



Keeping Pets in Residential Tenancies

**A Response to the NSW Government Enquiry by NSW Fair
Trading into Keeping Pets in Residential Tenancies**

10 August 2023

Contents:

- 1. Introduction**
- 2. Summary**
- 3. Addressing the Discussion Points**
- 4. Conclusion**
- 5. For Further Information**

AWL NSW's Response to the NSW Government Enquiry by NSW Fair Trading into Keeping Pets in Residential Tenancies

1. Introduction

The Animal Welfare League (AWL NSW) is a leading Australian animal welfare organisation founded in 1958.

AWL NSW welcomes the opportunity to provide a submission to the NSW Department of Fair Trading on Keeping Pets in Residential Tenancies.

AWL NSW rehomes more than 4,000 unwanted companion animals each year. We have experienced significant growth in animal surrenders over recent years.

Over 60% of households in Australia own a companion animal. Another 25% of households are interested in the possibility of getting a companion animal over the next 12 months (Animal Medicines Australia 2019).

An unanticipated confluence of events has created an unprecedented demand for animal surrenders – cost of living pressures, a housing rental shortage, and high levels of pet ownership during COVID. For example, a household wishing to downsize to rental accommodation to reduce the cost-of-living pressures will find it difficult to get accommodation with a pet. Many seek to surrender their animals to rehoming organisations like AWL NSW. The demand is so high that waiting periods for surrender can be as long as 18 months.

A way to ease this rise in demand is to make it easier for households in residential tenancies to keep pets.

At present, we are aware of residential tenancy agreements that have clauses prohibiting the keeping of pets in rentals. The legality of these clauses remains untested but they are a significant contributor to animal surrender rates. They may also precipitate animal abandonment.



2. Summary

The Residential Tenancies Act 2010 should be amended to include expressly:

- Allowing tenants to keep pets subject to landlords' consent.
- A landlord cannot unreasonably withhold consent.
- A landlord can only refuse consent by obtaining a Tribunal order.
- There is deemed consent if a landlord has not sought an order within 14 days of being notified of a tenant intending to have a pet.
- If the renter fails to notify the landlord that they have a pet for 90 days, then the landlord can apply to withhold consent to the Tribunal.
- A tenant should have the right to keep a pet so long as they are meeting their legal obligations.
- In specified circumstances such as damage to property or noise and nuisance, mediation should first be undertaken.
- A tenant should have appeal rights to the Tribunal (following mediation) if an order to withdraw consent is sought.

Implementation and institutional support are critical to the operational success of the reforms. The following high-level observations are made:

- As far as practical there should be harmonisation of regulations amongst jurisdictions.
- Additional resources and expertise should be made available to Fair Trading and NCAT.

3. Addressing the Discussion Points

The following discussion points were included in the original consultation distributed by the NSW Government and are responded to below.

Point 1.

Should NSW residential tenancy laws on keeping pets in rental properties be changed?

Presently, the Residential Tenancies Act 2010 does not prohibit renters from keeping a pet. However, landlords can insert clauses into rental agreements that prohibit renters from having pets. This has become a standard clause in most rental agreements.

Such clauses have the ability to limit legal activity within a property for which the renter is paying a fair market value. Imagine if a landlord had a no-children clause within a contract.

The landlord should have the right to ensure that the premises for which they are receiving rent is kept in fair and reasonable condition and the activities that are conducted within the property are legal within the zoning. Similarly, a renter should have the right to keep a companion animal(s) so long as they comply with the appropriate legislation (Companion Animals Act, Prevention of Cruelty to Animals Act - POCTAA).

The Residential Tenancies Act 2010 should be amended to include expressly:

- Allowing tenants to keep pets subject to landlords' consent.
- A landlord cannot unreasonably withhold consent.

Point 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?

This question probes into a complex issue that involves not only the rights of tenants and landlords but also the practicalities of bureaucracy and the overall well-being of properties.

Support for a Tribunal Order Model: A model where a landlord can only refuse consent if they obtain a Tribunal order allowing them to do so is supported. But the Tribunal itself should not be a consent authority, adding costs and red tape for both tenants and landlords.

The 14-Day Deemed Consent Rule: Further, the Victorian model where there is deemed consent after 14 days should be considered i.e. if the landlord has not lodged an application to withhold consent within 14 days of the consent being sought then consent is deemed to have been given.

Retroactive Consent: There is a circumstance that is not covered that should be considered. And that is where a renter has not sought consent but retrospectively seeks consent. Perhaps if a renter does not seek landlord consent within 90 days of acquiring the pet, then the landlord can apply to withhold consent to the Tribunal.

Landlord's Right to Withdraw Consent: Further, there needs to be an opportunity available to the landlord to withdraw consent if the property is not being kept in fair and reasonable condition (due directly to the pet) beyond normal wear and tear. In the event of an adverse inspection report relating specifically to the activity of a pet, a landlord could seek an order from the Tribunal to withdraw consent.

In Summary:

- A landlord can only refuse consent by obtaining a Tribunal order.
- There is deemed consent if a landlord has not sought an order within 14 days of being notified of a tenant intending to have a pet.



- If the renter fails to notify the landlord that they have a pet for 90 days, then the landlord can apply to the Tribunal to withhold consent.
- If the property is not kept in fair and reasonable condition (and that can be specifically attributed to a pet) then the landlord can apply to the Tribunal to withdraw consent.

Point 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?

As a general rule, a tenant should have the right to keep a pet so long as they are meeting their legal obligations (Companion Animals Act, POCTAA and the Local Environmental Plan). The only specified grounds should then be whether the pet is causing damage to the property beyond fair wear and tear or is causing noise and nuisance. In this event, where an order has been sought by the landlord from the Tribunal then the tenant should have appeal rights.

It is important that the Tribunal is not turned into a proxy consent authority and is required to deal with trivial tenancy matters. There may be a role for mediation from Fair Trading New South Wales.

In Summary:

- A tenant should have the right to keep a pet so long as they are meeting their legal obligations.
- In specified circumstances such as damage to property or noise and nuisance, mediation should first be undertaken.
- A tenant should have appeal rights to the Tribunal (following mediation) if an order to withdraw consent is sought.

Point 4.

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

As far as practical there should be harmonisation of regulations relating to the keeping of pets between the States.

In New South Wales, the adoption of a more rational regulatory approach to keeping pets in residential tenancies will require institutional leadership from Fair Trading. NCAT would also be required to adjudicate on orders. This will likely require increased allocation of resources and expertise to both organisations.

In Summary:

- As far as practical there should be harmonisation of regulations amongst jurisdictions.
- Additional resources and expertise should be made available to Fair Trading and NCAT.

4. Conclusion

Animal surrenders from downsizers and renters are adding to already excessive demand in the animal rehoming industry.

It is critical that the NSW Government creates a fair balance between the rights of renters and landlords in relation to the keeping of pets.

Striking the right balance will mean fewer surrenders, better welfare for companion animals and improved rental opportunities for households.



Stephen Albin

CEO

Animal Welfare League NSW

10 August 2023