

Pet-friendly accommodation in New South Wales **A discussion paper by the Cat Protection Society of NSW Inc**

1. Pet-friendly accommodation

As property prices rise and the population increases, people are moving to higher density housing and living in closer proximity to each other. As well as an increase in density, there is a decrease in home ownership, with many people unable to afford to own their own home. Therefore more people are living in strata units and renting.

Each year in NSW about 60,000 cats and dogs are euthanased because there are no homes for them. A significant and growing contributor to this death toll is the lack of pet-friendly accommodation, for both renters and owners. If we are to tackle the problem of killing countless healthy cats and dogs each year, we must make it possible and legal for the pet-loving population to responsibly keep their pets.

2. Current laws for renters

The law that applies in NSW to private renters and owners with a written or oral residential tenancy agreement is the *Residential Tenancies Act (RTA)*¹. If they are living in a strata unit, then they also come under the applicable by-laws for that strata scheme under the authority of the *Strata Schemes Management Act (SSMA)*².

Under the *RTA* owners and tenants alike have rights and obligations to each other, which is set out in the act. These include but are not limited to:

Renters:

- Pay the rent on time³
- Pay a bond for any damage⁴
- Pay for any damage the tenant or guests cause⁵
- Not to interfere with the peace comfort or privacy of neighbours⁶

Owners:

- Rent the premises in reasonable state of cleanliness and fit to live in⁷
- To give rent receipts⁸
- Provide 60 days written notice of a rent increase⁹

¹ *Residential Tenancies Act 2010* (NSW) herein referred to as RTA

² *Strata Schemes Management Act 1996* (NSW) herein referred to as SSMA

³ *RTA s33*

⁴ *RTA s 32*

⁵ *RTA s 52*

⁶ *RTA s 51*

⁷ *RTA s 52*

⁸ *RTA s 36*

⁹ *RTA s 41*

- Ensure the quiet enjoyment and use of the premises by the tenant¹⁰
- Provide reasonable repairs and maintenance of the rented premises¹¹

Although the *RTA* is relatively comprehensive in rights and responsibilities of parties, it is silent on the keeping of pets and how that should be managed.

However, the most recent reform of the *RTA*, which took effect 31 January 2011, now allows owners to charge for professional carpet cleaning if the owner permits the tenant to keep an animal on the residential premises¹². Previously it was deemed a prohibitive term to charge for carpet cleaning even while a pet was on the premises. The aim of this amendment was to encourage owners to lift their pet bans by giving them more avenues to recover cleaning costs. Although this is a step in the right direction, this may not adequately compensate or offset the fear of risk by owners, and may have limited positive results for pet owners.

The situation becomes more complex if the tenant wishes to keep a pet in rented premises under a strata scheme. Firstly, they must have approval by both the owner and the owners corporation of that particular strata scheme. If the tenant is allowed pets under the tenancy agreement, the owners corporation may still refuse the tenant's request. If the owners corporation has pet friendly by-laws, the owner may still refuse, ultimately resulting in a pet ban for the resident.

The current approval process for renters with pets can be a very daunting and gruelling exercise that tends to be balanced in favour of the property owners making it near impossible for tenants to lawfully keep their pet.

3. Current laws for owners

Generally an owner of a house may keep pets with few restrictions other than those imposed by local councils and the *Companion Animals Act*¹³. These are general rules applying to everyone, no matter what type of housing they live in.

However, if the home owned is in a strata scheme, it will also be governed by the rules and by-laws of that scheme. As stated above, the law in NSW that applies to people living in strata units/townhouses is the *SSMA*.¹⁴ Under the *SSMA* the owners corporation must create by-laws, which set out the rules and regulations that all residents (owners or renters) of the strata scheme must abide by.

In order to determine whether the strata scheme is pet-friendly, the pet owner must first examine the by-laws, which can be obtained from the strata property manager. Generally, the by-laws will state one of the following:

- No pets allowed

¹⁰ *RTA s 50*

¹¹ *RTA s 63*

¹² *RTA s 19 (3)*

¹³ *Companion Animals Act 1998 (NSW) CAA*

¹⁴ *Strata Schemes Management Act 1996 (NSW) SSMA*

- No pets allowed without prior approval of the owners corporation, usually with a clause stating that this approval must not be withheld unreasonably
- Small pets allowed but must inform the owners corporation
- Open policy or is silent on the keeping of animals

These are just the most common pet by-laws; they can be varied as the owners corporation deems appropriate.

Owners corporations have the ability to amend or repeal their by-laws at any point through a general meeting of the owners' corporation via a special resolution¹⁵ with few restrictions. A special resolution requires a 75 per cent majority vote based on unit entitlement.¹⁶ The current restrictions on amending strata by-laws by owners corporations are covered under s 49 of SSMA and include, among others:

- Cannot restrict children or anyone under the age of 18¹⁷
- Cannot prevent the keeping of a guide dog or an accredited assistance dog.¹⁸

With few restrictions, the potential impact of changes in by-laws for a previously pet-friendly strata building is it may be changed into a building with a pet ban. This *might* not affect existing owners with pets at the time of the special resolution but it will affect any new pet-owning purchasers coming into the building. It will also prohibit the existing owners from replacing their current pets (for example, if they die) and from selling the unit to a pet owner. Also, existing owners who bought into the development as a pet-friendly building and do not currently have a pet will be restricted from getting one, now and in the future, or until the by-law is changed.

4. Issues for landlords

Landlords are looking for a return on their investment: they want good tenants who will pay their rent on time and look after the property. Generally they will not want the property to be vacant for extended periods of time so will look favourably on tenants who are committed to a long-term lease. They would prefer to not have to deal with disputes with neighbours as this is time-consuming.

Responsible pet owners can meet all the wishes of a landlord. However, irresponsible pet owners can present a greater risk to landlords in terms of damage to property and complaints about noise or annoyance to neighbours. That said, the absence of pets does not magically make people good or reliable tenants. Just as landlords seek references to attest to a tenant's capacity to meet their obligations, landlords could seek references that attest to the tenant's pets being 'good tenants'.

Although it is illegal to charge a pet bond in NSW, landlords are entitled to be paid for any damage caused by the tenant. Arguably the risk of damage to property (and complaints) from a wild party is far greater than the risk of damage from a domestic cat who sleeps about 18 hours a day.

¹⁵ SSMA s 47

¹⁶ <http://www.strataman.com.au/bylaws.html#changes>

¹⁷ SSMA s 49(3)

¹⁸ SSMA s 49(4)

The real issue for landlords then, is not 'pets' or 'no pets' but finding good, reliable tenants. By excluding pet owners from consideration, the pool of potential candidates from which to find 'good' tenants is significantly reduced. It is therefore in the landlord's best interest to not apply exclusion criteria to pet owners, but rather to apply inclusion criteria to tenants – based on references.

Responsible pet owners will be willing to provide references for their pets and landlords should be willing to consider these. A documented pet agreement as a part of the lease should provide additional assurance to the landlord, and a responsible pet owner would be willing to give undertakings about the responsible care of their pets and the landlord's property.

Given the tight market for pet-friendly accommodation, a pet-owning tenant is more likely to be a long term tenant, reducing the costs of turnover. Developers report a financial premium attached to pet-friendly units; clearly in a tight market the same would apply to rental properties.

5. Issues for owners corporations

Owners corporations might be concerned that allowing pets in their strata scheme will lead to noise, disputes between neighbours and hygiene issues ... realistically, these concerns could equally be created by two-legged tenants. Just as landlords are concerned with finding 'good' tenants, owners' corporations are looking for 'good' neighbours, and the best way to achieve this is to set down practical and reasonable rules for pet owners and straightforward dispute resolution procedures.

An arbitrary limit on animal size or numbers is neither practical nor reasonable. For example, pairs of pets can be happier as they enjoy each other's company and are therefore less likely to engage in unwanted behaviours. Well-exercised big dogs can be more suited to apartment living than small working dogs. Rather than nominating criteria about the permitted pets, owners corporations would do better to concentrate on what they expect of all occupants in terms of being considerate neighbours.

Sydney prestige property agent Jennine Leonarder-Collins told the *Sydney Morning Herald* "I will often say to owners of apartments in smaller blocks that they are nuts to have a no-pets policy. Apartment buildings that ban animals do a disservice to their owners and limit the money they can fetch." (p48, SMH, 8 August 2009)

Many new developments promote themselves as pet-friendly and have incorporated pet-friendliness into the buildings' designs. They have sound commercial reasons to do this.

As well as a financial premium, there is a social benefit to pet-friendly living. In *Living Well Together: How companion animals can strengthen social fabric* (Petcare Information & Advisory Service Pty Ltd and the Centre for the Built Environment and Health (School of Population Health), University of Western Australia, 2009) editor Dr Lisa Wood notes that pets have been found to act as a lubricant for social contact and interaction, and that pet owners were more likely to exchange favours with neighbours, be involved in community issues and have higher levels of social capital.

Banning pet ownership in strata precludes all the benefits that companion animals bring to their owners and to the community but it does not and cannot guarantee a clean and noise-free property. It also does not guarantee the premium price that can be gained by being a pet-friendly property.

Pet owners living in strata need to be mindful that by-laws can change and today's pet-friendly apartment may be a pet-owner's nightmare tomorrow. It is vitally important that owners of strata property who wish to keep pets are actively involved in the owners corporation.

6. Current pet-friendly laws in other jurisdictions

The *Unit Titles Act*¹⁹ in the Australian Capital Territory is a piece of legislation dealing with the law surrounding owner's corporations. *Section 51A*²⁰ allows an owners corporation to refuse an application for the keeping of a pet. However, it also has a clause, s 51A(3)²¹, which states that the owners corporation cannot unreasonably refuse an application to keep a pet. The impact of this clause is that decisions made by the owners corporation must be made in a rational and logical way so they can account for that decision. If a tenant is refused their application to keep a pet, they may request reasons for that decision. If none are provided or they believe the reasons given are unreasonable, they may apply to the relevant tribunal to have a hearing of the merits of the decision. The tribunal will then decide whether the owners corporation has acted unreasonably.

Currently in NSW, the owners corporation does not have to give reasons unless they have voluntarily inserted the unreasonable clause into their by-laws. If they have not, decisions made by the owners corporation relating to applications for keeping an animal are hidden and protected from review.

This mandatory clause in the ACT encourages owners corporations to genuinely and seriously consider an application on its merits and to take responsibility for the decision they make.

In Western Australia, the *Residential Tenancies Act*²² allows a pet bond to be charged when a tenant has been allowed to keep a pet on the premises. This is one of the only jurisdictions in Australia to allow a 'pet bond' to be charged. The maximum amount that can be charged per tenancy is \$100 regardless of the number of animals on the premises. There has been some comment that although the pet bond endeavours to encourage more owners to be pet-friendly in their residential agreements, the amount does not represent a realistic incentive for reluctant owners to change their pet policies.

In Ontario, Canada, the legislature has made it illegal to evict a tenant on the basis that they keep a pet on the rented premises. Under s 14 of the *Residential*

¹⁹ *Unit Titles Act 2001* (ACT)

²⁰ *Unit Titles Act 2001* (ACT)

²¹ *Unit Titles Act 2001* (ACT)

²² *Residential Tenancies Act 1987* (WA)

*Tenancies Act*²³, it prohibits owners including a 'no pets' clause in the residential agreement, and if included will be considered void. Although they are allowed to question potential tenants if they have a pet, they are not allowed to evict a tenant on that basis once they have gone into possession of the premises.

7. Possible reforms to expand pet-friendly accommodation

Pets bonds

Currently under the *RTA*²⁴ in NSW, owners are not allowed to charge tenants who have pets on the property any bond over and above the normal residential bond. That being said, property owners are still protected by the normal bond payment for any damage done to the property, including any damage caused by a pet. However, in order to address the concerns that the bond payment does not adequately cover potential damage done by tenants, there may be a need for a separate device with additional funds to cover any particular damage done by the tenant's pets. This would give the property owner more peace of mind that damage caused by irresponsible tenants would be covered by the fund.

A proposed pet bond in NSW could be similar to Western Australia's pet bond with two key differences. First, in order to provide the essential peace of mind, the bond needs to better represent the concerns and anticipated risk. In Western Australia the maximum amount that can be charged as a pet bond is \$100, irrespective of the number of pets. This has been seen to be a value that is unrealistically low and fails to address the concerns held by property owners. Nominating a dollar value is unhelpful; it would make more sense to calculate any pet bond as a percentage of the standard bond, or a value of rent (eg pet bond could be two weeks rent).

A second difference could be the potential to charge a bond on a 'per pet' basis. Although there is no evidence to suggest that multiple pet households cause any more damage than single pet households,²⁵ this amendment would quell the concerns of owners of the potential risk of animal hoarders²⁶.

Pet agreements

A pet agreement is a contract between the tenant and the owner of the property, which outlines the expected behaviours of the tenant and their pet. Depending on the agreement, it can cover situations that might arise and the actions to be taken in the event that problems or issues occur.

The pet agreement is a personal guarantee, which protects against any damage caused by the tenant and it usually gives a right to the owner to 'evict' the pet if the

²³ *Residential Tenancies Act 2006* (Ontario, Canada)

²⁴ *Residential Tenancies Act 2010* (NSW)

²⁵ in fact two pets may be better than one as they are social beings and a playmate can help alleviate any potential boredom

²⁶ Involves keeping higher than usual numbers of animals as pets without having the ability to properly house or care for them.

pet is causing nuisance and/or the tenant is not being a responsible pet owner as outlined in the agreement. This gives the owner another avenue to recoup damages or deal with the tenant if there are problems, and it holds the tenant to account for any breaches. Furthermore, if the tenant is living in a strata unit, there can also be a contract between the tenant and the owners corporation outlining similar actions, which may be taken by them if the tenant does not abide by the contract.

Ban on pet restrictions in rental agreements

Currently in NSW, if the owner discovers that the tenant is keeping a pet on the rented premises and the rental agreement has a 'no pets' clause, the owner may evict the tenant for breach of contract even when the pet is not causing any problems.

A recommendation to ban an owner's right to evict a tenant on the basis of keeping a pet would be similar to the situation in Ontario, Canada. It would require a change in the legislation to disallow owners from restricting the keeping of pets, though the keeping of pets would still be subject to the local council rules and to the strata by-laws. The owner would not be able to evict a tenant solely on the basis of keeping a pet. However, if the pet were causing a nuisance, the usual avenues for eviction and/or remedy would be available to the owner.

Shifting the burden to owners corporations to justify pet refusal

Most owners corporations who do not have a pet ban will have a by-law that states:

"no animal allowed without prior written approval by the owners corporation and this approval must not be withheld unreasonably"

This allows the owners corporation to retain control on what type and number of animals are allowed to reside on the premises. Since the owners corporation has the power to amend the by-laws with few restrictions, there have been some schemes that have removed the *"must not be withheld unreasonably"* in order to avoid any form of review of their decisions. This allows them to make decisions without giving reasonable reasons to the aggrieved resident and exempts them from justifying their decision. This is problematic as it does not allow for equal and fair representation and it can lead to capricious decision making, or decisions made based on a particular bias, leaving the resident at the whim of the owners corporation.

In the Australian Capital Territory, if the owners corporation refuses an application to have a pet, it must give reasons for withholding approval. If those reasons are unreasonable or deemed unreasonable, the tenant/unit owner has the ability to seek a review of that decision and can get an order from the tribunal, either approving the decision or overturning it and allow the animal on the premises. This approach is a fairer and more equitable approval process, giving consideration to a variety of views and concerns rather than simply allowing a select and privileged few to set the rules without reason or justification.

A more radical option would be to implement a blanket approval for all pets, and if the owners corporation does not want a particular animal on the premises, the onus would be on the owners corporation to show reasonable cause why the animal needs to be removed. Considering where the law stands today, this approach is unlikely to find favour.

Insurance policy

This would require the participation of the private sector by pricing the risk and creating an insurance policy for pet owners who are renting or owners who are part of a strata scheme. The policy would provide coverage for any damage or loss caused by a pet, and the premium would be paid by the tenant (or strata unit owner). If such insurance were available, landlords could request pet-owning tenants to be appropriately insured as a condition of being allowed to keep pets, or tenants could include evidence of insurance in rental applications and pet agreements.

8. Conclusion

As long as your pets do not interfere with the ability of your neighbours to enjoy their property, then arguably your neighbours should not be allowed to restrict your right to the quiet enjoyment of your property, which might include having a pet. So long as the animal does not interfere with your neighbours' rights, there should be little reason for them to complain. If there are problems, then there are numerous avenues that can be used to rectify the situation. There is no difference between dealing with a potentially noisy neighbour and a potentially noisy dog or cat, but people living in strata are at the mercy of owners corporations that can legally enforce pet bans without reason, and without explanation.

For renters with pets, only small steps, such as the amendment to permit charging for professional carpet cleaning, have been made to reform the *RTA*. However, in order to properly address the problem, better legislation that protects both landlords and pet-owning tenants must be enacted. We must make it possible and legal for the pet-loving population to responsibly keep their pets.

In the absence of better legislative protections, there are actions that individuals can take, such as strata owners ensuring their owners corporation has put in place fair and reasonable by-laws; tenants preparing pet résumés and negotiating pet agreements; and landlords being open to renting to responsible pet owners.

Research shows pets provide significant physical and mental health benefits to people. People have enjoyed the companionship of animals for some 10,000 years. Housing design and law need to provide for the maintenance of this important relationship which is essential to human wellbeing.

Housing restrictions on pet ownership diminish social capital and condemn homeless pets to death. There is an urgent need to change this situation, for the sake of animals and for the sake of people.