

COMMISSIONER'S GUIDELINES

PET REQUESTS IN A RENTAL

For landlords, real estate agents, property managers and tenants

INTRODUCTION

The *Residential Tenancies Act 1987* (WA) (RTA) gives the Commissioner for Consumer Protection (the Commissioner) powers to decide some rental disputes. This process is known as 'Commissioner determinations'.

The Commissioner can decide disputes over a tenant's request to keep a pet or make small changes (minor modifications) at their rental home.

The Commissioner will hear from both parties (tenants and landlords) before deciding disputes as an independent authority. Applications for Commissioner determinations can be made online.

This publication provides tenants, landlords, property managers and real estate agents with guidelines on the Commissioner determinations for a pet request in a rental home.

Visit the [Commissioner determinations for pets and minor modifications](#) webpage for more information.

PET REQUEST PROCESS FOR TENANTS AND LANDLORDS

Tenants are allowed to keep pets at their rental home unless the landlord can prove, with evidence, that one of the grounds for refusal listed in the RTA applies.

To keep a pet at a rental home, tenants must follow the steps below. The only exception is assistance animals. Tenants are permitted to keep assistance animals without their landlord's consent.¹

Before keeping an assistance animal at the property, a tenant should check to see if there is any written law, local law or strata by-law that prohibits keeping an assistance animal at the property.

The landlord may set [reasonable conditions that do not need Commissioner approval](#) on the keeping of an assistance animal.

Tenant requests pet:

If a tenant wants to request to keep a pet during their tenancy, they must use the approved form, and send this to the landlord - Pet Request Form – [Form 25](#).

Once the tenant has completed the form, they should keep a copy for their own records and give the form to the landlord.

¹ *Residential Tenancies Act 1987* (WA) s. 50A(3). See the definition of 'assistance animal' in s. 3 of the RTA.

A pet is only allowed at a rental home if the landlord or the Commissioner have approved the tenant's pet request (the request). A landlord's approval may be [automatic in some cases](#).

To prevent a breach of the tenancy agreement, tenants should wait until the pet is approved before bringing them to the rental home.

The tenant should receive a written response from the landlord within 14 days of the request being made.

If a tenant disagrees with a landlord's [refusal on a ground that does not require Commissioner approval](#) or [condition that does not require Commissioner approval](#), the tenant can [apply online](#) to the Commissioner to challenge the landlord's decision.

Landlord responds:

1. Responding to a pet request from a tenant

The landlord has 14 days after receiving the Pet Request Form to respond to the tenant with their decision. This response must be in writing and must include minimum information, depending on the decision being made by the landlord.

The landlord can:

- **Approve the request.** If the landlord approves the request with no conditions, the landlord must inform the tenant that they can have the pet at the rental property.
- **Approve with conditions** (some conditions need [Commissioner approval](#)). If the landlord imposes a condition that **does not** require Commissioner approval, they must:
 - provide confirmation to the tenant that the landlord approves the request; and
 - notify the tenant of the condition(s) that are being set.

Where the landlord proposes a condition that **does** require Commissioner approval, they must notify the tenant:

- that they approve the request;
 - that they intend to apply to the Commissioner to impose a condition(s) on their approval; and
 - the details of the proposed condition(s).
- **Refuse the request** (some reasons for refusal need [Commissioner approval](#)). If the landlord refuses for a reason that **does not** require Commissioner approval, they must notify the tenant:
 - that they refuse the request;
 - the ground(s) for refusal; and
 - the reason they believe each ground for refusal applies.

Where the landlord refuses for a reason that **does** require Commissioner approval, they must notify the tenant that they intend to apply to the Commissioner for approval to refuse the request.

2. Applying for Commissioner approval (if needed)

If the landlord's reason for refusal or proposed condition requires Commissioner approval, they must also apply to the Commissioner within 14 days after receiving the Pet Request Form.

The landlord can [apply online](#).

AUTOMATIC APPROVAL OF A PET REQUEST

A tenant's pet request is considered **automatically approved** by the landlord if:

- The landlord does not respond to the tenant in writing, with the minimum information, within 14 days after receiving the request; **and**

- If the landlord refuses the request on grounds that need Commissioner approval, and where necessary they fail to apply to the Commissioner within 14 days after receiving the request.

The landlord is responsible for undertaking both of these steps.

IMPOSING CONDITIONS ON A PET REQUEST

Landlords may approve a pet request with conditions. These conditions must follow the rules outlined in the RTA and some won't apply without Commissioner approval.

Where a landlord wants to set a condition, they must:

- Respond to the tenant in writing, with the minimum information, within 14 days after receiving the request; **and**
- If the landlord's condition requires Commissioner approval, apply to the Commissioner within 14 days after receiving the tenant's request.

The landlord is responsible for undertaking both of these steps.

If the landlord's condition requires Commissioner approval, and they fail to apply to the Commissioner within 14 days after receiving the request, the tenant's request is considered to be approved without these conditions.

Conditions which do not need Commissioner approval

A landlord **does not** need to apply to the Commissioner for the approval of a reasonable condition about:²

- the number of animals that may be kept at the rental property;
- the cleaning, maintenance or fumigation of the rental property in relation to the keeping of the pet; or
- a prescribed matter (currently no prescribed matter).

If a tenant believes a condition about one of the above is unreasonable, they can [apply](#) to the Commissioner to challenge the condition.³

Conditions which do need Commissioner approval

A landlord **must** apply to the Commissioner for approval to impose any condition that doesn't fall into the above list.⁴

In making a decision, the Commissioner will consider:

- Does the proposed condition reduce any health and safety risks that have been raised in the landlord's application? (example condition, where the owner has a pet allergy: the carpet must be professionally cleaned at the end of the tenancy).
- Does the proposed condition reduce the risk of damage to the rental property? (example condition: the pet is not allowed in the carpeted bedrooms).
- Does the proposed condition address concerns about exceeding a 'reasonable number of pets' or the suitability of the rental property for the requested pet? (example conditions: one of the three pets must live outside or the pet's access to the balcony is restricted due to the falls risk).
- Does the proposed condition limit any potential undue hardship to the landlord?

The Commissioner will also consider:

- Is the proposed condition appropriate, reasonable and proportionate to the risk?
- Is the proposed condition covered under any other law? (such as STRATA by-laws or the Cat or Dog Act? - in these cases an application is not required.
- Do the parties agree to the proposed condition?

² Residential Tenancies Act 1987 (WA), s. 50C(a).

³ Residential Tenancies Act 1987 (WA), s. 50H(1).

⁴ Residential Tenancies Act 1987 (WA), s. 50F(2).

REFUSING A PET REQUEST

In some situations, the landlord may be able to refuse a tenant's request for a pet. However, the landlord can only refuse a request on specific grounds set out in the RTA.

Certain grounds **do not** require Commissioner approval. However, in most circumstances, the landlord **will be required** to apply to the Commissioner for approval to refuse the request.

Refusal grounds which do not need Commissioner approval

A landlord **does not** need to apply to the Commissioner to refuse a pet on the following grounds:⁵

- keeping the pet would contravene a written law, local law or scheme by-laws applying to the rental property; or
- a prescribed ground (currently no prescribed grounds).

If the landlord has refused on a ground listed above, and the tenant believes the ground of refusal is not valid, the tenant can [apply](#) to the Commissioner to challenge the refusal.⁶

A landlord may refuse the request, if the rental property is subject to by-laws that require approval from a council or strata owners' body to keep a pet. Tenants should obtain the approval of the council or strata owners' body before submitting the request.

Refusal grounds which do need Commissioner approval

A landlord **must** apply to the Commissioner for approval to refuse a pet on the following grounds:⁷

- the rental property is unsuitable for keeping the pet;
- keeping the pet at the rental property would exceed a reasonable number of pets being kept at the rental property;
- keeping the pet at the rental property is likely to cause damage to the rental property that could not be repaired for less than the amount of the security bond;
- keeping the pet at the rental property would pose an unacceptable risk to the health and safety of a person;
- keeping the pet at the rental property is likely to cause the landlord undue hardship; or
- a prescribed ground – currently:
 - That the requested pet is a 'Dangerous Dog' as defined in the *Dog Act 1976*.
 - Keeping the pet at the rental property is likely to cause a tenant under a residential tenancy agreement in respect of the rental property (other than the tenant who made the request for consent) undue hardship.

If the landlord fails to make their application within 14 days of receiving the request, then the pet will be deemed to be approved by the landlord.⁸

The landlord's application must address one or more of the above grounds as a reason for refusal. The landlord will need to provide reasonable evidence to support their application (example: third party quotes regarding the cost of repairs, or a medical diagnosis).

A pet cannot be refused because the landlord has never allowed a pet before, because the tenant did not have a pet when the lease was signed, or because the lease says pets are not permitted.

HOW THE COMMISSIONER DECIDES IF A REFUSAL GROUND APPLIES

REFUSAL GROUND 1: The rental property is unsuitable for keeping the pet.

To satisfy the Commissioner that this ground applies, the landlord would need to demonstrate how the rental property is unsuitable for the particular pet requested.

The RTA provides examples of why a rental property may be unsuitable, including:

⁵ Residential Tenancies Act 1987 (WA), s. 50D(a) and (c).

⁶ Residential Tenancies Act 1987 (WA), s. 50G(1).

⁷ Residential Tenancies Act 1987 (WA), s. 50E(1).

⁸ Residential Tenancies Act 1987 (WA), s. 50B(5).

- a lack of fencing; or
- insufficient open space to humanely accommodate the pet; or
- other things necessary to humanely accommodate the pet.

Other reasons may include poor protection from the elements or unsuitable barriers to prevent fall risks from balconies.

What is necessary to accommodate a pet humanely will vary depending on the characteristics of the pet.

This ground is about whether the rental property is suitable for the requested pet. The Commissioner will consider whether the pet can be kept at the rental property humanely and safely. The risk that the pet might cause damage to the rental property is not considered under this ground.

REFUSAL GROUND 2: Keeping the pet at the rental property would exceed a reasonable number of pets being kept at the rental property.

To satisfy the Commissioner that this ground applies, the landlord would need to demonstrate how keeping the pet would exceed a reasonable number of pets at the rental property.

When considering this ground, the Commissioner will take into account factors including:

- nature and size of the rental property;
- characteristics of the requested pet;
- number and characteristics of any existing pets already at the rental property; and
- any applicable Local Government laws limiting pet numbers.⁹

REFUSAL GROUND 3: Keeping the pet at the rental property is likely to cause damage that could not be repaired for less than the amount of the rental property's security bond.

To satisfy the Commissioner that this ground applies, the landlord should address the following:

- What particular damage is the landlord concerned about? It is not sufficient simply to state that the pet may cause damage to the rental property.
- Why is damage *likely* to be caused?
- What is the anticipated cost to repair or replace the damage the landlord is concerned about?
 - Evidence from a third party, such as invoices, receipts, or quotes, is needed to demonstrate the likely cost.

When reviewing the landlord's application, the Commissioner may consider:

- The extent of the likely damage against the estimated costs.
 - For example, if the quote is to replace all the skirting boards, the Commissioner will consider the likelihood that all skirting boards will be damaged and whether any damage could be repaired rather than requiring replacement.
- Whether the risk might be lessened by imposing conditions.
 - For example, if the concern is about damage to carpet, a condition could be imposed to restrict the pet's access to carpeted rooms (see discussion of imposing conditions above).

If no security bond is held under the tenancy agreement, then the landlord cannot rely on this ground to refuse the pet request.

⁹ Example Clause 3.2, *Town of Cottesloe Dogs Local Law 2023*, clause 65 *Town of Cottesloe Health Local Laws 1997*.

REFUSAL GROUND 4: Keeping the pet at the rental property would pose an unacceptable risk to the health and safety of a person.

The RTA provides examples of how a pet may pose an unacceptable risk to the health and safety of a person, including:

- if the landlord has an allergy that is affected by the pet; or
- the pet is venomous.

To satisfy the Commissioner that this ground applies, the landlord would need to demonstrate:

1. a risk to the health and safety of a person exists; and
2. that the risk caused by the pet is unacceptable.

The first part requires evidence of the risk. A risk to health and safety could be general – for example, the pet may be venomous. In that case, information regarding the venomous nature of the pet should be provided.

A risk to health and safety could also be individual – for example, a severe allergy to a particular pet, severe asthma, or a severe phobia or other mental health incident related to the requested pet. In that case, the landlord will need to provide evidence of an independent medical diagnosis.

The second part involves considerations of both the likelihood of the risk eventuating and the gravity of the risk that may eventuate.¹⁰ For a risk to be unacceptable, there must be reasonable evidence that the risk is likely to occur and that the consequences will be serious and harmful to a person's health or safety. A mild allergic reaction to a pet would not be an unacceptable risk.

Where the landlord has engaged a property manager, and the health risk relates to the landlord (e.g. a severe, diagnosed allergy), the risk to the landlord may still not be considered unacceptable, as they are not required to enter the rental property during the tenancy. The Commissioner can set a reasonable condition on the landlord's approval of the request to lessen the risk, such as 'all carpets to be professionally cleaned at the end of the tenancy'.

If the landlord relies on an allergy or other medical condition for this ground, then a specific person must be identified. It is not sufficient to rely upon a hypothetical future tenant who may have an allergy.

REFUSAL GROUND 5: Keeping the pet at the rental property is likely to cause the landlord undue hardship.

The term 'undue hardship' is not defined in the RTA.

The Macquarie Dictionary defines the terms as:

- Undue: unwarranted; excessive; not proper, fitting or right; unjustified.
- Hardship: a condition that bears hard upon one; severe toil, trial, oppression or need.

The New South Wales Supreme Court has previously concluded that the phrase "undue hardship" means "greater hardship than the circumstances warrant".¹¹ This means that hardship alone is not sufficient, it must be a level of hardship that is not proportionate to the situation.

Often a landlord's concerns would be more appropriately addressed by one of the other grounds. If not, then, in order to satisfy the Commissioner that this ground applies, the landlord would need to address the following:

- What particular hardship is the landlord concerned about? It is not sufficient simply to state that the pet may cause a hardship to the landlord.
- Why is that hardship *likely* to arise.

¹⁰ *New South Wales v Simcock* (Final) [2016] NSWSC 1805 at [71].

¹¹ *State of New South Wales v Austeel Pty Limited* [2004] NSWSC 81, [22], quoting *Liberian Shipping Corporation v A King & Sons Ltd* [1967] 1 Lloyd's Rep 302 at [307].

- An explanation (and any evidence) to justify why the hardship would be undue.

REFUSAL GROUND 6: Section 50e(3)(E) – A prescribed Ground: The Pet is a Dangerous Dog

The RTA provides that a landlord may apply to the Commissioner for refusal to allow a pet if it is a 'dangerous dog' within the meaning of the *Dog Act 1976*. A 'dangerous dog' is specifically defined in the *Dog Act 1976*, and the landlord would need to prove that the dog meets the relevant definitions. It is not sufficient for the landlord to claim that the dog is 'dangerous' because of its temperament alone.

The *Dog Act 1976* provides three categories of 'dangerous dog':¹²

1. Dangerous Dog (Declared)

A local government or person authorised by a local government may declare that an individual dog is a dangerous dog. Such a declaration may be made if the dog has caused an injury or attacked a person, animal or vehicle before, or has a tendency to do so or threaten to do so.¹³

A dog only meets this definition upon it being declared a dangerous dog by a local government or authorised person by written notice. Evidence of the written notice would need to be supplied for the Commissioner to be satisfied it is a dangerous dog. Merely showing that the dog had attacked a person before would be insufficient.

In cases where the landlord can demonstrate the dog is a danger to a known person, and where the dog has not been declared dangerous by a local government, the landlord may apply to the Commissioner to refuse the pet under the ground that keeping the pet at the rental property would pose an unacceptable risk to the health and safety of a person. (Refer to Refusal Ground 5).

2. Dangerous Dog (Restricted Breed)

A dog which is one or more of the following breeds:¹⁴

- dogo Argentino;
- fila Brasileiro;
- Japanese tosa;
- American pit bull terrier;
- pit bull terrier;
- perro de presa Canario or presa Canario; and
- any other breed of dog the importation of which is prohibited absolutely by the *Customs (Prohibited Imports) Regulations 1956* (Cth).

The onus would be on the landlord to prove the breed of dog if they are claiming it is a restricted breed, unless the tenant has stated the breed of dog in their application.

3. Commercial Security Dog

This definition means a dog that is kept primarily for the purpose of guarding or protecting premises that are not a house or the premises of the dog's owner (such as their workplace), whether or not accompanied by a dog handler.¹⁵

It is important to note that this definition relies on the dog being kept to guard a place which is not a house or their owner's premises, and so a dog living at a house as the tenant's 'guard dog' or being used to guard the owner's workplace would not be considered a 'commercial security dog'.

¹² *Dog Act 1976* s. 3 (definition of 'dangerous dog')

¹³ *Ibid* s. 33A(1).

¹⁴ *Ibid* (definition of 'dangerous dog (restricted breed)'); *Dog Regulations 2013* r. 4.

¹⁵ *Dog Act 1976* s. 3 (definition of 'commercial security dog').

The onus is on the landlord to prove the dog is a commercial security dog, such as evidence of a contract that it is being used primarily to guard a place that is neither a house nor its owner's premises.

REFUSAL GROUND 7: Section 50e(3)(E) – A prescribed Ground: Keeping the pet at the rental property is likely to cause undue hardship to a tenant who lives at the same rental property and who did not make the request to keep the pet.

The term 'undue hardship' is not defined in the RTA.

The Macquarie Dictionary defines the terms as:

- Undue: unwarranted; excessive; not proper, fitting or right; unjustified.
- Hardship: a condition that bears hard upon one; severe toil, trial, oppression or need.

The New South Wales Supreme Court has previously concluded that the phrase "undue hardship" means "greater hardship than the circumstances warrant".¹⁶ This means that hardship alone is not sufficient, it must be a level of hardship that is not proportionate to the situation.

This ground could be used by the landlord when another tenant living in the rental property is likely to suffer undue hardship due to the pet being kept at the same rental property. This applies whether the other tenant is on the same lease or a different lease from the tenant making the pet request.

An example of when this ground could be used is if the tenant were to request to keep a snake at the rental property, and another tenant living in the same rental property has a fear of snakes. The impacted tenant may be likely to suffer undue hardship because they are faced with a choice to either attempt to terminate their lease early (and incur costs and uncertainty involved with that) or live with a pet that is causing them constant fear.

Another example of when this ground could be used, is if a tenant seeks approval to keep a parrot or other loud bird in the rental property, and another tenant works night shifts and relies on quiet during the day to sleep. In this case, the impacted tenant may be likely to experience undue hardship due to the excessive noise from the pet that could cause sleep deprivation and impact their ability to work.

Where there are multiple leases within the same rental property, the landlord needs to take reasonable steps to make sure a tenant does not interfere with the quiet enjoyment of the other tenants at the rental property.¹⁷ This ground helps the landlord to meet this obligation by allowing them to consider the impact of the requested pet on the other tenants at the rental property.

To satisfy the Commissioner that this ground applies, the landlord should address the following:

- What particular hardship on the tenant they are concerned about? It is not enough to simply state that the pet may cause a hardship to the tenant.
- Which tenant(s) is likely to suffer the hardship? This ground can only be used for a tenant who was not a part of the pet request.
- Why is the hardship likely to arise?
- An explanation (and any evidence) to justify why the hardship would be undue.

Evidence for this ground could include signed statements from the other tenant(s) describing their concerns and how the requested pet would cause them undue hardship.

¹⁶ *State of New South Wales v Austeel Pty Limited* [2004] NSWSC 81, [22], quoting *Liberian Shipping Corporation v A King & Sons Ltd* [1967] 1 Lloyd's Rep 302 at 307.

¹⁷ Section 44(2)(c) *Residential Tenancies Act 1987* (WA).