



Consultation Paper

Keeping Pets in Residential Tenancies – Consultation –
October 2022

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Published by

Better Regulation Division
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Purpose of this Consultation Paper

The purpose of this consultation paper is to seek feedback from the public about current laws on keeping animals in NSW tenanted properties.

NSW Fair Trading, within the Department of Customer Service, is conducting the consultation and will consider carefully all feedback received.

Have your say

We invite you to read this paper and provide your feedback on the rental laws relating to the keeping of animals.

We would prefer to receive your submission using the online options on the Have Your Say consultation website, or by email in an accessible format. Accessibility is about making documents easily available to all members of the public, including those who have an impairment (such as visual, physical or cognitive). Further information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>.

You can provide feedback in several ways:

- complete a survey at www.haveyoursay.nsw.gov.au/pets-in-rental-homes
- upload a submission for this consultation at www.haveyoursay.nsw.gov.au/pets-in-rental-homes
- by email to residentialtenancy@customerservice.nsw.gov.au
- by post to:
Residential Tenancies – Pets Consultation
Policy & Strategy, Better Regulation Division
Department of Customer Service
4 Parramatta Square
12 Darcy Street
Parramatta NSW 2150

Submissions are open until Friday, 2 December 2022.

The NSW Government's Guide to Better Regulation, which sets out how to apply the seven Better Regulation Principles to regulatory proposals, may assist you in considering the issues and preparing a submission. The Guide is available at:
<https://www.treasury.nsw.gov.au/finance-resource/best-practice-regulation-guidelines>.

Important note: publication of submissions

Submissions may be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission. Automatically generated confidentiality statements in emails are not sufficient. Submissions may be referred to in a report on the outcome of the consultation. If you have concerns about your submission being published or being connected back to you, or if it raised concerns for your safety, anonymous submissions will also be accepted and will be referred to as such in the report.

Please note, there may be circumstances where the Government is required by law to release the information in your submission. For example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*.

Introduction

The NSW Government is seeking feedback on current NSW residential tenancy laws about pets in rental properties.

Research estimates that nearly 70% of Australian households have a pet¹, indicating the prominence of pet ownership in Australia..

Some Australian states and territories have recently changed their laws to make it easier for tenants to keep pets. Following these changes, NSW Fair Trading has heard from some stakeholders and members of the public who have expressed the view that the NSW laws should also be changed.

People in favour of change have stated that that restrictions on keeping pets prevent many tenants from being able to enjoy health and wellbeing benefits associated with pet ownership, such as improved mental health and companionship.² They state that the under-supply of pet friendly housing makes it more difficult and expensive to find rental properties that allow pets, which can have a disproportionate impact on vulnerable people who may be at a greater risk of housing instability.³

Another reason raised by stakeholders for changing the current laws in NSW is that they may deter victims of domestic violence from leaving a violent situation due to concerns about finding rental or other accommodation that allows them to keep their pet.⁴

However, some stakeholders and members of the public are opposed to changing pet ownership laws. They state that keeping a pet in a rental property risks damaging the property.⁵ There is also potential for excessive noise that could bother neighbours in surrounding properties. They believe landlords should be able to control this risk with the option to refuse to allow a pet to live in the property.

Recent changes have been made to NSW strata laws so that strata schemes can only refuse approval for pets if the animal causes unreasonable interference to others. More information about the changes to the strata laws relating to pets can be found on the consultation page for the statutory review of NSW strata laws. For more information about the current laws for pets in strata schemes, visit the strata page on the nsw.gov.au website.

NSW residential tenancy laws

The NSW Government's position has been that a landlord and tenant are best placed to negotiate whether keeping a particular pet should be allowed for a given property. Rental properties can vary greatly and certain types of pets may not be suitable for all properties.

¹ Animal Medicines Australia, *Pets and the Pandemic: A social research snapshot of pets and people in the COVID-19 era*, (2021); Animal Medicines Australia, *Pets in Australia: A national survey of pets and people*, (2019).

² AHURI, *Housing and housing assistance pathways with companion animals: risks, costs, benefits and opportunities*, (2021).

³ Ibid.

⁴ Domestic Violence NSW, *Animals and People Experiencing Domestic and Family Violence: How their safety and wellbeing are interconnected*, (2020)

⁵ see n2.

In NSW, whether a tenant can keep a pet (that is not an ‘assistance animal’⁶) in a rental property is currently a matter for negotiation between the landlord and tenant. A landlord can refuse to agree to a tenant’s request to keep an animal in a rental property without providing any reason.

Changes to NSW residential tenancy laws that started on 23 March 2020 included a change to the standard tenancy agreement to include an optional, negotiable term that would allow for the keeping of an animal with certain conditions. A landlord can still cross out the term and prohibit the keeping of an animal.

The addition of this optional term in the standard tenancy agreement aimed to provide a responsible pet-keeping model that could be adopted by agreement and promote positive outcomes for landlords and tenants.

Laws in other Australian states and territories

From 2019 to 2022, changes have been made to rental laws about pets in Victoria⁷, Queensland⁸, the Australian Capital Territory⁹ (ACT) and the Northern Territory¹⁰ (NT). The key provisions under the changes are summarised below.

In Victoria and Queensland, a tenant must seek the landlord’s written approval to keep a pet. In the ACT, a landlord’s consent only needs to be obtained if this is required by the tenancy agreement. In the NT, a tenant must notify the landlord of their intention to have a particular pet and the landlord has 14 days to object.

In Victoria, the ACT and the NT, to refuse consent a landlord must apply for an order from the relevant tribunal within 14 days of receiving the tenant’s request to keep a pet. There are some slight differences between these jurisdictions as to how the tribunal is to decide an application for an order. However, in each of these jurisdictions the tribunal may take certain matters into consideration before reaching its decision. Depending on the jurisdiction, these matters may include:

- the type of pet proposed
- the suitability/character and nature of the rental property
- the likelihood of unreasonable damage to the rental property
- whether there is an unacceptable public health or safety risk
- whether the landlord would suffer significant hardship (in the ACT law), or if it would be unlawful.

In Queensland, a landlord can refuse consent for keeping a pet, without needing an order, on certain prescribed grounds, which include:

- unsuitability of the rental property (due to lack of fencing, space or something else for humane accommodation of the pet)
- likely damage costing more than the rental bond to repair, and
- an unacceptable health and safety risk to a person.

⁶ Under the current law, NSW landlords cannot refuse to allow a tenant with a disability to have an ‘assistance animal’ (for example, a guide dog) [see [Companion Animals Act 1998 \(NSW\)](#) (in particular, Part 6) and [Disability Discrimination Act 1992 \(Cth\)](#)].

⁷ [Residential Tenancies Act 1997 \(Vic\)](#) [see, in particular, Part 2, Division 5B]

⁸ [Housing Legislation Amendment Act 2021 \(QLD\)](#) [see, in particular, section 44]

⁹ [Residential Tenancies Act 1997 \(ACT\)](#) [see, in particular, sections 71AE, 71AF and Schedule 1, clauses 74A and 74B]

¹⁰ [Residential Tenancies Act 1999 \(NT\)](#) [see, in particular, sections 65A and 65B]

If the tenant disputes any of the grounds in the landlord's notice refusing consent, the tenant can apply to the relevant tribunal for an order about the notice.

For all these jurisdictions, if a landlord does not approve or refuse the request for approval within 14 days, the keeping of the animal is automatically approved.

In Queensland and the ACT, the landlord's approval can be subject to reasonable conditions about certain matters (such as cleaning of the property). Queensland's law also expressly voids a condition requiring the tenant to provide extra rent, rental bond or security.

In the ACT, landlords are also required to state in advertisements for rental properties if a tenant will be required to seek their consent to keep a pet.

Although there are similarities in the approach taken by these different jurisdictions, one notable difference is that the laws in Victoria, the ACT and the NT place the responsibility on the landlord to obtain an order from the relevant tribunal to be able to refuse consent to the keeping of an animal. The Queensland law enables a landlord to refuse consent in writing on certain grounds stated in the legislation and the tenant must apply to the relevant tribunal for an order if they wish to dispute any of those grounds.

Feedback on current laws and possible reforms

NSW Fair Trading is seeking feedback on whether any changes should be made to the current NSW tenancy laws on keeping of pets in rental properties and, if so, what those changes should be.

It may be helpful to consider the changes that other Australian jurisdictions have made to their laws. Any changes to the NSW laws could potentially adopt a similar model or aspects of those models, or they could take a different approach.

We would welcome feedback on the approaches that have been taken by the other jurisdictions or suggestions for other approaches.

1. Should NSW residential tenancy laws on keeping pets in rental properties be changed? Why or why not?
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?
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?
4. Is there another model for regulating the keeping of pets in tenancies that you would prefer? If yes, please outline the model.