



“Animal Welfare by the experts –
those who keep, care for and breed animals.”

www.animalcareaustralia.org.au

22 September 2024

RE: Draft Residential Tenancies Amendment Bill 2024 (Draft Bill)

Thank you for the opportunity to comment on this Draft Bill.

Animal Care Australia (ACA) represents the interests of animal keepers and breeders. We are nationally recognised for our expertise in the keeping and caring of companion animals and pets.

We restrict our comments to those amendments relevant to the keeping of animals by tenants.

We make the following comments and recommendations.

1. ACA supports the Draft Bill generally. The comments and recommendations that follow aim to improve the bill.
2. ACA is resolute that any and all animals that can be kept by the owner of a property should also be able to be kept by a tenant in that property. The only exception is when the landlord can show that keeping the animal or animals is likely to cause irreparable significant damage to the property that exceeds the rental bond.
3. Issues covered by Acts which regulate the keeping of animals should not impinge on the statutes within this Act, including animal welfare, council registration, wildlife licensing, etc. The following Acts all regulate the keeping of animals in NSW.
 - a. Prevention of Cruelty to Animals Act 1979,
 - b. Companion Animals Act 1998,
 - c. Exhibited Animals Protection Act 1986,
 - d. Animal Research Act 1985,
 - e. Crimes Act 1900 sections 79, 80, 505, 530, 531, 547E,
 - f. Local Government Act 1993,
 - g. Local Land Services Act 2013,
 - h. Animals Act 1977,
 - i. Greyhound Racing Act 2017,
 - j. Right to Farm Act 2019,

- k. Game and Feral Animal Control Act 2002,
 - l. Biodiversity Conservation Act 2016,
 - m. Biosecurity Act 2015,
 - n. Environmental Planning and Assessment Act 1979, and others.
4. ACA was concerned (and opposed) during the consultation meeting when the RSPCA NSW representative indicated support for guidelines based on the number of animals kept, requirements to report council registration to landlords and other areas that conflict with paragraph 2 and 3 above.
 5. ACA advises that we represent the interests of all animal keepers and breeders – that is, we represent all stakeholders affected by this amendment. Please be clear that although much of our work is in the area of animal welfare this is not our only area of expertise.
 6. RSPCA NSW has experience with regard to regulating compliance with the prevention of cruelty to animals, in particular dogs and cats. They do not claim or possess expertise in other areas of animal keeping and breeding, nor do they represent the interests of those who wish to keep and breed animals.
 7. RSPCA NSW continues to erroneously claim those who breed animals are running businesses. In the large majority of cases this is simply false. The vast majority of breeders of pet animals in Australia are hobbyists who do so out of a passion for the animals under their care. There is no expectation of profit. The cost charged when selling pets offsets a fraction of the breeder’s costs and goes some way to ensuring the animal is valued by the new owner.
 8. During meetings, including the recent turn the page meeting hosted by the Rental Commissioner, the range of different species of animals considered was largely restricted to dogs and cats. ACA would like to make it clear that there is a huge number of species kept by keepers and breeders, most have specific requirements.

Recommendation 1.

The bill must resolutely resist the temptation to reproduce keeping of animals’ regulation covered by other Acts (including those Acts listed in paragraph 3 above) within the Residential Tenancy Act.

9. Currently there is no restriction on the questions that can be asked as part of an application for a tenancy. Landlords and agents can simply ask if the applicant has pets and then refuse all such applications on this basis. This completely negates the purpose of Object (b) of the Draft Bill.
10. Section 73E (2)(a) requires the landlord to give consent within 21 days after the application to keep a pet is made. For new tenancies, this means there is a 21 day period where new tenants await approval to keep their animal or animals.

11. Object (b) currently states “to enable residential tenants to obtain consent to keep animals...”.
12. The current Draft Bill will not operate as intended without resolving the above. Consent must be the default presumed position. The landlord must apply to the Tribunal to withdraw consent.
13. Recommendation 2 that follows enacts a presumption animals can be kept. If this recommendation is not implemented then the bill must include a section specifically preventing application forms from asking about pets, it must also resolve the 21-day wait for consent issue.

Recommendation 2.

Replace object (b) with the following:

- (b) to enable default consent for tenants to keep animals and to set grounds for a landlord to withdraw consent.

In Section 73B (1) replace the words “with the landlord’s consent.” with the words “unless a pet restriction authority is in place which authorises the landlord to withdraw consent.”

Edit the wording of consequential sections to

- replace “landlord’s consent” with “landlord’s withdrawal of consent”, and
 - replace “application for consent” with “application to withdraw consent”,
- and similar replacements throughout the Draft Bill.

14. Restrictions on menacing, dangerous and restricted dogs are specified within the Companion Animals Act 1998. Permits issued to owners of such animals include requirements with which the owner is required to comply. Whether the owner of the animal owns the property in which they reside or is a tenant is not relevant.

Recommendation 3.

Delete Section 73D (2)(a) in its entirety.

15. Section 73G (4) and (5) are setting considerations the Tribunal may take into account when deciding to issue a pet restriction authority. These considerations do not relate to damage to the landlord’s property directly.
16. A residential premises is only unsuitable for an animal if it is reasonable to presume the animal is going to cause extensive damage to the property.
17. The number of animals kept, in our experience, is a poor indicator of the damage caused to the property. In fact, more competent keepers and breeders will often keep more animals with excellent husbandry and lower risk of damage to the property.

18. The deciding factor for the Tribunal must be whether the animal or animals are on balance likely to cause irreparable damage to the property.

Recommendation 4.

Replace Section 73G (4) with the following:

The Tribunal may only make a pet restriction authority if on balance the animal or animals are more likely than not to cause irreparable damage to the property.

19. The meaning of assistance animal proposed by Section 73A is not intended or recommended for this use. ACA recommends a broader definition that includes all assistance animals recommended by medical professionals. The following extract to our submission regarding strata details our argument.
- a. Animal Care Australia notes it is difficult to obtain formal recognition of an assistance animal that is a species other than a dog, despite the definition of Assistance Animal being that of ‘a dog or other animal’ in numerous acts. The criteria to receive approval on public transport is restricted solely to dogs. Approval on public transport plays a role in recognition of what an assistance animal is when seeking approval for permits or registration of an Assistance Animal in other situations.
 - b. Animal Care Australia notes the difficulty when attempting to register with your local council. There is no prescribed set of questions, but an applicant must be able to demonstrate that their animal is trained to assist you with a disability. Meaning this comes down to the discretion of the assessing council staff member.
 - c. The medical profession is in the best position to assess whether an animal is assisting a person, whether physically or mentally.

Recommendation 5.

Replace the definition of an assistance animal proposed in Section 73A with the following:

assistance animal is an animal

- (a) defined as such under the *Disability Discrimination Act 1992* (Commonwealth), or
- (b) where the tenant has a statement from a health practitioner recognising the animal as an assistance animal for the purpose of this Act.

(Health Practitioner means as defined in Section 5 of the Health Practitioner Regulation National Law (NSW)).

20. The ACA committee has spent some time brainstorming situations where an **ongoing pet restriction authority** might be appropriate. We can identify scenarios where a specific pet might justify a **specific pet restriction authority**.
21. We cannot identify any situations where there is not already legislation in place that would limit or prevent the keeping of animals of a “specific type”. Examples include limiting the types or species of animals on biosecurity grounds or may limit the types of animals because they cannot reasonably be accommodated based on characteristics of the premises and its boundaries. Such matters are all dealt with in detail by other legislation listed in paragraph 3 above.
22. What does “specific type” in the draft definition of an **ongoing pet restriction authority** mean? Is the intention that it means the factors listed under proposed Section 73G (7) or is it restricted to Section 73G (5)(a), the “type of animal”? If ongoing pet restriction authorities are to be included, then clarification is needed.
23. Currently the Draft Bill implies, but does not specifically state, that an **ongoing pet restriction authority** can ONLY be issued as part of Tribunal proceedings for the issue of a **specific pet restriction authority** and hence the factors upon which the Tribunal decides are the same. If this is the intention, then this should be made clear.
24. The Tribunal will only be privy to opposing evidence regarding the issue of a specific pet restriction authority. Regarding the Tribunal assessment of the **ongoing pet restriction authority** the only evidence is that provided by the landlord.

Recommendation 6a.

Delete ongoing pet restriction authorities completely.

Recommendation 6b.

If Recommendation 4a is not implemented, then add Section 73G (9):

- (9) The Tribunal may only issue an ongoing pet restriction authority when
 - (a) making a specific pet restriction authority, and
 - (b) the factors for making the specific pet restriction authority apply precisely to all animals of the type to which the specific pet restriction authority is made.

25. ACA presumes the tenant is a party to the decision of the Tribunal, however this is not sufficiently clear currently.
26. A tenant must be made aware of their rights to contest the making of a pet restriction authority and the support available to assist them to do so.

Recommendation 7.

Add Section 73G (3)(c):

- (c) the manner in which the tenant may contest the application to the Tribunal as prescribed in the regulation.
- (d) the support available to assist the tenant in contesting the application to the Tribunal as prescribed in the regulation.

27. Children, teenagers, adults, indeed all people are known to damage all manner of fittings, fixtures, walls, etc. in rental premises. People and animals of all types are hosts for a range of parasites. The damage caused by animals is caused by their owners who in this case are tenants.

28. Tenants are already liable for all damage that is not reasonable wear and tear.

Recommendation 8.

Delete Section 73J in its entirety.

Please don't hesitate to make contact if we can assist further.

Regards



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