

**Submission
No 11**

**INQUIRY INTO RESIDENTIAL TENANCIES
AMENDMENT (PROTECTION OF PERSONAL
INFORMATION) BILL 2025**

Organisation: Animal Defenders Office Inc.

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Animal Defenders Office
Using the law to protect animals

ABN: 12837355070 | Member: CLCNSW Inc | GPO Box 2259 Canberra ACT 2601 | www.ado.org.au | contact@ado.org.au
The Animal Defenders Office is accredited by Community Legal Centres Australia Inc.

Portfolio Committee No. 8 – Customer Service
Upper House Committees, NSW Legislative Council

By email: PortfolioCommittee8@parliament.nsw.gov.au

Dear Sir/Madam

Thank you for the opportunity to provide a submission to the NSW Legislative Council Portfolio Committee No. 8 – Customer Service’s Inquiry into the Residential Tenancies Amendment (Protection of Personal Information) Bill 2025 (“the Inquiry”). This submission is made on behalf of the Animal Defenders Office.

About the Animal Defenders Office

The Animal Defenders Office (“ADO”) is a nationally accredited 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.

The ADO makes the following comments about the Residential Tenancies Amendment (Protection of Personal Information) Bill 2025 (“the Bill”). The Bill seeks to amend the *Residential Tenancies Act 2010* (NSW) (“the Act”). The ADO’s comments are focussed on the parts of the Bill that may impact tenants and prospective tenants with animals in rental premises.

Keeping pets during consent application and review processes

The Bill proposes to allow a tenant to keep their animal at their rental premises while the tenant awaits a response to an application for consent from the landlord, provided the tenant applies for consent within seven days of moving into the premises (Sch 1, cl [13] proposed s 73B(1A)).

On the face of it this is a positive step in terms of supporting tenants and their animals. However, the ADO has concerns about certain aspects of the proposal that risk undermining the positive impact the proposal may otherwise have.

Keeping an animal during Tribunal proceedings following landlord’s refusal of consent

The proposed amendment does not appear to cover the situation where the landlord refuses consent to keep the animal and the tenant seeks review of the refusal by the

Tribunal. Currently, the proposed provision would not allow the tenant to keep the animal while awaiting the outcome of the Tribunal proceedings. This is because the proposed provision allows the tenant to keep the animal only ‘until the landlord gives the tenant a written response under section 73D’. Section 73D refers only to the landlord responding to an application for consent. It does not include where an application to the Tribunal is made under section 73G of the Act.

To address this oversight, the Bill could provide in proposed subsection 73B(1A) that the tenant may, subject to a separate provision (eg subsection (1B)), keep the animal at the premises until the landlord gives the tenant a written response under section 73D. The additional provision (eg ‘1B’) could then provide that if consent is refused under section 73D(2)(b) of the Act, the tenant may keep the animal at the premises until the period for applying to the Tribunal under section 73G has expired¹ or, if an application to the Tribunal is made, the Tribunal proceedings are finalised.

Keeping an animal after the commencement of the tenancy

A further concern regarding proposed subsection 73B(1A) is that it does not apply to tenants who wish to keep an animal after the commencement of the tenancy; for example, if a tenant were either to be given or to adopt an animal six months in to the tenancy. There is currently no provision for the tenant in this situation to keep the animal while they apply to the landlord for consent. The policy supporting the proposed subsection 73B(1A), ie ‘to make it easier for renters to have pets’², should also apply to a renter in this situation.

The ADO suggests that to remedy this oversight, section 73B of the Act could be further amended to allow a tenant who becomes the owner of an animal during the tenancy period to keep the animal at the premises if the tenant applies under section 73C for the landlord’s consent within 7 days of becoming the owner of the animal. The suggested provision could allow the animal to be kept until the landlord gives a written response under section 73D or Tribunal proceedings associated with the application for consent are finalised.

Where landlord’s refusal to provide consent prevails—termination of agreement by tenant

If a landlord refuses to consent to an animal being kept on the premises and/or this decision is upheld at the conclusion of any related Tribunal proceedings, the ADO

¹ It is unclear whether the Act specifies the period within which an application to the Tribunal for this purpose is to be made. If no such period is specified in the Act, then the period would be 28 days from the day on which the applicant becomes entitled under the Act to make the application (*Civil and Administrative Tribunal Rules 2014* (NSW), rule 23(3)(b)).

² The Hon. Anoulack Chanthivong MP, Second Reading Speech LA (“2R Speech LA”), <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-155298'>.

submits that the Act must allow the tenant to be able to terminate the residential tenancy agreement on that basis.

The ADO suggests that a provision could be inserted in the part of the Act dealing with termination of residential tenancy agreements,³ and titled along the lines of ‘Refusal by landlord to consent to keeping of animals—termination notice by tenant’. Such a provision could allow a tenant to give a termination notice on the ground that the landlord has refused to consent to the tenant keeping an animal at the residential premises and (where relevant), the refusal has been upheld by the Tribunal. The suggested provision could be based on section 98A of the Act. The suggested provision would also need to allow the tenant to keep the animal at the residential premises until the termination date specified in the tenant’s termination notice.

Disclosing factors affecting potential tenants with animals

In 2024 the Act was amended to provide for the keeping of pets in rental premises.⁴ This included allowing landlords to refuse consent to keep a pet on specified grounds (s 73F). Several of the specified grounds go to the nature of the premises and/or objective factors such as local council orders, rather than to the animal whom the tenant wishes to keep on the premises. While the latter circumstances will change from tenant to tenant and animal to animal, the former will remain relatively stable for the life of the premises (“stable factors”). The ADO submits that it would therefore be reasonable to expect that a landlord could include these stable factors in advertisements about the property, so that prospective tenants with an animal, or thinking of keeping an animal, could be fully informed about the viability of the premises from the perspective of keeping a current or future animal.

The Bill could therefore amend proposed section 22B to refer to matters in paragraph 73F(1)(b), (d), and (e) of the Act. This could take the form of an additional subsection that would specify that, if paragraph 73F(1)(b), (d), or (e) of the Act applies to the premises, a landlord or landlord’s agent must specify which of those provisions applies to the premises in any advertisement or other offer relating to the residential premises. Alternatively, the less preferable option (in that it is less certain that it would be enacted) would be to prescribe these matters in the regulations under proposed subsection 22B(5) of the Bill (Sch 1, cl [3]).

The ADO submits that, for completeness, the proposed amendment to section 26 of the Act could be expanded to include a provision requiring the disclosure of information relating to keeping animals (the Bill, Sch 1, cl [5]). The additional provision could require that, if a residential tenancy agreement relates to residential premises to which

³ Part 5, Division 3 of the Act.

⁴ *Residential Tenancies Amendment Act 2024* (NSW): <https://legislation.nsw.gov.au/view/pdf/asmade/act-2024-75>.

paragraph 73F(1)(b), (d), or (e) of the Act applies, the landlord or landlord's agent must disclose this before the tenant enters into the residential tenancy agreement.

Privacy and protection of personal information relating to tenants with animals

The ADO submits that the Act should protect persons wishing to rent with animals. One way to do this would be to prevent landlords asking potential tenants if they keep or intend to keep an animal, information which may otherwise enable landlords to favour applicants who do not have or want animals.

Proposed section 218A in the Bill may help to protect prospective tenants with animals in this way (Sch 1, cl [39]). The provision proposes to allow the regulations to impose restrictions or prohibitions on the collection of tenants' personal information by residential tenancy entities, including the types of personal information that may be collected (proposed s 218A(1)(a)(i)).

The Bill also proposes to omit the definition of 'personal information' in section 209 of the Act (Sch 1, cl [18]) and substitute it with the definition of that term from the *Privacy Act 1998* (Cth) ('Privacy Act') (the Bill, Sch 1, cl [1]). 'Personal information' is defined in the Privacy Act to include 'information ... about an identified individual, or an individual who is reasonably identifiable'.⁵

The Bill further proposes to regulate the type of personal information that may be collected by requiring a 'residential tenancy entity' to collect personal information only in an 'approved form' (Sch 1, cl [21], proposed subsection 210D(1)). The term 'approved form' is currently defined in the Act as 'the form approved from time to time by the Secretary' (s 3). The ADO understands that the Bill is intended to provide 'for the development of a mandatory application form that will be required to be used for all rental applications' and that will contain prescribed information fields.⁶

The proposed amendments would have the effect of regulating the gathering of personal information (as defined in the Privacy Act) for the purposes of rental tenancies. However, under the proposed approach, a ban on landlords asking prospective tenants about animals would need to rely on:

- (a) Information about owning or intending to own an animal meeting the definition of 'personal information' in the Privacy Act; and
- (b) The government of the day:
 - (i) making regulations that specify this type of personal information for the purposes of proposed section 218A(1)(a)(ii); and/or
 - (ii) ensuring the 'approved form' for collecting personal information relating to an application for a tenancy (as provided for in proposed

⁵ Privacy Act s 6.

⁶ 2R Speech LA.

subsection 210D(1)) is made and does not include information about animals.

The ADO submits that this would make a proposal to prohibit the collection of information about animals during the application process too risky in that it would be vulnerable to a challenge on the grounds that information about animals is not included in the definition of personal information, and/or it would not be implemented by governments with other legislative priorities.

The ADO therefore submits that it should be clarified in the Bill itself that:

- personal information includes information about keeping animals, and
- information about animals must not be collected from prospective tenants.

This submission was made with the assistance of David Ghnassia, legal intern with the Animal Defenders Office.

Thank you for the opportunity to make a submission to the Inquiry.

Yours sincerely

Tara Ward
Managing Solicitor (volunteer)
Animal Defenders Office Inc.

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