. They've also said that it may, might, possibly or could increase the price of rentals. Do we have anywhere where we can compare this proposed agenda? Is there somewhere inside Australia? Is there a like-for-like country, region or body that we could compare this to?

NATASHA MANN: Not currently. New South Wales would be leading the charge on this. There is no other jurisdiction, to the best of our knowledge, that does this. So it would be something that we would be leading the charge on. It is such a complex issue and there's no easy solution. We could maintain the status quo, but that just means that secret rent bidding will continue to be that: It will be secret. We could do what is contemplated by 22B with some tightening of the provisions and then review it—keep it under review and then have the 12 month check-in. Then we would really understand what was happening. We would have that visibility, that data that we could make some better evidence-based decision-making on.

The other point I wanted to talk about was that I know an alternative suggestion has been put forward that we could have the advertised price as the fixed price and nobody could bid above that. That's certainly a policy option that was considered as part of this. I do want to share that we spoke to industry about that, and their feedback was that all that would result in is everyone would advertise their ambit claim. So they would put a very high rent in the ad; I think you made that point earlier. But that's the feedback that we had from industry. Whilst that solution sounds neat—it sounds like it will solve problems because there will be no solicited or unsolicited—I think that also comes with risks that need to be considered. That will actually marginalise people as well because people

will see a higher price and think, "This is out of my league. I'm not even going to be part of this process," when, in actual fact, it may go for much less.

I guess I just make the point. Is 22B a perfect solution? Possibly not. There's certainly some tweaking we can do to it. But is there a possible solution out there? I think there is not. Could we maintain the status quo? We could, but it just means that we're operating with limited data, limited visibility and so forth. I think, on the whole, my support would be for proceeding and seeing how we go with this because I think it gives us the data that we need and it allows us to see whether we can solve what is a terrible crisis of rental and people really struggling. I see them every day.

The CHAIR: Finally, if I can offer, in the Minister's second reading speech talking about 22B, he said:

The Government recognises that changes to regulation might potentially impact a volatile rental market in different ways. That is why the Government will ask the Rental Commissioner to keep those changes under review and to recommend amendments to them if needed.

I interpret that as the Minister saying to the Rental Commissioner, "Once implemented, keep an eye on this, watch this and advise of changes or tweaks that we might need to make"—whether we go to a 12 month statutory review or ongoing changes to regulation or whatever the case may be. Do you think that's what the Minister meant there? Am I interpreting that right, do you think? I know it's hard for you to step inside the Minister's shoes.

NATASHA MANN: That's certainly my interpretation of what the Minister is intending. I think he absolutely wants to keep this under constant review. I think the Rental Commissioner having that role is a unique opportunity to really put this into focus, to look at what's occurring and to course-correct if needed. Certainly in my discussions with the Minister, he's very open to course-correcting if we need to at any point in time.

Mr ALEX GREENWICH: Could I just seek one point of clarification because I've had a bit of confusion here. The purpose of clause 22A in the bill is to broaden the prohibition of secret rent bidding. Is that correct?

NATASHA MANN: That's right. Currently it's done by regulation and it only applies to agents. The intent of this is to broaden it to landlords and also to third-party providers.

Mr ALEX GREENWICH: Am I also right in saying that, as the regulation has just changed in December, the enforcement of prohibited secret rent bidding, which is going to be broadened by this bill, has just begun, and Fair Trading is enforcing these provisions around secret rent bidding?

NATASHA MANN: Yes. We started off, as I mentioned, the day after. We've scraped the 12,000 ads. We did educative letters because there were 1,000 in breach. In March to May we did 76 undercover inspections and we issued 51 PINs. So there is a lot of compliance activity occurring already. This would just be augmenting the existing compliance activity. We do generally try and give the industry time to catch up with what's happening, but now we are in the real enforcement pointy end of things.

Mr ALEX GREENWICH: So to be clear, we have prohibited secret rent bidding and the Department of Fair Trading is currently enforcing that prohibition?

DIANA HOLY: It's actually solicited rent.

Mr ALEX GREENWICH: Yes, which is what we are calling secret rent bidding.

The CHAIR: No, I think they are two different things.

NATASHA MANN: That's the confusion. I think it's an easy confusion to have. Solicited is outlawed currently by the regulations. Real estate agents only cannot go to a tenant and say, "Offer more and you will get the property." That's now banned. Unsolicited is still—it's the secret unsolicited that we are trying to address in this bill.

Mr ALEX GREENWICH: So the tenant putting forward—

NATASHA MANN: Exactly.

Mr ALEX GREENWICH: Could we just not include "tenants" into 22A as has been recommended by Shelter? Or create a separate provision around that?

NATASHA MANN: So that would—

Mr ALEX GREENWICH: That would prevent a tenant from making an unsolicited bid.

The CHAIR: That becomes a price cap. That becomes a pricing regime as opposed to a transparency regime.

Ms LIZA BUTLER: And a ban.

Mr ALEX GREENWICH: And then we've stopped secret rent bidding! And rent bidding.

Ms JENNY LEONG: As a follow-up, I appreciate we are dealing with complexity around this and the challenges around where we are at. What we've heard from yourself and from others is that no jurisdiction has implemented this kind of measure before, yet every jurisdiction in Australia has implemented an end to no-grounds evictions except for New South Wales. On one hand we are seeing the referral to the Rental Commissioner on something that is established practice that we can see how it has worked in other jurisdictions, but in relation to this—moving into an uncharted territory in a very hot rental market—we are seeing the Parliament move forward with legislating around ending secret rent bidding and rental auctions—depending on your point of view—without the Rental Commissioner's input on the consultation and the drafting.

Given the member for Strathfield has raised questions around where the drafting is at, do you think there is scope in terms of the timing to refer this to the Rental Commissioner to look at in the context of the end to no-grounds evictions at the same time, given that this is uncharted territory? What is the scope for doing that, as a possibility, given you have admitted, "Look, let's try and see how it goes"? Potentially it's a more cautious option, given how hot the rental market is now, to refer that to the Rental Commissioner. I wonder your thoughts in relation to that.

The CHAIR: Ms Leong, I think that no-grounds evictions is well outside of our remit here today.

Ms JENNY LEONG: No, I am asking in the context of referring 22B, particularly rental auctions, to the Rental Commissioner as a comparative element that we see in this case and based on what Ms Mann has said. No jurisdiction has entered into this territory, whereas on no-grounds evictions we are being cautious and referring it to the Rental Commissioner for full consultation. On an issue where no jurisdiction has done it, we are moving ahead without the Rental Commissioner's expertise. I'm just curious to get Ms Mann's thoughts in relation to that.

The CHAIR: But you are asking Ms Mann to comment on no-grounds evictions.

Ms JENNY LEONG: No, I am asking Ms Mann to comment on whether or not 22B and the rental auction process would be something that the Rental Commissioner could also take into scope. If Ms Mann doesn't want to answer it she doesn't have to, but I think it's a legitimate question.

The CHAIR: If your question is whether or not the Rental Commissioner should consider 22B, I think that's what we're talking about—just 22B and not no-grounds evictions.

Ms JENNY LEONG: It's a comparison based on the fact, Chair—and I can keep repeating it, but I think the question is still there.

Mr ALEX GREENWICH: Yes, you've summarised the question.

Ms JENNY LEONG: The question is there for Ms Mann to respond to.

NATASHA MANN: This is probably not the answer that you're after, but I really feel that the sequencing of the bill and the provisions and things is really a matter for Government and for a Minister and Parliament, not for me.

Ms JENNY LEONG: I appreciate that, thank you. That's fine. I wasn't expecting an answer, I was just keen to get your thoughts on that.

Mr TIM JAMES: I have a supplementary question. There has been a lot of talk about tweaks and refinements. The member for Strathfield says, in relation to 22B, "I struggled with this provision." We are talking about course corrections, 12 month reviews et cetera. Is this really how we go about typically making law in New South Wales?

NATASHA MANN: Have I seen this before in my 20 years? Yes, many times.

The CHAIR: I was thinking that about my 12 years. I've seen it quite a few times.

Mr TIM JAMES: Would it not be better to get it right up-front, rather than to go about this experiment?

NATASHA MANN: No bill, in my view—I haven't seen a perfect bill ever and, ultimately, I think that is a matter for Parliament.

Mr TIM JAMES: Sure. Thank you.

The CHAIR: I guess that's why we do a lot of statute reviews. We are over time and I apologise for that. I appreciate you being here today. It has provided incredible insight from a departmental level about intention and the working, and the possible machinations. I need to clarify—Ms Leong threw three or four or five different things out there at one stage. Have they been answered, Ms Leong, or do we need to treat them as taken on notice?

Ms JENNY LEONG: There were a lot of questions. I think it's probably up to those appearing. If they feel like the responses that have been provided address those question then I'm fine with that. If they feel that there is further clarity that can be provided in response to those questions, I'm happy to leave them the option to respond on notice. I didn't want to put them in a situation where there wasn't the time to answer fully. I leave that up to the witnesses to determine.

The CHAIR: To that end, you will be provided with the written words that were offered up by Ms Leong. If you are able to find a response of some description to put around that, we would require that by 4.00 p.m. on Tuesday 6 June, which is just next Tuesday. We appreciate the turnaround challenges of that as well. Having said all of that, thank you for appearing before the Committee today. You will each be provided with a copy of the transcript of today's proceedings for corrections, and any questions taken on notice will be forwarded to you by Committee staff. We sincerely thank you, as with all the witnesses who are appearing at this hearing. It is an incredibly tight turnaround and incredibly tight time frame we are all trying to work through, as well as the Committee secretariat. That concludes our public hearing for today. I place on record my thanks to the witnesses who appeared today. In addition, I thank the Committee members, Committee staff, Hansard and staff in the Department of Parliamentary Services for their assistance in the conduct of today's hearing. Thank you all very much.

(The witnesses withdrew.)

The Committee adjourned at 15:21.