



Animal Defenders Office
Using the law to protect animals

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The Animal Defenders Office is accredited by Community Legal Centres Australia Inc.

Residential Tenancies
Policy & Strategy, NSW Fair Trading
Department of Customer Service
4 Parramatta Square
Parramatta NSW 2150

11 August 2023

By email: residentialtenancy@customerservice.nsw.gov.au

Dear Sir/Madam

Re: Improving NSW rental laws

Thank you for the opportunity to provide a submission to the consultation process regarding NSW rental laws.

Our comments on Chapter 4, ‘A new model for keeping pets’ of the *Improving NSW rental laws consultation paper—July 2023* (“the consultation paper”) are set out below.

About the Animal Defenders Office

The Animal Defenders Office (“ADO”) is a not-for-profit community legal centre that specialises in animal law. The ADO provides pro bono animal law services to the community. The ADO is a member of Community Legal Centres NSW Inc., the peak body representing community legal centres in NSW.

Further information about the ADO can be found at www.ado.org.au.

ADO comments – A new model for keeping pets

1. The ADO submits that the proposed model disproportionately favours landlords and disadvantages renters and their animals. The proposed model does not follow best practice in jurisdictions such as the ACT, the NT, and Victoria, where the onus is on the landlord to apply to a tribunal if the landlord wants to refuse a current or future tenant from keeping one or more animals at the rented property for any reason. The consultation paper does not explain why the proposed model has rejected the approach adopted in these jurisdictions, which constitute a majority of jurisdictions which have reformed their rental laws in this respect.

In the absence of a justification or explanation, the ADO submits that NSW should adopt a model based on the approach in the ACT, the NT, and Victoria.

2. Previous consultation processes on this issue have acknowledged that NSW rental laws need to be updated because current laws in NSW may unjustifiably impact on vulnerable and disadvantaged members of our community, including victims of domestic violence, those suffering from mental health issues, and those living on their own – all of whom may be deterred from leaving their current abode due to concerns about finding rental accommodation that allows them to keep their animal(s).¹ The ADO also notes that NSW strata laws have been changed recently to make it easier for residents to keep animals.²

For these reasons, the ADO submits that the NSW should adopt a model that minimises the onus on tenants and requires landlords to apply to a Tribunal to approve its reason(s) for refusing animals in their property.

3. In order to achieve the right balance for renters and landlords, the ADO submits that the NSW model should also adopt the following features of models in other Australian jurisdictions:
 - a. Requiring a tenant to notify the landlord of the tenant’s intention to keep one or more specified animals and giving the landlord 14 days to object (NT). Using the proposed ‘pet form’ would be an appropriate way to notify landlords.³
 - b. Requiring a landlord who wishes to refuse the request to keep the animal(s) to apply for an order from the relevant tribunal within 14 days of receiving the tenant’s request, regardless of the reason for the refusal (Victoria, ACT, NT).
 - c. Prescribing in law matters the tribunal may take into consideration before reaching its decision (Victoria, ACT, NT).
 - d. Voiding any condition requiring a tenant to provide extra rent, rental bond or security (QLD).
4. The ADO does not support the proposed 21-day period for landlords to consider notices from tenants about wanting to keep an animal at the property.⁴ The ADO submits that this is too much time to be keeping animals and their keepers in limbo. Animals would require accommodation, feeding, and other forms of care during this time which could create difficulties for the animals and those involved in their care during a longer wait period. Other jurisdictions give 14 days which is more appropriate and achieves a fairer balance between the renters, the animals, and landlords.

¹ *Keeping Pets in Residential Tenancies – Consultation – October 2022*, Department of Customer Service NSW 2022, p 4.

² *Strata Schemes Management Act 2015* (NSW) section 137B and *Strata Schemes Management Regulation 2016* (NSW) regulation 36A.

³ The consultation paper, 4.2 p 7.

⁴ *Ibid.*

The ADO therefore submits that 14 days is a more appropriate amount of time for a landlord to consider a request to keep an animal.

5. The ADO does not support allowing landlords to cite prescribed reasons for refusing consent to keep animals without applying to a tribunal. In particular, the ADO does not support the following reasons proposed in the consultation paper:

a. *Keeping a restricted dog or dog declared dangerous or menacing.*

The ADO submits that this should be assessed on a case-by-case basis by a tribunal. Each declared dangerous or menacing dog, or restricted dog, is different. Some may be dogs with temporary behavioural or temperament issues due to being transferred between several carers and owners. Others may be rescued dogs from violent backgrounds, including domestic violence or being trained for dog fighting or pig dogging. NSW law acknowledges this status may be transient and allows declarations of dangerous and menacing dogs to be revoked after 12 months.⁵ Keepers of declared dangerous or menacing dogs already struggle to keep their dogs and rehabilitate them. NSW laws preventing the transfer of ownership of these dogs are already the harshest in the country on this issue.⁶

b. *If keeping the animal breaks other laws, such as the Prevention of Cruelty to Animals Act 1979, council zoning laws or council ordinances.*

The ADO submits that a court or enforcement officers authorised under the relevant legislation should determine this rather than landlords. In particular, it should be left to these entities and not to landlords to decide when POCTA legislation may be breached. However, animal welfare is a valid consideration so landlords should be able to raise their concerns with the tribunal about potential negative animal welfare outcomes for an animal or animals if housed at the property.

c. *The landlord has previously received an exclusion from the NSW Civil and Administrative Tribunal (the Tribunal) for the property, type of animal, or number of animals.*

The ADO does not support this proposed default ground for refusal as there are many variables (eg size, age, breed, health, exercise needs, relationship between the renter and their animal(s), etc) when it comes to individual animals living in particular properties, and too many to allow this to be an automatic reason for not permitting animals to be kept at rental properties on an ongoing basis.

d. *Keeping the pet would exceed a reasonable number of animals being kept at the property.*

The ADO does not support this as a default reason to refuse as it does not take

⁵ *Companion Animals Act 1998* (NSW) s 39.

⁶ *Ibid* ss 52A and 52B.

into account the variety of reasons why a person may want to keep multiple animals, including the bonds between the person and/or the animals themselves, or keeping a mother and her offspring together for the benefit of the animals.

- 6. The ADO therefore recommends that the proposed model be rejected and a model based on rental laws in Victoria, the ACT and the NT be adopted, along the lines proposed in this submission.**

Yours sincerely

Tara Ward
Manager and Principal Lawyer
Animal Defenders Office Inc.