

Submission to 'Improving NSW rental laws consultation', August 2023

This is a joint submission from Homelessness NSW and Domestic Violence NSW.

Homelessness NSW is a not-for-profit peak body working to end homelessness in NSW. Our 200+ members include specialist homelessness services, allied organisations and services who share the belief that everyone should have a safe home and the support to keep it. We work with our members, people with lived experience and a broad network of partners to understand drivers of homelessness, advocate for solutions, build skills and knowledge, and scale innovation.

Domestic Violence NSW (DVNSW) is the peak body for specialist domestic and family violence (DFV) services in NSW. We have over 150 member organisations across NSW. We work to improve policy, legislative and program responses to domestic and family violence and to eliminate DFV through advocacy, partnerships and promoting good practice.

DVNSW members represent the diversity of specialist services working in NSW to support women, families and communities impacted by domestic and family violence. They are non-government funded organisations. Our member organisations include crisis and refuge services, transitional accommodation and community housing providers, family support services, Aboriginal community-controlled organisations and specialist CALD organisations, specialist homelessness service providers, men's behaviour change programs and networks, community organisations working with high-risk communities, specialist women's legal support services, women and children's support services, and Safe at Home programs.

Across NSW there are less than 1% of rentals available for people on low incomes.¹ There are more than 50,000 people waiting on the waiting list for social housing and most of these people will wait 10 years or more for a home.^{2,3} A highly competitive rental market and under-resourced social housing system mean that many people in NSW are at greater risk of homelessness than ever. Continuing rising cost of living due to inflation, along with shifts from the cities to the regions during the COVID-19 pandemic, have further stressed the rental market. Rental reforms that are compassionate, fair and sensible are needed, to respond to the current issues.

There are critical aspects of the current rental system that inhibit access to safe, stable and good quality housing. Women and children experiencing domestic and family violence are particularly vulnerable to these impacts. Where there are barriers to the rental market created by unaffordability, competition for limited properties, discrimination, insecure lease arrangements and prohibitions of pets, people may stay in or return to violent relationships or risk becoming homeless.^{4,5} There are well-evidenced health and social benefits associated with pet ownership and the lack of pet-friendly rental properties people forces people to impossible choices between a home and their pets.⁶ Challenges in accessing the rental market also make it difficult for people,

¹ Anglicare. (2023). 2023 Rental affordability snapshot. Available at <https://www.anglicare.asn.au/publications/2023-rental-affordability-snapshot/>

² Morris, A., Idle, J. Moore, J., and Robinson, C. (2023). Waithood: The experiences of applying for and waiting for social housing. Sydney: Institute for Public Policy and Governance, University of Technology Sydney.

³ NSW Government. (2023). Expected waiting times. NSW Department of Communities and Justice. Available at <https://www.facs.nsw.gov.au/housing/help/applying-assistance/expected-waiting-times>

⁴ Cripps, K. and Habibis, D. (2019) Improving housing and service responses to domestic and family violence for Indigenous individuals and families. Australian Housing and Urban Research Institute Limited, Melbourne. doi: 10.18408/ahuri-7116201

⁵ Mission Australia. (2019). Out of the shadows: Domestic and family violence, a leading cause of homelessness in Australia. Available at <https://www.missionaustralia.com.au/domestic-and-family-violence>

⁶ Stone, W., Power, E.R., Tually, S., James, A., Faulkner, D., Goodall, Z. and Buckle, C. (2021) Housing and housing assistance pathways with companion animals: Risks, costs, benefits and opportunities. Australian Housing and Urban Research Institute. doi: 10.18408/ahuri5121601.

including women and children escaping domestic violence, to move from specialist homelessness services accommodation into long-term housing or to plan pathways out of homelessness into securing housing.⁷

In preparing this submission, we note that we endorse the recommendations put forth by the Tenants' Union NSW.

We make the following recommendations in relation to specific questions in the 'Improving NSW rental laws consultation paper'. We recommend that:

Recommendation 1: At the end of a fixed term lease (as with a periodic lease) a landlord should only be able to end the tenancy for a valid reason.

Recommendation 2: No less than 120 days notice should be given for 'no grounds' evictions.

Recommendation 3: That legislation be amended such that landlords need to provide evidence to the Tribunal of a valid reason *not* to allow a pet, rather than the tenant needing to demonstrate an argument as to why they should be able to have a pet. The onus of proof should be with the landlord, not the tenant.

Recommendation 4: A maximum of 14 days is a reasonable amount of time for a landlord to consider and respond to a renter's request to keep a pet. Where a landlord is seeking an order to refuse a request for a pet they should be required to do this within a 14 day timeframe from the date on which the renter made a written request.

Recommendation 5: Landlords must be required to seek an order at Tribunal if they wish to refuse a request for a pet.

Recommendation 6: The Tribunal should *not* be able to give the landlord the ongoing right to say no to animals at the property.

Recommendation 7: To facilitate collection and publication of reliable and timely data, landlords or their agents should be required to report a rent increase to the NSW Government using an online system.

Recommendation 8: There must be protections introduced to prevent a landlord from increasing the rent when changing between lease types.

Recommendation 9: Landlords should be required to justify a rent increase if it is over a reasonable threshold (set by a measure appropriately determined by the Rental Commissioner or another relevant independent agency). The responsibility to prove a rent increase is not excessive should sit with the landlord.

Yours sincerely

Amy Hains
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⁷ Blunden, H., & Flanagan, K. (2022). Housing options for women leaving domestic violence: the limitations of rental subsidy models. *Housing Studies*, 37(10), 1896-1915.

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RECOMMENDATION DETAIL

Removing ‘no grounds’ terminations

We strongly support the removal of ‘no grounds’ eviction provisions from the Residential Tenancies Act 2010. ‘No grounds’ evictions create increased risks of homelessness given limited options for rental accommodation and disproportionately impact low-income earners and others with limited power in the housing market.

Q1. What is your preferred model for ending fixed term leases and why?

Landlords should have a valid reason to end a periodic lease *and* a fixed term lease. Security and stability of tenancy is beneficial for landlords and tenants and such stability is more likely where landlords cannot automatically terminate a lease simply because the fixed term has ended.

Recommendation 1: At the end of a fixed term lease (as with a periodic lease) a landlord should only be able to end the tenancy for a valid reason.

Q3. What would be an appropriate notice period for the five proposed reasons for ending a lease? Why is it reasonable?

It is harder than ever for renters to secure a property. This is particularly challenging for low-income earners who have very few options for affordable rental properties.⁸ Notice periods for the end of a lease should be as long as possible in order to give renters the time needed to secure new accommodation in such a difficult environment. Eviction without sufficient notice means that renters may be forced to choose between entering homeless or returning to a domestic violence perpetrator. In addition to the strain on individuals and families, if renters don’t have time to secure new accommodation this potentially increases the demand on already overstretched homelessness and housing support services.⁹

Recommendation 2: No less than 120 days notice should be given for ‘no fault’ evictions.

Proposed new model for keeping pets

Under current laws, especially in a highly competitive rental market, low-income pet owners are significantly disadvantaged when seeking a rental property. Landlords can currently deny tenancy solely based on pet ownership, which has a very real impact on increasing people’s

⁸ Anglicare, 2023

⁹ Australian Institute of Health and Welfare. (2022). Specialist Homelessness Services annual report 2021–22. Australian Government.

risks of homelessness. Compared to other states, NSW legislation on keeping pets in rental properties is substantially weighted towards the discretion of the landlord. Tenants must argue the case for keeping a pet and have little to no power where a landlord refuses their request.¹⁰ Pet ownership has been associated with positive health and social outcomes for individuals and improved community connections – pet ownership is, in general, good for wellbeing.¹¹ Pets are beneficial to the safety, health and wellbeing of many people experiencing or at risk of homelessness. However, research shows that in our current system, owning a companion animal can be a pathway to housing insecurity due to the limited availability of rental properties that will allow pets and that some renters may risk eviction by keeping a companion animal without a landlord’s permission, because their companion animals play such a vital role in their lives.¹² Pet owners who rent are making impossible decisions between homelessness and their significant relationships with, and responsibilities to, their pets.

Pets are particularly important to the safety and wellbeing of people who have experienced trauma, especially women and children impacted by domestic and family violence.^{13, 14} Relationships with pets can be valuable to healing and wellbeing for people who have experienced trauma. Fear of separation from pets, along with perpetrators using pets as a method of fear and control, have been shown to be barriers to some women attempting to leave a violent relationship. In a recent study on temporary accommodation conducted by Homelessness NSW, homelessness service providers stated that:

“We have so many women that do not leave violent relationships as they don’t have an option of taking their pets with them”. (Homelessness service provider)

“For people who have experienced trauma, a pet is often a very necessary emotional support”. (Homelessness service provider)

This creates significant risks of harm or fatality, when victim survivors remain living in a house with a violent perpetrator - if there are no housing options that allow them to keep their pets with them. There is also evidence that people may stay living in a violent relationship if they are concerned that the perpetrator may retaliate against them by harming a pet and there are no options for them to leave *with* the pet.¹⁵

Recommendation 3: That legislation be amended such that landlords need to provide evidence to the Tribunal of a valid reason *not* to allow a pet, rather than the tenant needing to demonstrate an argument as to why they should be able to have a pet. The onus of proof should be with the landlord, not the tenant.

Q6. Is 21 days the right amount of time for a landlord to consider a request to keep a pet? If not, should the landlord have more or less time?

No, 21 days is not a reasonable amount of time. This is too long given the importance of pets to people’s wellbeing and the significant decisions that renters may need to make in relation to keeping a pet. There may be substantial health, safety and wellbeing concerns associated with a person’s request to keep a pet. The amount of time a landlord takes to respond to such a

¹⁰ Stone, W., Power, E.R., Tually, S., James, A., Faulkner, D., Goodall, Z. and Buckle, C. (2021) Housing and housing assistance pathways with companion animals: Risks, costs, benefits and opportunities. Australian Housing and Urban Research Institute. doi: 10.18408/ahuri5121601.

¹¹ Stone et al., 2021

¹² Power, E. R. (2017). Renting with pets: a pathway to housing insecurity?. *Housing Studies*, 32(3), 336-360.

¹³ Kerman, N., Gran-Ruaz, S., & Lem, M. (2019). Pet ownership and homelessness: A scoping review. *Journal of Social Distress and the Homeless*, 28(2), 106-114.

¹⁴ Blakemore, T., Dean, L., Stuart, G., McGregor, J., Hansen, K., Davies, K., Gale, M., & Turley, L. (2022). The wisdom of women and workers: Practice considerations for designing assertive outreach services for women experiencing homelessness. University of Newcastle. ISBN: 978-0-7259- 0186-8.

¹⁵ Stone et al., 2021

request should be as short as possible in order to minimise stress and facilitate making of timely, informed decisions.

Recommendation 4: A maximum of 14 days is a reasonable amount of time for a landlord to consider and respond to a renter's request to keep a pet. Where a landlord is seeking an order to refuse a request for a pet they should be required to do this within a 14 day timeframe from the date on which the renter made a written request.

Q7. What are valid reasons why a landlord should be able to refuse a pet without going to the Tribunal? Why?

It is important that the onus be on the landlord to demonstrate why a pet should be refused. In most if not all cases, any request to refuse a pet should be taken by the landlord to the Tribunal. It would only be under very exceptional circumstances where there is substantiated evidence of risk of harm to the animal or a person (and that risk cannot reasonably or safely be mitigated) that a request be refused. For example, that a landlord could provide medical evidence of severe allergic reaction to animals, by which if they were to move back into their property, the previous presence of a pet would put their health and safety at risk.

Recommendation 5: Landlords must be required to seek an order at Tribunal if they wish to refuse a request for a pet.

Q8. Should the Tribunal be able to allow a landlord to refuse the keeping of animals at a specific rental property on an ongoing basis? Please explain.

No, each request for the keeping of a pet should be treated individually. Given the evidence on the significant positive impacts on people's and communities' wellbeing, there must be consideration to the specific circumstances of the renter and the particular animal when making such a decision.

Recommendation 6: The Tribunal should *not* be able to give the landlord the ongoing right to say no to animals at the property.

Additional considerations

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

- Prevent discrimination at application stage: Rental applicants should not be asked about pet ownership at the application stage, given the risk that such disclosure may result in their application being rejected. There should be no blanket prohibition on pets in residential tenancy agreements.
- No additional bonds for pet owners: There should not be any additional bonds required of pet owners. Renters already pay bonds to cover potential damage to property, and allowing landlords and agents to request additional bond money from renters with pets creates unnecessary barriers for low-income renters trying to find a home. Pet bonds are currently prohibited and should remain prohibited.

Information to help renters know when a rent increase is ‘excessive’

We support the proposal to make up-to-date, transparent information on rents and rent increases available to renters. This is important in helping renters to make informed choices and to be able to advocate where they identify unfair increases. We do expect, however, that such availability of information does not come with increased responsibility on the renter to monitor and challenge fairness.

Q27. What do you think is the best way to collect this information?

We recognise that some form of new data collection will be required in order to collect this information. However, it is important that the collection of such data does not increase the requirements on renters and we do not think that a voluntary survey of renters, landlords and/or agents would garner the necessary information. We suggest that requirements for landlords and their agents to report rent increases would be an effective method.

Recommendation 7: To facilitate collection and publication of reliable and timely data, landlords or their agents should be required to report a rent increase to the NSW Government using an online system.

Q28. Do you think the ‘one increase per 12 months’ limit should carry over if the renter is swapped to a different type of tenancy agreement (periodic or fixed term)? Please explain.

The one increase per 12 months limit should be applied irrespective of the different types of tenancy agreement that might be in place over that period. It is important that renters are protected from loopholes that might expose them to additional rent increases and that rental agreements are offered with as much stability as possible (for the renter and landlord). We note the importance of such regulation in preventing significant risks of poverty and homelessness at a time when there are few, if any options for renters who find that rent is increased beyond their means to pay and who may have limited capacity to challenge proposed changes to tenancy agreements.

Recommendation 8: There must be protections introduced to prevent a landlord from increasing the rent when changing between lease types.

Other changes to improve rental affordability

Q30. What do you think about these options?

- *Require a landlord to prove that a rent increase is not ‘excessive’ where, for example, a rent increase exceeds CPI over a certain period.*
- *Amend the criteria in the Act for when a rent increase is ‘excessive’. Currently, the list of factors that may be taken into account in considering if an increase is ‘excessive’ includes the market level of rent for comparable properties and the state of repair of the property.*

The onus is currently on the renter to identify and demonstrate that a rent increase is excessive. There is no benchmark or evidence base on which a renter might make this assessment and the prospect of such advocacy is daunting for many people. Where people are fearful that if they raise such issues they may lose their property, or where people are experiencing crises or hardships, they are unlikely to undertake such self-advocacy. As such, the onus for demonstrating that an increase is *not* excessive should sit with the landlord. There should be a

regulated process that requires landlords to submit to the Tribunal any rental increase that might be considered excessive (above CPI + 10% for example as per the ACT model). This would shift the responsibility of justification as to whether or not a rent increase is excessive to the landlord and offer a clearer means of assessment.

Recommendation 9: Landlords should be required to justify a rent increase if it is over a reasonable threshold (set by a measure appropriately determined by the Rental Commissioner or another relevant independent agency). The responsibility to prove a rent increase is not excessive should sit with the landlord.