

2 December 2022

Residential Tenancies – Pets in Tenancies Consultation  
Policy & Strategy, Better Regulation Division  
Department of Customer Service  
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## Submission on Keeping Pets in Residential Tenancies

### 1. Introduction

Inner West Council welcomes the opportunity to make a submission to the public consultation being conducted by NSW Fair Trading within the Department of Customer Service on keeping pets in residential tenancies.

This submission is guided by a Notice of Motion adopted by Council on 8 November 2022. To quote from the resolution:

- *In NSW, landlords can refuse to allow a tenant to keep a pet without providing a reason - unless it's an assistance animal, and that the NSW government is currently consulting about changing these rules*
- *In other States and Territories, regulations have recently changed to make it easier for tenants to keep pets in rental home*
- *Support a change to NSW Tenancy law to remove blanket 'no pets' clauses.<sup>1</sup>*

Accordingly, this submission supports the reform of NSW residential tenancy laws that prohibits the use of blanket 'no pets' clauses in residential tenancy agreements and that produces positive outcomes for both landlords and tenants.

### 2. Pet ownership

Pet ownership in Australia is one of the highest in the world.

According to recent survey findings published in 2021, there has been a substantial boom in pet ownership, with an estimated 30.4 million pets being housed in private and rental properties across the country. Nationally, 69% of all households now own a pet, up from 61% since 2019.<sup>2</sup> Within the Inner West, approximately 42% of households own a dog while 35% of households own a cat according to the NSW Companion Animals Register.<sup>3</sup>

However, despite the prevalence of pets within Australian households and evidence of the benefits derived from pet ownership for both individuals and the wider community, the right of households to keep pets varies considerably, depending on the housing sector and the type of tenure.

### 3. Structure of submission

In addressing the use of blanket 'no pets' clauses in residential tenancy agreements, this submission focuses on the following:

- Existing tenancy laws in NSW applying to both rented properties and strata schemes
- Objections to blanket 'no pets' clauses on the keeping of pets
- Summary of recent changes to tenancy laws in some States and Territories
- Benefits and limitations associated with tenancy law reform
- Recommendations for a change to tenancy laws in NSW.

#### 4. Pet keeping laws in NSW

##### *Residential tenancies*

In relation to the *Residential Tenancies Act 2010*, there is no provision that prohibits a tenant from keeping a pet or that requires a request for a landlord's consent.

Whether a tenant can keep a pet, other than an 'assistance animal', in a rental property is currently a matter of negotiation between the landlord and the tenant. A landlord can refuse to consent to a tenant's request to keeping a pet in a rental property without having to provide any grounds.

Changes to NSW tenancy laws were introduced in March 2020. In particular, the standard residential tenancy form, issued by NSW Fair Trading, now includes an optional, negotiable term that would permit the keeping of pets under certain circumstances. Nevertheless, a landlord can still cross out the term and prohibit the keeping of pets. There is no appeal process that would enable the tenant to have the landlord's decision reviewed by an independent tribunal.

Under current laws, landlords cannot refuse to allow a tenant with a disability to have an 'assistance animal', such as a guide dog, in a rented property.<sup>4</sup>

##### *Strata schemes*

New strata laws for pets in NSW were introduced in August 2021. As a result, owner corporations can no longer unreasonably prohibit or restrict pet ownership through by-laws, apart from preventing pets causing a nuisance or hazard to other occupants.

These new strata laws came into effect when previous blanket pet bans in strata schemes were found to be in breach of NSW strata legislation due to their 'harsh, unconscionable or oppressive' nature.

The *Strata Schemes Management Regulation 2016* lists a number of grounds where strata residents may still be prohibited from keeping pets. In particular, these apply to circumstances where owning a pet unreasonably interferes with another occupant's use and enjoyment of their lot or a strata complex's common property. In addition, any owner or tenant within the strata scheme can apply for an order to have a pet removed on such grounds.<sup>5</sup>

Apart from these restrictions, strata schemes still possess the authority to set reasonable conditions under their by-laws such as conditions relating to pets entering or exiting strata buildings.

For renters in strata complexes, the terms of a residential tenancy agreement may impact a tenant's capacity to own a pet. Even if a strata scheme permits the keeping of pets by residents, landlords, through the terms embedded in a lease, can still prohibit a tenants ownership of pets in strata schemes.<sup>6</sup>

## 5. Objections to blanket ‘no pets’ clauses on keeping of pets

Objections to the use of blanket ‘no pets’ clauses in NSW include:

1. The power imbalance between landlords and tenants embedded in existing residential tenancy legislation
2. The refusal by landlords to tenants keeping pets without reasonable grounds being provided
3. The lack of any independent review process enabling assessment of a landlord’s refusal of a tenant to keep pets
4. The unacceptable impact on women escaping domestic violence where current laws can deter victims from leaving a violent relationship due to concerns about finding rental or other accommodation that allows them to keep their pets.<sup>7</sup>

## 6. Summary of pet keeping laws in other States and Territories

Between 2019 and 2022, Victoria, Australian Capital Territory (ACT), Queensland and the Northern Territory (NT) moved to reform their residential tenancy laws relating to pet ownership.<sup>8</sup> Table 1 below summarises tenant and landlord obligations specified by these laws.

**Table 1. Tenant and landlord obligations relating to pet ownership laws**

Responsibility	Victoria	ACT	Queensland	NT
<b>Seeking approval – onus on tenant</b>	<b>Yes</b> (tenant to seek landlord’s written approval)	<b>Yes</b> (tenant to seek landlord’s written approval if required by RTA)	<b>Yes</b> (tenant to seek landlord’s written approval)	<b>Yes</b> (by notification – landlord has 14 days to respond)
<b>Refusing consent – onus on landlord</b>	<b>Yes</b> (landlord to apply to tribunal within 14 days)	<b>Yes</b> (landlord to apply to tribunal within 14 days)	<b>Yes</b> (landlord can refuse consent based on prescribed grounds – no tribunal order required)	<b>Yes</b> (landlord to apply to tribunal within 14 days)
<b>Resolving disputes – onus on tenant</b>	N/A	N/A	<b>Yes</b> (tenant to apply to tribunal to overturn landlord’s refusal)	N/A

### *Seeking approval to keep a pet*

As indicated in Table 1, the onus is on the tenant in Victoria and Queensland to acquire written consent from the landlord to keep a pet. In the ACT, written consent from the landlord is only necessary if this is required by the Residential Tenancy Agreement (RTA).

### *Refusing consent to keep a pet*

As shown in Table 1, the onus is on the in landlord in Victoria and the ACT to apply for an order from the relevant tribunal within 14 days after receiving a tenant’s request to keep a pet.

In Queensland, however, a landlord can refuse consent for keeping a pet without the need for an order from the relevant tribunal based on certain prescribed grounds. If consent is refused, then the onus is on the tenant to apply to the tribunal for an order that overturns the landlord's refusal.

It is Council's view that legislative changes in Victoria, ACT and NT are preferable in the sense that the onus is on landlords to seek orders from the relevant tribunal when wanting to refuse pet ownership requests from tenants. This is due to the likelihood of landlords and their real estate agents having more time and superior financial resources compared to tenants.

#### *Tribunals and dispute resolution*

While there are variations between these jurisdictions with respect to determining orders, the relevant tribunals must take a range of matters into considerations. These include (a) the type of pet proposed, (b) the suitability of the rental property and (c) the potential of unreasonable damage being caused to the property. As noted above, Queensland legislation actually prescribes grounds for a landlord refusing consent.

In all jurisdictions cited, if a landlord does not respond to a tenant's request within 14 days, the keeping of a pet is automatically permitted.

The relevant tribunals referred to above are the Civil and Administrative Tribunals associated with each respective State and Territory.

#### *Strata schemes and pet ownership in States and Territories*

Generally speaking, strata building rules in the States and Territories do not prohibit pets or require advanced approval for strata owners and residents to keep pets in strata complexes. Nevertheless, strata or body corporates frequently make changes to the standard or model rules regarding pet ownership. As such, strata owners and residents usually need to seek permission from their body corporate before keeping a pet on their premises.

#### *Addressing objections to blanket 'no pets' clauses through legislative reform*

Overall, legislative reforms in Victoria, ACT, Queensland and NT have sought to make the regulation of keeping pets in residential tenancies fairer by banning blanket 'no pets' clauses and by involving relevant tribunals in dispute resolution subject to appropriate considerations or prescribed grounds such as the types of pets and the suitability of rental properties to house pets based on the adequacy of internal and external spaces, boundary fences etc.

As a consequence, these reforms collectively address to varying degrees the objections listed above to the use of blanket 'no pets' clauses in residential tenancy agreements.

### **7. Additional benefits**

Apart from helping to redress the former power imbalance between landlords and tenants associated with blanket 'no pets' clauses, studies have reported additional benefits stemming from the reform of laws governing pet ownership. One of these benefits relates to the connection between declared pet ownership and lower rental property maintenance costs.

It has been shown that difficulties experienced by renters in securing pet-friendly properties can result in a proportion of renters deciding not to seek permission from landlords and agents to keep

pets. Non-disclosure by these households means living with a significant threat to security of occupancy, since it constitutes a breach of the tenancy agreement and places these households at risk of eviction.

Under these circumstances, renter households are more likely to delay or avoid property repair requests to prevent their pets being detected. Failure to have property repairs undertaken in a timely fashion risks reducing property quality over time. It therefore stands to reason that fairer laws and regulation associated with the keeping of pets is likely to result in tenants submitting property repair requests promptly which in turn helps safeguard the integrity and value of rental properties over time.<sup>9</sup>

## **8. Addressing limitations**

### *Introducing animal welfare guidelines*

An important consideration of laws governing pet ownership is the impact they have on the welfare of companion animals.

A reform of residential tenancy laws should be supplemented by guidelines which outline responsible pet ownership and appropriate housing requirements and standards. Such guidelines could be given force by inclusion in existing companion animal regulation.

The purpose of these guidelines would be to provide advice on assessing the suitability of a property to adequately accommodate a pet, based on a range of factors including a pet's exercise needs together with the size, outdoor space, proximity to neighbours, and security of the property.

These guidelines should be developed in consultation with animal welfare groups and the wider community and could be applicable equally to all pet owners in both owner-occupied and rented premises alike. Pet owners would then be able to determine if their current or prospective residence is suitable to house their pet.<sup>10</sup> These guidelines would also assist animal shelters and ethical breeders in helping to advise clients about the keeping dogs and other pets.

### *Ending 'no grounds' evictions*

Attempts have been made in the NSW parliament to amend residential tenancy legislation and end 'no grounds' evictions.<sup>11</sup>

Instances of 'no grounds' termination notices being issued to tenants, following lawful requests for repairs or maintenance, refusing unlawful access or to hike rents, have been regularly reported.<sup>12</sup>

Even if reforms to pet ownership laws were introduced in NSW, the possibility would still exist for a landlord to issue a 'no grounds' eviction notice following a tenant's disclosure or request to keep a pet. 'No grounds' termination notices take effect after just 30 days at the end of a fixed-term lease, or after 90 days during an on-going lease.

In order to prevent reforms to pet ownership laws from being undermined in this way, it is necessary that 'no grounds' evictions be abolished and replaced with a list of reasonable grounds that could be referred to by a landlord who legitimately requires vacant possession of their property e.g. future occupancy by the landlord and family or to permit major renovations.

Support for the abolition of ‘no grounds’ evictions has long been supported by Inner West Council, dating back to the adoption of a resolution supporting the Make Renting Fair campaign on 12 December 2017.<sup>13</sup>

## Recommendations

Drawing upon the proceeding discussion are the following recommendations that support the reform of NSW residential tenancy laws on the keeping of pets in rental properties.

1. Introduction of a model that incorporates the following responsibilities:
  - (a) Seeking approval to keeping a pet – onus on the tenant
  - (b) Refusing consent to keeping a pet – onus on the landlord
  - (c) Resolving disputes - recourse to the NSW Civil and Administrative Tribunal.
2. Guidance on developing such a model should be informed by the ACT model in particular which comprehensively incorporates elements (a) and (b) and the involvement of an independent tribunal.<sup>14</sup>
3. The development of animal welfare guidelines which outline responsible pet ownership and appropriate housing requirements and standards relating to a pet’s exercise needs, together with indoor and outdoor spaces, proximity to neighbours, and aspects of the property’s security.
4. The abolition of ‘no grounds’ evictions to prevent unreasonable terminations and the undermining of progressive reforms on pet keeping in residential tenancies.

Thank you again for giving Council this opportunity to make a submission on keeping pets in residential tenancies. Should you need any further information or clarification regarding this submission, please feel free to contact Jon Atkins on (02) 9335 2080 or by e-mail at [jon.atkins@innerwest.nsw.gov.au](mailto:jon.atkins@innerwest.nsw.gov.au)

Sincerely

**Simone Plummer**  
Director Planning

## Notes

<sup>1</sup> Council resolution [C1122\(1\) Item 14 Notice of Motion: Keeping pets in rental homes](#), dated 8 November 2022.

<sup>2</sup> Animal Medicines Australia, [Pets and the Pandemic](#), September 2021.

<sup>3</sup> Inner West Council, [Companion Animal Action Plan 2019-2023](#), adopted 3 March 2020.

<sup>4</sup> Refer to Part 6 in *Companion Animals Act 1998* (NSW) and *Disability Discrimination Act 1992* (Commonwealth).

<sup>5</sup> NSW Government, [Strata Schemes Management Regulation 2016](#), section 36A ‘Keeping of animals - circumstances of unreasonable interference’.

<sup>6</sup> O’Hearn Lawyers, [‘New laws for pets in strata schemes in NSW’](#), 1 October 2021.

<sup>7</sup> Monique Dam, [Animals and People Experiencing Domestic and Family Violence: How their safety and wellbeing are interconnected](#), Domestic Violence NSW, November 2020.

<sup>8</sup> Department of Customer Service, [Consultation Paper](#), October 2022.

<sup>9</sup> Emma R. Power, '[Renting with pets: a pathway to housing insecurity](#)', *Housing Studies*, Volume 32, Issue 3, 2017. Also the Inner West Council Companion Animal Action Plan 2019-2023, sections 4.4.6 and 4.5.3, refers to Council's willingness to support the community in bringing about changes relating to particular companion animal practices, for example, limited opportunities for pet ownership in rental accommodation.

<sup>10</sup> Riley Brooke, '[The case to end blanket pet bans for renters in NSW](#)', Tenants' Union of NSW, 23 May 2022.

<sup>11</sup> Attempts to abolish 'no grounds' evictions occurred during the review of the *Residential Tenancies Act 2010* in 2018 and more recently via the [Residential Tenancies Amendment \(Prohibiting No Grounds Evictions\) Bill 2022](#) in November 2022. Both attempts were unsuccessful.

<sup>12</sup> Tenants' Union of NSW, [Eviction, Hardship and the Housing Crisis](#), February 2022; Caitlin Cassidy, '[A social calamity: record-high rents push tenants across Australia to breaking point](#)', *The Guardian*, 27 September 2022 and testimonies published by [Make Renting Fair](#) campaign.

<sup>13</sup> Council resolution [C1217 Item3: Support for Make Renting Fair Campaign and Sydney Alliance's Affordable Housing Campaign](#) dated 12 December 2017.

<sup>14</sup> Refer to [ACT Residential Tenancies Act 1997](#); ACT Civil and Administrative Tribunal, [Pets in rental properties](#) and Legal Aid ACT, [Tenancy: Pets](#).