



Victorian
Law Reform
Commission



COMMUNITY LAW REFORM

Assistance Animals Consultation Paper

Prepared by the Victorian Law Reform Commission.

The Victorian Law Reform Commission was established under the *Victorian Law Reform Commission Act 2000* as a central agency for developing law reform in Victoria.

This report reflects the law as at April 2008.

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Community Law Reform



ASSISTANCE ANIMALS Consultation Paper 5

Victorian Law Reform Commission

GPO Box 4637
Melbourne Victoria 3001 Australia
DX 144 Melbourne, Vic

Level 10, 10–16 Queen St
Melbourne Victoria 3000 Australia

Telephone +61 3 8619 8619

Facsimile +61 3 8619 8600

TTY 1300 666 557

1300 666 555 (within Victoria)

law.reform@lawreform.vic.gov.au

www.lawreform.vic.gov.au

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Abbreviations

ADI	Assistance Dogs International
AWARE	Assisting Wellbeing Ability Recovery and Empowerment Dogs Australia
DDA	<i>Disability Discrimination Act 1992 (Cth)</i>
DFNAA	<i>Domestic (Feral and Nuisance) Animals Act 1994 (Vic)</i>
EOA	<i>Equal Opportunity Act 1995 (Vic)</i>
GDV	Guide Dogs Victoria
HREOC	Human Rights and Equal Opportunity Commission
IGDF	International Guide Dogs Association
SEDA	Seeing Eye Dogs Australia
VEOHRC	Victorian Equal Opportunity and Human Rights Commission
VLRC	Victorian Law Reform Commission

Call for Submissions

The Victorian Law Reform Commission invites your comments on this Consultation Paper.

WHAT IS A SUBMISSION?

Submissions are your ideas or opinions about the law being reviewed. Submissions can be anything from a personal story about how a law has affected you, to a research paper complete with footnotes and bibliography.

The commission wants to hear from anyone who has experience with a law under review. It does not matter if you only have one or two points to make; we still want to hear from you.

WHAT IS MY SUBMISSION USED FOR?

Submissions help the commission understand different views and experiences about the law it is researching. Information in submissions, along with other research and comments from meetings, is used to help develop recommendations.

HOW DO I MAKE A SUBMISSION?

A submission can be made in several ways: by completing the form on our website; in writing via email, mail or fax; over the phone or face-to-face. There is no particular format you need to follow, however, it would assist us if you address the consultation questions listed at the end of the paper.

Submissions can be made by:

- Online form: www.lawreform.vic.gov.au
- Mail: PO Box 4637, GPO Melbourne Vic 3001
- Email: law.reform@lawreform.vic.gov.au
- Fax: 03 8619 8600
- Phone: (03) 8619 8619, TTY 1300 666 557 or freecall outside the metropolitan area 1300 666 555
- Face-to-face: Please contact us to make an appointment with one of our researchers.

ASSISTANCE IN MAKING A SUBMISSION

- if you require an interpreter; or
- if you require some other assistance to have your views on these issues heard, please telephone the commission on (03) 8619 8619, TTY 1300 666 557 or freecall outside the metropolitan area 1300 666 555.

If you would like a copy of this paper in an accessible format please contact the commission.

CONFIDENTIALITY

When you make a submission you must decide how you want your submission to be treated. Submissions are either public, anonymous or confidential.

- Public submissions can be referred to in our reports, uploaded to our website and made available to the public to read. The names of people or organisations that make submissions will be listed in the appendices of the report.
- Anonymous submissions can be referred to in our reports and made available to the public but the identity of the author/s will not be revealed.
- Confidential submissions cannot be referred to in our reports or made available to the public.

Please let us know your preference along with your submission. Our website submission form includes a tick box you can use to indicate your preference. If you do not tell us you want your submission treated confidentially we will treat it as public.

**SUBMISSION DEADLINE:
18 AUGUST 2008**

Introduction

VICTORIAN LAW REFORM COMMISSION

Professor Neil Rees

Paris Aristotle AM

The Honourable Justice David Harper

Her Honour Judge Felicity Hampel

Professor Sam Ricketson

His Honour Judge Dr Iain Ross AO

AUTHORS

Michelle Burrell, Amelia Ie

Simone Marrocco

The Victorian Law Reform Commission received a request from the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) to examine the law in Victoria as it relates to people with a disability who rely on assistance animals.

One of the functions of the Victorian Law Reform Commission is to examine any matter that the Commission considers raises relatively minor legal issues that are of general community concern.¹ The commission refers to these types of inquiries as 'community law reform projects'.

This consultation paper is part of a community law reform project the commission is undertaking on the law on assistance animals.

The VEOHRC is concerned that Victorian law does not adequately protect the rights of such people and there may be cases where the lack of clarity and certainty in the law has led to discrimination.

It is likely that simpler, clearer laws will promote community understanding of the fact that people with a disability who have a trained assistance animal are entitled to be accompanied by the animal throughout their daily lives.

This consultation paper examines whether the law can be clarified and improved so that it better protects people's rights. The paper looks at the current legal and regulatory framework in Victoria and other Australian jurisdictions, as well as industry practice by those organisations which provide training and other services for assistance animals.

We provide a series of draft proposals that explain how we think some relatively minor changes to the law might improve the situation. We suggest changes to both equal opportunity legislation and the laws regulating animals.

In devising draft proposals the commission has four main aims:

- To clarify and rationalise the legal right of a person with a disability to use a trained assistance animal throughout his or her daily life;
- To give greater operational effect to this legal right than currently exists by establishing the framework for an administrative system which would permit a person with a disability to easily establish that he/she was accompanied by a trained assistance animal;
- To promote community understanding of the fact that people with a disability who have a trained assistance animal are entitled to be accompanied by the animal throughout their daily lives; and
- To provide certainty for business and the community in relation to health, safety and hygiene issues associated with the use of assistance animals.

We seek your comments and views on those proposals.

Information about how to give us your views (by making a submission) is set out on page 3. To allow time for the commission to consider your views before deciding on recommendations, please provide your submission by **18 August 2008**.

Upon completing our consultations in August, we will produce a final report and recommendations to the Attorney-General by 30 September 2008.

¹ *Victorian Law Reform Commission Act 2000 (Vic)* s 5(1)(b).

Chapter 1

Background

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- 6 Origins of this Community Law Reform Project
- 6 Our Process
- 6 Structure of this Paper
- 7 Terminology

'As I've become more confident about working with my dog, I've rediscovered much of the independence which had been whittled away over the past few years. It's independence on different terms from before because I'm no longer on my own and unencumbered, but it's a precious gift which I value greatly. I feel as though I have regained my citizenship'.²

INTRODUCTION

- 1.1 This quote encapsulates the experience of many people with a disability who benefit from using an assistance animal. Unfortunately, some people with a disability do not enjoy the same experience because the law is unclear, confusing and possibly inconsistent. This consultation paper explores these issues and suggests options for law reform that would provide better protection for people with disabilities.

ORIGINS OF THIS COMMUNITY LAW REFORM PROJECT

- 1.2 For several years, equal opportunity and law reform bodies have recognised the challenges that sometimes face people with a disability who use assistance animals. Between 1999 and 2002, the federal Human Rights and Equal Opportunity Commission (HREOC) published papers aimed at clarifying the status of assistance animals under the Commonwealth *Disability Discrimination Act 1992*.³ In 1993 HREOC recommended, among other things, that the definition of assistance animal in the Commonwealth legislation be clarified.⁴
- 1.3 During 2004 and 2005, the Victorian Equal Opportunity Commission (VEOHRC) considered the issues raised by the HREOC inquiry and held a forum with stakeholders that highlighted many issues around the use of assistance animals in Victoria. VEOHRC then approached the Victorian Law Reform Commission with the suggestion that we undertake a community law reform project about the issue.
- 1.4 In 2007, the Victorian government commenced a review of the *Equal Opportunity Act 1995* (EOA). The report of that review is due for publication in June 2008.⁵ Our project does not duplicate that work. Instead, the commission is looking at a very specific aspect of anti-discrimination law—namely the rights and obligations arising from assistance animal partnerships.

OUR PROCESS

- 1.5 The commission has conducted initial research and consultation to identify current problems and potential solutions. We have looked at relevant laws in other states and territories. Following this initial research, we have produced this consultation paper which sets out our findings about the current law dealing with assistance animal partnerships as well as some suggestions about how the law may be changed.
- 1.6 The commission now seeks your views. In particular, we want to know if the legal changes we are proposing will work in practice, and whether they can be further improved.
- 1.7 As well as receiving written submissions in response to this consultation paper, the commission will meet businesses, employers, service providers, transport operators, assistance animal training organisations, disability groups, local government, state government departments and statutory agencies including the VEOHRC and the Bureau of Animal Welfare to obtain feedback on our draft proposals.
- 1.8 Following these consultations and consideration of written submissions, the commission will produce a final report, including recommendations, which will be sent to the Attorney-General by the end of September 2008.

STRUCTURE OF THIS PAPER

- 1.9 Chapter 2 explores what assistance animals are, who uses them and the roles assistance animals fulfil. This chapter also provides an overview of how assistance animals are trained, registered and identified in Victoria. It includes some information about discrimination complaints associated with the use of assistance animals.

- 1.10 Chapter 3 describes the key Commonwealth and State legislation that gives rights to people partnered with assistance animals, and it examines the way in which the courts have interpreted this legislation. The chapter identifies some of the limitations of the current law.
- 1.11 Chapter 4 considers the law in other Australian jurisdictions. It considers whether there are lessons that can be learnt in Victoria from those laws.
- 1.12 Chapter 5 proposes a new model of regulating assistance animal partnerships in Victoria. It includes *draft* proposals for legislative reform.

TERMINOLOGY

- 1.13 There are many terms used to describe assistance animals in legislation, academic research and within the industry itself.⁶ Throughout this paper, the term ‘assistance animal’ refers to sight dogs, hearing dogs, mobility dogs, psychiatric service dogs and other animals trained to support people with a disability in public places, in employment and when accessing goods and services.
- 1.14 These animals have skills that enable them to help a person with a disability both at home and in public places. However, this consultation paper focuses on the role of assistance animals in public places rather than in the home.
- 1.15 People with disabilities who are assisted by animals are described as ‘assistance animal handlers’. The handler may or may not own the animal.
- 1.16 The team of assistance animal and handler is described as an ‘assistance animal partnership’.
- 1.17 A ‘trainee assistance animal’ is an animal undergoing training to assist a person with a disability. A ‘trainer’ includes a training organisation, private trainer or person with a disability training an animal to perform the functions of an assistance animal.
- 1.18 Throughout this report, the term ‘guide dog’ is used. The commission recognises that ‘guide dog’ specifically refers to those dogs trained by Guide Dogs Australia and its affiliates and that the correct term is ‘dog guide’. The term ‘seeing eye dog’ or ‘sight dog’ may also be used.
- 1.19 However, because most members of the public use the term ‘guide dog’, it is used in this consultation paper to encompass all dogs trained to assist people with visual impairment.
- 1.20 Throughout this paper we use the terms ‘impairment’ and ‘disability’. ‘Impairment’ is the word used in the Victorian *Equal Opportunity Act 1995* to describe the attribute or ground upon which it is unlawful to discriminate against a person. ‘Disability’ is the word used with the same purpose in the relevant Commonwealth legislation, the *Disability Discrimination Act 1992*.

- 2 Lynne Davis, ‘Choosing (and using) A Guide Dog When You’re Vision Impaired’ (2006) *Blind Citizens News* at 17 October 2006.
- 3 Human Rights and Equal Opportunity Commission, *Discussion Paper: Assistance Animals, the Disability Discrimination Act and Health and Hygiene Regulations* (1999), Human Rights and Equal Opportunity Commission, *Discussion Paper: Assistance Animals under the Disability Discrimination Act* (2002).
- 4 Human Rights and Equal Opportunity Commission, *Reform of the assistance animals provision of the Disability Discrimination Act: Report following consultations on s. 9(1)(f) of the Disability Discrimination Act 1992 dealing with assistance animals other than guide dogs and hearing dogs* 18 November 2003.
- 5 For information about the review see <www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Your+Rights/Equal+Opportunity/JUSTICE++Equal+Opportunity+Review>
- 6 Natalie Sachs-Ericsson, Nancy Hansen and Shirley Fitzgerald, ‘Benefits of Assistance Dogs: A Review’ (2002) 47 (3) *Rehabilitation Psychology* 251, 252.

Chapter 1

Background



Chapter 2

About Assistance Animals

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WHAT ARE ASSISTANCE ANIMALS?

- 2.1 Assistance animals are those that are trained to assist a person with a disability to alleviate some of the effects of the disability. Assistance animals provide their owners with independence, a sense of self-confidence, safety, mobility and self-esteem. Studies have shown that the use of assistance animals promotes health, mobility, social interaction and facilitates employment.⁷
- 2.2 While guide dogs have a long and established history in Australia, other types of assistance animals are relatively new. Hearing dogs were first introduced in Australia in the 1980s.⁸ Organisations training assistance animals for people with non-vision or hearing related disabilities only began to appear in the late 1990s.⁹ As a result, the assistance animals industry is still small and developing.
- 2.3 Despite this, the demand for assistance animals already far exceeds supply. Waiting lists are common, and may be up to 12 months long. This is because training an assistance animal is time-consuming and expensive. According to Seeing Eye Dogs Australia (SEDA), it takes up to two years and costs about \$30,000 to train a dog to the required level.¹⁰
- 2.4 Types of assistance animals used in Australia are listed in the table below.

TYPES OF ASSISTANCE ANIMALS

Guide Dogs or seeing eye dogs, are trained to help blind or visually-impaired people to move around safely. The person chooses the direction the team will travel, while the dog makes sure that they safely negotiate obstacles like stairs, kerbs or traffic on the chosen route.¹¹

Hearing Dogs are trained to help deaf or hearing-impaired people by alerting them to specific sounds.¹² These may include a doorbell, alarm clock, telephone, smoke alarm or crying baby. A hearing dog alerts its handler to a sound by making physical contact and leading the owner to the source of the sound.

Mobility Support Animals are trained to help people with physical disabilities who use wheelchairs or have difficulty walking or moving.¹³ Mobility support animals can pull a wheelchair or help people to walk by providing stability. They may also be trained to open and close doors, retrieve and carry items, turn light switches on and off, and other day-to-day tasks as needed by their handler. They are sometimes called 'assistance dogs' or 'service dogs'.

Medical Alert Animals are trained to assist their handlers before and during a medical emergency such as a seizure or diabetic episode. They can recognise early warning signs that a medical emergency is about to occur and are trained to alert their owner by making physical contact.¹⁴ Medical alert animals may also be trained to assist by:

- lying on top of their handler during a seizure to prevent owners injuring themselves
- helping their handler to become reoriented and mobile after a seizure
- going for help.

Psychiatric service animals, sometimes called 'service dogs' are trained to provide support to people with psychiatric disabilities. They may assist people with disabilities including bipolar disorder, panic disorder, depression, schizophrenia and autism. The tasks performed are tailored to the needs of the individual handler.¹⁵ They may include:

- alerting their handler to the onset of a manic episode or panic attack
- providing a focus point during an episode
- providing tactile stimulation to alleviate severe depression
- helping people to identify when they are hallucinating.

- 2.5 Not all animals that help people with disability are assistance animals. The table below sets out some of these.

ANIMALS NOT LEGALLY CONSIDERED TO BE ASSISTANCE ANIMALS

Companion or 'pet' animals are not assistance animals. Assistance animals must be trained to assist a person to alleviate the effects of their disability.

If you do not have a disability your animal is not an assistance animal even if it provides you with comfort or emotional support.

If you do have a disability but your animal is not specifically trained to assist you by alleviating the effects of your disability, your animal is not an assistance animal. House training or general obedience training is not training to assist a person to alleviate the effects of a disability, nor is the provision of comfort only.¹⁶

Therapy animals are used to improve a person's general quality of life and to facilitate counselling or psychotherapy.¹⁷ They are often used to assist older people and people with low severity physical, emotional, intellectual or developmental disabilities. They are not trained to the same standard as assistance animals and are not trained for public access.

Facility animals visit people living in hospitals, mental health units, nursing homes and rehabilitation centres to assist treatment or recovery and improve their quality of life through contact with an animal.

- 2.6 In Australia, it is very rare for animals other than dogs to be assistance animals. The commission was unable to identify any formal training organisation in Australia that trains species other than dogs to be assistance animals. However, in other countries formal organisations have successfully trained other animals. In the United States miniature ponies have been trained to assist people with sight impairments.¹⁸ Other animals such as monkeys have been trained to assist people with quadriplegia by taking on tasks in the home like fetching items from a fridge, pouring a drink and inserting a DVD.¹⁹
- 2.7 There is controversy over the suitability of other species to undertake assistance roles.²⁰ There are public health concerns and animal welfare concerns. For example, the Australian community may not feel comfortable with domesticating a monkey for use as an assistance animal.

WHO USES AN ASSISTANCE ANIMAL?

- 2.8 People must have a disability for their animal to be considered an assistance animal.²¹ Those with vision impairment most commonly use assistance animals. However, people with many types of disability use them for everyday support including people with hearing or mobility impairments, people with mental health disability, people with epilepsy,²² cerebral palsy,²³ or post-traumatic stress disorder.²⁴ The commission's research suggests that assistance animals are most commonly used by people who have had a disability for an extended period.²⁵

- 7 Susan L. Duncan et al, 'APIC State-of-the-Art Report: The Implications of Service Animals in Health Care Settings' (2000) 28(2) *American Journal of Infection Control* 171.
- 8 <www.hearingdogs.asn/history.html> at 22 April 2008.
- 9 <www.asdog.org.au/files-about-asdog/howwebegan.htmlat> at 22 April 2008.
- 10 <www.seda.org.au/frequently_asked_questions_cost_to_graduate_sed.html> at 22 April 2008.
- 11 Guide Dogs Victoria, 'Guide Dog FAQ' <www.guidedogsvictoria.com.au/faq/guide-dog-faq/> at 22 February 2007.
- 12 Natalie Sachs-Ericsson et al, 'Benefits of Assistance Dogs: A Review' (2002) 47(3) *Rehabilitation Psychology* 252. above n 6, 252.
- 13 Assistance Dogs International, 'Service Dogs' <www.adionline.org/service.html> at 22 February 2007.
- 14 Susan L. Duncan et al, 'APIC State-of-the-Art Report: The Implications of Service Animals in Health Care Settings' (2000) 28(2) *American Journal of Infection Control* 171, above n 7.
- 15 Allie Johnson, *Guard Dogs of Mental Health* (2005) 31 *Bark Magazine* 42.
- 16 Definitional issues around comfort and assistance are discussed further at 3.38-3.44, and 5.24-5.29.
- 17 Claire Latter, *An Exploration of the Use of Animal Therapy in Special Education* (Honours Thesis Bachelor of Education, University of South Australia, 1999) 4; 10-13.
- 18 Dan Shaw, 'Yes That's Right. It's a Seeing Eye Horse', (2006) 140 20 *Newsweek* 11 November 2002. See further: The guide Horse Foundation at <www.guidehorse.org> at 19 September 2006.
- 19 Susan Chaityn Lebovitis, 'Monkey See, Monkey Do Just About Anything', *Boston Globe* January 2006. See further: <www.helpinghandsmonkeys.org> at 17 October 2007.
- 20 Duncan et al, 'APIC State-of-the-Art Report: The Implications of Service Animals in Health Care Settings (2000) 28(2) *American Journal of Infection and Control* 171, 174. above n 7, 174.
- 21 *Domestic (Feral and Nuisance) Animals Act 1994* (Vic) s 7(1); *Equal Opportunity Act 1995* (Vic) s 4; *Disability Discrimination Act 1992* (Cth) s 9(1).
- 22 Maryann Mott, 'Seizure-Alert Dogs Save Human with Early Warnings', *National Geographic News* 11 February 2004.
- 23 Susan Modlin, 'From Puppy to Service Dog: Raising Service Dogs for the Rehabilitation Team' (2001) 26 (1) *Rehabilitation Nursing* 12, 15.
- 24 Joan Froling, 'Service Dog Tasks for Psychiatric Disabilities' (2006) International Association of Assistance Dog Partners <www.iaadp.org/psd_tasks.html> at 11 July 2006.
- 25 Susan Modlin, 'From Puppy to Service Dog: Raising Service Dogs for the Rehabilitation Team' (2001) 26 (1) *Rehabilitation Nursing* 12, 13 above n 23 13.

- 2.9 Assistance animals may not be suitable for all people and all disabilities. Some people do not like animals, have allergies, or are unwilling to take on the expense, time and responsibility that an assistance animal partnership requires. While assistance animals can provide important help to some individuals, others prefer to use devices such as canes, wheelchairs or mobility aids.²⁶

HOW MANY PEOPLE USE ASSISTANCE ANIMALS?

- 2.10 It is difficult to establish the number of people in Victoria using assistance animals. This is because the use and training of assistance animals is unregulated. While training organisations keep their own records, these do not include any animals trained outside the organisation such as privately trained assistance animals.
- 2.11 While it is impossible to quantify exact numbers, records of training organisations suggest that SEDA²⁷ and Guide Dogs Victoria (GDV)²⁸ support about 250 assistance animal partnerships in Victoria between them.

WILL ASSISTANCE ANIMALS BECOME MORE COMMON?

- 2.12 As the industry grows and the community becomes more aware of the role and value of assistance animals, it is possible that the demand for assistance animals will grow. One million Victorians, or 20 per cent of the population, have some form of disability.²⁹ Some 1.2 million Australians, or 6.3 per cent of the population, always or sometimes need assistance with self-care, mobility or communication.³⁰ This figure has increased by nearly 10 per cent since 1998.³¹ Demographic trends suggest that as Australia's population grows and ages, the number of Australians with a disability will continue to rise. Assistance animals may play an increasing role in this future environment.

WHO TRAINS ASSISTANCE ANIMALS?

- 2.13 Most assistance animals are trained by formal training organisations. These are usually charities and provide their services free or at a low cost.³² They receive funding from public donations, sponsorship and government grants. Training organisations often provide a range of additional services including ongoing support, advocacy and information.
- 2.14 Most training organisations have an application process requiring evidence of the disability. The type of evidence required varies from organisation to organisation. Applicants may be required to obtain a referral, attend an interview or assessment, complete questionnaires about the type and level of their disability, and supply doctor's reports, medical histories and personal references.
- 2.15 Some training organisations place other limitations on the acquisition of an assistance animal. For example, some organisations have age restrictions and do not provide assistance animals to young children or people aged over seventy-five.
- 2.16 In Victoria, GDV and SEDA train most assistance animals. Victorians with non-vision related disabilities must generally look interstate for assistance animals.³³

ASSISTANCE ANIMAL TRAINING PROVIDERS TO VICTORIANS

Guide Dogs Victoria—based in Victoria, sight dogs only, International Guide Dogs Federation (IGDF) member

Seeing Eye Dogs Australia—based in Victoria, sight dogs only, IGDF member

Righteous Pups—based in Victoria, autism assistance dogs for children

Assistance Dogs Australia—based in NSW, physical disability, Australia wide, Assistance Dogs International (ADI) member

Assisting Wellbeing Ability Recovery and Empowerment (AWARE) Dogs Australia—based in QLD, psychiatric service dogs, provides training course for self-trainers, Australia wide, ADI member

Canine Helpers for the Disabled—based in QLD, hearing and mobility dogs for a range of disabilities, provides animals across Australia, ADI member

Disability Aid Dogs Australia—based in QLD, range of disabilities, provides assistance dogs, courses on how to train your own assistance dog, Australia wide

Lions Hearing Dogs—based in SA, hearing dogs only, provides animals across Australia and Papua New Guinea, ADI member

INFORMAL TRAINING

- 2.17 People with a disability sometimes approach private trainers to train their assistance animal. Alternatively, people with disability may wish to learn how to train their existing dog to be an assistance animal and do the training themselves.
- 2.18 There are several reasons why people may choose to train their assistance animals themselves or use individual trainers. For example, there may be no formal training organisation that trains animals to perform tasks for people with particular disabilities. As demand for formally trained assistance animals exceeds supply, there are often long waiting lists. Consequently, people with the means may prefer to pay for the training.
- 2.19 There is little publicly available information about informal training of assistance animals. However, it appears to be more common for people with mobility or psychiatric disabilities to have informally trained animals, than those with a vision or hearing impairment. This may be a result of the smaller number of formal training organisations for assistance animals other than dog guides and hearing dogs, or the nature of the training required.

TRAINING STANDARDS

- 2.20 In Victoria, there is no legal regulation of who can train an assistance animal and how training must be conducted. However, various organisations have developed their own standards of training and/or operate to international standards. The industry is self-regulated.
- 2.21 Many formal training organisations use clear and rigorous quality standards devised over years of practice. This provides a measure of confidence that an assistance animal will be able to perform its required tasks.

26 Eg, alternative orientation and mobility services offered by Guide Dogs Victoria at <www.guidedogsvictoria.org.au> at 22 April 2008.

27 <www.seda.org.au/about_us_annual_report.html> at 28 May 2008.

28 <www.guidedogsvictoria.com.au/gd/pdf/GDVAR05REPORT.pdf> at 28 May 2008.

29 Australian Bureau of Statistics, cat No.4430.0 *Disability, Ageing and Carers*, Table 11 'Persons with a disability, disability status by main health condition' Victoria 2003.

30 Australian Institute of Health and Welfare, *Australia's Welfare 2007* (2007) 155. The report uses the term 'severe or profound core activity limitation' to describe this level of disability.

31 Australian Institute of Health and Welfare, *Australia's Welfare 2005* (2005) 219.

32 Natalie Sachs-Ericsson, Nancy Hansen and Shirley Fitzgerald, 'Benefits of Assistance Dogs: A Review' (2002) 47 (3) *Rehabilitation Psychology* 251, 253, above n 6 253.

33 Seizure Alert and Autism Assistance Dogs for children may be supplied by 'Righteous Pups' who are based in Victoria.

- 2.22 While internal standards exist in training organisations, for private trainers or people who train their own dog, there are no mandatory or voluntary guidelines to follow. This is not to say that informally trained animals are not well trained. Rather, there is no clear mechanism for verifying that appropriate training has occurred.³⁴
- 2.23 Some formal training organisations are prepared to provide certification to privately trained assistance animals. Canine Helpers for the Disabled (QLD)³⁵ runs a private certification program that evaluates and develops the teamwork skills of informally trained assistance animals so they can be certified according to international training standards.³⁶ Entry is only available in very limited circumstances and only to people from South East Queensland.
- 2.24 Similarly, some existing organisations, such as AWARE Dogs, train owners so they can train their existing animal to become an assistance animal. This service is provided to Victorians. A fee is charged to cover the training organisation's cost.³⁷ Disability Aid Dogs also provides support to people wishing to train their own animal.³⁸

INTERNATIONAL TRAINING STANDARDS

- 2.25 Most commonly, organisations affiliate themselves with international representative bodies that require their members to comply with fixed training and operational standards. The International Guide Dog Federation (IGDF) and Assistance Dogs International (ADI) are two international bodies that publish standards for training.

International Guide Dogs Federation

- 2.26 IGDF is a UK based organisation that has operated since 1989. It currently has members worldwide, including GDV and SEDA. IGDF has a set of standards with which all members are required to comply. The standards cover a range of areas including training, the health and welfare of guide dogs, fundraising, record keeping and school facilities.
- 2.27 To be eligible for membership, training organisations must have been operating for more than five years and have trained at least 20 guide dogs. New members must complete an accreditation process. The IGDF conducts a five-yearly review of its members.³⁹

Assistance Dogs International

- 2.28 ADI has operated since 1987. It represents people who train many types of assistance dogs including guide dogs, hearing dogs, mobility dogs, seizure alert dogs and psychiatric service dogs. It has members worldwide, including several that provide assistance animals to Victorians.⁴⁰ To become a member, a training organisation must be a charity. When applying they must provide a copy of the organisation's rules, a recommendation from an existing ADI member and references from five past clients.
- 2.29 All ADI members must comply with separate standards for the training and care of each type of assistance dog, ethical standards dealing with the provision of client services, treatment of animals and the organisational structure of member schools. A compliance committee monitors whether members are complying with the standards.⁴¹

HOW ARE ASSISTANCE ANIMALS CURRENTLY IDENTIFIED?

- 2.30 In Victoria, assistance animals and their handlers are not legally required to carry identification proving that the animal is a genuine assistance animal.
- 2.31 In practice, most people in an assistance animal partnership carry some form of identification when they are in public. This is for two reasons. Firstly, without identification it is very difficult to prove that an animal is a genuine assistance animal and not a pet. Having identification may help to avoid potentially humiliating and discriminatory situations. Second, clearly identifying an assistance animal as a working animal can help to prevent people from distracting the animal.

- 2.32 Because there is no official identification system, individual training organisations supply their clients with their own identification equipment. There are broad similarities between the types of identification equipment used across the industry. Common types of identification include identification cards, harnesses, and coloured jackets or backpacks. However, the specific type and detail of identification equipment varies according to the training organisation and the type of assistance the animal provides.
- 2.33 Identification equipment usually displays the training organisation's logo. For training organisations, displaying their logo on animals working in public is an important way of promoting their services and making their organisation stand out from others.
- 2.34 Identification is an important issue that any new regulation of assistance animals would need to address because it would assist in creating clarity and certainty for people in an assistance animal partnership. It may also help protect against discrimination. This is discussed further in Chapter 5 which explains options for establishing a simple identification scheme for assistance animals.

HOW COMMON IS DISCRIMINATION AGAINST ASSISTANCE ANIMAL PARTNERSHIPS?

- 2.35 It is likely that discrimination against assistance animal partnerships is more prevalent than complaint numbers to commonwealth and state human rights bodies indicate. People who have suffered discrimination may choose to take no action for many reasons. They may feel too upset, embarrassed, or afraid to follow up an incident.
- 2.36 People who suffer discrimination because they are accompanied by assistance animals may respond in various ways. These range from taking no action, to resolving the matter informally with the business or service, to making a discrimination complaint to the formal complaints handling body. In the state jurisdiction, this is the Victorian Equal Opportunity and Human Rights Commission (VEOHRC). In the Commonwealth jurisdiction, it is the HREOC.
- 2.37 Both VEOHRC and HREOC resolve many complaints via conciliation. Conciliation is free and aims to help parties resolve the complaint without going to court. Outcomes range from apologies, to guarantees of access and changed policies, to payments of financial compensation.⁴²
- 2.38 If conciliation is not successful, the complainant may choose to take the matter to a court or tribunal to obtain a final, binding decision.⁴³ Litigation is usually a last resort because it can be a very stressful, time-consuming and expensive. Victorian complaints are heard by the Victorian Civil and Administrative Tribunal. Commonwealth complaints are heard by either the Federal Court of Australia or the Federal Magistrates Court. These bodies have the power to make orders concerning legal rights and obligations and to award compensation. Only a small number of disputes proceed to litigation.

VICTORIAN EQUAL OPPORTUNITY AND HUMAN RIGHTS COMMISSION COMPLAINTS

- 2.39 An analysis of the complaints and enquiries received by the VEOHRC between 1999 and 2006 shows that 18 formal complaints of discrimination relating to an assistance animal were received.⁴⁴
- 2.40 Most VEOHRC complaints involved guide dogs (seven complaints) or hearing dogs (six complaints). One complaint involved a psychiatric service dog. One person, who was partnered with a dog whose assistance role was unclear, lodged four complaints.⁴⁵
- 2.41 In two cases, the complainant did not have an assistance animal, but suffered discrimination because he or she was accompanied by a person who did. In one case, a doctor refused to see a sick child unless her vision-impaired mother left her guide dog outside the examination room. In another case, an injured woman was not permitted to be accompanied by her hearing-impaired son in an ambulance because the son had a hearing dog.

- 34 Some, but not all groups that assist self-trainers are members of international bodies.
- 35 Previously known as Animal Assisted Therapy Australia.
- 36 For more information about Canine Helpers for the Disabled's Private Certification program, see <http://www.therapydogs.org.au/> at 4 June 2008.
- 37 Following initial training A.W.A.R.E. charges \$500 for a two week intensive course ADI standards. Information provided in phone interview 23 May 2008.
- 38 www.aiddogs.com.au/ at 28 May 2008.
- 39 For more information see www.ifgdsb.org.uk/default.asp at 23 April 2008.
- 40 Including Assistance Dogs Australia, A.W.A.R.E Dogs Australia, Canine Helpers for the Disabled and Lion's Hearing Dogs.
- 41 For more information see www.adionline.org at 23 April 2008.
- 42 *Equal Opportunity Act 1995* (Vic) s 117; *Human Rights and Equal Opportunity Commission Act 1986* (Cth) s 46PO. See also Victorian Human Rights and Equal Opportunity Commission, 'Making a Complaint' www.humanrightscommission.vic.gov.au at 21 February 2007.
- 43 *Ibid.* *Equal Opportunity Act 1995* (Vic) s 117; *Human Rights and Equal Opportunity Commission Act 1986* (Cth) s 46PO. See also Victorian Human Rights and Equal Opportunity Commission, 'Making a Complaint' www.humanrightscommission.vic.gov.au at 21 February 2007.
- 44 See HREOC Annual Reports for complaints data www.hreoc.gov.au/complaints_information/statistics/index.html at 4 June 2008.
- 45 There were no complaints involving assistance animals other than dogs.

- 2.42 In most cases, the assistance animal was formally trained and some form of identification was used. Most of these complaints arose because access was denied to business premises (seven complaints) or transport (six complaints). There were two complaints about access to housing or accommodation, and another two complaints about access to medical facilities.
- 2.43 Of the 18 complaints lodged with the VEOHRC, 14 were accepted and four were declined for lack of substance. The majority of investigated cases (9 out of 14) were resolved through conciliation (five) or withdrawn voluntarily following receipt of a written apology (four).
- 2.44 Transport is an area where specific complaints mechanisms also exist. The Transport Ombudsman reports that they have had three complaints since they opened in 2004.⁴⁶ The Victorian Taxi Inspectorate reports 37 complaints for the period 2004-2008.⁴⁷

⁴⁶ Information provided in email from Office of the Public Transport Ombudsman 5 June 2008.

⁴⁷ Information provided in e-mail from Victorian Taxi Directorate 5 June 2008.



Chapter 3

Regulation of Assistance Animals in Victoria

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Regulation of Assistance Animals in Victoria

THE LAW IN VICTORIA

- 3.1 In Victoria, there is no single law that deals comprehensively with assistance animals. There are four different Victorian Acts and 13 regulations containing provisions that apply to assistance animal partnerships.⁴⁸
- 3.2 In addition, there are Commonwealth laws that operate alongside Victorian laws and establish concurrent rights for all people with a disability using assistance animals, regardless of the type of disability or assistance animal.⁴⁹

DOMESTIC (FERAL AND NUISANCE) ANIMALS ACT 1994

- 3.3 The *Domestic (Feral and Nuisance) Animals Act* (DFNAA) is the main Victorian legislation regulating public access for people with assistance animals. However, as its name suggests, the DFNAA is not specifically an Act about assistance animals. Its main purpose is to regulate feral animals, dangerous dogs and pet dogs and cats.⁵⁰
- 3.4 The rights granted by the DFNAA are contained in section 7 which is headed 'exemptions for guide dogs'. Sections 7(1), (2) and (3) are reasonably clear: they exempt a guide dog from the nuisance and registration fee aspects of the Act that apply to all other dogs.
- 3.5 However, the right to be accompanied by an assistance animal contained in the DFNAA only applies to certain disabilities, and it is practically unenforceable. Section 7(4) says that 'a visually impaired person, hearing impaired person or person training a guide dog may, *at all times and in all places*, be accompanied by a dog kept and used, or trained by him or her as a guide dog'.
- 3.6 It is highly likely that section 7(4) cannot be read literally, for otherwise it would interfere with private property rights.⁵¹ It probably means that the three categories of people referred to in the sub-section are entitled to be accompanied by a guide dog at all times when in all of the places those people are lawfully permitted to be.⁵² In addition, the Act does not provide an enforcement mechanism for this 'right' to be accompanied by a guide dog. It does not impose obligations upon anyone and it does not contain a sanction if a visually or hearing impaired person accompanied by a guide dog is refused access to any place where that person is entitled to be.
- 3.7 Under the DFNAA, trainee guide dogs and hearing dogs have the same status as fully trained dogs. However, the Act does not define the term 'trained'. Nor does it specify any training standards for assistance animals.⁵³

THE EQUAL OPPORTUNITY ACT

- 3.8 The EOA also recognises assistance animal partnerships. It contains a provision which specifically deals with some forms of assistance animal partnerships (guide dogs).⁵⁴
- 3.9 There are also provisions of general application which probably render it unlawful to discriminate against assistance animal partnerships in some circumstances.⁵⁵
- 3.10 Section 52(1) of the EOA provides that '[a] person must not refuse to provide accommodation, to a person with visual, hearing or mobility impairment because that person has a guide dog.' It is discriminatory to:
- refuse a person access to business premises or accommodation;⁵⁶
 - to require the person to pay extra for the dog; or
 - to keep the dog elsewhere as a condition of entry.⁵⁷
- 3.11 A person whose disability is not visual, hearing and mobility related, falls beyond the protective scope of this specific provision concerning the use of guide dogs. This section of the EOA does not protect individuals with psychological disabilities. In this regard, it provides less protection than the Commonwealth Disability Discrimination Act (DDA). Further, this provision is limited to the area of accommodation only. It does not apply to the other areas of activity regulated by the Act such as employment, education, and the provision of goods and services.

General anti- discrimination provisions

3.12 However, the EOA also contains provisions that prohibit direct or indirect discrimination⁵⁸ because of a person's disability in many different areas such as employment, education, provision of goods and services, and club and sports membership.

3.13 Direct discrimination occurs when a person with an attribute protected by the Act, such as impairment, is treated less favourably, because of that attribute, than another person who does not possess that attribute. It is also unlawful to treat a person less favourably than others because of a characteristic associated with a particular attribute protected by the Act. The characteristic may be either one which a person with an attribute 'generally has', or one 'that is generally imputed to a person with that attribute'.⁵⁹

3.14 Whether a characteristic falls within either category is a question of fact to be determined by the evidence in each particular case. It is strongly arguable, however, that a person who is vision or hearing impaired would be able to establish that being accompanied by an assistance animal is an attribute that a person with an impairment of that nature 'generally has'. Consequently, as a result of the operation of the 'characteristics extension' in s 7(2) of the EOA it may be unlawful to discriminate against some people with some impairments when accompanied by some assistance animals in all of the areas of activity governed by Part 3 of the EOA.⁶⁰

3.15 Indirect discrimination occurs when a condition or requirement that applies equally to all persons operates to the disadvantage a particular group and is not reasonable.⁶¹ In these circumstances discrimination occurs because people of that group find it more difficult than others to comply with the particular condition or requirement.

3.16 The indirect discrimination provisions may apply when a person who is accompanied by an assistance animal when engaging in one of the areas of activity governed by the EOA sustains some detriment, or is denied some benefit, because of using the animal. If, for example, a restaurant or a store refused entry to all people accompanied by an animal this practice would have a disproportionate impact upon people with an impairment accompanied by an assistance animal because those people would not be able to use the services provided by that business. Telling a person with a disability that they cannot enter premises with their assistance animal effectively denies them entry.⁶² Unless the practice was found to be reasonable, the restaurant or store owner would have engaged in unlawful indirect discrimination in contravention of the EOA.

48 A list of relevant Acts and Regulations can be found at Appendix 1.

49 *Disability Discrimination Act 1992* (Cth).

50 *Domestic (Feral and Nuisance) Animals Act 1994* (Vic) s 1.

51 The right cannot extend to 'all times and in all places' because this would encompass private property.

52 Section 8(2) operates in a similar fashion in relation to a dog working with a government agency, for example a customs dog. A government official is entitled to be accompanied by the dog when working with the dog. *Domestic (Feral and Nuisance) Animals Act 1994* (Vic) s 8(2).

53 However, regulations made under the Act do contain standards for obedience training of dogs. *Domestic (Feral and Nuisance) Animals Regulations 2005* r49.

54 The DFNA is inconsistent with the EOA which provides a more expansive definition of 'guide dog'. Section 4 of the *Equal Opportunity Act 1995* (Vic) defines a "guide dog" as 'a dog that is trained to assist a person who has a visual, hearing or mobility impairment'.

55 *Equal Opportunity Act 1995* (Vic) ss 7-9.

56 "Accommodation" means business premises, a house or flat, a hotel or motel, a boarding house or hostel, a caravan or caravan site, a mobile home or mobile home site, and camping sites: *Equal Opportunity Act 1995* (Vic) s 4(1).

57 *Equal Opportunity Act 1995* (Vic) s 52(2).

58 *Equal Opportunity Act 1995* (Vic) ss 7-9.

59 *Equal Opportunity Act 1995* (Vic) s 7(b)-(c).

60 For discussion of characteristics extension, see Neil Rees, Katherine Lindsay, Simon Rice, *Australian Anti-discrimination Law: Text, Cases and Materials* (2008) 113-119. See also *Kapoor v Monash University and Another* (2001) 4 VR 483.

61 Chris Ronalds, *Discrimination Law and Practice* (3rd ed) (2008) 43.

62 Similarly, the implied duty to make reasonable adjustments to a workplace in the form of 'special services and facilities' could potentially extend to allowing an employee to bring their assistance animal to work under section 22(1)(a)(1) of the EOA. This section applies to any employee with a disability. For discussion of the implied obligation and s 22(1)(a)(1) see Victorian Equal Opportunity and Human Rights Commission *Submission to the Exceptions Review: Consultation Paper 2008* p 18 at <www.humanrightscommission.vic.gov.au/projects%20and%20initiatives/eoa%20review.asp> at 8 May 2008.

Regulation of Assistance Animals in Victoria

Qualifications within the EOA

- 3.17 The general rights conferred by the EOA are qualified in some instances. For example, a person may refuse to provide a service to a person with an impairment if they are not reasonably capable of providing the service in the special manner required, or, if doing so would be more onerous for the service provider.⁶³
- 3.18 It is important to note that qualification applies to ‘services’ only. However, ‘services’ is broadly defined in the EOA to include access to and use of public places, banking and financial services, provision of entertainment, recreation or refreshment, transport, and the services of any profession, trade or business. Services also includes those provided by state and local government or a public authority, but does not include education or training.⁶⁴ Hence, the qualification applies to many of the services and places that assistance animal partnerships need to access.

OTHER VICTORIAN LAWS AND REGULATIONS

- 3.19 In addition to the DFNAA and the EOA there are a variety of Acts and regulations which give assistance animal partnerships specific rights.⁶⁵
- 3.20 These laws fall into three broad areas:
- major public events⁶⁶
 - national parks, reserves and gardens⁶⁷
 - public transport, taxis and other commercial passenger vehicles.⁶⁸
- 3.21 There are significant differences in the types of assistance animal recognised and the extent of the rights protected in each area. Some laws supply a definition explaining what an ‘assistance animal’ is, and some do not. Many use the term ‘guide dog’ as a catch-all label to describe different types of assistance animals. Most enactments only recognise dogs, but a small number recognise other types of animals. Trainee assistance animals are sometimes but not often recognised.
- 3.22 Victorian human rights legislation is also relevant to any discussion of assistance animal law.
- 3.23 The *Charter of Human Rights and Responsibilities Act 2006* includes the right to be free from discrimination.⁶⁹ The Charter applies to all public authorities and includes organisations contracted to provide a public service on behalf of the Victorian government, such as public transport authorities.⁷⁰ The Charter makes it ‘unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right’.⁷¹

COMMONWEALTH LEGISLATION

DISABILITY DISCRIMINATION ACT

- 3.24 The DDA operates alongside Victorian legislation. It imposes additional requirements and obligations. Section 13(3) of the DDA explicitly provides that the Commonwealth law does not exclude state laws if they are consistent and able to operate concurrently. However, if there is an inconsistency, federal law will over-ride state law.⁷²

Section 9 DDA

- 3.25 Section 9 of the DDA makes it unlawful to treat a person ‘less favourably’ because the person has, or is accompanied by, an assistance animal. In effect, it establishes a specific sub-category of discrimination on the ground of disability.⁷³
- 3.26 It is much broader than the guide dog provision in the Victorian EOA.⁷⁴ It applies to all disabilities, to all trained assistance animals and to all areas of activity governed by the DDA. These include employment, access to business premises, public transport or public events, and to obtaining accommodation. The DDA makes it clear that this right must be respected even if a person or business has a policy against allowing animals, or normally imposes conditions upon people accompanied by animals.⁷⁵ However, this is qualified when there is ‘unjustifiable hardship’.⁷⁶ This is discussed further below.⁷⁷

- 3.27 The DDA does not specifically require an assistance animal to be under the control of its user.⁷⁸ However, section 9(2) specifies that a person possessing or accompanied by an assistance animal may remain liable for damage to property caused by the assistance animal.
- 3.28 Section 9 recognises not only guide dogs and hearing dogs, but also ‘any other animal trained to assist the aggrieved person to alleviate the effects of the disability’.⁷⁹ This means that *any* animal trained to assist with *any kind* of disability is recognised. ‘Trained’ is not defined. Nor does the DDA indicate how assistance animals are to be recognised by the public.
- 3.29 The courts have interpreted the DDA definition of ‘assistance animal’ very broadly. In *Sheehan v Tin Can Bay Country Club*,⁸⁰ the Federal Magistrates Court held that an informally trained dog that helped a man with an anxiety disorder to feel more confident by ‘breaking the ice’ in social interactions was an assistance animal for the purposes of the DDA.

General anti-discrimination provisions

- 3.30 Section 5 of the DDA defines direct discrimination, whilst section 6 contains a general description of indirect discrimination on the ground of disability.
- 3.31 On the face of it, section 9 is a sub-category of direct discrimination. However, some people have brought claims under either or both sections of the DDA.⁸¹ Other cases have been decided on the grounds of indirect discrimination in the areas of access to premises or provision of services, without the need to examine section 9 of the DDA.⁸² It has been noted that ‘the nature of the stand-alone provisions tends to lend itself to a lack of clarity’ and can ‘...potentially result in confusion and overlapping claims.’⁸³

Qualifications within the DDA—unjustifiable hardship

- 3.32 The DDA does not contain an express provision requiring employers or providers of goods to make ‘reasonable accommodation’ to facilitate access or participation by a person with a disability.⁸⁴ Under the DDA it is unlawful to discriminate against a person with a disability who is accompanied by an assistance animal in any of the areas of activity governed by the Act unless one of the specific exceptions applies.
- 3.33 There are circumstances where refusing access to a person accompanied by an assistance animal may be lawful. For example, under section 24 (2) of the DDA it is not unlawful to discriminate against a person on the ground of disability in the provision of goods and services, or making facilities available, if such provision would result in ‘unjustifiable hardship’. It is up to a person claiming ‘unjustifiable hardship’ to argue on the facts of a particular case that it would impose unjustifiable hardship were he or she compelled not to discriminate.

63 *Equal Opportunity Act 1995* (Vic) s 46.

64 *Equal Opportunity Act 1995* (Vic) s 4(1).

65 Food and hygiene standards also apply. Assistance animals are allowed to access ‘dining and drinking areas and other areas used by customers’ *Australia New Zealand Food Standards Code* std 3.2.2 cl 24 (1)(b).

66 *Commonwealth Games Arrangements Act 2001* (Vic); *Major Events (Crowd Management) Act 2003* (Vic); *Australian Grand Prix (Formula One) Regulations 2006* (Vic).

67 *Alpine Resorts (Management) Regulations 1998* (Vic); *Forests (Murrumbidgee Scenic Reserve) Regulations 1999* (Vic); *Forests (Stevenson Falls Scenic Reserve) Regulations 1999* (Vic); *Forests (You Yang Regional Park) Regulations 2003* (Vic); *National Parks (Park) Regulations 2003* (Vic); *Royal Botanic Gardens Regulations 2004* (Vic); *Water Industry (Reservoir Parks and Lands) Regulations 2001* (Vic); *Wildlife (State Game Reserve) Regulations 2004* (Vic).

68 *Transport (Passenger Vehicles) Regulations 2005* (Vic); *Transport (Public Transport Corporation) Regulations 1994* (Vic); *Transport (Taxi-Cabs) Regulations 2005* (Vic); *Transport (Ticketing and Conduct) Regulations 2005* (Vic).

69 ‘Every person has the right to enjoy his or her human rights without discrimination’. *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 8(2).

70 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 6(2).

71 *Charter of Human Rights and Responsibilities Act 2006* s 38(1). The Charter also contains an exemption from the obligation where the public authority is acting to give effect to a statutory provision that is incompatible with a human right [section 38(2)].

72 *Australian Constitution* s 109.

73 Section 9 is a definition section. Part 2 of the DDA renders it unlawful to discriminate against people on the ground of disability when engaging in the various activities which fall within that Part. Section 9 enlarges the meaning of ‘discrimination on the ground of disability’ which is defined in sections 5 and 6.

74 *Equal Opportunity Act 1995* (Vic) s 52.

75 *Disability Discrimination Act 1992* (Cth) s 9(1).

76 *Disability Discrimination Act 1992* (Cth) s 11.

77 See 3.32–3.35.

78 HREOC has previously recommended that the DDA be amended to require an assistance animal to be under the control of its user. HREOC 18 November 2003, above n 4.

79 *Disability Discrimination Act 1992* (Cth) s 9.

80 [2002] FMCA 95 (9 May 2002).

81 *Forest v Queensland Health* [2007] FCA 936

82 *Grovenor v Eldridge* [2000] FCA 1574; *Haar v Maldon Nominees Pty Ltd* (2000) 184 ALR 83.

83 *Forest v Queensland Health* [2007] FCA 936 [173] (Collier J).

84 For discussion of the debate as to whether there is an implied obligation to make reasonable accommodation see Productivity Commission *Review of the Disability Discrimination Act 1992*, Report No 30, Melbourne 186-189.

Regulation of Assistance Animals in Victoria

- 3.34 'Unjustifiable hardship' does not apply to all activities governed by the DDA.⁸⁵ 'Unjustifiable hardship' is a question of fact in each case but the DDA provides a non-exhaustive list of considerations that may be taken into account when determining whether a person has established 'unjustifiable hardship'. Section 11 provides that relevant circumstances include:
- the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and
 - the effect of the disability on a person concerned; and
 - the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship; and
 - in the case of the provision of services, or the making available of facilities—an action plan given to the Commissioner under s 64.⁸⁶
- 3.35 The burden of proof rests on the person who wishes to be excused from complying with a general obligation not to discriminate. It is not easy to establish unjustifiable hardship. In the view of the HREOC establishing unjustifiable hardship in cases involving assistance animals will 'very rarely be possible'.⁸⁷

HREOC exemptions

- 3.36 The DDA also contains a provision allowing HREOC to grant individual exemptions from compliance with some provisions in the Act for a specified period of time.⁸⁸ In 2007 HREOC granted the Australasian Railways Association⁸⁹ a temporary exemption from sections 23 and 24 of the DDA in relation to assistance animals. The exemption will operate until 2010.⁹⁰
- 3.37 The exemption allows the rail operators to refuse access to a person who claims to be accompanied by an assistance animal unless that person can show evidence that the animal has been trained to alleviate the effects of the passenger's disability. The passenger must also prove the animal is of an appropriate breed and temperament and has been trained to meet appropriate standards of behavior. Registration of the animal as an assistance animal (in jurisdictions where registration schemes exist) or identification as a guide or hearing dog will satisfy as proof.⁹¹

FEDERAL CASE LAW ON ASSISTANCE ANIMALS

- 3.38 The case *Sheehan v Tin Can Bay Country Club*⁹² examined the meaning of section 9(1)(f) of the DDA. The applicant (Mr Sheehan) had self-trained a dog to help 'break the ice' and make him feel more confident in social settings. The symptoms of Mr Sheehan's disability included a concern about meeting people and how people reacted to him. It was accepted by the respondent that Mr Sheehan had a disability for the purposes of the DDA.
- 3.39 Having previously taken his dog to the local golf club, Mr Sheehan received a letter from the club stating that he could not bring his dog onto the premises unless the dog was leashed. Mr Sheehan claimed direct discrimination.
- 3.40 The Federal Magistrates Court held that an informally trained dog that helped a man with an anxiety disorder to feel more confident by 'breaking the ice' in social interactions was an assistance animal for the purposes of the DDA. In that case, the respondent club was found to have indirectly discriminated against the applicant when it refused to permit the applicant's unleashed dog on the premises.⁹³
- 3.41 HREOC criticised the decision in *Sheehan* as rendering the operation of section 9 'unsustainable in its current form'. They considered the current definition to be unsustainable because:
- [t]he concept of 'assistance' used here appears so broad as to entitle any person with a disability to be accompanied by the animal of their choice since it will always be possible to claim that an animal provides companionship, a talking point in social interaction and a greater sense of security, and that these effects alleviate the effect of a person's disability.*⁹⁴

- 3.42 Difficulties with the interpretation of section 9(1)(f) of the DDA also arose in the more recent case of *Forest v Queensland Health*.⁹⁵ In that case, the applicant, Mr Forest, suffered from a personality disorder and claimed that he had trained two dogs as assistance dogs to mitigate the anxiety and distress he experienced because of his disorder. Mr Forest attended the Cairns Base Hospital and the Smithfield Community Health Centre accompanied by one of his assistance dogs. Notwithstanding Mr Forest's assertions that his dog was an assistance animal within the meaning of the DDA, representatives of Queensland Health advised Mr Forest that he would not be treated while accompanied by a dog. Mr Forest claimed that Queensland Health had unlawfully discriminated against him on the ground of disability in relation to access to premises and the provision of services.
- 3.43 It was accepted that Mr Forest had a disability under the DDA. The issue for the court was whether the dogs were assistance animals under section 9 of the DDA. The Court found that the training that had been provided to Mr Forest's dogs⁹⁶ and the tasks they performed were sufficient for them to be classed as assistance animals.⁹⁷
- 3.44 Justice Collier found that 'the fact that the dogs provide both companionship and therapy to the applicant does not in my view derogate from the performance of tasks which potentially assist in alleviating the effect of the applicant's disability'.⁹⁸
- 3.45 The Court noted that the lack of clarity in the DDA precipitates confusion between owners of assistance animals and service providers.⁹⁹

SUMMARY

- 3.46 In Victoria, various laws recognise and protect assistance animals in different ways. Some Victorian laws distinguish between people partnered with assistance animals depending on the nature of their disability and the type of animal that is used.
- 3.47 Having laws that recognise certain disabilities and not others causes confusion and is inequitable. There is no sound reason for providing different levels of legal protection according to the type of disability. It offends human rights principles, including the right to equality before the law.
- 3.48 Some laws are vague and may create conflicting rights and obligations. This makes the law confusing and impractical both for people using assistance animals and for the broader community.
- 3.49 There have been reported incidents where people with disabilities accompanied by an assistance animal, such as a guide dog, have been refused entry into taxis, restaurants,¹⁰⁰ health services, and accommodation¹⁰¹ even after explaining that the animal is a trained assistance animal. The main problems with the current law are set out in the table on page 24.
- 3.50 The next chapter looks at how other states regulate assistance animal partnerships. It is included to help the reader consider what works and does not work in other places. It also discusses some of the reform processes taking place in other states and territories.

- 85 There are unjustifiable hardship exceptions to some of the obligations cast by Part 2 of the *Disability Discrimination Act 1992* (Cth). These include exceptions in the areas of education (s 22(4)); access to premises (s 23(2)); goods, services and facilities (s 24(2)); accommodation (s25(3)(c)) and club and incorporated association membership (s 27(4)).
- 86 For further discussion of unjustifiable hardship see Chris Ronalds, *Discrimination Law and Practice* (3rd ed) (2008) 161-164.
- 87 <www.hreoc.gov.au/disability_rights/faq/Companion_Animals/companion_animals.html> at 17 June 2008. See the decision of the Commission in *Brown v Birss Nominees Pty Ltd* [1997] HREOCA 54. Note also the Commission decision in *Jennings v Lee* [1996] HREOCA 29 that it was discriminatory to require a guide dog to be left outside. See also *Forest v Queensland Health* [2007] FCA 936.
- 88 *Disability Discrimination Act 1992* (Cth) ss 55(1) and 55 (1A).
- 89 Members include VLine. For a full list of ARA members see <www.ara.net.au/full.php> at 3 June 2008.
- 90 See <www.hreoc.gov.au/disability_rights/exemptions/ara/dec2.htm> at 21 April 2008.
- 91 Ibid. See <www.hreoc.gov.au/disability_rights/exemptions/ara/dec2.htm> at 21 April 2008.
- 92 [2002] FMCA 95.
- 93 Direct discrimination was not found.
- 94 Human Rights and Equal Opportunity Commission, *Discussion Paper: Assistance Animals under the Disability Discrimination Act* (2002), above n 3 3
- 95 [2007] FCA 936.
- 96 Other than Forest's own extensive training they had not been trained or accredited with any other recognised training association.
- 97 [2007] FCA 936 [124] (Collier J).
- 98 [2007] FCA 936 [116] (Collier J).
- 99 [2007] FCA 936 [174]-[175] (Collier J).
- 100 *Jennings v Lee* [1996] HREOCA 29.

Regulation of Assistance Animals in Victoria

PROBLEMS WITH THE LAW

Gaps in legal protection

Most Victoria laws recognise only guide dogs and hearing dogs. In contrast, the Commonwealth legislation recognises a much broader range of assistance animals and disabilities.

No clear definition of 'assistance animal'

Victorian legislation does not clearly define 'assistance animals'. Different terms are used in different pieces of legislation. Most commonly, the term 'guide dog' is used, however, this is also inconsistently defined.

Most, but not all, Victorian laws recognise only dogs as legitimate assistance animals. Commonwealth law explicitly recognises any animal trained to alleviate the effects of a disability. The Commonwealth definition does not define key terms such as 'trained'.

Protection for trainee animals is unclear

While some laws treat trainee assistance animals the same as fully trained assistance animals, some do not mention trainee assistance animals at all.

Absence of training standards and guidelines

There are no uniform training standards for assistance animals in Victoria. People who train assistance animals are not legally required to have any qualifications or experience. The current law does not provide adequate support when the person with a disability trains their assistance animal.

No registration scheme

Local council dog registration does not specify that the dog is an assistance animal. The absence of reliable records makes it difficult to identify and access the assistance animal community as a whole, and to develop policies and services for their benefit.

No universal identification

People who use assistance animals are not legally required to carry identification. Because no uniform identification exists, businesses and service providers must be able to recognise a wide variety of different identification features. At the same time people with disability may be subject to humiliating questioning about the nature of their disability.



Chapter 4

Other Jurisdictions

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INTRODUCTION

- 4.1 All Australian jurisdictions have laws dealing with assistance animals. Each adopts a different approach to protecting access rights and regulating the use and training of assistance animals.

AUSTRALIAN CAPITAL TERRITORY (ACT)

- 4.2 The ACT has specific legislation dealing solely with assistance animals.
- 4.3 The *Domestic Animals Act 2000* defines an assistance animal as ‘an animal trained to help a person with a disability to alleviate the effect of the disability’. ‘Trained’ is not defined.
- 4.4 The Act provides that a person with a disability,¹⁰² who is accompanied by an assistance animal, has the same right of access to, and use of, a public place as a person not accompanied by an assistance animal.¹⁰³ It also prohibits additional charging when an assistance animal accompanies a person.¹⁰⁴ The Act prohibits a person from excluding or removing either an assistance animal, or their handler from a public place. This is subject to a broad exception of ‘reasonable excuse’ contained in the legislation.¹⁰⁵
- 4.5 Trainee assistance animals are not recognised. There are no specific training requirements for assistance animals in the ACT. However, assistance animals must be registered with the local council.¹⁰⁶
- 4.6 ACT anti-discrimination legislation also prohibits discrimination by treating a person ‘unfavourably’ in any circumstances because they possess or are accompanied by an assistance animal.¹⁰⁷

NEW SOUTH WALES (NSW)

- 4.7 In NSW, as in Victoria, assistance animals are regulated under legislation that deals with all sorts of animals including pets and dangerous dogs.
- 4.8 The *Companion Animals Act 1998* defines an assistance animal as one referred to in section 9 of the Commonwealth DDA.
- 4.9 Part 6 of the Act deals with assistance animals.¹⁰⁸ ‘A person with a disability is entitled to be accompanied by an assistance animal being used bona fide by the person to assist the person, into, or onto, any building or place open to, or used by, the public, and on any public transport’.¹⁰⁹
- 4.10 Assistance animal partnerships must not be denied entry without reasonable cause. Further, people with a disability must not be charged an additional entry fee for an assistance animal. An extra fee can be charged only if it is directly attributable to additional costs of hosting the assistance animal and the charge is reasonable.¹¹⁰ These provisions are enforced by a maximum penalty of 8 units.¹¹¹
- 4.11 By virtue of the use of the Commonwealth definition of assistance animal, the NSW Act requires assistance animals to be ‘trained,’ but does not specify what kind or level of training is required. However, the NSW Act does contain a provision allowing further regulations to be made regarding the training and accreditation of assistance animals.¹¹²
- 4.12 Guidelines issued by the Department of Local Government require that an assistance animal registered by a local council must have been trained by a formal training organisation meeting ADI standards or equivalent. In NSW these organisations are Guide Dogs NSW, Assistance Dogs for Independence, Assistance Dogs Australia and Lions Hearing Dogs Inc. ¹¹³ Owners can claim a registration fee exemption.¹¹⁴

NORTHERN TERRITORY

- 4.13 The *Law Reform (Miscellaneous Provisions) Act* recognises guide and hearing dogs only. Northern Territory anti-discrimination legislation takes a more expansive approach, defining ‘guide dog’ as one trained to provide assistance to a person who has a visual, hearing or mobility impairment.¹¹⁵ It includes reliance on such animals as an attribute upon which discrimination is prohibited.¹¹⁶

4.14 The Act provides a fixed penalty of \$500 for any person that denies access to a public place, accommodation or service, including public transport to a person with a sight or hearing impairment when accompanied by a guide or hearing dog.¹¹⁷ This provision applies regardless of any other Territory law.

4.15 The Act does not make any specific provisions as regards training, accreditation, registration or identification. Trainee dogs are not recognised.

QUEENSLAND

4.16 The *Guide Dogs Act 1972* recognises guide and hearing dogs.¹¹⁸ There is a specific definition of trainee assistance animals that imposes additional identification, training and ownership requirements.¹¹⁹

4.17 Queensland addresses the issue of training standards by approving assistance animal partnerships or the organisation that trains them.¹²⁰ Only assistance animals trained at 'approved institutions' are recognised.¹²¹ Declaration as an 'approved Queensland institution' is by regulation.¹²² The Act also permits approved training organisations to authorise individual assistance animal trainers. The approved organisation must authorise in writing that they are satisfied that the person has the necessary training, knowledge or experience to train hearing or guide dogs.¹²³

4.18 Queensland is the only state that specifically provides for the approval of training organisations located outside its borders.¹²⁴ In addition, any organisation that is a member of the International Federation of Guide Dog Schools for the Blind is considered an approved organisation, regardless of where the organisation is located.¹²⁵ This is a simple but effective way of recognising people partnered with assistance animals trained outside state borders while still ensuring quality standards are maintained.

SOUTH AUSTRALIA

4.19 As well as recognising guide and hearing dogs¹²⁶ the *Dog and Cat Management Act 1995*, recognises disability dogs. These are defined as dogs 'trained and used, or undergoing training to be used, for the purpose of assisting a person who is wholly or partially disabled'.¹²⁷

4.20 The Act provides that a person with a disability is entitled to be accompanied by an accredited disability, guide or hearing dog, in a public place or public passenger vehicle. A penalty of up to \$250 applies where a person refuses access.¹²⁸ Falsely claiming a dog is an assistance animal attracts a penalty of up to \$250.

4.21 South Australia is the only Australian jurisdiction that has a centralised accreditation scheme for assistance animals. Under this scheme, the Dog and Cat Management Board ('the Board') has direct power to accredit and revoke accreditation of individual assistance animals.¹²⁹

102 The definition of disability is the same as that in the *Disability Discrimination Act 1992* (Cth) s 4.

103 *Domestic Animals Act 2000* (ACT) s 104.

104 *Domestic Animals Act 2000* (ACT) s 106.

105 *Domestic Animals Act 2000* (ACT) s 105.

106 *Domestic Animals Regulation 2001* (ACT) Part 2 (5)(d) and (6)(d).

107 *Discrimination Act 1991* (ACT) s 9.

108 The NSW legislation also sets out a range of places where dogs are prohibited, for example children's play areas and food consumption areas and then provides an exception for a dog that is an assistance animal being used by a person with a disability. *Companion Animals Act 1998* (NSW) s 14(8).

109 *Companion Animals Act 1998* (NSW) s 59.

110 *Companion Animals Act 1998* (NSW) ss 60- 62.

111 *Companion Animals Act 1998* (NSW) s 60(1).

112 *Companion Animals Act 1998* (NSW) sub-s 96(1)(e).

113 NSW Department of Local Government, *Guideline on the Exercise of Functions under the Companion Animals Act* January 2007, 22. See <www.dlg.nsw.gov.au/Files/Forms/CA%20Guidelines%20Jan%202007.pdf> at 23 April 2008.

114 'Such proof should include a signed statement or documentation from a recognised training body that the animal is (or is being) trained as an Assistance Animal and a signed statement from the training body or the owner that the animal is being used for that purpose.' See <www.dlg.nsw.gov.au/dlg/dlghome/dlg_InformationIndex.asp?mi=9&ml=1&ar eaindex=CA&index=301> at 23 April 2008.

115 *Anti Discrimination Act 1992* (NT) s 4.

116 *Anti Discrimination Act 1992* (NT) s 4.

117 *Law Reform Miscellaneous Provisions Act* (NT) s 35.

118 *Guide Dogs Act 1972* (QLD) s 3.

119 Section 3 of the *Guide Dogs Act 1972* (QLD) defines a "guide dog trainee" as a dog that is (a) owned by an approved Queensland institution; and (b) being trained for use as a guide by a blind person or as an aid by a deaf person; and (c) identified as being owned by the institution by a distinctive coat or harness.

120 *Guide Dogs Act 1972* (QLD) s 3.

121 Institutions approved under the legislation are Guide Dogs Queensland, Guide Dogs NSW and ACT, Lions Hearing Dogs Incorporated, Royal Guide Dogs Owners Association Australia, the Guide Dog's Owner's and Friend's Association and institutions established outside Australia that are members of IGDF. Disability Services Queensland, *Assistance Dogs and Guide Dogs Review Discussion Paper* (2005) <www.disability.qld.gov.au/key-projects/assistance-guide-dogs/documents/review_discussion_paper.pdf> at 5 June 2008.

122 *Guide Dogs Regulation* (QLD) 1997. Guide Dogs Queensland is the approved Queensland institution, *Ibid* at 13.

123 *Guide Dogs Act 1972* (QLD) ss 3, 6A.

124 *Guide Dogs Regulation 1997* (QLD) s 3, Schedule 1.

125 *Guide Dogs Regulation 1997* (QLD) s 3.

126 Section 66 of the *Equal Opportunity Act 1984* (SA) also prohibits discrimination against a person with a sight or hearing impairment who is accompanied by a guide dog.

127 *Dog and Cat Management Act 1995* (SA) ss 4, 81.

128 *Dog and Cat Management Act 1995* (SA) s 81.

129 *Dog and Cat Management Act 1995* (SA) s 21A(1).

- 4.22 'Any person wishing to apply for disability dog accreditation must prove to the Dog and Cat Management Board that they cannot carry out functions as an able bodied person without the aid of a dog'. Other conditions apply, including that the animal undertakes a public access test.¹³⁰
- 4.23 The Board accredits dogs trained by individual trainers by devolving that function to approved training organisations. Currently Lions Hearing Dogs and the Guide Dogs Association of South Australia are approved to accredit dogs trained by individuals.¹³¹
- 4.24 The Board is able to set its own criteria for accreditation, but is bound by legislative criteria for revoking accreditation.¹³² Unless accreditation is revoked or surrendered, it remains in force for the life of the dog.¹³³
- 4.25 The Board is required to keep a register of all accredited assistance animals.¹³⁴ The assistance animals register is available for public inspection at no charge.

TASMANIA

- 4.26 The *Guide and Hearing Dogs Act 1967* establishes access rights of guide dogs users and trainers for public places, accommodation and services, including transport. 'Guide dog' includes both seeing and hearing dogs, including trainee dogs.¹³⁵ Hence, the legislation establishes rights for people with sight or hearing impairments only.
- 4.27 The legislation also establishes a scheme for identification of guide and hearing dogs. Identification is by way of an identity card issued by the 'approved' training institution which itself must be accredited under the Act. Training organisations are free to choose the form of the identification card and the information that it bears, as long as the name of the organisation and the cardholder's name and address are included.¹³⁶ The Act requires a person partnered with a guide or hearing dog who wishes to access premises to produce the identification card when requested to do so.¹³⁷
- 4.28 The Royal Guide Dogs for the Blind Association of Tasmania is the only approved assistance animal training organisation.¹³⁸ As a result, even though the legislation provides for the recognition of both guide and hearing dogs, only guide dogs are able to fulfil the basic requirements needed to obtain legal status.
- 4.29 Tasmanian anti-discrimination legislation interacts with the Guide Dogs and Hearing Dogs Act to provide broad protection from direct and indirect discrimination. This is achieved by including 'reliance on a guide dog' within the definition of 'disability', which is one of the attributes upon which discrimination is prohibited under the Tasmanian Anti Discrimination Act.¹³⁹ 'Guide dog' is not defined.

WESTERN AUSTRALIA

- 4.30 Western Australia recognises people with vision impairments partnered with guide dogs in the *Dog Act 1976*.¹⁴⁰ A person who is blind or partially blind is entitled to be accompanied in any building, public space or on public transport. This right extends to those training a guide dog.¹⁴¹
- 4.31 However, the *Equal Opportunity Act 1984* prohibits discrimination by treating a person with a sight or hearing impairment 'unfavourably' because they possess or are accompanied by a guide or hearing dog.¹⁴²
- 4.32 Under the Dog Act, a guide dog must be trained by a training institution that is recognised by the Guide Dogs for the Blind Association of Western Australia Incorporated in order to gain legal status.¹⁴³ However, the legislation also allows people partnered with guide dogs trained outside of approved organisations to apply directly to the Minister for individual approval.¹⁴⁴ The Minister receives one or two such applications per year.

REFORM INITIATIVES IN OTHER JURISDICTIONS

- 4.33 There has been increased attention to the problems associated with assistance animal laws over the last few years. Policymakers have identified systemic problems with both state and commonwealth assistance animal laws, leading to reform initiatives in several states.

- 4.34 Since 1999, the HREOC has played a key role in drawing attention to the issues relating to assistance animals under the Commonwealth *Disability Discrimination Act 1992*. Following the decision in *Sheehan v Tin Can Bay Country Club*,¹⁴⁵ HREOC released a report entitled *Reform of the Assistance Animals Provision of the Disability Discrimination Act*¹⁴⁶ highlighting the problems with federal assistance animal laws and possible solutions.
- 4.35 HREOC criticised the decision in *Sheehan* as rendering the operation of section 9 ‘unsustainable in its current form’.¹⁴⁷ HREOC recommended that the definition be limited to dogs only, with a provision for other animals to be added by regulations. They also recommended that the legislation specify that companionship or reassurance in social interactions is not in itself assistance.¹⁴⁸
- 4.36 The Government undertook to consider these issues in the context of a response to the Productivity Commission review of the DDA, which was completed in 2005.
- 4.37 While there has been no changes to federal laws to date, some reforms initiatives have commenced in states and territories. These initiatives have occurred independently and are not part of a concerted national reform program. As a result, different states have approached the issues in different ways.

WESTERN AUSTRALIA

- 4.38 Western Australia commenced a comprehensive review of its *Dog Act 1976* in 2002. Completed in late 2006, the review proposed several amendments to the *Dog Act 1976* and *Dog Regulations 1976* that are relevant to assistance animal partnerships. The key recommendations included:
- Extending recognition from dog guides only to all ‘dogs used as bona fide assistance dogs by people with disabilities where the assistance can be clearly defined’; and
 - Creating a right for people partnered with dogs whose assistance role cannot be clearly defined to make a special application to their local council for recognition as an assistance animal partnership.¹⁴⁹
- 4.39 Legislative amendments are expected shortly.

QUEENSLAND

- 4.40 Queensland initiated an Assistance Dogs and Guide Dogs review in 2005. Extensive public consultations led to the publication of an *Assistance Dogs and Guide Dogs Review Discussion Paper*¹⁵⁰ in September 2005. This discussion paper presented a comprehensive analysis of the issues facing assistance animal partnerships in Queensland. It suggested several significant reforms including the establishment of a ‘public access test’ for assistance animals and the creation of a uniform identification card for assistance animals.¹⁵¹
- 4.41 The commission understands that a detailed reform proposal is now under consideration by the Minister for Disability Services.

130 <www.dogsncats.asn.au/webdata/resources/files/Assessment_Criteria_for_disability_dogs.pdf> at 16 June 2008.

131 Information provided by Lions Hearing Dogs, 19 June 2008.

132 *Dog and Cat Management Act 1995* (SA) s 21A(2) and (3).

133 *Dog and Cat Management Act 1995* (SA) s 21A(4).

134 *Dog and Cat Management Act 1995* (SA) s 21A(5).

135 *Guide Dogs and Hearing Dogs Act 1967* (TAS) s 2.

136 *Guide Dogs and Hearing Dogs Act 1967* (Tas) s 3(5).

137 *Guide Dogs and Hearing Dogs Act 1967* (Tas) s 3(4).

138 *Guide Dogs (Approved Institution Order) 2006* (Tas) s 3.

139 *Anti Discrimination Act 1998* (Tas) s 3.

140 *Dog Act 1976* (WA) s 8.

141 *Dog Act 1976* (WA) s 8(2).

142 *Equal Opportunity Act 1984* (WA) s 66A(4).

143 *Dog Act 1976* (WA) s 3.

144 *Dog Act (1976)* (WA) ss 8(3), 8(4).

145 This decision is discussed further in at 3.38–3.40.

146 Human Rights and Equal Opportunity Commission, *Reform of the assistance animals provision of the Disability Discrimination Act: Report following consultations on s.9(1)(f) of the Disability Discrimination Act 1992 dealing with assistance animals other than guide dogs and hearing dogs* 18 November 2003.

147 *Ibid* 1.

148 *Ibid* 16.

149 Western Australia Department of Local Government and Regional Development (2006) *Proposed Amendments to the Dog Act 1976, Dog Regulations 1976 and the Dog (Restricted Breeds) Regulations (No. 2) 2002* 9. See <www.dlgrd.wa.gov.au/Publications%5CDocs%5CDogAct1976ProposedAmendments.pdf> at 28 February 2007.

150 Disability Services Queensland *Assistance Dogs and Guide Dogs Review Discussion Paper* (2005).

151 *Ibid* 16-20.

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Chapter 4

Other Jurisdictions





Chapter 5

Options for Reform

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INTRODUCTION

- 5.1 In the preceding chapters, we outlined the key issues associated with dealing with assistance animal partnerships. We argued that the current differences between federal and state laws make it harder for service providers and the members of the public to understand that people who use assistance animals have the same right of access as any other person.
- 5.2 The focus of this chapter is to consider what kind of law reform would ensure that people with a disability can confidently exercise their right to be accompanied by an assistance animal except in a very limited range of circumstances in which that right may be subject to some limitation because of overriding considerations.
- 5.3 This chapter considers various options for reform. It includes draft proposals and seeks your feedback. Following consultation and further research on these proposals, the commission will produce a final report including recommendations. This report will be submitted to the Attorney-General.
- 5.4 In considering options for reform, the commission wishes to enhance respect for the human rights of people with disabilities. In proposing change, the commission aims to facilitate the inclusion of people with disabilities in all aspects of community life. This approach is consistent with the principles contained in the *Charter of Human Rights and Responsibilities* and in key government policies including *A Fairer Victoria*.¹⁵²
- 5.5 In devising draft legislative proposals the commission has four main aims:
 - To clarify and rationalise the legal right of a person with a disability to use a trained assistance animal throughout his or her daily life
 - To give greater operational effect to this legal right than currently exists by establishing the framework for an administrative system which would permit a person with a disability to easily establish that he/she was accompanied by a trained assistance animal;
 - To promote community understanding of the fact that people with a disability who have a trained assistance animal are entitled to be accompanied by the animal throughout their daily lives; and
 - To provide certainty for business and the community in relation to health, safety and hygiene issues associated with the use of assistance animals.

LEGISLATIVE CHANGES

STREAMLINING THE LAW

- 5.6 As noted in previous chapters, there are both federal and Victorian laws which regulate the use of assistance animals. As a federal law, the DDA overrides any Victorian law that is inconsistent with its own assistance animal provisions.¹⁵³ This means that although Victoria can reform its own assistance animal laws to promote clear and effective regulation, it cannot address problems arising from Commonwealth legislation and nor can it legislate in a way that is inconsistent with Commonwealth law.
- 5.7 The commission strongly supports harmonisation of Commonwealth and state anti-discrimination legislation. However, in the absence of that larger reform, any new legislative or regulatory system in Victoria must not be in conflict with the Commonwealth legislation. Reforming Victorian laws to remove current anomalies will certainly help to address the problems identified in this consultation paper. It will also help to promote consistency with federal law by ensuring all people with disability enjoy equal protection.
- 5.8 Greater clarity in Victorian law can be achieved following the development of a coordinated policy about a number of key issues which include:
 - establishing a concise definition of 'assistance animal'
 - providing uniformity and establishing a platform for consistent regulation
 - training standards
 - identification and accreditation.

- 5.9 Improvements in these areas would promote understanding of the law and help people to exercise their rights and to observe their obligations. It would also promote consistency with federal law. The current review of the (EOA) provides the Victorian Government with an ideal opportunity to enact such a reform.

TWO STEPS TO REFORM

- 5.10 The Commission suggests a two-step process for reform. This two-step process deals, firstly, with creating consistency around the issue of discrimination and, second, creating clarity around the 'operational' aspects of assistance animals such as training, accreditation and registration.
- 5.11 The first step would bring all state anti-discrimination provisions regarding assistance animals into the EOA. The commission also suggests amendments to the EOA to improve consistency with the DDA, and to provide protection for all people with a disability using an assistance animal. The detail of these amendments is set out in the draft proposals below.
- 5.12 In addition to making improvements to the EOA, the second step recommended by the commission also considers that some small amendments to the DFNAA will be required. In this way existing powers under the DFNAA can be used to establish a simple, yet comprehensive training, accreditation, registration and identification scheme for assistance animals in Victoria.
- 5.13 Our proposed scheme would operate alongside existing animal registration schemes, and focus on the animal training and care aspects of the assistance animal partnership. This will help to keep costs to a minimum by relying on existing regulatory mechanisms whenever possible.
- 5.14 The commission also believes it worth considering whether the VEOHRC may have a role to play in ensuring that the broader community, and employers and service providers in particular, understand the circumstances in which people may be accompanied by assistance animals throughout their daily lives. Our draft proposals for the role of VEOHRC are outlined below.
- 5.15 The commission believes that these simple yet far-reaching changes would establish a strong base for the use of assistance animals in Victoria. Establishing a light touch regulatory scheme will bring certainty and quality control without losing the valuable expertise and experience built up by existing organisations.¹⁵⁴ Most importantly, people with disability, businesses and the general public would stand on firm legal ground when dealing with well trained and easily recognised assistance animals.

LEGISLATIVE AMENDMENTS TO THE EQUAL OPPORTUNITY ACT 1995

ALL PEOPLE WITH DISABILITY SHOULD BE PROTECTED

- 5.16 Currently, the Commonwealth DDA recognises all types of assistance animals, while the Victorian EOA only recognises dogs assisting people with visual, hearing and mobility impairments. The DFNAA only recognises guide dogs and hearing dogs. Under these laws, people partnered with different types of assistance animals have different rights in the same situation. This is highly unsatisfactory given the vital role assistance animals play in facilitating participation in daily life by people with disability.
- 5.17 The commission suggests the assistance animal provisions of the EOA should apply to all forms of disability and be consistent with the rights contained in the DDA. The mechanism for achieving this aim is relatively simple. By replacing the term 'guide dog' in the EOA Act with 'assistance animal', and defining this properly, people with all forms of disability will gain an important legal right.¹⁵⁵

CLEAR DEFINITION OF 'ASSISTANCE ANIMAL'

- 5.18 Legislation needs to include a clear and comprehensive definition of assistance animal. It should not be limited to a particular form of disability.

152 Government of Victoria, *A Fairer Victoria 2008: Strong People, Strong Communities* (May 2008).

153 *Disability Discrimination Act 1992* (Cth) ss 12, 13.

154 Regulation which is not obtrusive or prescriptive and is cheap to administer and comply with may be referred to as 'light touch'. National Economic Research Associates, *Alternative Approaches to 'Light-Handed' Regulation: A Report for the Essential Services Commission Victoria* (2004) 8.

155 Coverage will also need to be extended to apply to all areas of activity affected by the general anti-discrimination provisions of the EOA.

156 *Companion Animals Act 1998* (NSW) s 5(1).

157 *Disability Discrimination Act 1992* (Cth) s 9(1)(f).

158 *Domestic Animals Act 2000* (ACT).

159 *Guide Dogs and Hearing Dogs Act 1967* (Tas) s 2.



5.19 There is a range of options for improving the definition of assistance animal. One option, already taken by NSW,¹⁵⁶ is to refer to the definition contained in the Commonwealth Act which includes guide dogs, hearing dogs and 'any other animal trained to assist the aggrieved person to alleviate the effect of the disability'.¹⁵⁷ The ACT has also adopted a comprehensive definition. They define an assistance animal as 'an animal trained to help a person with a disability to alleviate the effect of the disability'.¹⁵⁸ In other states, such as Tasmania, a more restrictive definition is used.¹⁵⁹

Which animals?

5.20 The commission wishes to minimise the possibility of legislative over-reach in its definition of assistance animal. There is a risk that a very broad definition, such as 'any animal', allows for species of animals that the community does not accept as appropriate. This could have a negative impact on public confidence in existing assistance animals such as guide dogs. This risks flow-on effects to people with disability if the community believes the law has gone too far by allowing other species to be classified as assistance animals.¹⁶⁰

5.21 However, community attitudes alone should not determine the appropriateness of a species or breed as an assistance animal. One way to balance community interests would be to adopt a definition that specifies the assistance animal is properly trained. Thus, the community can have confidence that the species is appropriate and poses no risk to the public.¹⁶¹

5.22 Our proposals maintain a clear legal difference between a pet and a trained assistance animal. The community rightly expects that laws which create a right to be accompanied by an assistance animal only apply when that animal has been appropriately trained to assist the person with a disability and not to be a nuisance or to interfere with other people. Under our draft model, new species could not be legally recognised as assistance animals unless regulations governing their training were made under the DFNAA.

5.23 Training and accreditation requirements would be established by using existing powers under the DFNAA.¹⁶² Having clear standards would protect the reputation of existing assistance animal organisations as new species could only be recognised by law if they are properly trained and meet standards. It would also allow the law to adapt as standards for other assistance animals improve over time. This, in turn, would inform community attitudes and generate wider acceptance. Most importantly, it would ensure proper standards of assistance to people with a disability without denying opportunities for new animals to provide help in the future where needed.

Definition of assistance

5.24 As discussed previously, the Commonwealth definition has been interpreted by the Federal Magistrates Court to include self-trained animals that provide comfort and reassurance.¹⁶³ The HREOC have criticised this approach.

5.25 However, in more recent cases it has been made clear that when deciding what is a trained assistance animal, the courts are required to 'come to a factual conclusion as to the nature of the applicant's disability, because the concept of alleviation of a disability ... can only be considered properly and effectively in this case in light of a precise, factual decision as to the disability held by the applicant'.¹⁶⁴ For example, an assistance dog may mitigate anxiety or distress, or help navigate the social environment for a person with a mental illness typified by those symptoms—however the actions of the dog must directly alleviate the impacts of the disability.

5.26 The commission suggests that legal protection concerning the use of assistance animals should be conferred upon people with a disability only where the assistance animal genuinely assists that person in a way that alleviates the effect of that person's disability. The relevant test is that the person is enabled to access services and premises where the nature of their disability would make it more difficult to do so without the assistance animal. This does not mean the person 'needs' the animal, but rather that the effects of the disability are lessened by using an assistance animal, in the same way other disability aids may provide assistance.¹⁶⁵

- 5.27 This goes beyond companionship alone. While companionship may be of added benefit to the person with a disability, it would not of itself meet the test of *alleviating* the relevant disability. This is consistent with Commonwealth law as interpreted by the courts.¹⁶⁶
- 5.28 The commission's draft proposals include that the EOA use the term assistance animal, and define it as 'an animal that is trained to perform tasks and functions that assist a person with a disability to alleviate the effect of their disability'. The definition of 'trained' should be linked to the DFNA. This is discussed further below.

Draft Proposals

The Equal Opportunity Act should be amended to replace the term 'guide dog' with 'assistance animal' wherever it appears.

The Equal Opportunity Act should define assistance animal as 'an animal that has been certified by an approved assistance animal organisation to perform tasks and functions that assist a person with a disability to alleviate the effect of their disability'.

The Equal Opportunity Act should include a definition of an 'assistance animal in training'. The provisions of the Act should apply to these animals.

The Equal Opportunity Act should define 'approved assistance animal organisation' as an organisation declared by the Minister under section 7 of the Domestic (Feral and Nuisance) Animal Act once amended.

The Equal Opportunity Act should include an explanatory note that specifies that 'to alleviate the effect of a disability' means more than mere companionship or comfort but may include assistance with navigating social interactions where the nature of the disability is such that this assistance would alleviate the disability.

The Equal Opportunity Act should include an explanatory note that 'trained' means trained according to the standards contained in regulations made under the Domestic (Feral and Nuisance) Animals Act.

CONSULTATION QUESTIONS

How should assistance animals be defined in Victorian legislation?

The commission's preferred definition is '*an animal that has been certified by an approved assistance animal organisation to perform tasks and functions that assist a person with a disability to alleviate the effect of their disability*'.

- Should the commission's preferred definition of assistance animal be adopted? What are the advantages and disadvantages of the definition? Is there any other more suitable definition?
- Do you support the mechanism of linking the definition of 'trained' to standards that may be developed under the Domestic (Feral and Nuisance) Animals Act and associated regulations?

WHAT SHOULD THE RIGHT LOOK LIKE?

A POSITIVE RIGHT OF ACCESS

- 5.29 Currently, the DFNA provides a positive right of access for people with vision or hearing disabilities using a guide dog.¹⁶⁷ However, this broad right to be accompanied 'at all times and in all places'¹⁶⁸ does not apply to people with other forms of disability. Nor does it have an enforcement mechanism.
- 5.30 As discussed above, the EOA guide dog provision provides explicit protection from refusal to allow guide dogs in accommodation only. The provision also only protects people with a visual, hearing or mobility impairment.¹⁶⁹ It does not extend to other forms of impairment such as mental health disabilities.

160 This issue was noted by HREOC in their report on assistance animals law: Human Rights and Equal Opportunity Commission, *Reform of the assistance animals provision of the Disability Discrimination Act: Report following consultations on s.9(1)(f) of the Disability Discrimination Act 1992 dealing with assistance animals other than guide dogs and hearing dogs* 18 November 2003, above n 4.

161 The commission's preferred approach would be to define assistance animals as dogs and then add other species later by way of regulation. This approach has been suggested by HREOC. However the Victorian Equal Opportunity Act does not include a regulation making power.

162 Training and accreditation is discussed below at 5.69–5.102.

163 *Sheehan v Tin Can Bay Country Club* [2002] FMCA 95 (9 May 2002).

164 *Forest v Queensland Health* [2007] FCA 936 [32] (Collier J).

165 *Forest v Queensland Health* [2007] FCA 936 [117] (Collier J).

166 However 'the fact that assistance animals provide companionship does not derogate from performance of tasks that alleviate the disability'. *Forest v Queensland Health* [2007] FCA 936 [32] (Collier J).

167 'A visually impaired person, hearing impaired person or person training a guide dog may, at all times and in all places, be accompanied by a dog kept and used, or trained by him or her as a guide dog'. *Domestic (Feral and Nuisance) Animals Act 1994* (Vic) s7(4).

168 *Domestic (Feral and Nuisance) Animals Act 1994* (Vic) s 7(4).

169 *Equal Opportunity Act 1995* (Vic) s52.

170 Using the 'characteristic extension' provision in s 7(2)(b).

171 The process of bringing a discrimination claim is discussed in chapter 3.



- 5.31 However, the general non-discrimination provisions of the Act apply to all people with disability. This is because the use of an assistance animal may be a characteristic of an existing attribute under the EOA (impairment).¹⁷⁰
- 5.32 Thus, a person may bring a claim of direct or indirect discrimination under the EOA as distinct from a complaint that a person has contravened section 52 of the EOA by failing to provide access to accommodation because of a guide dog.¹⁷¹ This means that the coverage of the EOA is broader than that explicitly provided in the guide dog provision.
- 5.33 While the value of remedial anti-discrimination provisions is recognised, the human rights of people with disability are more effectively enhanced if the law contains a positive right to be accompanied by an assistance animal unless there are good reasons for limiting this right. Setting this out in legislation enables all people with a disability to assert with confidence their right to be accompanied by an assistance animal. It also helps to raise public awareness of the right to use an assistance animal. If such a positive right is to be included, it needs to be consistent with the DDA. In particular, it would need to include some form of exception to deal with places where assistance animals should not go because their presence may unfairly impact upon other people.

NO DISCRIMINATION

- 5.34 Although some derogation may be necessary, legislation needs to avoid any broad exemptions that could result in lack of protection for people with disability of a particular type, or when using certain assistance animals. In other jurisdictions, such as New Zealand, a person using a 'disability assist dog' must comply with 'any reasonable conditions imposed by the occupier or person controlling the premises'.¹⁷² Such a broad exemption is so vague that it significantly undercuts the rights of the person with disability and is open to abuse.
- 5.35 To avoid this sort of problem the DDA clearly states that less favourable treatment on the basis of being accompanied by an assistance animal constitutes unlawful discrimination. The EOA could be amended to mirror that provision so that protection is extended to all areas of activity covered by the Act.
- 5.36 Under that approach the EOA, like the DDA, would grant legally enforceable rights to be treated in the same way as others whenever a person with a disability is accompanied by a trained assistance animal while undertaking activities that are regulated by anti-discrimination law. However, there may be a need for an exception that operates in those circumstances where it is reasonable to exclude an assistance animal partnership.
- 5.37 Currently, the 'special manner of service' exception in section 46 of the EOA permits different treatment that is reasonable when dealing with the provision of services. There is no similar exception, however, for the other areas of activity regulated by the Act. Nor does the EOA have an 'unjustifiable hardship' defence as is the case under sections 15(4), 22(4), 23(4), 24(2) and 25(3)(c) of the DDA.¹⁷³ One option would be to adopt the DDA 'unjustifiable hardship' provisions in the Victorian Act.
- 5.38 Under the DDA there is a rebuttable presumption that it is unlawful to treat a disabled person accompanied by an assistance animal less favourably than others in any of the areas of operation covered by the Act. The presumption is rebutted when the respondent establishes unjustifiable hardship (in those instances where the exception is available).
- 5.39 The commission has included this as an option for reform and seeks your views. Under this option the Victorian EOA would be amended to mirror the DDA provisions, including a prohibition on less favourable treatment together with an unjustifiable hardship exception in relation to all or most areas of activity.

REASONABLE ACCOMMODATION OF ASSISTANCE ANIMAL PARTNERSHIPS?

- 5.40 Another way to achieve a similar, but not the same, result would be to include a provision in the EOA which confers an obligation upon employers, businesses, service and accommodation providers not to unreasonably refuse to accommodate assistance animal partnerships. We have included this as alternative option and seek your views.

- 5.41 The 'reasonable accommodation' approach was adopted in recent amendments to the EOA as regards family and carer responsibilities and the workplace. When those amendments come into force on 1 September 2008, the EOA will require an employer not to unreasonably refuse to accommodate the parental or carer responsibilities of a person offered employment, an employee, a contract worker, a person invited to become a partner in a firm, or a partner in a firm.¹⁷⁴ In determining whether a refusal to accommodate responsibilities is unreasonable, all relevant facts and circumstances must be considered. The amendments include examples of relevant facts and circumstances.
- 5.42 Failure to reasonably accommodate a person's family or carer responsibilities will constitute discrimination. A person should not have to prove either direct or indirect discrimination in order for the conduct to be unlawful.¹⁷⁵
- 5.43 The 'reasonable accommodation' approach operates in a similar, but not the same, way as the 'unjustifiable hardship' provisions in the Commonwealth Act.¹⁷⁶ The major difference between the two approaches is the principle which underpins the imposition of the legal obligation and the granting of the legal right in question. When a person is under an obligation to 'reasonably accommodate' the needs of another person with a disability, the starting point is that the person to be accommodated is different and may be treated differently as long as reasonable steps are taken to cater for that person's difference.
- 5.44 By way of contrast, when those parts of the DDA which grant rights and impose obligations (Part 2) are read in conjunction with section 9, the starting point is that a person with a disability who is accompanied by an assistance animal is no different to anyone else and must be treated no differently. Equality of treatment is the norm. The 'unjustifiable hardship' provisions in Part 2 cater for the very limited range of circumstances in which a person who is obliged not to discriminate on the ground of disability can establish that he/she should be permitted to treat a person with an assistance animal differently than others because the circumstances of the particular case merit different treatment.
- 5.45 The advantage of applying the 'reasonable accommodation' approach is that a person does not need to go through the sometimes convoluted reasoning required to establish a complaint of direct or indirect discrimination in relation to assistance animals.¹⁷⁷ It also sends a message to service providers, in broad terms, about their obligations. On the other hand, one of the negatives of 'reasonable accommodation' provisions is that they require case by case factual determinations. They permit flexibility but may suffer from lack of precision by placing a very significant amount of discretion in the hands of service providers.
- 5.46 Depending upon how much detail is set out in legislation as to its practical application, the reasonable accommodation approach runs the risk of being too vague. This could have the unintended consequence of making it even harder for assistance animal partnerships to assert their rights.
- 5.47 In the case of the family and carer responsibility amendments, quite a lot of detail was included in the legislation about the factors a tribunal or court must consider when deciding if reasonable accommodation has or has not been made. For example, in relation to employment, the factors to be considered include: the nature of the accommodation required, the financial circumstances of the employer, and the consequences for the employer and employee if the accommodation is not made.¹⁷⁸ If this approach was taken for assistance animals, detailed guidelines may be needed to clearly express the boundaries of reasonableness across the range of circumstances where people with assistance animals need access to places and services.
- 5.48 Our draft proposals about a guideline making power for the VEOHRC are discussed further below.

GUIDELINE MAKING POWER

- 5.49 Currently, the EOA does not contain a general guideline making power for either the Attorney-General or the VEOHRC.
- 5.50 This contrasts with the Commonwealth DDA which provides the relevant Minister with the power to formulate 'disability standards'.¹⁷⁹ These standards apply to all legal persons and may regulate the areas of employment, education, accommodation, provision of goods and services

172 *Dog Control Act 1996* (NZ) s 75(2).

173 Unjustifiable hardship is discussed in Chapter 3.

174 Equal Opportunities Amendment (Family Responsibilities) Bill 2007, Explanatory Memorandum.

175 Scrutiny of Acts and Regulations Committee, *Alert Digest No 16 of 2007, Ministerial Correspondence Equal Opportunities Amendment (Family Responsibilities) Bill 2007* See <www.parliament.vic.gov.au/sarc/Alert_Digests_07/07alt16min.htm> at 29 May 2008.

176 The DDA does not contain an express obligation to make reasonable accommodations for assistance animals. However, it should also be noted that the Productivity Commission, following their review of the DDA, recommended that an express provision be included in the legislation. Productivity Commission *Review of the Disability Discrimination Act 1992, Report No 30*, Melbourne 196, above n 84, 196.

177 To successfully claim indirect discrimination the complainant must establish that there is a requirement or condition which forms the basis of the decision to discriminate, they must also identify the correct comparative pool and establish that a person displaying their attribute is not able to comply with the requirement or condition. They must also establish that the requirement or condition is not reasonable when all circumstances are taken into account. For discussion see Chris Ronalds, 2008 *Discrimination Law and Practice* (3rd edition), above n 86, 49-51.

178 Equal Opportunities Amendment (Family Responsibilities) Bill 2007 ss 7(2), 8(2), 9(2), 10(2).

179 *Disability Discrimination Act 1992* (Cth) s 31.

180 *Disability Discrimination Act 1992* (Cth) s 32.

181 State of Victoria, Department of Justice *Equal Opportunity Review: Discussion Paper* 2007 28.



and access to public places. The standards provide a greater level of detail than is usually found in legislation. Once approved by Parliament, the standards are legally binding. It is unlawful for a person to contravene a disability standard.¹⁸⁰

- 5.51 While the VEOHRC has issued guidelines on specific issues, for example *Employer Guidelines on Parents and Carers*, these guidelines have no legal status in the EOA.¹⁸¹
- 5.52 In New South Wales, the Anti-Discrimination Board may develop guidelines. Compliance with these guidelines may be formally considered by courts and tribunals when determining discrimination complaints.¹⁸² Similarly, in Tasmania and the Northern Territory equal opportunity bodies may develop guidelines.¹⁸³
- 5.53 The current review of the EOA is considering whether the Act should include a guideline making power along the lines of the NSW model. The discussion paper seeking community views on reform of the Victorian EOA poses several consultation questions about a guideline making power, including the possible scope of such a provision.¹⁸⁴
- 5.54 While the commission does not wish to pre-empt the findings of the EOA review, we do recognise the benefits such a provision would bring to the regulation of assistance animals and to the area of equal opportunity law generally. In particular, guidelines have the capacity to target a specific issue so that a sensible balance is struck and greater clarity achieved.
- 5.55 Guidelines could be used to reassure the community that assistance animals will not usually be permitted to enter sterile areas or places where community health and safety may be compromised. By way of example, a person with an assistance animal may be refused entry to a restaurant kitchen in all but exceptional circumstances. Guidelines could also stipulate that while a person may be accompanied by an assistance animal when in hospital, that animal would not be permitted in an operating theatre.
- 5.56 The commission believes that guidelines can clarify the law in a very practical way so that it is easier for service providers to meet their legal obligations. Courts and tribunals can also use them to determine discrimination claims against objective criteria that have been developed with the specific needs of people with disability and service providers in mind.
- 5.57 Under our draft proposals, guidelines could also make a direct link between the anti-discrimination provisions of the EOA and the proposed training, identification and registration requirements in the DFNA. Put simply, guidelines could require that when an assistance animal is properly trained and registered, and their handler is carrying standard identification, the person should not be denied access to premises or services unless there are very specific and compelling reasons for doing so.

Draft proposals

The Equal Opportunity Act should specify that it is unlawful discrimination to treat a person with an impairment less favourably because that person possesses or is accompanied by an assistance animal, or animal in training, whether or not it is the discriminator's practice to treat less favourably any person who possesses or is accompanied by an animal.

OR, IN THE ALTERNATIVE

The Equal Opportunity Act should be amended to include a provision that states that a person 'must not unreasonably refuse to accommodate a person accompanied by an assistance animal, or assistance animal in training, in the provision of goods, services, accommodation or in regards to employment'.

The Equal Opportunity Act should specify that unreasonably refusing to accommodate an assistance animal partnership includes:

- requiring a person to leave their assistance animal or animal in training outside or to sit in a specified area in the premises; or
- charging an additional fee for entry or service because a person is accompanied by an assistance animal or animal in training.

The Equal Opportunity Act should provide that all relevant facts and circumstances must be considered in determining whether a person has unreasonably refused to accommodate an assistance animal partnership.

Examples of relevant facts and circumstances should be included in the Act. These should include a requirement that the assistance animal be under the effective control of its user.

Draft Proposals regardless of which option is chosen

That subject to the findings of the Review of the Equal Opportunity Act, the Act be amended to provide a guideline making power for the Victorian Equal Opportunity and Human Rights Commission so that they may develop guidelines regarding the reasonable accommodation of assistance animal partnerships.

That subject to the findings of the Review of the Equal Opportunity Act, the Act be amended to provide that such guidelines be taken into account by courts and tribunals considering discrimination claims.

The Equal Opportunity Act should specify that it is not discriminatory to:

- require an assistance animal to be under the control of its user; or
- require the person to produce an animal assistance identification card.¹⁸⁵

Provisions regarding the production of an assistance animal identification card should not come into force until amendments providing for an Identification Scheme have been made to the Dogs (Feral and Nuisance) Animals Act.

The Equal Opportunity Act should specify that a person possessing or accompanied by an assistance animal is liable for damage to property caused by the assistance animal.

CONSULTATION QUESTION

Should the current guide dog provisions in the Equal Opportunity Act be extended to provide protection for all assistance animal partnerships in all areas of activity covered by the Act?

- How should the EOA be amended to clarify the right of a person with a disability to be accompanied by an assistance animal?
- Should the EOA effectively mirror the provisions in the DDA or should it include an obligation to make 'reasonable accommodation' for assistance animal partnerships?
- Would a guideline making power for the VEOHRC be a good way to provide more detail about the standards required to avoid discrimination? Would such guidelines provide enough certainty for business and services, people with disability and the community?
- Is there a better way to ensure everyone knows when they can and cannot exclude an assistance animal partnership?

AMENDMENTS TO THE DFNA

5.58 Making changes to the EOA will resolve some of the problems identified in this consultation paper. If Victoria is to have comprehensive, modern laws on assistance animals, however, the interrelated issues of training, accreditation and identification will need to be addressed.

5.59 Ideally, a new Act—the 'Assistance Animals Act'—would be enacted to establish a comprehensive, yet simple, system for regulating assistance animals. The advantage of this approach would be that all provisions relating to assistance animals could be more easily found in legislation whose sole purpose was to regulate the area. Currently, assistance animals are dealt with in one section of the DFNA, which as its name suggests is not primarily concerned with assistance animals.

182 *Anti-Discrimination Act 1977* (NSW) s 120A.

183 *Anti-Discrimination Act 1998* (Tas) s 6; *Anti-Discrimination Act* (NT) s 13.

184 State of Victoria, Department of Justice *Equal Opportunity Review: Discussion Paper 2007* 28, above n 181, 28.

185 It would remain unlawful to request discriminatory information, for example to ask a person to 'prove' their disability. *Equal Opportunity Act 1995* (Vic) s 100.



- 5.60 However, because this is a community law reform project, only relatively minor changes to the law may be considered appropriate. To that end the commission suggests a series of modest amendments to the DFNAA that achieve the policy aim of ‘operationalising’ existing rights to be accompanied by an assistance animal.
- 5.61 These amendments would use existing powers under the DFNAA to establish a light touch regulatory scheme. The main elements of the scheme would be that the Minister could declare assistance animal training organisations to be recognised under the DFNAA. These organisations would be assessed against simple guidelines and would be subject to existing regulations about training standards modified to refer to assistance animal partnerships.
- 5.62 All assistance animals trained (or being trained) by such organisations (or by assistance animal owners training their animal under the guidance of such organisations) would be regarded as bone fide assistance animals under Victorian law.
- 5.63 Amendments would also provide for the registration and identification of assistance animals. This would provide certainty for training organisations, assistance animal users and the community about what is, or is not, a bona fide assistance animal.
- 5.64 The detail of the commission’s proposed model is discussed below.

INTER-RELATIONSHIP BETWEEN THE DFNAA AND THE EOA

- 5.65 One of the principal aims of the commission’s proposed amendments to the DFNAA is to provide clarity around the term ‘trained assistance animal’ when used in the EOA. The definition of assistance animal should be consistent across the two Acts.
- 5.66 The DFNAA should not contain ‘right of access’ or anti-discrimination provisions as these are best placed in the EOA.¹⁸⁶ The commission believes that the DFNAA should only be concerned with the training, accreditation, registration and identification of assistance animals.
- 5.67 If there is any reference to disability or impairment in the DFNAA, this should be consistent with the definition of ‘impairment’ in section 4 of the EOA.¹⁸⁷ Linking the definitions in both Acts provides certainty and allows the law to be updated over time in a way that is consistent with the rights and obligations across all Victorian human rights and equal opportunity legislation.¹⁸⁸

Draft proposals

That Parliament repeal section 7(4) of the Domestic (Nuisance and Feral) Animals Act.

That Parliament amend the Domestic (Nuisance and Feral) Animals Act to refer to ‘Assistance Animal’ wherever ‘guide dog’ currently appears.

That Parliament amend the Domestic (Nuisance and Feral) Animals Act to define an assistance animal in the same way as it is defined in the *Equal Opportunity Act 1995* (once amended).¹⁸⁹

That Parliament amend the Domestic (Nuisance and Feral) Animals Act to define a person with a disability as a person with an impairment as defined in the *Equal Opportunity Act 1995*.

CONSULTATION QUESTIONS

Does it make sense to place all Victorian laws that support the use of assistance animals in the Equal Opportunity Act?

- If not, is there another way the law can be made simpler and easier to navigate?

DEFINITION OF ‘TRAINED’

- 5.68 The Commonwealth DDA does not expressly require an assistance animal to be suitable for public access, nor does it define ‘trained’. There is no explicit requirement that an assistance animal be trained by a particular organisation or type of trainer, undertake a minimum amount of training, or be accredited or registered with a particular organisation or agency. Hence, the courts have found that ‘trained’ should be given its ordinary meaning, which is ‘to discipline and instruct (an animal) to perform specified action’.¹⁹⁰

- 5.69 This lack of clarity in the Commonwealth DDA potentially contributes to conflict between assistance animal owners and service providers, and may undermine public confidence in the standards of assistance animals they see in public places. In *Forest v Queensland Health*, Justice Collier suggested that some reference to accredited training organisations would provide certainty for owners and service providers, and promote public confidence in the use of assistance animals.¹⁹¹
- 5.70 In Victoria, the EOA defines a guide dog as ‘a dog that is trained to assist a person who has a visual, hearing or mobility impairment’.¹⁹² However, as we have seen there is a range of training organisations in Victoria. There is no uniform framework for determining minimum standards of training of an assistance animal.
- 5.71 The DFNAA refers to organisations that train guide dogs being approved by the Minister for Agriculture, but only in so far as that relates to dogs in training.¹⁹³ Under the commission’s draft proposals, the Minister for Agriculture would be able to declare organisations as ‘assistance animal organisations’ to cover both animals in training and those that have completed their training. This is discussed further below under ‘approved assisted animal organisations’.
- 5.72 The commission believes that in order to be eligible for approval as an approved assistance animal organisation, the training organisation should be required to meet minimum standards set out in guidelines. This is consistent with the existing approach for ‘applicable organisations’ under section 5A of the DFNAA.
- 5.73 These standards could be met by being a member of a relevant international body, or by demonstrated good performance in the provision of assistance animal training. This is discussed further below under ‘guidelines’.

DRAFT PROPOSALS

That Parliament amend section 7 of the Domestic (Nuisance and Feral) Animals Act to include a provision that the Minister may declare that an organisation is an ‘assistance animal organisation’. This provision should mirror existing sections 5A (1)-(2) but replace the term ‘applicable organisation’ with ‘assistance animal organisation’.

The Domestic (Feral and Nuisance Animals) Act should specify that a person or organisation whose approval as an ‘assistance animal organisation’ is refused or discontinued should have the right to appeal the decision to the Victorian Civil and Administrative Tribunal (VCAT).

CONSULTATION QUESTIONS

Do you support the introduction of a law that would require organisations which train assistance animals to be accredited by way of a declaration by the Minister that the organisation is an ‘assistance animal organisation’?

- What sort of appeal rights should be available if accreditation is refused or discontinued?

APPROVED ASSISTANCE ANIMAL ORGANISATIONS

- 5.74 Establishing a mechanism for approving ‘assistance animal organisations’ will help to ensure consistent minimum standards. Upon completion of training by such an organisation, the animal would achieve the status of assistance animal. While in training the assistance animal partnership would also be covered by anti-discrimination legislation.

WHO SHOULD BE ELIGIBLE FOR ‘ASSISTANCE ANIMAL ORGANISATION’ STATUS?

Approved organisations

- 5.75 Under our proposals an organisation, rather than individuals, would be eligible for approval by the Minister. Thus, any trainer employed by an approved organisation would be considered an accredited trainer.¹⁹⁴ Assistance animals that have been trained by these organisations in the past should be recognised.

186 Besides the current provision is cast so wide that it may interfere with private property rights and is effectively unenforceable because it does not contain a sanction if it is breached.

187 The commission notes the *Equal Opportunity Act 1995* (Vic) is currently being reviewed.

188 The *Charter of Human Rights and Responsibilities Act 2006* (Vic) definition of discrimination is linked to the *Equal Opportunities Act 1995* (Vic) in a similar way.

189 That is ‘an animal that has been certified by an approved assistance animal organisation to perform tasks and functions that assist a person with a disability to alleviate the effect of their disability’.

190 [2007] FCA 936 [90]-[92] (Collier J).

191 [2007] FCA 936 [175]-[176] (Collier J).

192 *Equal Opportunity Act 1995* (Vic) s 4.

193 *Domestic (Feral and Nuisance) Animals Act 1994* (Vic) s 7(2)-(3).

194 This ‘approved institution’ approach is used for guide dogs in Queensland. *Guide Dogs Act 1972* (Qld) s 3, 6A; *Guide Dogs Regulation 1997* (Qld) s 4.



Private trainers

- 5.76 It is unclear how many private, individual trainers are currently operating. People may seek a private trainer if they are expecting a long wait from a formal training organisation and they have the means to pay for private training.
- 5.77 The commission seeks views about whether individuals should be eligible for approval by the Minister under the proposed model. While we are aware that some people rely on private trainers, we do not wish to create a heavy administrative burden for the Bureau of Animal Welfare which currently administers the DFNAA. Without knowing the extent of private training, it is difficult to assess the likely burden. Even though we have not included private trainers in our proposed model, we actively seek views about this issue.

Informal training

- 5.78 The commission accepts that in some circumstances a person with a disability may wish to train an animal. Informally trained animals need to be eligible for legal status as an assistance animal if the scheme is to be fair and comprehensive. However, an appropriate mechanism is needed to ensure quality control.
- 5.79 Under our proposed model, people with disabilities who wish to train their own animal could seek recognition of their assistance animal via an approved animal assistance organisation. This may be seen to promote equity. It may also promote public confidence in the fact that assistance animals will behave properly in public and will not endanger the health or well-being of other people.
- 5.80 Some formal training organisations in other states already provide certification to privately trained assistance animals. Similarly, some organisations train owners so that they in turn can train their existing animal.¹⁹⁵
- 5.81 Similar schemes could be established in Victoria so as not to disadvantage people with disabilities who choose to train their own animal. It may be necessary to approve interstate organisations in order to recognise a diverse range of assistance animal types.

CONSULTATION QUESTIONS

Which organisations should be eligible for approval by the Minister as an 'assistance animal organisation'?

- Should 'assistance animal organisation' status be limited to formal training organisations or should private trainers be included as well?
- How should self-trainers be covered?
- How might the issue of the cost of training and testing for informally trained assistance animals be dealt with? How can inequities be avoided if all animals must be tested by an approved assistance animal organisation?
- Should national or interstate training organisations be eligible for approved status in Victoria? If not, why not?

ASSESSING APPLICATIONS FOR ASSISTANCE ANIMAL ORGANISATION STATUS

- 5.82 Requirements for acquiring the status of an approved 'assistance animal organisation' could be contained in guidelines developed by the Bureau of Animal Welfare.¹⁹⁶ This is consistent with the current approach under section 5A (1)(b) of the DFNAA concerning 'applicable organisations'.
- 5.83 One option is to require the organisation applying to the Minister for approval as an 'assistance animal organisation' to be a member of a relevant national or international body such as ADI, IGDF or Guide Dogs Australia. This approach would probably include most institutional providers currently operating in Victoria.¹⁹⁷

- 5.84 However, there may be emerging providers who have not chosen to affiliate with an international body. The guidelines could allow for such organisations by including generic standards that an assistance animal organisation must meet.
- 5.85 The guidelines could include:
- ‘Demonstrated experience in assistance dog or assistance animal training;
 - Knowledge of, and adherence to procedures for determining the suitability of a person with a disability to own and manage an assistance dog or animal;
 - Knowledge of and adherence to procedures for selecting suitable dogs or animals and training that ensures they are safe to work in public places; and
 - Demonstrated provision of ongoing support to the person with a disability and further training for the animal to ensure the welfare of the person, the animal and public safety’.¹⁹⁸
- 5.86 The advantage of including generic standards is that they provide flexibility for providers who are not members of international bodies. The disadvantage is that it creates a heavier administrative burden for the Bureau of Animal Welfare.
- 5.87 The commission considers that further consultation with assistance animal organisations and consumers is needed to finalise the details of any guidelines. The commission is aware of the proud history of local guide, hearing and assistance dog organisations and recognises the expertise these organisations would bring to the development of guidelines. The commission accepts that standards and systems need to minimise bureaucracy, yet provide an appropriate level of regulation.

Draft proposals

Further consultation with assistance animal organisations and consumers is needed to finalise guidelines for approval of ‘assistance animal organisations’. This consultation should be undertaken by the Department of Agriculture as a priority so that reform may proceed quickly.

CONSULTATION QUESTIONS

Do you support the development of guidelines for assessing applications by an organisation seeking approval as an ‘assistance animal organisation’?

- What sorts of things should be included in the guidelines?
- Should the guidelines simply require membership of a relevant international or national body that has its own standards, or should generic standards also be included in the guidelines?

WHO WOULD ADMINISTER THE APPROVAL SYSTEM?

- 5.88 We believe it is appropriate that the Bureau of Animal Welfare, which has the existing responsibility for implementing the regulatory systems under the DFNAA, be given responsibility for advising the Minister on applications for approval of assistance animal organisations.
- 5.89 Their responsibilities could include maintaining and publishing the list of ‘approved ‘assistance animal organisations’ on their website;¹⁹⁹ keeping training and accreditation standards under review; and protecting the general wellbeing of assistance animals in Victoria through the existing DFNAA scheme. These functions are related closely to the existing expertise and role of the Board in regulating animals and their trainers.
- 5.90 The commission does not consider it appropriate for the Bureau of Animal Welfare to be involved in assessments of people’s disability or the activities of training providers relating to disability. Rather, their function should be to regulate assistance animal organisations in a similar fashion to obedience trainers and other animal trainers.

195 See 2.23 and 2.24

196 Which is part of the Department of Agriculture.

197 For a list of current providers see Page 13

198 Disability Services Queensland *Assistance Dogs and Guide Dogs Review: Discussion Paper* 2005 19 above n 121, 19.

199 Maintaining the list of approved organisations and publishing on the internet could be done at very little expense given the very small numbers of assistance animal training organisations in Victoria.

CONSULTATION QUESTIONS

Should the Bureau of Animal Welfare administer the approval system?

- What resources will they need to fulfil this role?

DEVELOPING TRAINING REGULATIONS

- 5.91 In order to ensure an adequate level of safety and prevent nuisance, the commission is considering whether assistance animals should be assessed against minimum standards by way of a 'public access test'. The advantage of a public access test is that it ensures consistency within the industry while being flexible enough to reflect the range of tasks different assistance animals perform.
- 5.92 The definition of 'trained' assistance animal in the EOA may be clarified by including a requirement for approved 'assistance animal organisations' to test animals for public access. This may provide guidance to the community about what is or is not a bona fide assistance animal while also protecting the interests of training organisations and people with a disability.
- 5.93 The commission suggests that the detail of training standards be dealt with by way of regulation, so that the standards may be more easily updated and improved over time. The commission also acknowledges that the development of such regulations requires the input of training organisations, service providers and people with a disability.
- 5.94 For this reason the commission recommends further consultation. However, in order to provide context to that debate we have included some options about how such a scheme might operate. The commission also urges stakeholders to reach consensus quickly so that reform can be finalised in a timely fashion.
- 5.95 Currently DFNAA regulations provide for a range of standards for obedience training and obedience training organisations. Very similar regulations could apply to assistance animal organisations. The focus should be on the basic requirements that any assistance animal must meet to be safe to operate in public. The test might include things like absence of aggression towards humans or another animal, heeling and walking with a handler, staying on command, and coming on demand. This is consistent with the current approach to standards for obedience training of a dog contained in the DFNAA.²⁰⁰
- 5.96 Although there are no uniform Australian standards for assistance animal training, there is significant local knowledge and expertise. This expertise should be used when developing minimum training standards that ensure an assistance animal meets a public access test.
- 5.97 Both the IGDF and ADI have specific minimum standards of training for guide dogs, hearing dogs and assistance dogs.²⁰¹ Assistance Dogs International also has a public access test. These may provide some guidance for Victorian regulations.
- 5.98 Further consultation with assistance animal organisations and consumers is needed to finalise the details of regulations, including a public access test. Following consultation, regulations can be made under existing powers.²⁰²
- 5.99 In the interim existing regulation 49 of the DFNNA Regulations 2005 should apply to assistance animal organisations. Regulation 49 sets out the assessment program for obedience training in Victoria. It also establishes standards for qualified dog trainers. It provides that the Minister may approve an organisation for a period of three years. It is an appropriate interim measure as it includes many of the minimum standards that would apply to assistance dogs and their trainers.

Draft proposals

That regulations for the training of assistance animals be consulted on and developed based on the existing provisions of regulation 49 DFNAA (obedience training) but be amended to refer to assistance animal training.

CONSULTATION QUESTIONS

Do you agree that an assistance animal must be trained to an appropriate level of skill by an approved organisation to be regarded as a 'trained' assistance animal under Victorian law?

Do you support the development of regulations defining what is an appropriate level of training and skill for assistance animals?

- Who should be consulted in developing such regulations?
- What sorts of issues should the regulations cover?

REGISTRATION

- 5.100 Currently, there is no central registration system dedicated to keeping records of assistance animals working in Victoria. All domestic dogs and cats over three months old must be registered with the owner's local council.²⁰³ However, dog owners and training organisations do not have to pay registration fees if their dog is an assistance animal.²⁰⁴
- 5.101 Formal training organisations keep records of their own clients. However, there are no records available for assistance animals trained outside these organisations.
- 5.102 The commission proposes that a person be able to register their animal as either an assistance animal, or an assistance animal in training, at their local council.²⁰⁵ Legislation already provides that owners and trainers of assistance animals are eligible for a waiver of local council animal registration fees.²⁰⁶ The commission supports this approach.
- 5.103 Under the model we propose for Victoria, any approved assistance animal organisation could certify trained animals as meeting the public access test. This certification would be sufficient to satisfy the local council of the bona fides of the assistance animal. The council would not be required to individually assess the animal, nor would the Bureau of Animal Welfare.
- 5.104 Upon receipt of an application to register the animal, accompanied by a certificate of the animal's status as either in training or having passed the public access test, the registration record would include a reference to assistance animal status.
- 5.105 Upon entry of the assistance animal or assistance animal in training on the local register, an identity card would be issued by the council. This proposal is discussed below.

Draft proposals

That Parliament amend section 14 of the Domestic (Feral and Nuisance Animals) Act to specify that an assistance animal or assistance animal in training may be registered with the local council upon receipt of an application accompanied by certification by an approved assistance animal organisation that the animal has either:

- passed the public access test; or
- is in training.

CONSULTATION QUESTIONS

Is a registration scheme necessary? Should assistance animals be registered with the local council?

- Is the registration system proposed by the commission workable in practice? Is there a better way to manage the registration of assistance animals?

EASY IDENTIFICATION

- 5.106 Currently assistance animal partnerships are not legally required to carry identification, although many carry identification issued by training organisations. While no standard identification equipment exists, many organisations have their own identification jackets or insignia that

200 *Domestic (Feral and Nuisance) Animals Regulations 2005* (Vic) r 49.

201 For guide dog standards see <<http://www.ifgdsb.org.uk/default.asp>> at 9 April 2008. For assistance animals see <www.adionline.org/default.html> at 9 April 2008.

202 *Domestic (Feral and Nuisance) Animals Act 1994* (Vic) s 100(1)(i).

203 *Domestic (Feral and Nuisance) Animals Act 1994* (Vic) s 10.

204 The Commission notes that assistance animals are not pets.

205 This would work simply for dogs where registration is currently required, but new processes may need to be considered if other species are declared lawful assistance animals in the future.

206 *Domestic (Feral and Nuisance) Animals Act 1994* (Vic) s 7(3).



are well recognised by the community. The absence of a uniform identification system makes it particularly difficult for assistance animals that have not been trained by well-known organisations.

- 5.107 Without standard identification procedures, it can be difficult for people to identify an animal as a genuine, trained assistance animal. This creates a risk that poorly trained animals may be allowed into public areas and cause nuisance or safety hazards, or genuine assistance animals may be denied entry because their handler cannot prove that the animal is trained. It also risks discrimination against people with disability who may be asked to prove their disability because they do not have an easily recognisable animal assisting them.
- 5.108 Establishing the bona fides of your animal when travelling or moving interstate is also problematic because mutual recognition schemes between states and territories have not been established. The commission is interested in identifying ways to ensure that Victorian assistance animal partnerships are recognised in other states and territories.
- 5.109 While branding is important and should be maintained, there is a need for a consistent approach. Facilitating assistance animal partnerships to carry simple identification could overcome many of these difficulties and make it easier for service providers to fulfil their obligations with confidence. This will reduce the likelihood of discrimination.
- 5.110 The simplest way of introducing consistent identification is to create a uniform identification card issued by the local council when the animal is registered. A uniform identity card is easy to produce and carry and will not require changes to existing assistance animal equipment. In particular, it will not interfere with training organisations' ability to distinguish their own brand as dogs could continue to wear their current jackets and insignia in addition to their handler carrying the identity card.
- 5.111 However, the identity card must be durable and not look like it could be easily manufactured at home. A driver's licence style card would be preferable. Issues of who will bear administration costs also need to be considered. It is important that identification schemes do not operate in such a way that they stigmatise people with disability, or people with particular disabilities.

Draft proposals

Amend section 14 of the Domestic (Feral and Nuisance) Animals Act to specify that upon registration, a local council must issue an assistance animal identification card to the owner or handler.

Amend section 14 of the Domestic (Feral and Nuisance) Animals Act to specify the minimum information to be included on the identity card as the name and address of the assistance animal owner or handler; the date of expiry of registration, and confirmation that the animal is covered by the Act.

That a simple process for mutual recognition of bona fide assistance animals be established between Australian states and territories so that assistance animal partnerships may enjoy their right to freedom of movement.

CONSULTATION QUESTIONS

Is an identification scheme necessary? Should a person with an assistance animal be required to carry a standard identity card for the animal?

- What are the advantages and disadvantages of that approach?
- Is the issuing of an identity card by the local council the best way to administer the identity scheme? Is there a better way to achieve the aim of having an easily recognisable simple ID?
- What information should be on an assistance animal identity card?
- Should a mutual recognition scheme be established across states and territories?

CONSULTATION QUESTIONS

Is there anything else you would like to tell us?

Appendix



Appendix 1

LAWS REFERRING TO ASSISTANCE ANIMALS

KEY STATE LEGISLATION	
<i>Domestic (Feral and Nuisance) Animals Act 1994</i>	s 7
<i>Equal Opportunity Act 1995</i>	ss 4, 52
OTHER STATE LEGISLATION	
<i>Commonwealth Games Arrangements Act 2001</i>	s 3(1)
<i>Major Events (Crowd Management) Act 2003</i>	ss 3, 10
STATE REGULATIONS	
<i>Alpine Resorts (Management) Regulations 1998</i>	reg 42(3)
<i>Australian Grands Prix (Formula One) Regulations 2006</i>	reg 5
<i>Forests (Murrindindi Scenic Reserve) Regulations 1999</i>	reg 17
<i>Forests (Steavenson Falls Scenic Reserve) Regulations 1999</i>	reg 18
<i>Forests (You Yangs Regional Park) Regulations 2003</i>	reg 20(4), 22
<i>National Parks (Park) Regulations 2003</i>	reg 37
<i>Royal Botanic Gardens Regulations 2004</i>	reg 23
<i>Transport (Passenger Vehicles) Regulations 2005</i>	reg 72
<i>Transport (Public Transport Corporation) Regulations 1994</i>	reg 301
<i>Transport (Taxi-Cabs) Regulations 2005</i>	reg 33
<i>Transport (Ticketing and Conduct) Regulations 2005</i>	reg 20
<i>Water Industry (Reservoir Parks Land) Regulations 2001</i>	reg 18
<i>Wildlife (State Game Reserve) Regulations 2004</i>	regs 18, 19
COMMONWEALTH LEGISLATION	
<i>Disability Discrimination Act 1992</i>	ss 5, 6, 9
COMMONWEALTH STANDARDS	
<i>Australia New Zealand Food Standards Code 3.2.2</i>	Ch 3 Div 6 cl 24

Consultation questions

1. How should assistance animals be defined in Victorian legislation?
2. Should the current guide dog provisions in the Equal Opportunity Act be extended to provide protection for all assistance animal partnerships in all areas of activity covered by the Act?
3. Does it make sense to place all Victorian laws that support the use of assistance animals in the Equal Opportunity Act?
4. Do you support the introduction of a law that would require organisations which train assistance animals to be accredited by a declaration by the Minister that the organisation is an 'assistance animal organisation'?
5. Which organisations should be eligible for approval by the Minister as an 'assistance animal organisation'?
6. Do you support the development of guidelines for assessing applications by organisations seeking approval as an 'assistance animal organisation'?
7. Should the Bureau of Animal Welfare administer the approval system?
8. Do you support the development of regulations setting out a 'public access test' for assistance animals?
9. Do you agree that an assistance animal must pass a 'public access test' by an approved organisation to be declared a 'trained' assistance animal?
10. Is a registration scheme necessary? Should assistance animals be registered with the local council?
11. Is an identification scheme necessary? Should a person with an assistance animal be required to carry a standard ID card for the animal?
12. Is there anything else you would like to tell us?

