

Submission from the Cat Protection Society of NSW to the NSW Department of Customer Service, Statutory review of the domestic violence provisions in the Residential Tenancies Act 2010 – October 2022

The picture of renting with a pet in a situation of domestic violence is a highly unique one, and tragically complex. The Issues Paper guiding this review does not mention companion animals once, and they are also absent from ‘circumstances of domestic violence’ specified in the *Residential Tenancies Act 2010* (‘the Act’). As a shelter for domestic cats, we are highly engaged with people because cats are the companions of people. We are acutely aware of, and sensitive to, the issues surrounding domestic violence and pets. DV-affected animals, their tenant owners, their shared hardships and pathways to safety are a part of what we do. Working in a One Welfare framework, which emphasises the necessary necessary interconnectedness between the health and wellbeing of people, animals, and the environment, our mission is that every cat deserves a loving and responsible home. Naturally, this extends this to the victim-survivors who love them.

The correlation of violence towards animals and other humans is well established. Internationally, studies show that between 21% to 89% of domestic and family violence cases involve harm to pets and/or threats of such (Cleary, 12). Harm to pets can range from overt physical cruelty to more covert neglect; largely affects pets owned by the victim rather than the perpetrator; and is primarily used by perpetrators to control, coerce, or intimidate their human victims (Cleary, 12). Witnessing violence to their pets is a distinct part of the victim’s trauma, and fear for their pets is a significant factor in their decision to leave (Cleary, 13; Summers, 38). Many human victims do not recognise a personal or moral difference between their victimisation and that of their pet, but consider their hardships one of shared solidarity (Fitzgerald, 357); by contrast, their tormentors are more likely to view pets as objects to be owned as property (Cleary, 15). Owners and pets remaining together is overwhelmingly beneficial to the health and healing of both, but this powerful human-animal bond runs into distinct difficulties. Despite significant concern for harm and threats to their pets, victims with pets are more likely to delay leaving, and show greater reluctance to seek help and report to the authorities (Cleary, 14). Evidence from New York State’s URIPALS initiative shows that victims with pets who escape will often return to a violent home or sleep rough when faced with separation into different shelter systems (URIPALS, 4; 2).

Animals in NSW strata and rental properties is a contentious topic. In 2021, blanket bans on pets in strata properties were outlawed, but the rental sector has yet to follow. AHURI’s recent *Final Report No. 391* notes that nationally, a majority of the 970 surveyed property investors support the right of tenants to live with their pets, but also that those favourable to pets in rentals tend to “hold contradictory positions regarding landlords’ rights — so these commitments may be unreliable” (AHURI, 3).

Tenancy legislation across Australia exists at the state and territory levels rather than federal, and has developed over time “without national co-ordination and numerous differences have opened up between jurisdictions” (AHURI, 3). Currently, NSW landlords have full remit to include no-pets clauses in their lease agreements, and to judge pet-owning applicants on a case-by-case basis not governed by clear, formal guidelines. It surprises no-one that, therefore, many NSW tenants take the risk and hide pets from their landlords; domestic violence, like all forms of abuse, thrives on secrecy – and so the need to maintain secrecy about a concealed pet in a rental property could easily be exploited.

Owner-surrendered cats comprise a minority of admissions to Cat Protection, but largely they come to us because their owner cannot find pet-friendly accommodation. We are a no-kill shelter, but across the state cats in pounds and shelters are euthanased at a far greater rate than dogs (CIE, 9). Co-sheltering (that is, crisis and relief centres which accommodate humans and their pets together) is a growing area of concern in the shelter and advocacy sectors and in research settings, but in practice remains very thin on the ground across the world.

In NSW, around a third of residents are renting their place of abode. According to the ABS’ 2016 Personal Safety Survey, 23% of Australian women had experienced physical or sexual violence from a partner since the age of 15. Anne Summers reports that 28% of women with children who fled a violent partner left for a rental or other property; and for 36.6% of all victimised women (mothers or not), violence escalated during the process of separation (Summers, 47; 46). Around half temporarily separated, typically more than once, and cited reasons of housing and financial insecurity for returning (Summers, 43-4; 43). Co-sheltering opportunities must become more available for domestic violence relief across *all* sectors, including rental.

It is in this light that we offer our submission to this review. Our main points concern the protection of human and animal victims from penalties, liabilities, and privacy breaches in the process of ending a tenancy due to domestic violence. Our guiding philosophy is the inclusion of pets – in rentals, in criminal law as victims, and their representation in declarations and by competent persons.

We commend the expanded scope of ‘competent person’ noted in stakeholder feedback on p. 10 of the Issues Paper, and consider that experts working with animals, such as veterinarians and animal welfare inspectors, should be consulted about their potential inclusion. Research on vets’ perceptions of the link between human and animal abuse confirms that there is knowledge of the link across the discipline, and that veterinarians understand that those who abuse animals are more disposed than others to spousal and child abuse (Green and Gullone, 623). Animal abuse substantiated by a trained professional should be considered acceptable evidence included in a declaration to aid a tenant and their pet’s flight from violence.

The possibility of a forbidden pet being revealed in the process of ending a tenancy due to domestic violence is a major concern. In the absence of a blanket ban on no-pets lease clauses, a declaration made by a competent person could contain evidence of a disallowed pet, for which the tenant would likely be held liable. If NSW law is not to prohibit no-pets clauses, then it ought to forgive these tenants and their

pets for breaking the lease. If the 2019-20 reforms to the Act relieve a tenant of the final notice period specified in their lease, it can relieve them of certain other duties in the same lease. Further, a victim's fear of their disallowed pet being revealed stands out as an obstacle to their ability to be protected by domestic violence termination notices. They could be penalised with a hefty fine if they are found to have misrepresented anything to this effect in their declaration, *and* if they are found to be in breach of their lease. As mentioned above, pet owners show greater reluctance to leave and engage authorities than those without pets; we cannot assume this reluctance will not extend to their provision of termination notices. We can only wonder how many cases of domestic violence have been prolonged by no-pets clauses in rental lease agreements, but it is not a difficult situation to imagine.

The privacy of the affected tenant and their pet is of paramount concern. Landlords and real estate agents' obligation to obtain a tenant's consent to the use of images containing personal effects which may be personally identifying is tabled in the Issues Paper (pp. 14-5). We support the inclusion of domestic violence as reasonable grounds for non-consent to the use of images, but we make the point that currently, neither the Act nor the Issues Paper specifies what 'unreasonable' non-consent might look like. Landlords and real estate agents may not be aware that visual material containing an animal, a pet bed, or any other belongings — regardless of when, and for how long they resided at the property — could well be recognisable to a perpetrator who could then attempt to locate their victim. Consent should be sought each time, and to each individual photo or recording, from the tenant whose belongings they are, regardless of circumstances. No non-consent is 'unreasonable' in respect of images that can identify a person who should be protected. The seriousness of the consequences for DV-affected tenants demand stronger penalties for privacy breach; \$2,200 is not considered sufficient disincentive to protect a tenant's privacy, particularly one whose life may well depend on it.

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References

Australian Bureau of Statistics (ABS), 2016-7. *Personal Safety, Australia*. <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>> Accessed 29/11/2022.
Centre for International Economics (CIE), 25 May 2022. *Issues Paper: Rehoming of Companion Animals in NSW*. Canberra and Sydney: Centre for International Economics.

Cleary, M., Thapa, D.K., West, S., Westman, M., Kornhaber, R., 2021. 'Animal abuse in the context of intimate partner violence: A systematic review'. *Aggression and Violent Behaviour*, 61, 1-17.

Fitzgerald, A.J. 2007. "They Gave Me a Reason to Live': The Protective Effects of Companion Animals on the Suicidality of Abused Women'. *Humanity and Society*, 31(4), 355-78.

Green, P.C., Gullone, E., 2005. 'Knowledge and attitudes of Australian veterinarians to animal abuse and human interpersonal violence'. *Australian Veterinary Journal*, 83(10), 619-25.

Martin, C., Hulse, K., Ghasri, M., Ralston, L., Crommelin, L., Goodall, Z., Parkinson, S. and O'Brien Webb, E., 2022. *Regulation of residential tenancies and impacts on investment, AHURI Final Report No. 391*. Melbourne: Australian Housing and Urban Research Institute Ltd. doi: 10.18408/ahuri7124801. Accessed 29/11/2022.

Summers, A., 2022. *The Choice: Violence or Poverty*. Sydney: University of Technology Sydney.

URIPALS, 2015. *Escaping Domestic Violence as a Pet Owner*. New York: Urban Resource Institute.