

26 July 2023

The Hon. Anoulack Chanthivong, MP  
Minister for Better Regulation and Fair Trading

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Dear Minister

### **‘Improving NSW rental laws’ consultation**

I am writing to provide my feedback on the current public consultation into ‘Improving NSW rental laws’, specifically the consultation regarding animals in rental properties.

#### **The need for urgent reform on animal-rental laws**

I want to start by congratulating the NSW Labor Government on making an election commitment to introduce reforms in this space.

We know that the most vulnerable people in society are being harmed by NSW’s existing rental laws, whereby landlords have complete rights to refuse to allow tenants to have animals at their rental property.

This situation has been made worse by the current rental and cost-of-living crisis and has seen an exponential increase in the number of animals being surrendered to (already full) pounds and shelters, and an increase in the number of people and animals experiencing homelessness.

It is also affecting the ability of people to leave domestic violence situations with their animals, because of struggles to find long term, affordable rental accommodation. In a survey of frontline workers, Domestic Violence NSW reported that 93% of respondents identified the lack of animal-friendly rental accommodation as the biggest barrier to leaving violence for clients with animals.

While other states have long since enacted laws to protect the ability of people to rent with animals, NSW has continued to lag behind. The time is long overdue for reform.

#### **Previous consultation supports a shift to the Victorian model**

As you are aware, the former Liberal-National Government undertook a consultation on animal-rental laws in late 2022. The results of this consultation have still not been published online or released to stakeholders.

It is unclear why the new Labor Government has decided to undertake a second consultation so soon. I urge you to ensure that responses to the first consultation are taken into account, given

many individuals and organisations put a lot of time and work into their submissions and survey responses.

The first consultation made it very clear that the people of NSW want to see changes to laws regarding animals in rentals, with 83% of survey responses supporting reform.

It is also very clear that the people of NSW support reforms similar to the Victorian legislation, whereby the onus is put on the landlord to apply to the Tribunal if they wish to prevent a tenant from having an animal in the property. **82% of respondents said they believed that “the landlord should apply to the Tribunal to refuse a pet”**. This view was not just coming from tenants, it was also supported by 68% of landlords.

The reasons people gave for supporting this model included:

- “Responsibility is on the landlord to explain to Tribunal why they refuse the pet”
- “Encourage more landlords to accept pets”
- “Don't think tenants should have to challenge a refusal”

**Only 9% of respondents supported a model that requires tenants to apply to the Tribunal, similar to the Queensland approach.**

This first consultation confirmed that there is clear support to move towards a Victorian style model which puts the onus on the landlord to apply if they want to refuse an animal. It is also supported by peak bodies like the Tenants Union of NSW. This is the appropriate model for NSW to adopt, given the significant power and resource imbalance between tenants and landlords, which makes it much more feasible and appropriate for a landlord to apply to the Tribunal rather than a tenant.

If the NSW Government genuinely wants to make it easier for tenants to rent with animals and change the culture around renting with animals in NSW, it is essential that we adopt a model which makes renting with animals the norm and puts the onus on landlords to apply to the Tribunal if they wish to depart from that norm.

### **Concerns with proposed approach by the NSW Government**

Given the outcomes outlined above, it is unclear why the NSW Government seems to be pushing to move towards a different model, based on the rental laws in Queensland, which would allow landlords to refuse an animal based on a list of reasons. If the tenant disputes the reason the landlords has given for refusing the animal, the onus is on the tenant to apply to the Tribunal.

I have a number of concerns about this proposal which, as noted above, was only supported by 9% of the people who responded to the first consultation.

- 1. Onus on tenants to apply to the Tribunal:** Placing the onus on tenants to apply to the Tribunal if an animal is refused will completely defeat the purpose of this reform and make these changes ineffective. It will mean that effectively, the default position of landlords refusing animals will remain in place.

It is highly unlikely that a tenant, already at a power imbalance and in a more vulnerable financial and housing situation, is going to apply to a Tribunal over a refusal to allow an animal.

Going before the Tribunal is intimidating for most people and requires the dedication of significant time and resources. It is more likely the tenant will simply move on and seek to find another property who is more accepting of animals or – if they cannot do that – seek to surrender their animal to a pound or shelter. The flow on effect of this will be that landlords may be able to get away with refusing animals for spurious reasons, knowing that their reasons are highly unlikely to be challenged in the Tribunal.

2. **List of reasons for landlords to ‘refuse’ an animal:** As outlined above, I do not support the Queensland approach of providing landlords with a list of pre-approved reasons to refuse animals, as I believe these reasons may be open to misuse and abuse by landlords who know that tenants are highly unlikely to challenge them in the Tribunal.

If the NSW Government does go down the path of specifying approved ‘reasons’ for refusal that may be specified in the legislation, I urge you to ensure these reasons are very specific and clear so that there can be limited dispute between landlord and tenant about whether the reason is valid. The landlord should also be required to produce evidence to the tenant to prove that they have a genuine reason to refuse the animal.

I also urge the NSW Government to be careful about allowing landlords to be the arbiters of what living conditions are appropriate for animals. For example, I note the Queensland allows for a landlord to refuse to allow animals if the property cannot “humanely accommodate the pet”. I do not believe it is appropriate for landlords and agents, who in most cases will have no expertise in animal care or welfare, to be making these kinds of judgments – especially when they do not know the particular animal who will be living in the property or their specific needs.

We already have animal cruelty legislation (such as the Prevention of Cruelty to Animals Act 1979) which determines the standards of care required to be provided to animals in NSW. If there is a situation where an animal’s living situation is not meeting those standards, this is a matter that should be reported to and investigated by the relevant enforcement agencies with expertise in this space: the RSPCA, AWL and NSW Police. It is not for landlords to decide what is good or bad animal welfare.

Finally, landlords should also not be allowed to refuse an animal due to risk of ‘damage’. There are already adequate existing rental and civil laws, and arrangements such as bonds, which deal with situations where a tenant or their animal causes damage to a property.

3. **Granting landlords ‘ongoing’ permission to refuse animals:** I am concerned at the suggestion that a landlord may be given ‘ongoing’ permission to refuse to allow animals in certain rental property.

Firstly, it is unclear how it will be determined that a landlord should be given an ‘ongoing’ permission to refuse animals. It would be entirely inappropriate for such a determination to be made in the course of a Tribunal proceeding involving a lay-tenant, who may not have the resources, time or legal knowledge to properly respond to such an application, and result in an incorrect decision being made by the Tribunal which will affect all future tenants to come. The Government would need to consider how to ensure there is a level playing field in any such a determination, such as funding the Rental Commissioner or an organisation like the Tenants Union of NSW to take on the ‘other side’ in these cases to ensure a fair outcome.

Secondly, it is unclear what the criteria would be to obtain 'ongoing' permission to refuse animals, and whether this permission would apply to all species and breeds of animal or just some. It is difficult to imagine any rental property that would not be suitable for at least some types of animals e.g. a fish in a tank, or a quiet indoor cat. It also fails to take into account the circumstances of each individual tenant and animal, which may be wildly different in each case and have very different potential impacts on a property (e.g. a tenant with two young active dogs versus a tenant with one quiet, elderly dog).

Allowing 'ongoing' permission for animals to be refused in certain properties seems to defeat the purpose of these rental reforms and will take us back to the status quo where refusing animals is the default position, rather than enabling tenants to make their case for allowing an animal.

If the Government chooses to proceed down this path, it is important that any landlord that has been granted an 'ongoing' permission to refuse animals make this information available to prospective tenants upfront in any advertisement, to ensure that tenants with animals do not waste their time or miss out other rental opportunities.

4. **Imposing 'conditions' on having animals in rental property:** I urge the NSW Government to think very carefully about allowing landlord to impose 'conditions' on having animals in rental properties. If these conditions are too onerous or impractical, or cost prohibitive, there is a risk that they may be imposed by landlords as a de-facto way of stopping tenants from being able to have animals in rentals, and effectively reverting to the status quo.

The consultation paper gave the example of a condition "requiring the animal to be outside the home if it is a type of animal usually kept outside, like a chicken". While this might be an appropriate condition for larger animals, such as horses, I am concerned about how this may affect other animals. It could also lead to adverse animal welfare outcomes and even breaches of animal cruelty legislation, if it becomes medically necessary for the animal to live inside but the landlord has imposed a rule preventing it (e.g. if a chicken breaks a leg and needs to recover inside, or permanently live inside due to old age).

5. **Time for the landlord to respond to animal-request** I believe the landlord should be given 14 days to respond to a request to have an animal, consistent with the Victorian legislation. 21 days is too long in a fast-moving rental market.

Thank you for considering this submission. I would appreciate the opportunity to meet with your office to discuss these matters further.

Kind regards,



**The Hon. Emma Hurst MLC**  
Animal Justice Party

