

## ***Improving NSW rental laws***

11 August 2023



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### **About Animal Liberation**

Animal Liberation is proud to be Australia's longest serving animal rights organisation. We have worked to permanently improve the lives of all animals for over four decades. During this time, we have accumulated considerable experience and knowledge relating to issues of animal welfare and animal protection in this country. We have witnessed the growing popular sentiment towards the welfare of animals, combined with a diminishing level of public confidence in current attempts, legislative or otherwise, to protect animals from egregious, undue, or unnecessary harm. Our mission is to permanently improve the lives of all animals through education, action, and outreach.

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# Abbreviations

<b>ABS</b>	Australian Bureau of Statistics
<b>ACAC</b>	Australian Companion Animal Council
<b>ACO</b>	Approved charitable organisation
<b>AIHW</b>	Australian Institute of Health and Welfare
<b>AMA</b>	Animal Medicines Australia
<b>ANZCCART</b>	Australian and New Zealand Council for the Care of Animals in Research and Teaching
<b>APO</b>	Animal protection organisation
<b>APWF</b>	Australian Pet Welfare Foundation
<b>AVA</b>	Australian Veterinary Association
<b>AVMA</b>	American Veterinary Medical Association
<b>CA Act</b>	<i>Companion Animals Act 1998 (NSW)</i>
<b>CAN</b>	Companion Animal Network Australia
<b>DCS</b>	Department of Customer Service (NSW)
<b>DVA</b>	Domestic violence and abuse
<b>FY</b>	Financial year
<b>G2Z</b>	Getting 2 Zero model
<b>HAB</b>	Human-animal bond
<b>LG Act</b>	<i>Local Government Act 1993 (NSW)</i>
<b>LGNSW</b>	Local Government NSW
<b>NCAT</b>	NSW Civil and Administrative Tribunal
<b>OC</b>	Owners Corporation
<b>OIE</b>	World Organisation for Animal Health
<b>POCTA Act</b>	<i>Prevention of Cruelty to Animals Act 1979 (NSW)</i>
<b>Rehoming Amendment Act</b>	<i>Companion Animals (Rehoming Animals) Amendment Act 2022 (NSW)</i>
<b>RSPCA</b>	Royal Society for the Prevention of Cruelty to Animals
<b>RT Act</b>	<i>Residential Tenancies Act 2010 (NSW)</i>
<b>SSM Act</b>	<i>Strata Schemes Management Act 2015 (NSW)</i>
<b>SSM Regulation</b>	Strata Schemes Management Regulation 2016 (NSW)
<b>Sustainability Infrastructure Act</b>	<i>Strata Schemes Management Amendment (Sustainability Infrastructure) Act 2021 (NSW)</i>

## A note on terminology

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In this document, the terms “companion animal”, “guardian”, and “guardianship” will be used instead of “pet”, “owner”, and “ownership”, respectively. This highlights the reciprocal nature of the relationship many people share with companion animals<sup>1</sup>, as opposed to the passive connotation of “pet”.<sup>2</sup> This choice reflects the significance of these animals in people's lives.<sup>3</sup>

## Executive summary

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- I. Australia is a nation of companion animal guardians; approximately 69% of Australian households include a companion animal. For most, companion animals are regarded as a member of the family. Extensive evidence demonstrates the widespread social and health benefits of companion animal guardianship, both for individuals and communities. Health experts have quantified these benefits at a national level, revealing significant reductions to personal health and public service costs.
- II. Despite the ubiquity of companion animals within Australian households, the high value placed on them, and the wealth of evidence demonstrating the benefits that they bring to individuals and the broader community, the right of households to keep companion animals varies significantly. Recent reforms have failed to adequately and appropriately address long-term shortcomings in residential tenancy law.
- III. Existing residential tenancy laws in NSW fail to recognise and protect the human-companion animal relationship in the context of stable, secure and long-term housing. Changes to NSW residential tenancy laws in March 2020 allowed an optional term for keeping companion animals, but landlords can still legally prohibit animals. The Sustainability Infrastructure Act introduced amendments for strata schemes, but landlords can still disallow animals if they interfere with other occupants. Existing frameworks allow schemes to create by-laws that undermine recent amendments, and many landlords include clauses restricting companion animals, potentially breaching tenants' rights. These laws should be changed to accommodate tenants with companion animals in their care.
- IV. The current NSW residential tenancy laws present obstacles that hinder renters from companion animal guardianship. By addressing these limitations, we can create an environment that fosters responsible companion animal guardianship while striking a balance between the rights and interests of both tenants and landlords. We propose revising NSW residential tenancy laws to remove these obstacles, noting that doing so will facilitate greater rental security and animal welfare outcomes. This also aims to foster responsible guardianship while considering the rights of both tenants and landlords.
- V. Unfair rental laws contribute to euthanasia rates. Though state policies promote 'responsible ownership', implementation varies. Guardians face obstacles due to rental restrictions, leading to increasing surrenders. Limited access and diminished socialisation also affects behaviour and adaptability, further increasing the risk of unnecessary and avoidable euthanasia.
- VI. Euthanasia is the leading cause of death for healthy and treatable companion animals in shelters, with around 140,000 cats and dogs euthanised annually in Australia. Cats are often euthanised for being 'feral' or young, while dogs may face euthanasia due to 'behavioural issues' leading to abandonment or breakdown of the human-animal bond. The data shows a significant disparity between dog and cat euthanasia rates, with a higher percentage of cats being euthanised. In both RSPCA and NSW Office of Local Government shelters, the percentage of cats euthanised each year is higher than that of dogs. Reclaim rates for cats are also significantly lower than dogs, highlighting the challenges in rehoming and caring for cats in shelters.
- VII. Animal Liberation has identified a number of key recommendations in response to the issues outlined in this document. Key amongst these are that tenants must be permitted to seek consent to keep companion animals and a landlord should only be authorised to refuse based on a NSW Civil and Administrative Tribunal order. Placing responsibility on landlords ensures a transparent process for tenants caring for companion animals, with Tribunal involvement allowing impartial evaluation of reasons for refusal, preventing unjustified denials, and safeguarding tenants from discrimination.

# 1. Recommendations

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We note the recommendations made in Animal Liberation's submission to this consultation and reform process:

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## Recommendation 1

In the event that tenants are required to seek consent to keep companion animals on rental premises, a landlord should only be authorised to withhold consent based on an order issued by the NSW Civil and Administrative Tribunal ('the Tribunal'). When determining the reasonableness of a landlord's decision to withhold consent, the Tribunal should consider a limited set of factors. Doing so ensures a consistent and equitable decision-making process. It protects tenants' rights while addressing concerns of landlords related to property damage and compliance with other legislation. We recommend the NSW Government consider the reasons for landlords to refuse permission for tenants to keep companion animals contained in section 184E of the *Residential Tenancy and Rooming Accommodation Act 2008* (QLD). Such 'reasonable grounds' should be assessed on an individual basis, considering the specific circumstances and characteristics of both the property and the companion animal. Any introduction of such reasons should be preceded by community consultation.

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## Recommendation 2

Placing the responsibility on landlords ensures a fair and transparent process for tenants seeking to keep companion animals while preventing arbitrary or biased decisions and encouraging consistent and justifiable outcomes. Involving the Tribunal allows for an impartial evaluation of the landlord's reasons for withholding consent. The Tribunal can objectively assess the situation, taking into account the specific circumstances and ensuring that decisions are based on reasonable grounds. It also prevents landlords from unreasonably denying companion animal guardianship without sufficient justification, protecting tenants from unfair discrimination. To implement this reform effectively, clear procedures should be outlined, including the process for landlords to apply for a Tribunal order, the criteria for granting or denying orders, and the timelines for decision-making. These procedures should be designed to ensure efficiency and accessibility for all parties involved.

Clear procedures should be established for landlords to seek a Tribunal order and for tenants to appeal decisions regarding consent for companion animal guardianship. These procedures should be easily accessible, time-efficient, and provide a fair opportunity for both parties to present their cases. To facilitate the successful implementation of this reform, educational campaigns should be conducted by the NSW Government to inform landlords, tenants, and the general public about the revised decision-making process, as well as their rights and obligations. This will foster awareness, understanding, and compliance.

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## Recommendation 3

We propose a number of amendments to existing legislation:

**3a. The current application process for tenants in rental properties often includes inquiries about companion animal guardianship, which can lead to discrimination and unfair treatment. This has been noted in a number of recent Australian studies and surveys.<sup>4-6</sup> Such discrimination has a number of adverse consequences, including rental insecurity and poor animal welfare outcomes.<sup>7</sup> We**

**propose a revision to the *Residential Tenancies Act 2010* that prohibits landlords and agents from inquiring about companion animal guardianship during the application process.**

Prohibiting inquiries about companion animal guardianship prevents discrimination and ensures equal opportunities for tenants. Clear guidelines and educational resources should accompany the implementation of this prohibition, along with enforcement mechanisms to address violations. Other relevant inquiries, such as references and financial capability, should remain unaffected by this prohibition.

**3b. Scientific research consistently highlights the positive impact of companion animal guardianship on mental health, physical well-being, and overall quality of life.<sup>8-10</sup> It is crucial to acknowledge these benefits and create an environment that supports responsible companion animal guardianship. Though there is no term in the *Residential Tenancies Act 2010* that prohibits the keeping of companion animals<sup>11</sup>, the prevalence of 'no pets' terms in tenancy agreements restricts tenants from experiencing the numerous physical, emotional, and social benefits associated with companion animal guardianship.**

We propose amending the *Residential Tenancies Act 2010* to prohibit 'no pets' terms in tenancy agreements. To ensure effectiveness, extensive public consultation and engagement with stakeholders is necessary. Implementing the amendment should include an educational campaign led by the NSW Government to promote responsible companion animal guardianship, tenant and landlord rights, and prevent potential conflict.

**3c. The 'no grounds' eviction provisions in the *Residential Tenancies Act 2010* currently allow landlords to terminate tenancies without providing a specific reason, leaving tenants vulnerable to arbitrary eviction. We propose the elimination of the 'no grounds' eviction provisions found in sections 84 and 85 from the Act and the introduction of a comprehensive set of 'reasonable' grounds for terminating a tenancy, informed by community consultation.**

Eliminating 'no grounds' evictions addresses concerns of tenant insecurity and potential exploitation while encouraging a more transparent and accountable approach to tenancy termination. It also safeguards tenants' rights and promotes stable housing conditions. To establish the new framework for tenancy termination, we recommend conducting extensive community consultation. Engaging tenants, landlords, advocacy groups, legal experts, and other stakeholders will ensure a comprehensive understanding of diverse perspectives and enable the development of a fair and balanced set of reasonable grounds.

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## **Recommendation 4**

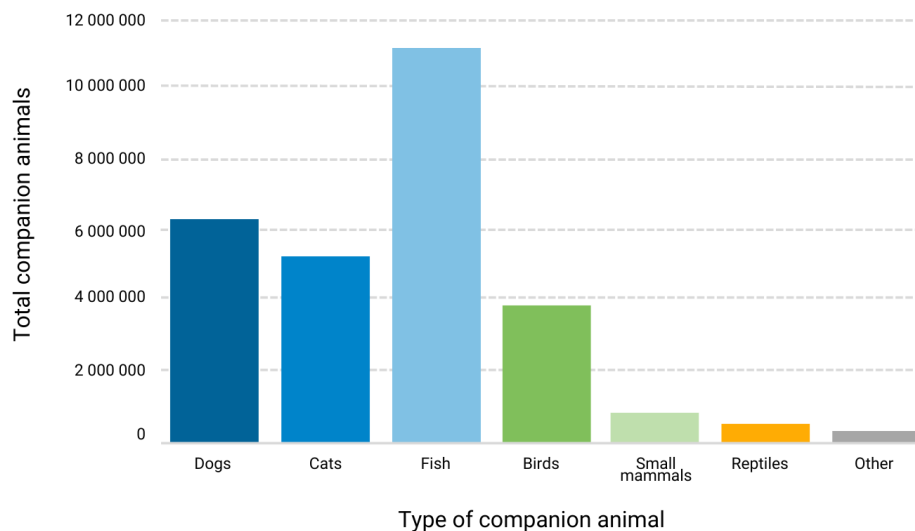
We propose a two-phase approach to introduce a new model that promotes responsible companion animal guardianship, addressing concerns of both renters and landlords. The reforms aim to enhance the well-being of renters and their companion animals, foster harmonious relationships, and ensure practical implementation. 'Phase one' involves developing a comprehensive model covering animal care, noise management, waste disposal, and property maintenance. It will include provisions to protect landlord rights and establish efficient dispute resolution mechanisms. Stakeholder consultation will shape a balanced framework. 'Phase two' focuses on implementing the model across the rental sector. This includes updating legislation, regulations, and tenancy agreements, accompanied by an educational campaign led by the NSW Government to raise awareness of the revised guidelines.

## 2. Introduction

The current consultation process occurs during a period of significant housing transitions across Australia that are impacting the choices and opportunities of many households.<sup>12-14</sup> Changes in housing demographics have particularly affected the options for tenants, requiring alternative pathways and long-term rental occupancy.<sup>15-18</sup> This transformation has significant implications for tenants with companion animals.<sup>19</sup> Throughout this response, we will demonstrate that adopting a companion animal offers opportunities for social relationships and contributes to public health.<sup>20</sup> In addition to the recommendations provided on pages 6-7, we will conclude by recommending that a key way in which NSW rental laws can be improved is by making it easier for tenants to securely rent premises with the companion animals they care for.

Australia is home to one of the highest rates of companion animal guardianship in the world.<sup>21-22</sup> Approximately 69% of Australian households include at least one companion animal.<sup>23</sup> These animals include at least 5.1 million dogs, 3.8 million cats, 11.3 million fish, 5.6 million birds, 614,000 “small mammals”<sup>24</sup>, 364,000 reptiles of various species<sup>25</sup>, and 1.8 million “others”.<sup>26</sup> The number of companion animals by species or type is provided in Figure 1 while the percentage of households by companion animal type is provided in Figure 2.<sup>27</sup> Of the households in Figure 2, at least 88% consider the companion animal(s) they care for to be members of the family.<sup>28</sup> Thus, few people regard companion animals as items of property.<sup>29</sup> Yet because companion animals are legally considered to be so they are not afforded the same legal protections as human family members.<sup>30</sup>

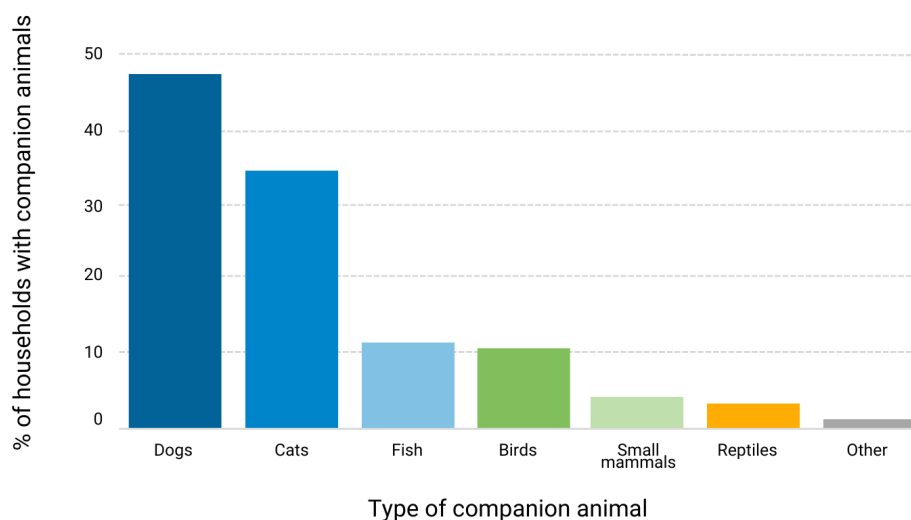
**Fig. 1: Number of total companion animals by type**<sup>31</sup>



NB: ‘Small mammals’ include rabbits, guinea pigs, ferrets and mice. ‘Reptiles’ include snakes, turtles, tortoises, lizards, frogs and salamanders.



**Fig. 2: Percentage of households by companion animal type<sup>32</sup>**



Recent research has suggested that there is a link between property rights, human rights and animal rights, with each meeting where interests intersect.<sup>33</sup> This document will demonstrate how current consultation themes converge across these rights and recommend the NSW Government amend tenancy laws to accommodate tenants with companion animals, protecting the human-companion animal relationship in stable, secure, and long-term housing.

## 2.1 Context

**Tenants with companion animals in NSW encounter challenges finding suitable and affordable housing.<sup>34-35</sup> Living with and caring for their companion animals is vital for creating a sense of “home,” and many tenants feel less “at home”<sup>36</sup> due to frequent moving (~85% moved in the past five years).<sup>37</sup> Tenancy laws and landlord restrictions may contribute to this situation<sup>38</sup>, leading to “residential alienation”.<sup>39</sup> This section will discuss the consequences of this alienation and propose informed alternatives to ease the burden on tenants caring for companion animals.**

Securing rental accommodation with companion animals poses challenges for individuals of various age groups. The transition into adulthood, with aspects like education, employment, leaving home, and starting a family, has experienced delays. Living with companion animals may now seem more achievable than job stability, homeownership, or starting a family.<sup>40</sup> This delay significantly impacts younger adults in the rental market, leaving them feeling powerless when negotiating with landlords for ‘pet-friendly’ housing.<sup>41</sup> Older adults also struggle to find stable, long-term accommodation that accommodates companion animals.<sup>42</sup> Broad restrictions on companion animal guardianship, combined with housing affordability issues, raise concerns about economically vulnerable older adults’ inclusion.<sup>43-44</sup> Additionally, current tenancy laws inadequately address factors related to domestic violence and abuse (‘DVA’) and animal welfare. Each of these will be discussed and applied to the current reform process in subsequent sections of this response.

## 2.2 The benefits of companion animal guardianship

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**Scientific research since the 1970s has shown that the "human-animal bond" ('HAB') improves social, mental, and physical health.<sup>45-48</sup> This understanding has boosted awareness of the mutual benefits of companion animal guardianship for both human health<sup>49</sup> and animal welfare.<sup>50</sup> While people keep companion animals for various reasons, the health benefits have been extensively studied since the 1980s, revealing better health outcomes in households caring for companion animals.<sup>51</sup> This phenomenon, known as the "pet effect", is widely acknowledged in academia.<sup>52</sup> The following subsections will briefly outline such benefits and apply these considerations to the current reform process.**

The HAB has persisted for millennia and this interspecies connection has been extensively studied to show it yields numerous positive effects.<sup>53</sup> For example, research consistently demonstrates that companion animals can reduce stress in their guardians<sup>54-55</sup>, offer social support<sup>56-57</sup>, minimise negative emotions<sup>58</sup>, increase positive emotions<sup>59</sup>, provide various physical benefits<sup>60-61</sup>, and create a sense of security.<sup>62</sup> Additionally, companion animals have been associated with various physiological advantages in their guardians, such as reduced blood pressure<sup>53-65</sup>, higher survival rates after serious health complications<sup>66-67</sup>, favourable effects on cardiovascular risk factors<sup>68-69</sup>, use less medical services<sup>70</sup> and generally better general physical well being.<sup>71</sup> As a result, guardians are happier, healthier and likely to live longer than those who do not care for companion animals.<sup>72-77</sup> These benefits are outlined as they apply to various key demographics in subsections 2.2.1 - 2.2.4 below.

### 2.2.1 Children and companion animals

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Companion animals are particularly significant to young people. A recent review of reports, studies and surveys have concluded that there can be "no doubt that companion animals have a positive effect on children in the cognitive, emotional, and physical health aspects".<sup>78</sup> This is because they aid their social and emotional development by providing opportunities for them to acquire critical skills such as empathy, responsibility and caretaking.<sup>79-82</sup> Thus, children who grow up with a companion animal have greater self-confidence, self-esteem and autonomy when compared with children without companion animals.<sup>83-84</sup> The benefits of companion animals for children extend beyond emotional or psychological support. Children who live with or are otherwise exposed to companion animals frequently develop enhanced immune function and report fewer allergies.<sup>85-89</sup> Interactions with companion animals has been recognised as a key contributor to well-being in later life for some time.<sup>90</sup> These will be further discussed in the following subsection.

### 2.2.2 Older adults with companion animals

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Many older Australians aged over 65 spend an average of 12 hours, or 79% of their waking hours<sup>91</sup>, alone daily, leading to a sense of deep loneliness.<sup>92</sup> Social contact and interactions are crucial for alleviating this loneliness and social isolation.<sup>93</sup> Companion animals play a vital role in triggering a "ripple effect"<sup>94</sup> by providing companionship, purpose, and reducing loneliness, leading to improved social contact.<sup>95-99</sup> For many older adults, companion animals become the primary stable, long-term relationships in their lives<sup>100</sup>, with well-documented and widely accepted health benefits.<sup>101</sup> Studies show that approximately 80% of relevant research demonstrates positive health outcomes for older adults caring for companion animals.<sup>102</sup> For example, these animals positively impact socialisation in people with Alzheimer's disease<sup>103</sup> and encourage more present-focused conversations.<sup>104</sup> Additionally, they have been associated with reduced illness symptoms in bereaved older adults with limited social resources.<sup>105-107</sup> Furthermore, companion animals improve physical health by increasing physical activity

and survival rates in heart attack survivors.<sup>108-113</sup> Interacting with animals also leads to decreased blood pressure due to the release of oxytocin.<sup>114-116</sup> These benefits extend to individuals with mental health and other illnesses, which will be further discussed in the following subsection.

### 2.2.3 People with physical illnesses and companion animals

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Companion animals offer profound benefits for individuals with physical illnesses. Research from the 1980s indicated that caring for such animals improves survival and recovery rates after discharge from a coronary unit<sup>117</sup>, prompting numerous subsequent studies on their health effects.<sup>118-122</sup> A comprehensive study involving 3.4 million people over 12 years found that caring for a companion animal reduces the risk of mortality from cardiovascular disease.<sup>123</sup> Other studies reported a significant decrease in minor health issues for at least 10 months post-adoption.<sup>124</sup> Lung transplant patients with companion animals experience improved lung function and overall quality of life.<sup>125</sup> Patients with AIDS found companionship and support from their animals<sup>126</sup>, leading to reduced stress and a sense of purpose.<sup>127-128</sup> Children undergoing major operations reported significantly reduced pain through companion animal therapy programs.<sup>129</sup> Moreover, patients with Alzheimer's Disease experienced greater calmness, improved social interactions, and fewer mental health illnesses after engaging in therapy visits with companion animals.<sup>130-131</sup>

### 2.2.4 People with mental illnesses and companion animals

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More than one in five Australians have experienced a mental illness in their lifetimes.<sup>132</sup> The benefits of companion animals for people living with mental illnesses are significant and well-documented.<sup>133-134</sup> These include facilitating the development of coping skills<sup>135</sup>, providing feelings of encouragement<sup>136</sup>, supporting self-efficacy and enhancing one's sense of empowerment.<sup>137</sup> Depression is the most prevalent mental illness in Australia.<sup>138</sup> The likelihood that young adults report depression is almost three (3) times greater for people who do not care for companion animals compared to those who do.<sup>139</sup> Meanwhile, schizophrenia affects between 150,000 and 200,000 Australians.<sup>140</sup> Studies have found that adults with schizophrenia who participate in animal-assisted therapy have more independent self-care, mobility and interpersonal contact.<sup>141</sup> For these reasons, companion animals are used to treat some types of mental illness.<sup>142-144</sup> This was particularly evident during the COVID-19 pandemic.<sup>145-148</sup> These therapeutic approaches are based on strong evidence that many others benefit from caring for companion animals at home.

## 2.3 Conclusion

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Regardless of the capabilities of animals, when people *believe* they provide benefits, it permits them to experience a social connection and many of the material advantages that this offers.<sup>149-150</sup> For example, Hutton (2015) explains that "a person's *belief* in their animal's supportive presence may be sufficient to 'buffer' negative life challenges" (emphasis added).<sup>151</sup> That is, how a person *perceives* their relationship with an animal is significant.<sup>152</sup> The extent to which people gain any advantages to their own welfare from the animal in their care is therefore related to a wide range of factors, including the quality of the relationship.<sup>153</sup> While it would be incorrect to characterise companion animals as a panacea<sup>154</sup>, there is strong evidence demonstrating that they can provide benefits through enhanced social support.<sup>155-158</sup>

For many people, companion animals act as "life-changers and lifesavers".<sup>159</sup> This may be because they meet social needs or because they have medical benefits.<sup>160</sup> Though these physiological and psychological benefits are particularly strong for people suffering from mental illness<sup>161-162</sup> and older adults<sup>163-164</sup>, we have demonstrated the

existence of core benefits that generally advantage companion animal guardians that are currently negotiable characteristics of a rental agreement. Failing to accommodate for these benefits reduces public health while unnecessarily impeding on renters' rights.

### 3. The current rental market

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**The national rental vacancy rate is at a record low of 0.9%, dropping to 0.6% in regional areas.<sup>165</sup> Unit rentals in Sydney experienced the largest annual price increase since 2004<sup>166</sup>, accompanied by significant growth in demand per listing<sup>167</sup>, indicating a 28% rise in renters per property each year.<sup>168</sup> Around 15% of NSW residents and 22% of households live in apartments, with 33% of people in NSW currently renting, and these numbers are expected to increase further.<sup>169-170</sup> As a result, many Australians who have given up on buying a home are now facing the possibility of being “priced out” of the rental market.<sup>171</sup>**

Around 30% of Australians rent, and almost half of them spend over 30% of their income on rent.<sup>172-173</sup> Lower-income earners face the most significant challenges, with the ability to afford less than 10% of rental properties.<sup>174</sup> The situation is worsened by the growing number of low-income households entering the private market, with approximately 1 million households (about 2.65 million people) renting in 2018<sup>175</sup> – more than double the number two decades ago.<sup>176</sup> For these renters, factors like dwelling size, having a backyard, access to local parks, and the ability to keep companion animals are crucial considerations.<sup>177</sup>

#### 3.1 Current tenancy law in NSW and companion animal guardianship

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Companion animal guardianship contributes to housing insecurity among renters, which encompasses various housing problems like unaffordability, instability, substandard housing, overcrowding, lack of belonging, feeling unsafe, and homelessness.<sup>178-180</sup> Caring for companion animals can trigger or complicate these issues<sup>181</sup>, with some tenants may remain in low-quality housing due to the difficulty in finding better alternatives that allow them to keep their companion animals.<sup>182</sup> Households in Sydney have reported limited availability of ‘pet-friendly’ housing, often of lower quality and less suitable for the family’s needs.<sup>183</sup> Recent surveys have found that of 652 respondents, of which 94% cared for a companion animal, 75% reported finding ‘pet-friendly accommodation’ stressful.<sup>184</sup> Similarly, in Canada, where home ownership is common like in Australia, companion animal guardians have experienced discrimination during rental property searches and landlord negotiations.<sup>185</sup>

In NSW, tenants have rights under several laws, including the *Residential Tenancies Act 2010* (‘RT Act’), the *Residential Tenancies Regulation 2019* (‘Regulation’), and the *Strata Schemes Management Act 2015* (‘SSM Act’). This section will give an overview of current tenancy laws, assessing recent amendments’ viability and practicalities while critiquing key sections that may conflict with the landmark *Cooper* decision, prohibiting blanket “pet-ban” by-laws by OCs. Companion animal guardianship in NSW is regulated by the *Companion Animals Act 1998*. Guardians must be registered with the local council and inform them of any changes, such as the animal’s death, going missing, being found after being reported missing, or if a dog is declared ‘dangerous’ or ‘menacing’ by a court. The *Local Government Act 1993* (‘LG Act’) allows councils to restrict the number of cats and dogs kept on the premises.

##### 3.1.1 Reviews, reform and amendments: 2015-2016

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The 2015 reform of the SSM Act introduced consumer protection provisions absent in the repealed 1996 Act.<sup>186</sup> Sections 139(1) and 150 are of significance to the current consultation, with the former stating that OCs must not create “harsh, unconscionable, or oppressive” by-laws, and the latter empowering the Tribunal to invalidate such by-laws.<sup>187</sup> The Tribunal also holds authority over animal-related matters, with sections 156-158 permitting orders

for animal removal from a strata scheme, even if allowed under the scheme's by-laws.<sup>188</sup> Subsequently, the 2010 Regulation was remade as the SSM Regulation, reflecting the aforementioned amendments. The Regulation offers model by-laws providing two options for keeping animals: 1) allowing animals with written notice to the owners corporation or 2) allowing guardians to keep animals on a lot with written approval from the owners corporation. While the second option should not be “unreasonably withheld”, the first option remains the “default option”.<sup>189</sup>

### **3.1.2 Domestic violence and abuse ('DVA'): 2019-2020**

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In 2019, the NSW Government introduced changes to the RT Act so that tenants can end their tenancy to escape DVA.<sup>190</sup> These changes, made under Division 3A of the RT Act, enable tenants to serve a termination notice and vacate without penalty.<sup>191</sup> The changes that enabled victims of DVA to “break lease” came into effect on 28 February 2019.<sup>192-193</sup> On 11 December 2020, further changes came into effect. Since the initial changes outlined above, medical practitioners could make a declaration as evidence that a tenant is in a domestic violence situation. From 11 December 2020, a wider range of professionals can make such a declaration.<sup>194</sup> At the time of writing, the NSW Government has initiated another review into rental laws and DVA.<sup>195</sup>

### **3.1.3 *Cooper v the Owners - Strata Plan No. 58068*: 2020**

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The Cooper dispute lasted nearly five years and involved unsuccessful attempts to repeal a “no-pet” by-law. After facing legal action by the OC to remove their dog, Angus, the Coopers cited section 150 of the SSM Act, claiming the by-law was oppressive, but the decision was initially overturned on appeal.<sup>196</sup> However, the Coopers eventually succeeded in overturning the Appeal Panel's ruling through the NSW Court of Appeal. This was based on the finding that such a ban “could not, on any rational view enhance or be needed to preserve the other lot owners' enjoyment of their lots and the common property”.<sup>197</sup> The Court of Appeal's unanimous decision resulted in the prohibition of blanket bans on keeping animals and set a precedent for the application of “harsh, unconscionable, and oppressive by-laws”. These amendments were influenced by the Cooper case and introduced under the Sustainability Infrastructure Act.<sup>198</sup>

### **3.1.4 Problems with applying Cooper: 2021 - present**

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Changes to NSW residential tenancy laws introduced on 23 March 2020 included an optional, negotiable term in the standard tenancy agreement for keeping companion animals, but landlords could remove this term and still prohibit animals legally.<sup>199</sup> The application of the Cooper decision faced significant problems because landlords can refuse a tenant's request to keep an animal without providing a reason.<sup>200</sup> In February 2021, the Sustainability Infrastructure Act received assent, containing amendments related to keeping animals in strata schemes. However, landlords may still prohibit animals if they unreasonably interfere with other occupants, allowing mechanisms to achieve similar results despite restrictions on blanket bans.<sup>201</sup> The existing legislative framework presents structural issues, as schemes can create their own by-laws to regulate keeping animals, undermining the purpose of recent amendments for legislative clarity. The SSM Act prohibits by-laws preventing tenants from keeping assistance animals, but many landlords still include clauses restricting companion animals in rental agreements, with no current prohibition on doing so. The Tenants' Union of New South Wales (“TUNSW”) argues that such restrictions breach tenants' reasonable peace, comfort, and privacy.<sup>202</sup>

## 3.2 Conclusion

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This section responds to the questions from the Department's *Improving NSW Rental Laws Consultation Paper*. Currently, the standard agreement defaults against keeping companion animals, which contradicts community expectations and isn't required by the Act. Animal Liberation suggests introducing phrasing that promotes responsible companion animal guardianship, advantageous for long-term tenants and not detrimental to landlords. However, we assert that the discussed reform hasn't adequately addressed structural issues impacting tenants with companion animals. Section 137B's ambiguity in defining 'unreasonable interference' is evident from a 'pets in strata' survey, where 59% found keeping animals reasonable and 41% disagreed.<sup>203</sup> The ability of owners corporations to create their own by-laws undermines "legislative clarity", allowing unfair regulations that compromise families with companion animals.<sup>204</sup> Based on supporting evidence, Animal Liberation strongly recommends completing the recent amendments to residential tenancy laws in NSW to avoid inequitable power imbalances that don't benefit guardians, tenants, or the animals involved.

## 4. Welfare implications of housing inequities

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Previous sections highlighted shortcomings in the current residential tenancy framework in NSW, identifying factors and outcomes relevant to the consultation. The benefits of caring for companion animals were also discussed, advocating for their representation in the decision-making process. This section will offer a concise overview of the welfare implications tied to housing inequities, focusing on both human and animal welfare outcomes.

### 4.1 Domestic violence and abuse ('DVA')

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In addition to legislation that prohibits cruelty to animals, there has been increasing statutory recognition that people can behave violently towards each other in domestic settings by harming companion animals. The Consultation Paper notes, for example, that since 2019 there have been amendments to rental laws concerning the keeping of companion animals in other Australian jurisdictions.<sup>205</sup> These include Victoria, Queensland, the Australian Capital Territory and the Northern Territory.

Over the past twenty years, evidence known as “the Link” has established a connection between animal cruelty and other forms of violence.<sup>206-211</sup> This connection is particularly evident in relationships involving DVA, where animal abuse frequently co-occurs with violence towards humans.<sup>212-221</sup> DVA is a prevalent form of violence against women, encompassing physical, sexual, emotional abuse, and controlling behaviours.<sup>222</sup> Victims and survivors of DVA often share close bonds with their companion animals, considering them as family members. In the context of DVA, this bond can be even stronger as many victims rely on the support of their companion animals due to isolation from friends and family caused by the abusers.<sup>223-224</sup> Perpetrators can display cruelty towards both animals and humans simultaneously, indicating a heightened propensity for violence.<sup>225-226</sup> A recent study by the Sentencing Advisory Council of Victoria (“VSAC”) supports the “deviance generalisation hypothesis,” suggesting that individuals who abuse animals are more likely to engage in other criminal activities, implying a broader pattern of antisocial behaviour among certain offenders.<sup>227</sup>

#### 4.1.1 Ensuring the community is adequately represented

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Recent studies indicate that approximately 89% of DVA survivors report mistreatment of a companion animal by their partner<sup>228</sup>, but the accuracy of these figures is uncertain.<sup>229</sup> Previous research focused primarily on abuse of cisgender women by cisgender male partners, neglecting the understanding of the link between DVA and animal cruelty in relationships involving individuals of diverse genders and sexualities.<sup>230-231</sup> Data for diverse genders or sexualities is currently unavailable.<sup>232</sup> One Australian study found that over 50% of individuals experiencing DVA also reported harm to their companion animals, with 17% mentioning the death of their animals. Comparatively, the figure for a matched sample of individuals without DVA was 6% reporting harm and no deaths.<sup>233</sup> Others have found between 50-70% of DVA victims report that their abuser had hurt or killed one of their companion animals.<sup>234-235</sup>

#### 4.1.2 Impacts on family members, including companion animals

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Witnessing animal cruelty significantly affects women, frequently leading to fear and grief.<sup>236</sup> This is significant as women are the primary caregivers in two-thirds of Australian households with companion animals.<sup>237</sup> Limited research suggests similar outcomes to other forms of violence.<sup>238-239</sup> Domestic violence experiences may vary across sexualities and genders<sup>240</sup>, with discrimination taking different forms, like threats to reveal someone's identity.<sup>241-243</sup> Companion animals can directly or indirectly suffer abuse in DVA situations.<sup>244</sup> Abusers harm animals to control and intimidate their human victims<sup>245-246</sup>, impacting children witnessing the abuse emotionally.<sup>247-249</sup> Victims with animals may hesitate to seek help or leave abusive situations due to concerns about companion animals in their care.<sup>250-254</sup> Studies show that a significant number of victims (~44%) delay leaving abusive partners because of their companion animals<sup>255-256</sup>, and limited options are available to accommodate them.<sup>257-259</sup> Addressing this issue is crucial to protect both human and animal victims of domestic violence.<sup>260-261</sup>

## 4.2 Animal welfare

**Animal welfare encompasses scientific, ethical, economic, and political dimensions<sup>262</sup>, reflecting society's growing concern for animal well-being.<sup>263</sup> The concept has evolved since the Brambell Committee introduced the Five Freedoms framework in 1965<sup>264</sup>, and other frameworks have emerged to assess animal welfare.<sup>265-266</sup> For this response, animal welfare is defined as a *temporary state influenced by an animal's environment*, building upon the definition proposed by the World Organisation for Animal Health ('OIE') and the research of Mellor, Patterson-Kane, and Stafford.<sup>267-268</sup> It is important to note that animal welfare exists on a continuum, ranging from negative to positive, regardless of the specific definition used.<sup>269</sup>**

There are a number of serious and avoidable animal welfare implications associated with the housing insecurity produced by restrictive tenancy laws and opportunities. For example, when rental properties prohibit companion animals their guardians may face difficulties in finding suitable housing that allows them to keep their companions.<sup>270-272</sup> Other poor animal welfare outcomes relate to measures guardians may take to reduce the risk of their companion animals being found living in a property without permission. Animals living in rental properties with 'pet bans' may have limited access to outdoor spaces or interaction with other animals. This can lead to reduced socialisation opportunities and, as socialisation is crucial for the mental and emotional development of animals, this can impact their behaviour and adaptability.<sup>273-274</sup> If they are subsequently surrendered, this can impact the likelihood of re-adoption or euthanasia. Each of these considerations is discussed in the context of the current reform process, particularly as it relates to unfair rental policies and legislation and their influence on animal welfare outcomes

### 4.2.1 Companion animal welfare in Australia

Though there are approximately 6.3 million companion dogs and 4.9 million companion cats in Australia<sup>275</sup>, these figures likely underestimate the total population due to unaccounted 'unowned' or 'stray' animals and those in shelters.<sup>276</sup> Transfers of animal guardianship occur through various means, creating a complex network of transitions between 'owned' and 'unowned' populations and different guardians. However, research on the movement of dogs and cats between guardians and unowned populations is lacking.<sup>277</sup>

Defining animal welfare is complex due to diverse interpretations.<sup>278</sup> Frameworks like Five Freedoms and others have been developed to describe and define it.<sup>279-281</sup> Broom (1986, 2016) defines it as animals' adaptation to their environment, including physiological, behavioural, and emotional responses.<sup>282-283</sup> Research on animal sentience explores their awareness and capacity for pleasurable and aversive states<sup>284-286</sup>, influencing ethical debates and our responsibility towards animals.<sup>287-288</sup> Housing-related challenges contribute to companion animal

abandonment, especially for low-income households, people with disabilities, and short-term living situations. Housing-related challenges significantly contribute to companion animal abandonment.<sup>289-291</sup> Low-income households (29%) and those with very low incomes (28%) are more likely to surrender companion animals due to moving.<sup>292</sup> Physical disabilities (32%) and mental disabilities (28%) also contribute to rehoming.<sup>293</sup> The majority (65%) of households forced to rehome their animals had lived in their current dwelling for less than three (3) years.<sup>294</sup>

### 4.2.2 Overpopulation

'Overpopulation' refers to the surplus of unwanted companion animals, often leading to homelessness.<sup>295</sup> However, the issue is more complex than just reducing their numbers.<sup>296-298</sup> Alternative terms like 'excess pets'<sup>299</sup> or 'unwanted companion animals'<sup>300</sup> have been proposed to address this challenge. The issue of companion animal overpopulation and abandonment is complex with various causes, including uncontrolled breeding and concerns about animal welfare.<sup>301</sup> Profit-driven large breeding facilities with little oversight and pet shops contribute to the problem.<sup>302-308</sup> Such operations are "defined by their priority of profit, at the expense of the animals' welfare, health, and temperament".<sup>309</sup> The absence of legal alternatives to abandonment puts guardians in difficult situations, leading to abandonment when they can't provide proper care. For example, pet shops have been identified as a major cause of excess unwanted animals, as the market's oversupply lowers the value of animals, leading to abandonment and euthanasia.<sup>310-312</sup> The lack of legal alternatives to abandonment puts guardians in difficult situations, especially when facing housing insecurity or rental challenges with companion animals.<sup>313</sup> This can lead to abandonment when guardians feel unable to provide adequate care.<sup>314-322</sup>

### 4.2.3 Surrendering companion animals in NSW

Surrendering companion animals is a significant issue with implications, including unnecessary euthanasia.<sup>323-324</sup> Understanding the reasons behind it is crucial for animal welfare, public health, and homeless animals.<sup>325</sup> The human-animal bond is essential, and its disruption can lead to negative outcomes.<sup>326-327</sup> In NSW, the animal rehoming process involves council pounds, animal welfare, and rehoming organisations. Most animals enter this system through council pounds and animal welfare groups.<sup>328</sup> Councils can set up pounds under the *Companion Animals Act 1998* ('the CC Act') and the *Public Spaces (Unattended Property) Act 2021* ('the PS Act'). They can manage these facilities or work with external organisations like the Royal Society for the Prevention of Cruelty to Animals ('RSPCA').<sup>329</sup> Companion animals are surrendered for various reasons, as listed in Figure 3.

**Fig. 3: Reasons available for the surrender of cats, kittens, dogs, and puppies to RSPCA NSW**<sup>330-331</sup>

Reason	Companion animal type
They are a 'stray'	Cats, kittens, dogs, puppies
They have 'trouble toileting'	Cats, kittens
They have 'behavioural issues'	Cats, kittens
They are 'destructive'	Dogs, puppies
They have too many offspring or continue to have offspring	Cats, kittens
They 'do not obey commands'	Dogs, puppies
They 'keep escaping'	Dogs, puppies

They 'do not get along with' other companion animals	Cats, kittens, dogs, puppies
They have 'shown some aggression'	Dogs, puppies
They 'bark too much'	Dogs, puppies
The guardians have too many companion animals already	Cats, kittens, dogs, puppies
The guardians are moving	Cats, kittens, dogs, puppies
The guardians can't care for them anymore	Cats, kittens, dogs, puppies
The guardians 'just don't want them anymore'	Cats, kittens, dogs, puppies
The guardians are allergic	Cats, kittens, dogs, puppies
The guardians 'don't have time' to care for them	Cats, kittens, dogs, puppies
The guardians can't afford to care for them	Cats, kittens, dogs, puppies
The guardians are renting	Cats, kittens, dogs, puppies
The guardians can't afford vet fees	Cats, kittens, dogs, puppies

#### 4.2.4 Euthanasia

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Euthanasia is a term derived from the Greek words *eu* (meaning 'good') and *thanatos* (meaning 'death').<sup>332</sup> The Australian and New Zealand Council for the Care of Animals in Research and Teaching ('ANZCCART') defines euthanasia as "the process of inducing a painless death".<sup>333</sup> According to the AVA, euthanasia is used in two (2) circumstances: 1) when pain, distress and suffering are likely to exceed manageable levels and; 2) when the health or welfare of animals is irredeemably compromised.<sup>334</sup> Similarly, the American Veterinary Medical Association ('AVMA') *Guidelines for the Euthanasia of Animals* outline two (2) essential conditions that are interdependent for euthanasia: 1) the veterinarian's humane intention to bring about death in a manner that aligns with the animal's welfare and best interests and; 2) the use of methods to induce a swift, painless, and distress-free death.<sup>335</sup>

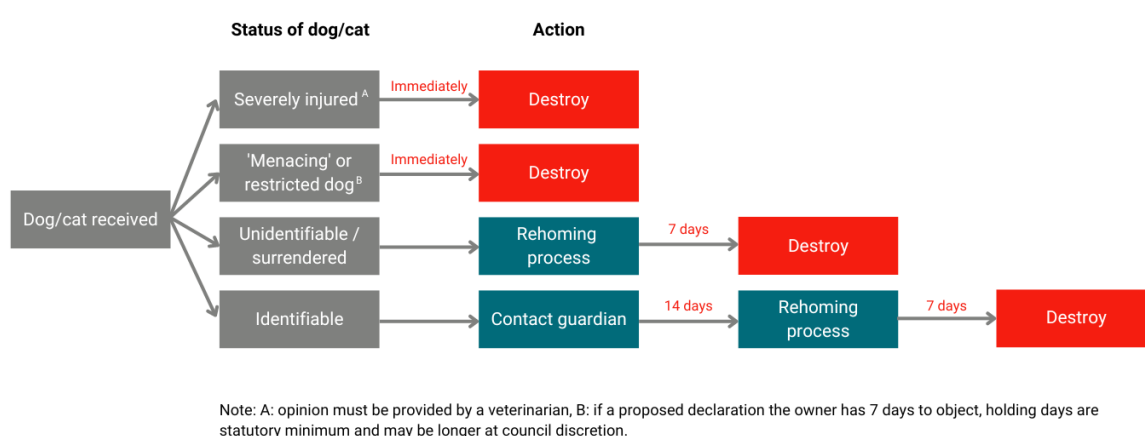
Regan (1984) proposed more exacting criteria for ethically justifiable euthanasia, which include: 1) ensuring that killing occurs using the least painful means possible; 2) genuine belief that euthanasia is in the best interest of the animal and; 3) motivation driven by genuine concern for the well-being and interests of the animal.<sup>336</sup> Unlike the AVA definition and AVMA *Guidelines*, Regan's criteria reject the use of the term "euthanasia" for the humane killing of healthy animals. This criteria implies that euthanasia should have a positive impact on animal welfare by eliminating actual or potential suffering.<sup>337</sup>

Though it is a common practice in veterinary medicine<sup>338-340</sup>, being a 'Day One Competency' for veterinary graduates<sup>341</sup>, opinions vary regarding the ethical circumstances that warrant euthanasia.<sup>342</sup> Euthanising an animal involves ethical considerations, including conflicts between guardian's interests and animal's welfare.<sup>343-348</sup> Though technical guidelines exist<sup>349</sup>, emotional elements are critical.<sup>350-351</sup> This is because the manner of death is significant for guardians and veterinary personnel.<sup>352-354</sup> Losing a companion animal can be as intense as losing a human loved one for many guardians.<sup>355-256</sup> Several ethnographic studies and media reports have indicated that individuals involved in animal euthanasia face a higher risk of emotional distress, physical health issues like high blood pressure, unresolved grief, depression, substance abuse and suicide.<sup>357</sup>

## 4.2.5 Current euthanasia rates in NSW

Euthanasia is the leading cause of death for healthy and treatable companion animals in shelters.<sup>358-359</sup> As Rand (2015) explains, “being unwanted kills pets more than disease”.<sup>360</sup> In Australia, approximately 140,000 cats and dogs are euthanised annually.<sup>361</sup> Up to 264 animals may be euthanised every day.<sup>362</sup> In NSW, euthanasia is permissible or required under a number of circumstances. It is *permissible* when: a) a dog or a cat enters enclosed lands and harasses animals on the land; b) a restricted dog<sup>363</sup> is seized or; c) a ‘dangerous’<sup>364</sup>, ‘menacing’<sup>365</sup> or restricted dog enters a pound. It is *required* under a ‘destruction order’ issued under the CA Act. The pathways by which an animal may be euthanised in a NSW pound is outlined in Figure 4 below.

**Fig. 4: Pathways for NSW pounds to euthanise an animal**<sup>366</sup>



Alongside Victoria, NSW has the highest total number of cats euthanised and is double that of the state with the next highest figure.<sup>367</sup> Cats are often euthanised for being ‘feral’ or young, while dogs’ ‘behavioural issues’ may result in abandonment or relinquishment and euthanasia.<sup>368</sup>

Given the figures cited above, this response focuses on cats and dogs as the primary species of concern. However, an assessment of available data demonstrates the disparity between the euthanasia rates in dog and cat populations. In RSPCA shelters, historical figures show that while 30% of dogs are reclaimed by their owners, only 3% of cats are reclaimed.<sup>369-370</sup> Such rates persist in recent data. For example, in the 2019-20 financial year (‘FY’) approximately 36.3% of dogs and 5.4% of cats were reclaimed<sup>371</sup>, while in the 2020-21 FY, nearly 38% of dogs and less than 6% of cats were reclaimed<sup>372</sup>; however, in the 2021-22 FY, only 4.7% of cats were reclaimed compared to 30% of dogs.<sup>373</sup> The percentage of cats euthanised in shelters each year is higher than that of dogs.<sup>374</sup> On average, the RSPCA euthanises 2,817 dogs and 8,274 cats nationally over the most recent three (3) reporting periods.<sup>375-377</sup> These figures are provided in Figure 5 below.

**Fig. 5: Animals received nationally by the RSPCA for the previous three financial years by outcome**<sup>378-380</sup>

Year	Species	Total received	% reclaimed	% euthanised
2019-20	Dog	28,072	36.3%	12.3%
	Cat	45,364	5.4%	21.4%
2020-21	Dog	22,311	37.9%	11.2%
	Cat	42, 572	5.9%	20.2%
2021-22	Dog	19,221	30.3%	12.9%
	Cat	35,571	4.7%	18.2%

Similar trends are found in NSW Office of Local Government ('OLG') data. In the 2019-20 FY, 44.6% of dogs were released to their original guardians. In comparison, only 4.7% of cats who entered OLG facilities during the same period were released to their original guardians. In the July-June period of 2020-21 FY, 47% of dogs were released to their original guardians. In comparison, only 4.9% of cats were returned to their original guardians. In the 2021-22 FY, 45.2% of dogs were released to their original guardians. In comparison, only 5.6% of cats were returned to their original guardians during the same period. As is the case in RSPCA shelters, the percentage of cats euthanised in OLG shelters each year is higher than that of dogs. In the 2019-20 FY, 38.6% of cats were euthanised compared to 6.7% of dogs. In the 2020-21 FY, 31.8% of cats were euthanised compared to 8.9% of dogs. In the 2021-22 FY, 29.7% of cats were euthanised compared to 9.7% of dogs. These figures are provided in Figure 6 below.

**Fig. 6: Animals received by the NSW OLG for the previous three financial years by outcome**<sup>381</sup>

Year	Species	Total received	% reclaimed	% euthanised
2019-20	Dog	27,703	44.6%	6.7%
	Cat	20,463	4.7%	38.6%
2020-21	Dog	23,621	47.0%	8.9%
	Cat	21,063	4.9%	31.8%
2021-22	Dog	20,606	45.2%	9.7%
	Cat	15,677	5.6%	29.7%

#### 4.2.6 Euthanasia of dogs in NSW

Evidence suggests that 'undesirable behaviours'<sup>382</sup>, principally in dogs, can jeopardise the welfare of both the canine companions and their human counterparts.<sup>383</sup> Worldwide, such behaviours are the leading reason for the relinquishment and euthanasia of dogs.<sup>384-388</sup> Dogs may face euthanasia due to 'behavioural issues', even if they are physically healthy.<sup>389</sup> As such, euthanasia for behavioural issues, such as aggression, may be seen as "contextually justified", even when the dog's physical health is

acceptable.<sup>390</sup> This is referred to as ‘convenience euthanasia’, defined as the euthanasia of a physically and psychologically healthy animal.<sup>391-394</sup> It has been identified as “one of the most stressful” events experienced by veterinary professionals.<sup>395</sup> Given the impact euthanasia has on veterinarians<sup>396</sup>, particularly in the context of convenience, consideration of its consequences are critical.<sup>397-398</sup> Moreover, such reasoning does not meet the criteria for suffering or pain and therefore are not in line with the meaning of euthanasia outlined in subsection 4.2.4. Limited research exists on ‘behavioural euthanasia’, primarily due to its controversial and often taboo nature.<sup>399</sup> Often kept in the shadows, veterinary professionals suspect that it occurs more frequently than openly acknowledged.<sup>400</sup>

This is supported by the available data on ‘behavioural’ or ‘convenience’ euthanasia of dogs in Australia and NSW, where dogs who have been identified as exhibiting ‘undesirable behaviours’ are at the highest risk of euthanasia.<sup>401</sup> This is further supported by RSPCA and OLG data detailing the reasons for the euthanasia of dogs in their respective facilities. ‘Behavioural issues’ constitute the overwhelming majority of reasons dogs are euthanised in RSPCA shelters nationally, with 67.7% of dogs euthanised for this reason in the 2021-22 financial year.<sup>402</sup> The majority of these dogs were killed in NSW facilities.<sup>403</sup> This data is provided in Figure 7 on page 24. Similar results are found in recent OLG figures, as demonstrated in Figure 8 on page 25.

Subsequent sections of this response will demonstrate the links between the development of ‘behavioural issues’, which we have shown to be the leading cause of euthanasia in dogs, and complications arising from unfair rental policies and legislation. In general, Sydney’s urban landscape is evolving into denser environments with a rise in apartment complexes. Consequently, dogs are expected to adjust to living in more confined spaces.<sup>404</sup> Such restrictions can lead to “abnormal behaviours” associated with anxiety in companion dogs.<sup>405</sup> Subsection 4.2.9 will demonstrate the increased adverse impacts unfair tenancy policies, including ‘pet-bans’, can have on animal welfare. Given the demonstrated role that ‘behavioural issues’ have on the euthanasia rates of dogs, such consideration is of primary importance.

#### **4.2.7 Euthanasia of cats in NSW**

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We have shown that dogs are primarily euthanised in NSW due to ‘behavioural issues’. In cats, the leading causes are being classified as ‘feral’ or being an ‘infant’. Although ‘feral’ cats are not labelled as exhibiting ‘behavioural issues’, their classification often involves similar considerations related to socialisation assessments.

While Local Government NSW (‘LGNSW’) claims some councils believe their officers can accurately identify “a bona fide ‘feral cat’<sup>406</sup>, evidence suggests that such identification is challenging.<sup>407-408</sup> One study highlights complexities due to observer inconsistencies and changes in identification accuracy over time.<sup>409</sup> Moreover, distinguishing individual ‘feral’ cats through visual inspection is “extremely time-consuming and tedious”.<sup>410</sup> Thus, many shelters rely on unreliable behavioural cues, leading to misinterpretations and incorrect assessments.<sup>411-412</sup> For example, in some RSPCA shelters, 80% of cats are recorded as ‘feral’ upon intake, but only 12% are specifically identified as such.<sup>413</sup> These errors in distinguishing frightened socialised cats from ‘feral’ ones can result in adverse and avoidable welfare outcomes, such as extended shelter stays, delayed reunions with families, and unnecessary euthanasia.<sup>414</sup>

Terminological differences and inconsistencies in ‘feral’ cat definitions contribute to the issue.<sup>415</sup> ‘Feral’ animals are described as “wild companion animals” who have escaped domestication.<sup>416</sup> The

use of such terms serves to devalue individuals of a specific species, thereby making their lethal control more socially acceptable.<sup>417-418</sup> A more appropriate definition suggests a 'feral' cat lives in a free-roaming environment, is capable of surviving independently, and may show fearful or defensive behaviour toward humans.<sup>419</sup> The latter is of particular importance. Kittens that have minimal or no contact with humans until they reach two months of age are prone to retain fearfulness towards people unless they undergo remedial socialisation.<sup>420</sup>

In Australia, research has primarily emphasised behavioural issues concerning 'owned' and 'unowned' or 'stray' cats<sup>421-422</sup>, rather than exploring the potential benefits of personality assessment.<sup>423</sup> For example, the NSW *Code of Practice for the Effective and Humane Management of Feral Cats* ('COP') states that "once it has been established that the trapped cat is feral, it should be euthanised in a humane manner [...] either by an authorised person at an animal shelter, council pound or veterinarian".<sup>424</sup>

According to Slater et al. (2013), providing scared cats with a minimum of 72 hours of care in humane housing conditions is essential to observe behaviours towards caretakers.<sup>429</sup> The Australian Institute of Animal Management ('AIAM') advises that this time allows for distinguishing 'feral' cats from those who are socialised but experiencing significant stress due to confinement.<sup>430</sup> The Rehoming Animals Amendment Act, which received assent on 4 March 2022, included a change requiring animals to be available for rehoming from the date notice is given. Despite this, councils in NSW are interpreting the Act differently and some euthanise 'feral' cats without keeping them for the required time.<sup>431</sup> For example, Hornsby Shire Council implemented a policy in which cats found in "rough appearance" or not microchipped were deemed 'feral' and were euthanised without any mandatory holding period.<sup>432-433</sup> Moreover, RSPCA shelters currently use a binary computerised menu to identify 'feral' cats.<sup>434</sup> The RSPCA justifies euthanasia for 'stray' cats, claiming they cannot be "re-conditioned" once 'feral'.<sup>435</sup> However, given identification difficulties and the likelihood of euthanasia, this claim is subject to challenge based on reasons provided above.

**Fig. 7: Reason for euthanasia of cats and dogs in RSPCA facilities: 2021-22<sup>436</sup>**

Species	Reason	ACT	Darwin	NSW	QLD	SA	TAS	VIC	WA	Total	% of total
Dogs	Infectious	0	0	0	9	2	0	0	1	12	0.48%
	Medical	13	16	226	234	65	3	96	40	693	27.8%
	Behavioural	14	4	911	444	101	9	169	30	1,682	67.7%
	Legal	0	0	32	21	1	0	40	0	94	3.7%
	Other	0	0	0	2	0	0	1	0	3	0.1%
	Total	27	20	1,169	710	169	12	306	71	2,484	100.0%
Cats	Infectious	10	1	0	365	21	9	116	0	522	8.0%
	Medical	45	4	830	760	247	35	380	65	2,366	36.3%
	Behavioural	15	0	561	133	438	79	291	3	1,520	23.3%
	Legal	0	0	0	1	3	172	0	0	176	2.7%
	Other	63	2	722	234	0	99	762	40	1,922	29.5%
	Total	133	7	2,113	1,493	709	394	1,549	108	6,506	100.0%



**Fig. 8: Reason for euthanasia of cats and dogs in OLG facilities: 2021-22<sup>437</sup>**

Species	Reason	Total	% of total
Dogs	Illness, injury or disease	307	15.2%
	'Feral' or infant	35	1.7%
	Guardian request	227	11.2%
	Unable to rehome	178	8.8%
	Unsuitable for rehoming	991	49.1%
	Dangerous or restricted	280	13.8%
	Total	2,018	100.0%
Cats	Illness, injury or disease	803	17.2%
	'Feral' or infant	2,945	63.1%
	Guardian request	11	0.2%
	Unable to rehome	185	3.9%
	Unsuitable for rehoming	722	15.4%
	Dangerous or restricted	0	0.0%
	Total	4,666	100.0%

#### 4.2.8 The role of voluntary rescue groups and organisations

In addition to the pressures the figures outlined above place on RSPCA and OLG facilities, including personnel, they exert significant strains on voluntary community rescue organisations. Recent media has reported that “the shelters are overflowing, the pounds are overflowing, [and] our rescue groups are absolutely bursting at the seams”.<sup>438</sup> Such groups typically function under a foster care system, opting not to maintain a physical shelter, and restrict their admissions based on their capacity.<sup>439</sup> They frequently accept ‘stray’ and other animals surrendered by their guardians, including farmed animals, and often collaborate with council pounds and animal shelters to accept transfers.<sup>440</sup> Rescue shelters frequently share profiles of available animals online, accompanied by photos and descriptions, with the aim of capturing the interest of potential adopters.<sup>441-443</sup>

Rescue groups are responsible for a substantial number of rehoming services in Australia. An estimated 16% of all dogs adopted are obtained via such groups.<sup>444-445</sup> Though motivations for adopting a companion animal in this way vary, they often include the belief that it is the ethically correct choice and the desire to save an animal from possible euthanasia.<sup>446</sup> A recent Australian survey found that municipal councils contributed 30%, ACOs contributed 48%, and rescue groups contributed 21% of all intakes in 2018-19. Of the 41,355 intakes of cats handled by rescue groups,

70% were accepted directly from the public, representing approximately 15% of the estimated total national intake.<sup>447</sup>

In NSW, the estimated number of cats transferred out of municipal council pounds and animal welfare organisations surpassed the total intake reported by PetRescue.<sup>448</sup> However, it is important to note that most of these transfers likely went to animal rescue groups, and the rescue groups would have also received cats from the general public. The discrepancy can be attributed to not all rescue groups using PetRescue to advertise cats for rehoming.<sup>449</sup> As a result, the pooled intake of animal rescue groups was considered to be 6547, acknowledging that this figure is likely an underestimate. The study assumed that 98% of these cats were rehomed, while 2% were euthanised, aligning with patterns observed in other states and territories. This is significant as the percentage of outcomes where cats were euthanised was 46% in councils and 25% in facilities operated by ACOs.<sup>450</sup>

A review of recent OLG data demonstrates the role played by volunteer rescue organisations. Such groups consistently accept over a quarter of cats and dogs received by OLG facilities. In some cases, they account for nearly 40% of cats received by OLG facilities. In the 2019-20 FY, a total of 27,703 dogs were recorded, and 44.6% (12,358) of them were released back to their owners. Additionally, 29.7% (8,234) of the dogs were handed over to organisations for rehoming, while 12.5% (3,490) were sold. For cats in the same period, only 4.7% returned to their guardians. A higher percentage of cats, 36.1%, were released to organisations for rehoming, and 18.8% were sold. The following FY, 47.0% of dogs were reunited with their guardians and 28.5% were sent to organisations for rehoming, while 11.9% were sold. For cats during this period, only 4.9% returned to their guardians. A higher proportion of cats, 39.3%, were released to organisations for rehoming, and 18.9% were sold. Finally, in the 2021-22 FY, 45.2% of dogs were successfully reunited with their guardians while 28.5% were handed over to organisations for rehoming and a further 13.1% were sold. For cats during this period, only 5.6% returned to their guardians while a significant proportion, 36.9%, were released to organisations for rehoming. A further 21.2% were sold. This data is provided in Figure 9 below.

**Fig. 9: Animals received by the NSW OLG for the previous three financial years by outcome**<sup>451</sup>

Year	Species	Total received	% released to guardians	% released to rescue groups for rehoming	% sold by OLG
2019-20	Dog	27,703	44.6%	29.7%	12.5%
	Cat	20,432	4.7%	36.1%	18.8%
2020-21	Dog	23,621	47.0%	28.5%	11.9%
	Cat	21,063	4.9%	39.3%	18.9%
2021-22	Dog	20,606	45.2%	28.5%	13.1%
	Cat	15,677	5.6%	36.9%	21.2%

#### 4.2.9 The impact on voluntary rescue groups and organisations

Individuals working or volunteering in animal rescue are driven by a profound passion for caring and protecting animals. Paradoxically, this commitment exposes them to recurring instances of neglect inflicted upon the very animals they strive to help.<sup>452</sup> As a result, such individuals express experiencing

a “love-hate relationship” with the work they do.<sup>453</sup> Thus, engaging in shelter animal work offers significant rewards while also exposing individuals to animal suffering, leading to an increased risk of negative mental health outcomes.<sup>454</sup> What might be distressing for an average individual to encounter on social media or in the newspaper is a regular experience for animal rescue workers.<sup>455</sup> This produces ‘compassion fatigue’, a phenomenon whereby individuals are traumatised by helping others.<sup>456-458</sup> Though it is an understudied issue in the context of animal rescue<sup>459</sup>, those involved in such work are at a notably higher risk of experiencing secondary trauma<sup>460</sup> and have a fivefold greater chance of developing Post-Traumatic Stress Disorder (‘PTSD’) compared to the average.<sup>461</sup>

Such considerations are particularly important given the current ‘crisis mode’ in which the Australian mental health system operates.<sup>462</sup> Such circumstances have been influenced by the COVID-19 pandemic<sup>463</sup>, which placed additional pressure on an “overwhelmed” system<sup>464</sup> and caused “unprecedented challenges” to mental health services<sup>465</sup>, with 88% of psychologists reporting increased demand.<sup>466</sup> Given the rates at which companion animals are surrendered and the motivations rescue volunteers hold, it is highly likely that this population is particularly vulnerable to increased mental health complications due to work overload.<sup>467</sup> Thus, such concerns should be factored into the current reform process as an additional element supporting the need for the recommendations provided on pages 6-8 of this document.

#### 4.2.10 ‘Responsible ownership’ and tenancy law in NSW

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Despite 69% of Australian households containing at least one companion animal<sup>468</sup>, only 10% of rentals allow companion animals.<sup>469</sup> As a result, around 30% of dogs and cats are surrendered due to limited ‘pet-friendly’ accommodation.<sup>470-471</sup> Understood in conjunction with the data provided in subsection 4.2.4 4.2.7, it is reasonable to conclude that unfair rental laws contribute to unnecessary euthanasia rates.<sup>472</sup> In its submission to the Residential Tenancies Regulation 2019 consultation process, the AVA noted that:

*many people are forced to surrender their pets due to harsh rental laws and these laws also make rehoming unwanted pets more difficult due to less available opportunities which subsequently leads to an increase in euthanasia rates in pounds and shelters because they cannot get permission to keep them in rental accommodation.*<sup>473</sup>

Though unfair rental laws impact animal welfare and euthanasia rates, state policies and campaigns on companion animal guardianship often focus on ‘responsible ownership’<sup>474</sup>, which is frequently replicated in the messaging of local councils.<sup>475</sup> Though this is based on the sensible notion that integrating other animals into households engenders particular responsibilities towards them<sup>476-477</sup>, understanding and application of the concept can vary among individuals and groups.<sup>478-479</sup> For example, some argue that ‘irresponsible’ companion animal guardian behaviours are influenced by individuals’ beliefs and motivations rather than malicious intent.<sup>480</sup>

The ‘responsibility’ model is often seen as an ideal foundation for legislation and policy, with the ‘owner’ being accountable for the ‘pet’.<sup>481-482</sup> However, this approach has flaws, including the complications of treating animals as property under law, which allows guardians to dispose of healthy animals easily.<sup>483-484</sup> Government and approved charitable organisations (‘ACOs’) also neglect to acknowledge how policy and legislation undermine ‘responsible ownership’. Being responsible requires knowledge to identify and address issues adequately<sup>485</sup>, along with the ability to take

appropriate action.<sup>486</sup> Many companion animal guardians strive to do so despite facing significant obstacles, particularly in the context of tenancy.

#### 4.2.11 Conclusion

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NSW Fair Trading should consider previous recommendations from different arms of the state government. Pertinent documents aimed at reducing euthanasia rates in NSW, such as the *Issues Paper on Rehoming Companion Animals* and the NSW Companion Animal Taskforce, emphasise responsible guardianship.<sup>487-489</sup> For instance, the Taskforce's May 2012 Discussion Paper identified reducing euthanasia rates as a primary objective and its October 2012 report included a recommendation to "promote socially responsible pet ownership to the whole community".<sup>490</sup> ACOs under the POCTA Act share similar rhetoric.<sup>491</sup> The Animal Welfare League ('AWL') supports the 'Getting 2 Zero' model ('G2Z'), aiming for almost no euthanasia of healthy and treatable animals<sup>492</sup>, defining "zero" as over 90% of incoming pets.<sup>493</sup> AWL's Rehoming Policy emphasises that "each community takes responsibility for saving its own abandoned animals".<sup>494</sup>

Given the difficulties guardians currently experience in securing stable accommodation in the rental market and the noted role this plays in the unnecessary euthanasia of companion animals, such rhetoric is deeply polarising and unjust. Due to the difficulties of finding 'pet-friendly' rental accommodation, guardians may resort to hiding their companion animals to keep them safe.<sup>495-497</sup> This poses housing security risks<sup>498-499</sup>, even though these guardians may be considered 'perfect tenants' by landlords.<sup>500</sup> Research shows that guardians prioritise the best interests of their animal companions.<sup>501</sup> However, such actions also raise welfare concerns for the animals in their care.

Animals in 'pet-ban' rentals may experience limited outdoor access and socialisation opportunities, impacting their behaviour and adaptability.<sup>502-503</sup> This is complicated by the fact that dogs sourced from intensive breeding facilities ('puppy farms') and pet shops express more adverse behaviours (e.g., aggression and anxiety).<sup>504-505</sup> Stress from disrupted environments can also cause behavioural issues.<sup>506-509</sup> This is particularly important given the rates at which tenants with companion animals move (~85% had moved within the previous 5 years).<sup>510</sup> These factors affect the likelihood of these animals being euthanised for 'behavioural issues' if they become one of the 30% of dogs and cats surrendered due to limited 'pet-friendly' accommodation.<sup>511-512</sup> That is, the actions guardians are currently forced to take in response to unfair tenancy laws and policies by landlords or OCs can be directly related to a companion animal becoming one of the 67% of dogs euthanised for 'behavioural issues' in NSW.<sup>513</sup>

Finally, Jarvis (2018) explains that "responsible ownership is about more than fulfilling the five welfare needs" we have outlined elsewhere.<sup>514</sup> Similarly, as expressed in Power's work (2008), dogs are not merely viewed as "little hairy people" fitting into existing routines; rather, people adapt and extend their plans and activities to accommodate the needs, preferences, and pleasures of their companion animals.<sup>515</sup> Moreover, doing so reduces the intake rates of Council pounds and RSPCA shelters, thereby reducing the rates at which such facilities engage in unnecessary euthanasia. Such behaviour, therefore, represents responsible guardianship of the kind the State government has consistently identified as critical to reducing the unnecessary euthanasia rates outlined in subsection 4.2.4.

## 4. Conclusion

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Australia's strong connection with companion animals is evident, with nearly 69% of households regarding them as family members. We have demonstrated the numerous social and health benefits associated with companion animal guardianship, showcasing their positive impact on individuals and communities. Over 900 supporters of Animal Liberation expressed their endorsement by signing a petition in enthusiastic support of the key recommendations put forth within this document, reflecting a widespread dedication to the cause. These signatories are provided in Appendix 1 of this document.

Despite the widespread recognition of companion animals' value and the evidence supporting their benefits, the right of households to keep them is inconsistently protected. Moreover, recent reforms in residential tenancy law have fallen short of addressing the longstanding issues in this area.

As such, current residential tenancy laws in NSW do not adequately acknowledge and safeguard the human-companion animal relationship in the context of stable and secure housing. Therefore, changes to these laws are essential to accommodate tenants with companion animals and facilitate responsible guardianship.

Unfair rental laws in Australia contribute to unnecessary euthanasia rates, as around 30% of dogs and cats are surrendered due to limited 'pet-friendly' accommodation. State policies promote 'responsible ownership,' but its implementation varies. Treating animals as property can lead to easy disposal of healthy animals. Many guardians face obstacles in providing responsible care due to rental restrictions. NSW Fair Trading should consider recommendations to reduce euthanasia rates.

Guardians often hide pets in 'pet-ban' rentals, impacting animal welfare. Limited access to outdoor areas and socialisation opportunities affect behaviour and adaptability. Stress from disruptions can also lead to behavioural issues. These factors increase the likelihood of euthanasia for surrendered pets due to housing restrictions. Responsible guardianship is essential, adapting plans for companion animals' needs and reducing unnecessary euthanasia rates.

This has extensive consequences for people and animals. Individuals involved in animal rescue work have a deep passion for caring and protecting animals, but this commitment exposes them to recurring neglect and animal suffering, leading to a 'love-hate relationship' with their work. This constant exposure puts them at a higher risk of negative mental health outcomes, including a fivefold greater chance of developing PTSD compared to the average person. The current 'crisis mode' of the Australian mental health system, exacerbated by the COVID-19 pandemic, adds further challenges to mental health services. Given the high rates of companion animal surrender and the motivations of rescue volunteers, it is crucial to consider their mental health vulnerability during the reform process.

To overcome the obstacles that hinder renters from keeping companion animals, a revised residential tenancy law model is proposed. This model defaults to empowering tenants to have companion animals, with only limited exceptions that must be reasonably justified by landlords. By encouraging responsible guardianship and showing empathy towards tenants with companion animals, landlords can play a crucial role in fostering a positive living environment. Transparency is vital in this process, and a clear procedure for companion animal guardianship decisions should be established. In cases where landlords seek to withhold consent, a fair process involving a Tribunal order should be in place to ensure the interests of both tenants and landlords are respected.

In conclusion, by revising the residential tenancy laws in NSW to accommodate companion animal guardianship, we can create a more inclusive and compassionate rental environment, promoting the well-being of both humans and the animal companions they care for. This approach aligns with the values of responsible guardianship and balances the rights of tenants and landlords for a harmonious coexistence.

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