

About the Tenants' Union of NSW

The Tenants' Union of NSW is the peak body representing the interests of tenants in New South Wales. We are a Community Legal Centre specialising in residential tenancy law and policy, and the main resourcing body for the state-wide network of Tenants Advice and Advocacy Services (TAASs) in New South Wales.

The TAAS network assists more than 30,000 tenants, land lease community residents, and other renters each year. We have long-standing expertise in renting law, policy and practice. The Tenants' Union of NSW is a member of the National Association of Tenant Organisations (NATO), an unfunded federation of State and Territory-based Tenants' Unions and Tenant Advice Services across Australia. We are also a member of the International Union of Tenants.

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The Tenants' Union of NSW' office is located on the unceded land of the Gadigal of the Eora Nation.

Contents

About the Tenants' Union of NSW	1
Contact	1
Contents	2
About this submission	4
Recommendations	5
1. NSW renting crisis: existing pressures compounded for renters with pets	7
2. Make it easier for renters to keep pets in NSW	7
2.1 Pet ownership in Australia	8
2.2 Animal welfare	8
2.3 Physical and mental health	8
2.4 Autonomy for people who rent their homes	9
2.5 Domestic and family violence	9
Recommendation 1	10
3. Model of reform	10
3.1 Models implemented in other jurisdictions in Australia	10
3.3 A model requiring notification vs consent	12
Recommendation 2	13
3.4 Application to Tribunal	13
Recommendation 3	14
3.5 Animal welfare framework for decision-making regarding pets and renting	14
Recommendation 4	16
4. Additional factors to consider when regulating pets and renting	16
4.1 Discrimination	16
Recommendation 5	17
Recommendation 6	17
4.2 Pet bonds	17

Recommendation 7	17
4.3 Insurance	17
Recommendation 8	18
4.4 'No grounds' evictions	18
Recommendation 9	19
5. Implementation	19
5.1 Phase 1: Implement model via regulation	19
5.2 Phase 2: legislative changes	21

About this submission

A rental is not just a landlord's investment property, it's a person or family's home. Renters should have the same rights as owner-occupiers to make simple choices to make the house they live in a home, including whether to adopt a pet.

There are a range of significant benefits to changing NSW residential tenancy laws to make it easier for renters to keep pets. These include, but are not limited to:

- Animal welfare.
- Physical and mental health and wellbeing benefits for people who keep pets.
- Improving safety of people experiencing domestic and family violence who may otherwise delay leaving violence because of a concern for their animals' safety.

This submission addresses the four questions outlined in the NSW Government's *Keeping Pets in Residential Tenancies Consultation Paper* ('the Paper'). In addition, the submission addresses several issues not explicitly raised in the Paper, including the impact of 'no grounds' evictions for renters with pets, the potential for discrimination against renters with pets when applying for a rental property, and our concerns about pet bonds. The submission makes some suggestions as to implementation of the changes we propose.

This submission is complemented by the Make Renting Fair community submission, which features contributions, stories and views from over 75 renters. These contributions were collected via a survey on the Tenants' Union of NSW website, in Make Renting Fair campaign meetings, through various Tenants' Union of NSW and Make Renting Fair social media channels, and at an in-person event at a dog park during the consultation period. Three of the renters' contributions featured in the Make Renting Fair submission have been duplicated here.

We encourage you to read this submission in conjunction with the Make Renting Fair campaign community submission.

Recommendations

Recommendation 1

Change NSW residential tenancy laws on keeping pets in rental properties so as to make it easier for renters to keep pets. A model should be implemented that ensures renters are able to decide to keep a pet, except where it would be unreasonable to do so.

Recommendation 2

If the tenant must continue to seek consent to keep pets on the premises, the landlord must only be able to withhold consent through an order from the Tribunal.

The Tribunal, when determining whether it is reasonable for a landlord to withhold consent should consider only a limited number of factors, these being whether:

- the premises are unsuitable to keep the animal; or
- keeping the animal on the premises would result in unreasonable damage to the premises; or
- keeping the animal on the premises would be an unacceptable risk to public health or safety; or
- the landlord would suffer significant hardship; or
- keeping the animal on the premises would be contrary to other legislation, council order or strata by-law.

Recommendation 3

If the landlord wishes to deny permission for a renter to keep a pet, the onus should be on the landlord to obtain a Tribunal order allowing them to refuse consent.

Recommendation 4

If further guidance is required to assist the Tribunal in determining whether a residential property is appropriate based on the welfare needs of the specific pet, additional guidelines be developed and added to the *Companion Animals Act 1998*.

Recommendation 5

Amend the *Residential Tenancies Act 2010* to prohibit landlords and agents from asking about pet ownership at the application stage.

Recommendation 6

Amend the *Residential Tenancies Act 2010* to prohibit 'no pets' terms in residential tenancy agreements.

Recommendation 7

Continue to prohibit landlords and real estate agents from requesting pet bonds.

Recommendation 8

Consideration be given to how the NSW government can improve landlord uptake of insurance, including consideration of any benefits of requiring 'landlord insurance' as a basic form of business insurance when renting a residential premises.

Recommendation 9

Remove 'no grounds' eviction provisions (sections 84 and 85) of the *Residential Tenancies Act 2010* and replace them with a range of 'reasonable' grounds for ending a tenancy, based on community consultation.

Recommendation 10

Reforms to make it easier for renters to keep pets be implemented as soon as is practicable through a two phase implementation of a new model.

1. NSW renting crisis: existing pressures compounded for renters with pets

NSW is in a rental crisis. Vacancy rates are extremely low across the state, especially in regional areas, and many renters are facing significant rent increases - either when moving into new properties, or within an existing tenancy. Local Tenants' Advice Services report an increase in complaints and requests for assistance in relation to excessive rent increases, rent bidding (pressure on applicants to offer a rent above asking price), use of 'no grounds' terminations to move on existing tenants in order to take account of higher market rents. Advocates report they are hearing from an increasing number of renters who, unable to secure alternative accommodation, are forced to move their families into caravans, or sleep in cars or tents, and of older renters forced to stay with friends or adult children or other family.

These problems are compounded further for renters with pets. Where competition for rentals is already very tight, renters trying to find available rental homes that are also pet-friendly experience significant difficulties. The number of properties listed as available is very limited. Renters with pets frequently report experiencing discrimination at the point of application for a rental property. In addition, the practice of including blanket 'no pet' terms in tenancy agreements is widespread. For some renters the inability to secure a rental property that will allow them to bring a pet with them, puts the renter or household at a much higher risk of homelessness.

"I've been on the go, moving into short term rentals and living in my van with my dog since June 2021, which has had a huge impact on my mental health. I've had to move up and down the East Coast to wherever I could find a pet friendly room to live in.

"My boy has saved me from the darkness that sometimes creeps into my thoughts. Without him my mental health would have been so heavy I may not even be here today. I owe him my life.

"I've had to struggle and fight so much for something that I should not be deprived of: a safe place to call home. It's inhumane and unjust how we get treated because we've decided to look after an animal. Pets have an amazing ability to create warmth without wanting anything in return. They give you unconditional love and with training, can be better housemates than some humans."

Clara*, NSW renter

2. Make it easier for renters to keep pets in NSW

Question 1: Should NSW residential tenancy laws on keeping pets in rental properties be changed? Why or why not?

NSW residential tenancy laws on keeping pets in rental properties should be changed to make it easier for renters with pets to find safe, secure, affordable rental properties to make their homes.

2.1 Pet ownership in Australia

Pet ownership in Australia is among the highest in the world. As of 2019, there were an estimated 29 million pets in Australia – greater than the number of humans. Almost two thirds of Australian households have a pet today, and 90% have had a pet at some time.¹ This includes a significant proportion of renting households. Pets are very important to the people who keep them: Australians spend \$12 billion a year on pets, and 71% of pet owners say their pets have a ‘very positive’ impact on their lives.²

2.2 Animal welfare

Refusal to allow pets can severely restrict a renter’s ability to find appropriate and affordable housing. This can lead to much-wanted pets being given up to shelters or abandoned. In some cases, renters are unwilling to give up their pet and experience homelessness as a result. While this has been an issue for many years,³ this has become particularly apparent in the past year or two. The worsening rental crisis in NSW and across Australia has been identified by the RSPCA and other animal welfare organisations as directly attributable for the surrendering of hundreds of wanted pets to shelters, particularly in those states and territories that allow landlords to deny renters permission to keep pets for no reason.⁴

Blanket bans on pets in rental properties can also lead to animals being kept without permission in premises that genuinely aren't suitable for them. This can lead to issues for the animal, renter and the property in the longer term. If there were fair and reasonable frameworks to guide the keeping of pets in rental properties, this could be avoided.

2.3 Physical and mental health

Pets have numerous and extensive benefits for people’s physical and mental health. Keeping pets is associated with lower blood pressure, lower cholesterol and triglyceride levels, fewer visits to the doctor, and increased physical activity overall. For children, growing up with pets can strengthen the immune system, and children with pets are less likely to miss days of school due to illness.⁵

Keeping pets is associated with improved cognitive function in older adults, increased opportunities for socialising and outdoor activities, decreased anxiety and feelings of

¹ Newgate Research (2019), [Pets in Australia: A national survey of pets and people](#), Animal Medicines Australia, accessed 18 November 2022.

² Ibid.

³ Harris, Scarlett (2017), [“I can't get a rental because I own a dog. So now I'm homeless”](#), SBS, 19 June 2017, accessed 18 November 2022.

⁴ See, for example: O'Connor, Maia (2021), [“Renters’ choice: the pet or the place? The Hunter region's tough rental market has led to a dramatic increase in animal surrenders.”](#) *Novonews*, 17 August 2021; Josephine Lim, Josephine & Tomevska, Sara (2022), [“Rental crisis forcing potential tenants to choose between their pets and a home”](#), *ABC News*, 8 June 2022; Shepherd, Tory (2022), [“Heartbreaking choice: families forced to give up dogs and cats as Australia's rental crisis bites”](#), *The Guardian*, 10 June 2022. All accessed 18 November 2022.

⁵ Centres for Disease Control and Prevention (2022), *How to Stay Healthy Around Pets*, last updated April 29 2022, https://www.cdc.gov/healthypets/keeping-pets-and-people-healthy/how.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fhealthypets%2Fhealth-benefits%2Findex.html, accessed 18 November 2022.

loneliness, and improved recovery from grief and trauma.⁶ Pets can be a great tool to manage long-term mental health conditions, and can even sometimes be prescribed as part of mental health treatment plans.

People who rent their homes should not be denied the opportunity to access all of the significant health benefits of pet ownership.

"I struggle with chronic and quite severe mental health issues and I find the presence of animals to be very comforting. But I don't have a pet and I don't feel like I should own one whilst I'm trapped in the rental market as I don't want to risk being homeless or having to surrender a pet I grow to love.

No one should have to choose between keeping a pet and being homeless. Landlords need to accept that their properties are investments, and like any investment there are risks. If they can't accept that people want to LIVE in the homes they rent, maybe they should seek out other investment opportunities."

Leigh*, renter

2.4 Autonomy for people who rent their homes

Renters are often denied the opportunity to make basic decisions about the homes they live in around things that owner-occupiers take for granted, including whether or not to adopt an animal.

Renters already pay a bond to cover any potential damage to a rental home - be it damage caused by humans or animals. Throughout the tenancy, landlords can exercise their existing rights to inspect the property, and inspections can include assessing how the pet is doing in the property. Renters are responsible for their animal in their home just as they are anywhere else, and are liable for damage, cleaning and noise issues. If the landlord has concerns about the pet's behaviour and/or any impact on the property, they are able to access already existing provisions within the Residential Tenancies Act to claim compensation for any damage they think the tenant is liable for as a result of the pet's actions, or can take the cost of damage out of the renter's bond at the end of the tenancy. If the landlord or their agent holds concerns about the pet's welfare, there are other available avenues such as reporting concerns about suitability of keeping the animal on the premises to their local council, or concerns about neglect or general welfare to appropriate agencies such as the RSPCA.

The denial of permission for renters to have pets is not grounded in material risk to the property. A renter should be able to decide for themselves whether or not to adopt an animal, without first having to seek permission from their landlord. When making this decision the renter should consider the animal's welfare and whether the rental property they are living in is appropriate to meet the animal's needs. Considering whether your home will meet the welfare needs of the animal you want to adopt is something that anyone about to adopt a pet should be considering - whether they rent or own their home.

2.5 Domestic and family violence

The inability to find or secure a pet-friendly rental property poses significant risks in

⁶ Ibid.

situations where the person is experiencing domestic violence. People with animals often delay leaving violent circumstances because they are unable to find a new home where they can take their animals. Where a person is forced to rehome or surrender their animal so that they can leave, this can compound trauma, and hinder healing.

DVNSW's July 2020 survey of domestic and family violence and community workers found 48% of respondents reported clients have delayed leaving a perpetrator by more than a year due to fear or threat of an animal being harmed. 42% of respondents said victim-survivors had delayed leaving a perpetrator for more than a year due to barriers accessing support related to their animals. "Lack of animal-friendly rental accommodation" was the most significant barrier to accessing support identified by respondents for clients with animals experiencing DFV, with 93% of respondents identifying this barrier. "Lack of animal-friendly emergency and crisis accommodation" and "Lack of animal-friendly transitional and long term accommodation" followed at 92% and 85%, respectively.⁷

Living with animals has a significant positive impact on people living with Post-Traumatic Stress Disorder (PTSD),⁸ and animals can be beneficial to mental health more broadly, as discussed above. Research has shown that people who have experienced family violence who now live with an animal report less psychological distress and higher social support than participants who had experienced violence and did not have pets, and that victim-survivors have described the relationship they have with their animals as an important remaining positive relationship in their lives after leaving violence.⁹

Recommendation 1

Change NSW residential tenancy laws on keeping pets in rental properties so as to make it easier for renters to keep pets.

3. Model of reform

Question 2: Would you support a model where a landlord can only refuse permission to keep a pet if they obtain a Tribunal order allowing them to do so? This is similar to the model that applies in Victoria, the ACT and NT. Why or why not?

The Tenants' Union of NSW supports a model where a landlord can only refuse permission or challenge the keeping of a pet if they obtain a Tribunal order allowing them to do so. This is a model similar to those that apply in Victoria, the ACT and the NT. We discuss specifics of implementation in section 5.

3.1 Models implemented in other jurisdictions in Australia

ACT model

⁷ Dam, Monique, and McCaskill, Christine (2020), [Animals and people experiencing domestic and family violence: how their safety and wellbeing are interconnected](#), Domestic Violence NSW, accessed 11 November 2022.

⁸ Centres for Disease Control and Prevention (2022)

⁹ DVNSW (2020)

In the ACT, a renter can apply in writing for a landlord's consent to keep an animal. The landlord is only able to refuse consent, or impose conditions, with approval from the Tribunal. Landlords are limited in the conditions they can impose, namely the number of animals kept on the premises, or the cleaning or maintenance of the premises.

The Tribunal can make an order allowing the landlord to refuse consent if:

- (a) *the premises are unsuitable to keep the animal; or*
- (b) *keeping the animal on the premises would result in unreasonable damage to the premises; or*
- (c) *keeping the animal on the premises would be an unacceptable risk to public health or safety; or*
- (d) *the lessor would suffer significant hardship; or*
- (e) *keeping the animal on the premises would be contrary to a territory law.*¹⁰

If the landlord does not apply to the Tribunal within 14 days of receiving the renter's application, the landlord is taken to consent.

Victorian model

The model in Victoria is similar. A renter can make a request in writing to the landlord for consent to have a pet. If the landlord does not apply to the Tribunal within 14 days of receiving the request, the landlord is taken to have consented to the request. If a landlord makes an application to Tribunal to refuse consent, the Tribunal may consider:

- (a) *the type of pet the renter proposes to keep, or is keeping, on the rented premises;*
- (b) *the character and nature of the rented premises;*
- (c) *the character and nature of the appliances, fixtures and fittings on the rented premises;*
- (d) *whether refusing consent to keep the pet on rented premises is permitted under any Act;*
- (e) *any prescribed matters;*
- (f) *any other matter the Tribunal considers relevant.*¹¹

If the Tribunal makes an order excluding the pet from the rented premises, the Tribunal must specify the date on which the order takes effect.

NT model

In the NT, a renter wanting to keep a pet must give the landlord written notice describing the proposed pet or pets. Once notice has been provided the landlord has 14 days to object to the renter keeping the pet, by both giving the renter written notice of the objection and reasons for objection, and applying to the Tribunal for an order that the landlord's objection is reasonable. When considering whether the landlord's objection is

¹⁰ *Residential Tenancies Act 1997*, ACT, Republication No 73, Republication date: 24 August 2022, <https://www.legislation.act.gov.au/View/a/1997-84/current/html/1997-84.html>, accessed 24 November 2022.

¹¹ *Residential Tenancies Act 1997*, VIC, Authorised Version incorporating amendments as at 7 September 2022, <https://content.legislation.vic.gov.au/sites/default/files/2022-09/97-109aa101%20authorised.pdf>, accessed 24 November 2022.

reasonable, the Tribunal may consider:

- (a) the type of pet the tenant proposes to keep on the premises;
- (b) the character and nature of the premises;
- (c) the character and nature of the appliances, fixtures and fittings on the premises;
- (d) whether keeping the pet on premises is permitted, restricted or prohibited under any other law or by-law;
- (e) any prescribed matters;
- (f) any other matter the Tribunal considers relevant.¹²

Renters are not permitted to keep a pet on the premises within the 14-day time period during which the landlord can object. If no application is made, the tenant may keep the proposed pet on the premises.

Of the three models above, the Tenants' Union of NSW prefers the ACT model. This model appropriately limits consideration of reasonableness to the suitability of the dwelling to house the animal, any potential harm to the landlord and the public of an inappropriately housed animal, or any significant hardship the landlord might face as a result of the keeping of an animal at the property. We discuss implementation further below, and in our recommendations draw significantly on the ACT model.

3.3 A model requiring notification vs consent

We note the ACT model could be varied to allow renters to notify rather than seek consent of the landlord they are keeping or intend to keep a pet. This would allow renters to make a decision about the keeping of the pet, without reference to the landlord. If the premises is unsuitable for the proposed pet the landlord could refer to appropriate existing regulations to help establish at Tribunal to address any breach of the agreement (see e.g. section 51 of the *Residential Tenancies Act 2010* (RTA) in relation to nuisance, cleanliness and damage), or via other channels such as Local Government or the RSPCA if other regulations or legislation has been breached (e.g. if there are concerns about neglect or cruelty, etc). If current regulations are considered not to be adequate, additional guidelines on the welfare needs of animals in residential premises, could be developed and added to the *Companion Animals Act 1998*. We discuss this in greater detail below.

While appreciating the benefits of autonomy for tenants in a notification model, we nonetheless feel a model that requires tenant request consent would not in practice impose too significant an obstacle to keeping a pet, as long as appropriate limits are placed on the landlord's ability to refuse consent, i.e. a landlord should not be able to unreasonably withhold consent including via silence. Crucially, whether through notification or consent the tenant must be protected from a negative response carried out by proxy, such as through use of no grounds evictions at the end of the fixed term or during a periodic agreement.

Under a model in which the tenant is obliged to seek consent the Tribunal should be given clear guidance regarding the factors that can be taken into account to determine whether the landlord's withholding of consent is reasonable. We suggest limiting the Tribunal's

¹² *Residential Tenancies Act 1999*, NT, as in force at 1 April 2021, <https://legislation.nt.gov.au/en/Legislation/RESIDENTIAL-TENANCIES-ACT-1999>, accessed 24 November 2022.

consideration of reasonableness to the following factors, whether:

- the premises are unsuitable to keep the animal; or
- keeping the animal on the premises would result in unreasonable damage to the premises; or
- keeping the animal on the premises would be an unacceptable risk to public health or safety; or
- the landlord would suffer significant hardship; or
- keeping the animal on the premises would be contrary to other legislation, council order or strata by-law.

Landlords should also be limited in the conditions they can impose, and should also be required to apply to the Tribunal for permission to impose any conditions in a similar way to that in place in the ACT model.

The model we suggest would enable a landlord who felt that the premises were not suitable for an animal to be kept as a pet to present evidence to the tenant at any time from application, to entering the agreement, to the point of request and encourage open, transparent and proactive conversations about the keeping of a pet on the premises. If the tenant and landlord could not agree on whether the property was suitable, the Act would then provide clear guidance regarding how the Tribunal will determine if it is reasonable for the landlord to withhold consent once a request is made.

Recommendation 2

If the tenant must continue to seek consent to keep pets on the premises, the landlord must only be able to withhold consent through an order from the Tribunal.

The Tribunal, when determining whether an order allowing the landlord to withhold consent be made should consider only the following factors, whether:

- the premises are unsuitable to keep the animal; or
- keeping the animal on the premises would result in unreasonable damage to the premises; or
- keeping the animal on the premises would be an unacceptable risk to public health or safety; or
- the landlord would suffer significant hardship; or
- keeping the animal on the premises would be contrary to other legislation, council order or strata by-law.

3.4 Application to Tribunal

Question 3: Would you support a model where the landlord can only refuse permission to keep a pet on specified grounds, and the tenant can go to the Tribunal to challenge a refusal based on those grounds? This is similar to the model that applies in Queensland. Why or why not?

A model where the landlord can only refuse permission to keep a pet on specified grounds, and where the tenant could challenge a refusal at Tribunal would be an improvement on the current model in NSW. However, we believe this would still ultimately disadvantage renters.

Landlords generally initiate Tribunal proceedings at a much greater level than renters - over three quarters (77.7%) of all Tribunal applications for tenancy matters in NSW are made by landlords.¹³ Renters face many barriers in accessing the Tribunal, such as financial and time constraints, a lack of confidence to navigate Tribunal processes, and concern about potential retaliation for accessing the Tribunal. More broadly, there is a significant power imbalance between landlords and renters. Placing the responsibility for applying to the Tribunal for an order appropriately places the onus on the party with greater resources and demonstrated ability to access the Tribunal.

It is important to note that a landlord refusing to allow a tenant to keep a pet is seeking to remove the tenant's autonomy in their own decision-making, in participation in generalised cultural norms of Australian society, and carving out elements from the private property right to possession and existing contractual rights to peace, comfort and privacy. These carve-outs should not be done lightly. If a carve out is justified, it should be justified by specific evidence of the unacceptable risks posed to the property or other contractual obligations. As with other civil disputes, it should be for the person who seeks to restrict another person's actions to present their case.

Recommendation 3

If the landlord wishes to deny permission for a renter to keep a pet, the onus should be on the landlord to obtain a Tribunal order allowing them to refuse consent.

3.5 Animal welfare framework for decision-making regarding pets and renting

The general welfare of the animal should be the primary consideration for determining whether or not a renter can keep a pet, that is - is the dwelling and/or property appropriate for the keeping of a particular animal. Renters — just like their home owning neighbours — before they move into a property or alternatively decide to keep a pet need to consider whether the relevant rental property will provide a safe and appropriate environment for their pet.

Existing regulation regarding animal welfare

The Companion Animals Act 1998 already provides some regulation for the keeping of pets at homes. These apply to renters and owner-occupiers alike. The Act includes consideration, for example, of appropriate enclosure:

12A Preventing dog from escaping

*(1) The owner of a dog must take all reasonable precautions to prevent the dog from escaping from the property on which it is being kept.*¹⁴

The Act also sets out penalties associated with dogs that attack people or other animals, which include in some cases disqualifying people from owning dogs in future.¹⁵ Similarly,

¹³ Moon, Jack, and Mowbray, Jemima (2022), "Who is using the Tribunal and why?", *This renting life*, 9 October 2022, <https://www.tenants.org.au/blog/who-using-tribunal-and-why>, accessed 24 November 2022.

¹⁴ *Companion Animals Act* (1998), NSW Government, <https://legislation.nsw.gov.au/view/whole/html/inforce/2022-03-04/act-1998-087#sec.15>, accessed 19 November 2022.

¹⁵ *Ibid.* See section 16.

a definition for 'nuisance' cats (cats that cause damage or interfere with other people's peace and privacy such as through persistent noise) is provided along with penalties for an owners' failure to prevent their cats from being a nuisance.¹⁶

The NSW Office of Local Government also provides some guidelines for responsibly housing pets:

Your home and property:

- *Is there adequate space?*
- *Can the pet be securely confined?*
- *Can you provide adequate shelter?*
- *Can you set up separate areas for pets and young children (if applicable)?¹⁷*

Similarly, the RSPCA provides some guidance on appropriately housing a dog:

All dogs need a place where they can feel secure, so it's very important to provide her with a clean, comfortable and safe environment. A sheltered area out of the rain and cold is essential, and the yard must be escape-proof. She will also need access to fresh water and a place to go to the toilet.

If she sleeps outside, the area must:

- *be escape-proof and securely fenced*
- *contain a warm, dry, draught-free kennel consisting of a floor, three solid walls and a roof*
- *include sheltered areas*

If your dog sleeps inside, make sure she has a comfortable bed in a quiet area where she can have some privacy.

Puppies are often very energetic and enjoy chewing things around the house. So if you are adopting a young dog, you may want to puppy-proof your property to prevent her from damaging anything.¹⁸

If further guidance is required for the purposes of helping determine whether a residential property is appropriate based on the welfare needs of the specific pet, additional guidelines could be developed and added to the *Companion Animals Act 1998*. These guidelines could include factors such as exercise needs, size, outdoor space, proximity to neighbours, and the security of the property. These would appropriately be developed in consultation with animal welfare groups and the broader community, and once developed would apply to all pet owners regardless of their tenure.

When making an order about the keeping of pets under the RTA, the Tribunal could then rely upon the guidelines to make a determination of reasonableness based on robust,

¹⁶ Ibid. See section 31.

¹⁷ NSW Office of Local Government (2022), *Responsible pet ownership - FAQs*, <https://www.olg.nsw.gov.au/public/dogs-cats/responsible-pet-ownership/faqs/>, accessed 19 November 2022.

¹⁸ RSPCA (2022), *Housing*, <https://www.rspcansw.org.au/what-we-do/care-for-animals/dog-care/housing/>, accessed 19 November 2022.

objective guidelines grounded in animal welfare. Renters with pets or looking to get a pet would also then have further information and clear guidelines to help them in their consideration of whether or not a rental property would meet their pet's needs. Such an approach would provide clarity to renters, landlords and agents alike, as well as to animal shelters and ethical breeders as they assess prospective pet owners' suitability.

Recommendation 4

If further guidance is required to assist the Tribunal in determining whether a residential property is appropriate based on the welfare needs of the specific pet, additional guidelines be developed and added to the *Companion Animals Act 1998*.

4. Additional factors to consider when regulating pets and renting

Question 4: Is there another model for regulating the keeping of pets in tenancies that you would prefer? If yes, please outline the model.

There are several other issues that must be addressed when considering reforming the way in which NSW tenancy law regulates the keeping of pets in rental homes.

4.1 Discrimination

The reforms suggested so far would not necessarily address all aspects of potential discrimination against renters with pets. Many renters will still be asked to disclose they have a pet and will be required to request consent when applying for a new property. Landlords and agents may simply reject all applications that include requests for consent to have a pet, and would not need to provide their reason for rejection. It can be extremely difficult to prove that discrimination is the reason for any individual application to be rejected, and currently only in instances where the pet was an assistance animal would such discrimination be unlawful. This problem is only exacerbated by the current extremely low vacancy rates across much of NSW. Landlords and agents are easily able to set aside applications for a property that includes a request for consent to have a pet.

"I have experienced countless (more than 20) application rejections because of my dog, despite a flawless rental history. Until I found where I currently live, I faced so much discrimination because I have a dog. Even offering up to \$100 rent more a week, I was getting rejected on the basis of my dog.

My dog is my best friend and provides me so much emotional support and a reason to get out of bed on my down days. He's more than a pet, he's a member of the family."

Paula*, NSW renter

In order to address this, we recommend the introduction of a prohibition on asking about pets at the rental application stage. The *Residential Tenancies Act 2010* (RTA) is currently silent on pet ownership, which allows landlords and agents to put bans or conditions on the keeping of pets in rental properties.

The RTA could be amended to prohibit landlords and agents from asking about pet

ownership at the application stage, and to explicitly prohibit 'no pets' terms in residential tenancy agreements. With these changes, renters could still be required to disclose whether they have a pet to their landlord once they have entered into an agreement, with the rules stipulating for example that renters must disclose within 14 days if a pet is at the property and what type. If the landlord does not believe their property is fit for a pet, or for the type of pet that the renter has, the landlord may then take the matter to the Tribunal to obtain an order allowing them to refuse permission.

Recommendation 5

Amend the Residential Tenancies Act 2010 to prohibit landlords and agents from asking about pet ownership at the application stage.

Recommendation 6

Amend the Residential Tenancies Act 2010 to prohibit 'no pets' terms in residential tenancy agreements.

4.2 Pet bonds

It is currently prohibited in NSW for landlords and real estate agents to request pet bonds. This should remain the case. Pet bonds are unnecessary and may result in inequity.

Renters already pay a bond to cover any potential damage to property, whether this damage is caused by animals or humans. The current bond system is already effective at covering the majority of risk at the end of the agreement. In 2021-22 63% of bonds were returned in full to tenants, and only 12.9% of bonds claimed in full by the landlord.¹⁹

There are already processes by which landlords can recoup costs associated with damage to property where the damage is the fault of the renter and costs exceed the renter's bond. There is no reason why landlords should be able to request an extra bond from renters with pets.

Finding the money for a rental bond is already a significant barrier for renters moving house, especially low-income renters. The requirement of a pet bond would create an additional barrier for renters when trying to secure a new home, especially for low income renters or those without easy access or ability to quickly come up with the lump sum that would be required, such as those who have been impacted by domestic and family violence or natural disasters.

Recommendation 7

Continue to prohibit landlords and real estate agents from requesting pet bonds.

4.3 Insurance

Property industry participants express concern about the potential for damage to premises as a result of keeping pets. While we believe that stronger guidelines around the keeping of animals will ease the occurrence of issues, and that for the vast majority the already existing bonds system is already adequate in covering this risk, there may remain some concern.

¹⁹ NSW Department of Customer Service, 2022, *Rental Bond Board Annual Report 2021-2022*.

Serious consideration should be given to the rate and type of insurance held by property investors in relation to their premises. While many property owners hold building insurance, it is our understanding that very few hold 'landlord insurance', a form of business protection that offers coverage against some risks of business, including unexpected damage or cleaning costs.

Holding appropriate insurances is a common part of delivering services for many businesses, and in some industries is a requirement. Work should be carried out to normalise holding appropriate insurance in relation to offering housing services as well.

Current offerings from insurance providers may be inadequate in relation to the keeping of pets, because it is not seen as a standard part of industry. The legislative reforms we propose may assist insurance providers to update and modernise their offerings.

While covering a wider range of issues may create a potential increase in premiums, increasing the customer base of providers will offer them the ability to spread the risk across a larger number of customers resulting in small or neutral impact on premiums. Work should be carried out to assess these opportunities to improve the approach taken to property investment in NSW.

Recommendation 8

Consideration be given to how the NSW government can improve landlord uptake of insurance, including consideration of benefits to requiring 'landlord insurance' as a basic form of business insurance when renting a residential premises.

4.4 'No grounds' evictions

While 'no grounds' evictions remain a feature of NSW tenancy laws, there are limited protections for renters who request consent to have a pet and are met with a 'no grounds' termination notice. We regularly see 'no grounds' termination notices issued in response to other reasonable, lawful requests from the renter (e.g. requesting repairs and maintenance, or refusing unlawful access).

If tenancy laws are reformed to make it easier for renters to keep pets, a renter's right to keep a pet may be undermined by the ability of the landlord to evict using 'no grounds' termination provisions. We are concerned that landlords may use or threaten 'no grounds' eviction following a renter's request to get a pet.

"I have lived in my current rental for three years. It is a stand alone, 4 bedroom, 2 bathroom house in a new estate with an average sized yard. We have never caused any problems here, it's always clean, tidy and well looked after. We've had no issues raised during inspections, and the rent is always on time or early.

*18 months ago I requested a large breed dog at the property which was declined. I was heartbroken but moved on. Almost 6 weeks ago I sent another written request for a dog and I am yet to receive an answer. If I was in Victoria, I could have gotten the dog after 2 unresponsive weeks. Instead, I am sitting in limbo not knowing if it's a yes or no and **too scared to send any more follow up emails in case they decide I'm too much trouble and evict me.***

Dogs are my life. I have owned dogs all my life until I moved into this rental and was told I cannot have one. My mental health is suffering without a companion animal and my 5

year old daughter is heartbroken she can't have a dog."

Melissa*, renter

Recommendation 9

Remove 'no grounds' eviction provisions (sections 84 and 85) of the Residential Tenancies Act 2010 and replace them with a range of 'reasonable' grounds for ending a tenancy based on community consultation.

5. Implementation

We believe there is overwhelming community support for reforms to NSW tenancy law to make it easier for renters to decide to keep a pet. The Consultation Paper invites feedback on a number of models, and we discuss these above.

There are a number of ways reforms to introduce a new model or approach can be implemented. Reforms could be implemented through regulation via changes to the standard form agreement, or legislative reform to the Residential Tenancies Act 2010. Alternatively, implementation could be achieved through a phased approach through regulation then legislative reform:

Phase 1: Implement model via regulation.

We suggest this would involve inserting a new section or set of terms regarding the keeping of pets in rental homes into the standard form residential tenancy agreement at Schedule 1 of the *Residential Tenancy Regulations 2019*.

Phase 2: Legislate model via the RTA

The *Residential Tenancies Act 2010* and any other relevant legislation (e.g. *Companion Animals Act 1998*) could then be amended to legislate and secure changes and to implement any measures that were not possible through regulation.

Below we provide further detail on implementation in two phases.

5.1 Phase 1: Implement model via regulation

A term can first be inserted into the standard form tenancy agreement regulating the keeping of pets in rental properties. This can be done at the discretion of the Minister, and has the benefit of being quick to implement. Reforms to make it easier for renters to keep pets are long overdue, and speedy implementation would immediately reduce barriers and help minimise the impacts of the current rental crisis for renters with pets.

Section 15 of the *Residential Tenancies Act 2010* includes the following:

15 Standard residential tenancy agreements

- (2) *The regulations may provide for the following—*
 - (a) *the terms of the agreement,*

- (b) *more than one standard form of residential tenancy agreement for use for different classes of residential premises, agreements or parties,*
 - (c) *the addition of clauses to, or the omission or variation of terms contained in, a standard form of residential tenancy agreement in specified circumstances,*
 - (d) *the application of terms of standard forms of residential tenancy agreement to agreements entered into before the regulations prescribing those standard forms took effect.*
- (3) *Terms to be consistent with Act A standard form of residential tenancy agreement must be consistent with this Act and the regulations.*

This allows the regulations to be amended to add new terms to the standard form residential tenancy agreement so long as newly inserted terms are consistent with the Act and regulations. The newly added terms are able to be applied to already existing tenancy agreements, and we believe this to be appropriate for a number of reasons. This is the easiest and quickest way to implement any reform - whether of the model we recommend, or others proposed within the Consultation Paper - and would not substantially change the basis of the agreement parties entered into.

Failing to apply reforms to existing tenancies would mean that many renters in longer term rentals or those who face barriers to relocate would still face significant barriers to pet ownership until they entered into a new tenancy agreement. This group of renters would likely include many older people and people with disabilities, for whom pet ownership has demonstrated significant health and well being benefits.

While clause 4(3) of the regulations states that newly added terms to the standard form residential tenancy agreement don't automatically apply to existing agreements, section 50 of the regulations provides a list of added terms that do apply to existing agreements.

4 Standard form of residential tenancy agreements—s 15 of Act

(3) When this Regulation is amended by altering, adding or substituting a standard form of residential tenancy agreement, the amendment does not (subject to the Act) apply to a residential tenancy agreement entered into before the commencement of the amendment.

—

50 Extension of particular terms of standard form of residential tenancy agreement

(1) For the purposes of section 15(2)(d) of the Act, the following terms of the standard form of the residential tenancy agreement set out in Schedule 1 (the Agreement) extend to existing residential tenancy agreements from the commencement of this Regulation—

The regulations could be amended so as to include an additional section in the standard form tenancy agreement (proposed term listed below), and the term could then be included under clause 50 of the regulations to ensure the newly added term then also applies to all already existing residential tenancy agreements.

The standard form residential tenancy agreement in the ACT provides a basic model for a new clause at 74A & B *Keeping animals on premises*. Before amendments are made to the *Residential Tenancies Act 2010 (NSW)* an additional clause in the NSW standard form tenancy agreement may not be able to implement the new model completely. We suggest, however, at a minimum the following should be considered in an initial clause, that through legislative change can realise the full model.

- Timeframe for seeking and receiving consent or time limits on application to Tribunal to prevent breach
- Tenants' acknowledgement of obligations
- A list of the comprehensive factors to be considered when determining the suitability of the property for the keeping of a specified animal (see discussion at section 3.3).

5.2 Phase 2: legislative changes

Amendments could then be introduced to the *Residential Tenancies Act 2010* to secure and legislate the reforms. In addition, following appropriate community consultation, animal welfare guidelines regarding the keeping of animals in residential premises could be added to the *Companion Animals Act 1999*.

At this point, we also recommend considering changes to allow the Tribunal to effectively resolve disputes, and give guidance around what constitutes a reasonable refusal to allow pets. In considering the suitability of the premises and risk to health, safety or welfare we suggest the Tribunal be guided primarily by the animal welfare guidelines. A possible drafting to implement this could be:

1. The Tribunal may make an order allowing the landlord to refuse consent to allow a pet only if it is satisfied that:
 - a. the premises are unsuitable to keep the animal; or
 - b. keeping the animal on the premises would result in unreasonable damage to the premises; or
 - c. keeping the animal on the premises would be an unacceptable risk to public health or safety; or
 - d. the landlord would suffer significant hardship; or
 - e. keeping the animal on the premises would be contrary to other legislation, council order or strata by-law.

The two-phase implementation of a new model or approach for keeping pets in rented properties that we outline above would allow introduction of any reforms as soon as is practicable, but would also provide for longer consultation periods on any aspects of reform that requires it.

Recommendation 10

Reforms to make it easier for renters to keep pets be implemented as soon as is practicable through a two phase implementation of a new model.