

# Submission on Keeping Pets in Rental Homes Consultation

**2 December 2022**

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## The NSW Young Lawyers Animal Law Sub-Committee (**Sub-Committee**) makes the following submission on the Consultation into Keeping Pets in Rental Homes (**Consultation**)

### **NSW Young Lawyers**

NSW Young Lawyers is a division of The Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 15 separate sub-committees, each dedicated to particular areas of practice. Eligibility applies to all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

The Sub-Committee comprises a group of over 400 members interested in animal protection laws regulating the treatment of animals. The Sub-Committee aims to raise awareness and provide education to the legal profession and wider community, while increasing understanding about the importance of protecting animals from abuse and neglect. A common theme amongst Sub-Committee members is a passion and desire to use their legal skills and the law to improve protections for animals.

The Sub-Committee welcomes the opportunity to make a submission in response to the Consultation, and makes comments on questions 1, 2, 3 and 4 of the Consultation paper page 6.

## **Summary of Recommendations**

1. The Sub-Committee submits that NSW residential tenancy laws on keeping pets in rental properties should be changed because of their impact on victim-survivors of domestic violence and abuse, tenants' mental health, and housing security.
2. The Sub-Committee supports a model whereby a landlord can only refuse permission to keep a pet if they obtain a Tribunal order allowing them to do so, similar to the model that applies in Victoria, ACT and NT.
3. The Sub-Committee does not support a model where the landlord can only refuse permission to keep a pet on specified grounds - the tenant being able to go to the Tribunal to challenge a refusal based on those grounds - unless the "specified grounds" are clear and reasonable.
4. The Sub-Committee supports the New York City model for regulating the keeping of pets in tenancies, which prevents a situation whereby a landlord, knowing that a tenant has a pet for an extended period of time, has the ability to evict the tenant or refuse their pet for reasons which often are unrelated.

## **Improved mental health of tenants associated with pet ownership and companionship**

Pet ownership experiences vary across the socio-economic strata worldwide and in Australia. However, the impact of COVID-19, as captured across several studies, have reported higher levels of stress, anxiety, isolation, depression, boredom, and other negative emotions.<sup>1</sup> Research indicates that pet ownership may be linked to higher levels of resilience and capacity to respond to adverse situations, including but not limited to reducing anxiety, depression, stress, and other negative emotions experienced by pet owners, primarily through pandemic-related restrictions.<sup>2</sup>

The above trends were also demonstrated prior to the imposition of pandemic-related restrictions;<sup>3</sup> The impact of pets, especially cats and dogs, on mental well-being has been consistent across various geographical locations such as Australia, the USA, and the UK. Studies demonstrate that pet owners show a higher degree of coping ability, self-esteem, and psychological well-being than non-pet owners.

Other studies also demonstrate that pets may be increasingly helpful in assisting aged individuals with feeling better, preventing social isolation, and reducing anxiety and stress levels by providing sensory stress relief and companionship. These studies have found links that associate physical activities with higher mental resilience and positive outcomes for pet owners by promoting better physical movement and activities.

It is the Sub-Committee's position that pet ownership could affect tenants, particularly vulnerable tenants, regarding their mental wellbeing.

## **Fleeing vulnerable situations such as domestic violence**

The results from studies on domestic and family violence both in Australia and abroad suggest that animal abuse exists in up to 70% of all domestic and family violence cases.<sup>4</sup> The present reality for many victim-survivors of domestic and family violence is that they often delay leaving violent situations because of

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<sup>1</sup> Kent & Mulley, 'Mobile mutts – Transport and the health benefits of pet dog ownership' (2021) 22 *Journal of Transport & Health* <<https://doi.org/10.1016/j.jth.2021.101147>>.

<sup>2</sup> Ibid; Collis & McNicholas, 'A theoretical basis for health benefits of pet ownership: Attachment versus psychological support' (1998) *Companion Animals in Human Health* 105-122 <<https://doi.org/10.4135/9781452232959.n6>>.

<sup>3</sup> Castro & Lindsey, 'Pet ownership, child anxiety, child physical activity and mother's perception of children's health status' (2021) *Human-animal interaction bulletin* <<https://doi.org/10.1079/hai.2021.0029>>.

<sup>4</sup> Lyla Coorey & Carl Coorey-Ewings, 'Animal Victims of Domestic and Family Violence' (2018) 7(1) *Animal Studies Journal* 1, 7.

concerns for the welfare of their animals. Additionally, as addressed before, pet ownership may also help individuals cope with difficult situation with increased resilience.

In a survey of domestic and family violence workers conducted by Domestic Violence NSW:

- 48% said that victim-survivors had delayed leaving their partners for more than a year due to the fear or threat of an animal being harmed;
- 42% said that victim-survivors had delayed leaving their partners for more than a year due to barriers to accessing supports related to their animals;
- 93% said that such barriers were a lack of animal friendly rental accommodation; and
- 92% noted a lack of pet friendly emergency and crisis accommodation.<sup>5</sup>

The NSW government recently offered grants to emergency and crisis accommodation providers or other organisations wanting to improve their capacity to provide short-term assistance for victim-survivors and their pets when leaving abusive situations. While these grants are warmly welcomed, they do not address longer term barriers such as the shortage of animal friendly accommodation in the private rental market.

Presently, most residential tenancy agreements in NSW include a clause preventing tenants from keeping a pet without the landlord's consent. There is no obligation of reasonableness, or any other obligation, imposed on a landlord when considering a request by a tenant to keep a pet. The practical result is a very narrow number of properties available in the rental market that are actually pet-friendly. The statistics above illustrate that the lack of availability of pet friendly rental accommodation directly impacts the time it takes for victim-survivors to leave abusive relationships.

It is the Sub-Committee's position that limiting the circumstances in which a landlord may refuse to provide consent to keep a pet would assist in increasing the availability of rental accommodation that is pet-friendly, thereby addressing a major cause of delay experienced by many victim-survivors in leaving abusive relationships.

## Housing Stability

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<sup>5</sup> Monique Dam & Christine MacCaskill, 'Animals and People Experiencing Domestic and Family Violence: How Their Safety and Wellbeing are Interconnected', *Domestic Violence NSW* (Report, November 2020) 43-5  
<<https://www.dvnsw.org.au/wp-content/uploads/2020/11/Nov-DVNSW-Report-on-Animals-and-People-Experiencing-Domestic-and-Family-Violence.pdf>>.

The Sub-Committee submits that NSW residential tenancy laws should be changed to improve housing stability for tenants with pets. Housing stability promotes a sense of belonging and security for individuals while also minimising the costs and disruption of moving.<sup>6</sup>

Pet ownership currently creates a barrier to housing stability due to the limited supply of pet-friendly housing.<sup>7</sup> While over 60% of Australian households include a pet, only 5.6% of listed rental properties were pet-friendly according to a search conducted in August 2021.<sup>8</sup>

Pet-friendly tenancies are often more expensive and poorer quality than rentals that do not accept pets.<sup>9</sup> The high costs of pet-friendly rentals are often due to the payment for a “pet bond”, cleaning fees and the costs of having an outdoor space, or a location that prevents noise disturbance. As such, tenants with pets may experience a compromise on the property quality, cost and location, which impacts their standard of living.<sup>10</sup> These costs also disproportionately impact vulnerable populations with pets such as low-income groups, victim-survivors of domestic abuse, the elderly and homeless.<sup>11</sup>

Moreover, the difficulty and costs of finding a pet-friendly tenancy may lead to eviction and/or the relinquishment of pets, which severely impacts animal welfare. An estimate of 15-25% of relinquished pets are closely related to pet restrictions in housing.<sup>12</sup>

Housing crises caused by events such as natural disasters, homelessness and, perhaps more relevantly, the COVID-19 pandemic have the ability to trigger an increase in the surrender of pets.<sup>13</sup> Consequently, pet relinquishment can lead not only to personal and emotional challenges for pet owners, but also strain on shelters and pounds. A change in NSW residential tenancy laws to improve access for tenants to keep pets in rental homes will improve housing stability, reduce social inequity and reduce the relinquishment of pets.

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<sup>6</sup> Emma R Power, ‘Renting with pets: a pathway to housing insecurity?’ (2017) 32(3) *Housing Studies* 336, 338.

<sup>7</sup> Taryn M Graham et al, ‘*Pets Negotiable: How Do the Perspective of Landlords and Property Managers Compare with Those of Younger Tenants with Dogs?*’ (2018) 8(32) *Animals* 1, 9.

<sup>8</sup> Intermedia, ‘The Pet Rental Crisis begs for better laws, keep families together and pets out of shelters’ (Web Page, 20 September 2021) <<https://petnews.com.au/the-pet-rental-crisis-begs-for-better-laws-keep-families-together-and-pets-out-of-shelters/>>.

<sup>9</sup> Wendy Stone et al, *Housing and housing assistance pathways with companion animals: risks, costs, benefits and opportunities* (AHURI Final Report No. 350, 2021) 23.

<sup>10</sup> Graham et al (n 7) 2.

<sup>11</sup> Stone et al (n 9) 23.

<sup>12</sup> *Ibid* 15.

<sup>13</sup> *Ibid*.

## **Models that apply in Victoria, the ACT, NT, and the *Strata Schemes Management Act* and Regulations in NSW**

As of 1 July 2020, Victorian landlords are required to seek an order from VCAT in order to refuse consent for a renter to keep a pet.<sup>14</sup> In considering the landlord's request, VCAT may consider things such as the type of pet the renter proposes to keep, the character and nature of the property and anything else the tribunal considers to be relevant.<sup>15</sup>

Similar to Victoria, landlords in the ACT are also required to seek an order from ACAT in order to refuse consent for the keeping of pets in rental properties. However, landlords in the ACT may impose reasonable conditions with respect to the number of animals kept on the premises or the cleaning and maintenance of the premises.<sup>16</sup> Other reasonable conditions may also be imposed with the prior approval of ACAT.<sup>17</sup>

In the Northern Territory, tenants may keep a pet on the rental premises if they provide a written notice to the landlord.<sup>18</sup> The landlord has 14 days to object in writing and make an application to the Tribunal.<sup>19</sup> The legislation sets out grounds which are deemed reasonable to refuse permission to keep a pet.<sup>20</sup>

The Sub-Committee support a model similar to the above-mentioned, requiring the oversight of the NSW Civil and Administrative Tribunal, as we submit that this will ensure that an impartial third will resolve disagreements between tenants and landlords.

Such changes could also reduce the number of pets that are surrendered due their owners moving: In 2019, prior to the amendment, 13.2% of the animals were surrendered to the Victorian RSPCA due to their owners relocating, this figure dropped to 9.5% in 2021.<sup>21</sup>

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<sup>14</sup> *Residential Tenancies Amendment Act 2018* (VIC) ss 2(2), 61.

<sup>15</sup> *Ibid* s 71E(2).

<sup>16</sup> *Residential Tenancies Act 1997* (ACT) s 71AE(4)(a).

<sup>17</sup> *Ibid* s 71AE(4)(b).

<sup>18</sup> *Residential Tenancies Act* (NT) s 65A(2).

<sup>19</sup> *Ibid* s 65A(3).

<sup>20</sup> *Ibid* s 65A(2).

<sup>21</sup> Alanah Frost, 'Pets in rentals Victoria: How reform has fared almost two years on', *Realestate.com.au* (Web Page, 27 December 2021) <<https://www.realestate.com.au/news/pets-in-rentals-victoria-how-reform-has-fared-almost-two-years-on/>>.

Overall, in 2019, 90% of the Australian households have owned a pet at some time and 61% of the Australian households hold a pet today.<sup>22</sup> There are strong policy grounds to restrict landlords' discretion in deciding whether to refuse permission to keep pets, including the prevalence of animal ownership, the role of animals in contributing to community cohesion/well-being, and the respect of tenants' autonomy.

However, the Sub-Committee notes that the Northern Territory model provides exceptions which may not be appropriately adapted. The legislation expressly allows other laws and by-laws to override the permission to keep a pet.<sup>23</sup> This leaves no avenue for the tenant to appeal to the Northern Territory Civil and Administrative Tribunal. The Sub-Committee does not support this element of the Northern Territory model.

In addition, the Sub-Committee submits that, in the NSW context, the *Residential Tenancies Act*<sup>24</sup> provides sufficient protection for landlords by way of making good provisions<sup>25</sup> and the general (i.e. not pet-specific or increased on account of a pet) requirement to pay a bond<sup>26</sup>. If there is a strong reason that a tenant should not house a pet, the onus ought to be borne by the landlord to evidence the reason in order that there is a clear and open path for tenants to secure accommodation with pets.<sup>27</sup>

## The New York City model

The Sub-Committee submits that consideration should be given to incorporating certain elements of models adopted overseas to further protect the fair rights of tenants with pets – in particular that of New York City.

In New York City, a landlord may not evict or refuse a tenant to own a pet if the following conditions are met:<sup>28</sup>

- 1) the tenant has kept a pet “*openly and notoriously*”;
- 2) the landlord (or their agent) has known or should have known of the pet for three (3) months or more; and

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<sup>22</sup> Animal Medicines Australia, *Pet Ownership in Australia: A national survey of pets and people* (Report, 2019) 6 <[https://animalmedicinesaustralia.org.au/wp-content/uploads/2019/10/ANIM001-Pet-Survey-Report19\\_v1.7\\_WEB\\_high-res.pdf](https://animalmedicinesaustralia.org.au/wp-content/uploads/2019/10/ANIM001-Pet-Survey-Report19_v1.7_WEB_high-res.pdf)>.

<sup>23</sup> *Residential Tenancies Act* (NT) s 65B2(d).

<sup>24</sup> *Residential Tenancies Act 2010* (NSW).

<sup>25</sup> *Ibid* s 51(2),(3).

<sup>26</sup> *Ibid* s159.

<sup>27</sup> *Ibid*.

<sup>28</sup> *Administrative Code of the City of New York*, 27 § 27-2009.1 (American Legal Publishing Corporation 2016).



- 3) the landlord does not begin court proceedings within the three (3) months of gaining knowledge of the pet.

The landlord does not need 'actual' knowledge of the existence of the pet.<sup>29</sup> The test in determining whether the landlord 'should have known' of the pet is whether the pet was housed in a customary manner<sup>30</sup> and whether the landlord should have reasonably known of the existence of the pet.<sup>31</sup> 'Openly and notoriously' means that owner does not deny the ownership of the pet from the landlord or keep the pet hidden or in secret.<sup>32</sup> This applies irrespective of whether the tenancy agreement contains a blanket pet prohibition clause.<sup>33</sup>

The Sub-Committee supports this element of the New York City model as it helps to prevent a situation whereby a landlord, who, knowing that a tenant has a pet for an extended period of time, has the ability to evict the tenant or refuse their pet for reasons which often are unrelated.

## Concluding Comments

NSW Young Lawyers and the Sub-Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

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<sup>29</sup> Gollberg & Lindenberg, P.C, 'New York City Pet Law', *Glnylaw* (Webpage) <<https://www.glnylaw.com/practice-areas/general-principles-of-landlord-tenant-law/new-york-city-pet-law/#:~:text=In%20New%20York%20City%20regardless,The%20pet%20cannot%20be%20secreted.>>>.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Bikram Singh, 'NYC Pet Law: Living with Your Pet in a No-Pet Building', *Singhranilaw* <<https://www.singhranilaw.com/post/nyc-pet-law-living-with-your-pet-in-a-no-pet-building>>.

<sup>33</sup> Ibid.

