



Victorian
Law Reform
Commission

ASSISTANCE ANIMALS



COMMUNITY LAW REFORM

Assistance Animals Final Report

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Abbreviations

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

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Preface

One of the functions of the Victorian Law Reform Commission is to examine and make recommendations about matters that are of general community concern but involve relatively minor legal change.

The commission's Community Law Reform program aims to foster community involvement in the law reform process. We welcome community law reform proposals from the public and community organisations about issues that are of concern, but which may have a relatively straightforward solution.

This report deals with the law governing the use of assistance animals by people with a disability. The Victorian Equal Opportunity and Human Rights Commission asked the commission to examine this body of law because of perceptions that it was not operating effectively and was in need of reform. The commission has consulted widely with the community. The commission held many meetings, roundtables and co-hosted a community forum. Consultations were held with consumers, disability organisations, transport and service providers, training organisations and regulators.

I would like to thank the community law reform team, Michelle Burrell and Simone Marrocco, who have been responsible for coordinating the entire project and for writing this report. I acknowledge the contribution of Miriam Cullen and Dahni Houseman who provided invaluable research assistance and project management support to the team. The work of the entire team, under the leadership of Michelle Burrell, has been outstanding. They have demonstrated a detailed understanding of the challenges presented by the project and great capacity for devising workable solutions to those challenges.

I also express thanks to my fellow commissioners directly involved in the work of the Community Law Reform division, Judge Felicity Hampel and Paris Aristotle, for their strong encouragement and for providing thoughtful comments and suggestions on drafts of this report.

This report is important for those people with a disability who use assistance animals. Our aim has been to ensure that the law effectively supports their right to use an assistance animal throughout their daily life. The report is also important for the organisations that train assistance animals, employers, service providers and the wider community.

The commission has made recommendations designed to clarify and improve the legal protections provided to people with a disability who use assistance animals by the *Equal Opportunity Act 1995*. We have also recommended a simple regulatory scheme for the training, registration and identification of assistance animals.

The commission hopes this report will bring greater clarity to the law governing assistance animals, enhance the rights of people with disabilities and provide clear guidance for service providers and the wider community.



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Chairperson

VICTORIAN LAW REFORM COMMISSION

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

Executive Summary

This report is concerned with reform of the law of assistance animals in Victoria.

The commission undertook this project as a community law reform project.

The aim of the project was to bring into operation the existing legal rights of people with disability to be accompanied by an assistance animal. Despite this right, people who use assistance animals continue to suffer discrimination.

There are approximately 300 assistance animals currently working in Victoria. They are all dogs. They provide assistance to people with a wide range of disabilities including sensory and physical disabilities. People with mental health disabilities, epilepsy and diabetes also use assistance animals.

Federal and state laws provide protection from discrimination for people using assistance animals, however the protection is patchy, and the law contains several inconsistencies. In addition, there is no legal framework for regulating the quality of assistance animals working in Victoria.

This report examines and makes recommendations in relation to the rights and obligations of assistance animal partnerships under the *Equal Opportunity Act 1995* (EOA). It also makes recommendations establishing a simple regulatory scheme for the training, registration and identification of assistance animals.

The recommendations have been crafted in the context of possible amendments to the EOA and the *Disability Discrimination Act 1992*, as well as recent Federal Court decisions.

Our proposals have been developed through a process of targeted consultation with people directly affected by current problems with the law. This includes both service providers and people with disability.

Significant momentum for reform has built through the consultation process. The hospitality industry, transport operators, service providers, local government, transport regulators, disability advocacy organisations, assistance animals training organisations and people with disability all support law reform in this area.

THE COMMISSION'S MODEL

The commission's legislative proposals aim to recognise and promote the rights of people with a disability by establishing a scheme for the regulation of assistance animals in Victoria. We believe our model should provide certainty for service providers, training organisations and users of assistance animals by:

- clarifying the meaning of 'assistance animal' in Victorian law
- removing existing inequities in legal protections for users of assistance animals, in line with the recommendations of the *Review of the Equal Opportunity Act*
- ensuring consistency with the *Charter of Human Rights and Responsibilities Act 2006*
- establishing a simple accreditation system for guide, hearing and assistance dog trainers providing services to Victorians
- providing a simple and consistent means of identifying properly trained assistance animals
- protecting the community from poorly trained assistance animals by establishing clear standards that assistance animal partnerships must meet to have legal protection, and
- promoting community education about assistance animals and the rights of people with disability to fully participate in all aspects of our community.

Our recommendations are framed in such a way that the right to be accompanied by an assistance animal is grounded in the EOA. In addition consequential amendments will need to be made to other Acts and regulations where guide dogs or assistance animals are currently mentioned or where the right to be accompanied by an assistance animal may be engaged.

We also propose a statutory scheme for accrediting trainers and requiring assistance animals to be trained to a minimum standard. This scheme would be established under a new legislation: the Assistance Animals Act.

Under the commission's model, only those assistance animals that are trained by an accredited trainer and certified as meeting a minimum standard for public access would enjoy legal recognition.

Training organisations would be accredited by the State of Victoria to be 'assistance animal training organisations'. Accreditation standards for trainers would be set out in regulation. These would be broadly equivalent to existing accreditation standards for the International Guide Dog Federation and Assistance Dogs International.

The accreditation scheme would be administered by the Department of Human Services. This would not be resource intensive because there are so few training organisations. We recommend that the Minister for Community Services establish an advisory panel, from which he or she may seek advice on applications for accreditation, industry development issues and animal behaviour standards.

Animal behaviour standards (equivalent to a public access test) would be made by regulation. The public access test would be administered by accredited trainers. It would aim to ensure that the assistance animal is safe and unobtrusive in public.

Upon certification that the assistance animal has satisfied the public access test a standard Identification Card would issued by the training organisations. The handler could use this card to establish the bone fides of the assistance animal partnership throughout Victoria. Handlers would also be required to ensure their dog is wearing either an identifying coat or harness.

Recommendations

1. The term 'guide dogs' should be omitted from the *Equal Opportunity Act 1995* and all other relevant Victorian Acts, Regulations and policies and replaced with the terms 'assistance dog' and 'trainee assistance dog'. (This is the commission's preferred option).

OR, in the alternative

1. The term 'guide dogs' should be omitted from the *Equal Opportunity Act 1995* and all other relevant Victorian Acts, Regulations and policies and replaced with the term 'assistance animal' and 'trainee assistance animal'.

2. 'Assistance dog' should be defined in the *Equal Opportunity Act 1995* and all other relevant Acts, regulations and policies as:

'A guide dog, hearing dog, or other dog, certified by an accredited assistance dog trainer as trained to perform tasks and functions that assist a person with impairment to alleviate the effects of their impairment'.

3. The Act should provide that 'trained' means trained by a guide, hearing or assistance dog trainer accredited under the regulatory scheme provided for in recommendations 13 to 19.
4. The *Equal Opportunity Act 1995* should include a definition of 'trainee assistance dog' to mean 'A guide dog, hearing dog, or other dog certified by an accredited assistance dog trainer as being in training'. The provisions of the Act should apply to these animals.
5. The *Equal Opportunity Act 1995* should include an explanatory note that specifies that 'to alleviate the effects of impairment' means more than mere companionship or comfort. However, it may include assistance with navigating social interactions where the nature of the impairment is such that this helps to alleviate the impairment.
6. The *Equal Opportunity Act 1995* should be amended to apply to dogs that assist persons with any impairment instead of being limited to vision, hearing and mobility impairments.
7. The *Equal Opportunity Act 1995* should specify that the fact that a person with impairment has, or may be accompanied by, an assistance dog is taken to be a characteristic that appertains to persons who have that impairment.
8. The *Equal Opportunity Act 1995* should specify that despite any other Act, it is unlawful discrimination when undertaking any of the activities that fall within Part 3 of the Act, to treat a person with impairment less favourably because that person possesses or is accompanied by an assistance dog unless there are exceptional circumstances where it would be necessary to exclude the assistance dog.
9. The *Equal Opportunity Act 1995* should provide that the onus of proving that exceptional circumstances make it necessary to treat the person who has, or is accompanied by, an assistance dog less favourably rests with the person claiming such circumstances exist.
10. The *Equal Opportunity Act 1995* or guidelines made under the Act should provide that:
 - 'treating less favourably' includes requiring a person to be separated from their assistance dog, or to occupy a specified area in the premises without reasonable cause, or charging an additional fee for entry or service because the person has, or is accompanied by, an assistance dog
 - it is not discriminatory to require a person to produce assistance dog identification provided for under Victorian legislation, and
 - it is not discriminatory to require an assistance dog to be under the control of its user.
11. That the consequential amendments be made to all relevant Acts, Regulations and policies that refer to guide dogs or assistance animals, so that the definition of assistance dog and the rights contained in the *Equal Opportunity Act 1995* (once amended) can be consistently applied.
12. That section 7 of the *Domestic (Nuisance and Feral) Animals Act 1994* be repealed.
13. That a new law – 'the Assistance Animals Act' be enacted to establish a regulatory scheme for the training and identification of assistance dogs in Victoria.
14. That the Minister for Community Services establish an advisory panel. The functions of which include providing advice on industry development issues, training standards and accreditation.

Membership should include disability consumer representatives, people with expertise in assistance dog training, animal welfare and behaviour experts and disability peak bodies.

15. That the Act provide that the Minister for Community Services accredit individuals and organisations to breed, select, train and certify assistance dogs in Victoria. Accreditation should be subject to renewal after a reasonable period.
16. The Minister may refuse or discontinue accreditation of an assistance dog trainer or organisation if they fail to meet or no longer meet the criteria. A trainer or training organisation whose accreditation is refused or discontinued should have the right to appeal the decision to the Victorian Civil and Administrative Tribunal (VCAT).
17. A list of accredited trainers should be made publicly available including on government websites.
18. Regulations made under the Act should provide that a trainer or training organisation may be accredited by the Minister if they can demonstrate that they:
 - a. understand and provide services to people with disability (impairment); and
 - b. breed and/or select suitable dogs that are able to meet the needs of persons with impairment and can operate safely in public; and
 - c. match individual dogs and persons to form an effective assistance dog partnership; and
 - d. train reliable assistance dogs that are able to perform tasks and functions that assist a person with impairment to alleviate the effects of their impairment and are safe and effective in public; and
 - e. use humane training methods; and
 - f. administer and certify partnerships using the 'public access test', including at least annual re-testing of partnerships; and
 - g. provide ongoing and regular support to the assistance dog partnership, including the removal of certification as an assistance dog where required; and
 - h. have a transparent complaints process that is available to clients in a variety of accessible formats; and
 - i. meet all other Commonwealth and State legislative requirements.
19. That only those assistance dogs that have been certified by an accredited assistance dog trainer as:
 - a. able to perform tasks and functions that alleviate the effect of the person's impairment
 - b. able to operate safely and unobtrusively in public (having passed the public access test) be legally recognised as assistance dogs in Victoria.
20. That accredited trainers be required to review the assistance dog partnership against the public access test on a regular basis as part of the minimum follow up required to maintain accredited trainer status.
21. That the *Domestic (Feral and Nuisance) Animals Act 1994* provide that an assistance dog or trainee assistance dog must be registered by the local council upon receipt of an application accompanied by certification by an approved assistance dog trainer that the dog has passed the public access test or is in training.
22. That the existing registration fee exemption for guide dogs be extended to all assistance dogs and trainee assistance dogs.
23. That the Act provide that upon certification, the accredited assistance dog trainer is required to issue an identifying coat or harness and a State of Victoria assistance dog identification card. In the case of trainee dogs, training jackets and identification cards should be issued.
24. Regulations made under the Act should provide that the assistance dog identification cards must be tamper proof and include the following:
 - a. Photo of the handler and dog; and
 - b. Name of the handler; and
 - c. Date of expiry (which is the next review date for public access testing); and
 - d. Name and contact details of the accredited trainer certifying the dog; and
 - e. A statement that the dog meets Victorian standards for assistance dogs.

Recommendations

25. For avoidance of doubt a person or trainer must have the identification ready available for inspection on request, and ensure the dog is wearing:
 - a. For a guide dog – a harness; or
 - b. For other type of assistance dog – an identifying coat; or
 - c. For a trainee assistance dog – an identifying coat.
26. That provisions be included in the *Equal Opportunity Act 1995* and all other relevant laws to ensure effective transitional arrangements for existing users of guide, hearing and assistance dogs recognized under the *Disability Discrimination Act 1992* (Cth).
27. For the avoidance of doubt the *Equal Opportunity Act 1995* should specify that a person possessing or accompanied by an assistance dog does not affect their liability for personal injury or property damage caused by the dog.
28. That the Victorian Government fund the Victorian Equal Opportunity and Human Rights Commission to undertake community education to increase awareness of the rights of people with disability to be accompanied by an assistance dog. Specific campaigns should be undertaken in partnership with industry bodies including those from the hospitality, transport and accommodation sectors.

Chapter 1

Background

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Introduction
Origins of the report
Victorian context
Our process
Structure of report
Terminology



INTRODUCTION

- 1.1 One of the functions of the Victorian Law Reform Commission is to examine and make recommendations on issues that are of general community concern but are relatively minor legal issues.¹ We call this work 'Community Law Reform'.
- 1.2 In undertaking Community Law Reform projects, the commission aims to promote access for people and groups not traditionally involved in law reform. We also aim to provide simple solutions to gaps, inadequacies or anomalies in the law so that reform delivers real benefits to the community.
- 1.3 This is the final report of the commission's Community Law Reform project on assistance animal laws. It follows public consultation on the issues raised in a Consultation Paper published in July 2008.
- 1.4 This report makes recommendations to improve protections under the *Equal Opportunity Act 1995* (EOA). It also recommends establishing a simple regulatory scheme for the training, registration and identification of assistance animals under a new Act—the 'Assistance Animals Act'.
- 1.5 The issues examined in this report are particularly significant for people with a disability and for organisations that train and support assistance animal partnerships. However, the law on assistance animals also affects employers, service providers and the general community.
- 1.6 In considering options for reform, the commission has as its main value, respect for the human rights of people with disabilities. In clarifying and enabling the rights of people with a disability to be accompanied by an assistance animal, the commission believes the proposed reforms will enhance the participation of people with disability, and so enhance our community as a whole.

ORIGINS OF THE REPORT

- 1.7 For several years, equal opportunity and law reform bodies have identified problems with current laws dealing with assistance animals. Some jurisdictions, such as the Australian Capital Territory have reformed their laws,² while others, such as Queensland have undertaken community consultation and developed options that are soon to be introduced.³
- 1.8 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* (DDA).⁴ As a result, HREOC recommended that the definition of assistance animal in Commonwealth legislation be narrowed in an effort to clarify what is, and what is not an assistance animal.⁵
- 1.9 During 2004 and 2005, the Victorian Equal Opportunity Commission (VEOHRC) considered the issues raised by the HREOC inquiry and held a forum with stakeholders. This forum highlighted many issues around the use of assistance animals in Victoria, these included:
 - lack of regulation and training standards
 - lack of guidelines for identifying a trained assistance dog
 - lack of specific protections for people with psychological disabilities or physical disabilities other than hearing, vision or mobility impairments who use assistance animals
 - lack of community knowledge about the rights of people using assistance animals
- 1.10 In 2006, VEOHRC approached the Victorian Law Reform Commission to suggest a Community Law Reform project on this issue.

VICTORIAN CONTEXT

- 1.11 In Victoria, various state laws recognise and protect assistance animal partnerships in different ways. The Commonwealth DDA establishes concurrent rights for all people with a disability using assistance animals.

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

2 *Domestic Animals Act 2000* (ACT).

3 See Queensland Government, *Assistance Dogs and Guide Dogs Review* <www.disability.qld.gov.au/key-projects/assistance-guide-dogs/> at 4 September 2008.

4 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).

5 Human Rights and Equal Opportunity Commission, *Reform of the Assistance Animals Provision of the Disability Discrimination Act* (2003) <www.humanrights.gov.au/disability_rights/inquiries/animal03/report.htm> at 3 September 2008.

- 1.12 Currently there is no legal requirement in Victoria for an assistance animal trainer or an assistance animal to meet minimum standards. Nor is there any common form of identification for assistance animals.
- 1.13 Some state laws, including the guide dog provisions of the EOA and the *Domestic (Feral and Nuisance) Animals Act 1994* (DFNAA) distinguish between people partnered with assistance animals depending on the nature of their disability and the type of animal that is used. In contrast the Commonwealth law does not distinguish between the type of disability, or animal used.
- 1.14 Having laws that recognise certain disabilities but not others is unfair. It is misleading and confusing to have limited protection for some assistance animal partnerships in Victorian statutes, when broader rights exist under Commonwealth law.
- 1.15 In 2007 the Victorian government announced a wide ranging review of the EOA. This report does not duplicate that work. Instead, we have focused on the specific issue of the rights and obligations arising from assistance animal partnerships.⁶
- 1.16 In July 2008 the Victorian Government released a report titled *Equal Opportunity Review Final Report: An Equality Act for a Fairer Victoria*. The report makes 93 recommendations, principal among which are recommendations to have a new 'Equality Act' that sets a clear framework for the protection of human rights in Victoria and contains a duty to eliminate discrimination as far as possible.
- 1.17 The report also recommended that the definition of 'guide dogs' in the Act should be expanded to apply to dogs that assist persons with any impairment instead of being limited to vision, hearing and mobility impairments. It also recommended that any further amendments regarding assistance animals should await the release of this report.⁷
- 1.18 The commission is mindful that the significant reforms to the EOA outlined by the review will impact upon reform options we put forward in this report. We discuss these issues further in Chapter 4.
- 1.19 The commission also notes that the Australian Government has recently announced that the DDA will be amended in the current session of Parliament.⁸ At the time of writing this report, the details of the Bill were not publicly available.

OUR PROCESS

CONSULTATION PAPER AND DRAFT PROPOSALS

- 1.20 The commission conducted initial research and consultation to identify current problems and potential solutions. This included an examination of the law in other jurisdictions as well as the law and practice in Victoria.
- 1.21 The commission then published a Consultation Paper. This provided an overview of what assistance animals are, who uses them and how they are currently trained and identified. It also looked at how assistance animal partnerships are regulated in other places.
- 1.22 The Consultation Paper identified some of the current limitations of the law in Victoria. It found that some laws are vague and may create conflicting rights and obligations. Possible inconsistencies between state and federal law add to the lack of clarity.
- 1.23 The commission was also concerned that there is no regulatory framework for training, registration or identification of assistance animals in Victoria. This may reduce public confidence in assistance animals and lead to discrimination.
- 1.24 In addition, the Consultation Paper examined whether the law can be clarified so that it better protects people's rights. It included draft proposals for legislative reform.
- 1.25 The Consultation Paper was published on 1 July 2008 and a call for submissions was made. To assist submission makers, discussion questions were included in the commission's Consultation Paper. Submissions closed on 18 August 2008.

6 Department of Justice [Victoria], *An Equality Act for a Fairer Victoria: Equal Opportunity Review Final Report* (2008) 14, recommendations 8 and 9.

7 *Ibid* 108, recommendations 52-53.

8 Robert McClelland (Attorney General [Australia]) and Bill Shorten (Parliamentary Secretary for Disabilities [Australia]) 'Rudd Government to Improve Australia's Disability Discrimination System' Press Release, 18 July 2008, <www.attorneygeneral.gov.au/www/ministers/robertmc.nsf/Page/Media_Releases> at 4 September 2008.



COMMUNITY CONSULTATION

- 1.26 The commission received 28 submissions in response to the consultation paper. These are listed at Appendix 1. For the first time in the commission's history, submissions could be made using our website. Also for the first time, submissions were published on our website. We hope that this will promote transparency and promote the exchange of ideas.
- 1.27 In addition we held 19 consultation meetings and roundtables during July and August 2008. A list of these meetings can be found at Appendix 2. The commission also held information meetings with relevant government departments.
- 1.28 Consultation meetings were held with consumers, disability organisations, transport and service providers, training organisations and regulators. Each meeting provided valuable insights into current practice. The meetings also allowed for robust analysis of the legal and policy issues arising from the commission's consultation paper. This dialogue has helped to shape this final report and improve our recommendations.
- 1.29 In partnership with VEOHRC and the Victorian Disability Advisory Council (VDAC), the commission hosted a half-day community forum for stakeholders, including people with disabilities, advocacy organisations and disability service providers. This forum used a process where small groups worked through the draft proposals contained in the Consultation Paper. The forum provided an opportunity for the people who use assistance animals to directly contribute to the commission's deliberations. It was both informative and invigorating because it focused on identifying workable solutions to the inadequacies in the current law that people face on a daily basis.
- 1.30 Information obtained from the forum, consultations and submissions is referred to throughout the report.
- 1.31 Having considered the input from the consultation process, we have now produced this final report, including recommendations.

STRUCTURE OF REPORT

- 1.32 Chapter 1 provides background to the report and explains the origins of this Community Law Reform project.
- 1.33 Chapter 2 examines assistance animals in Victoria. It describes current practice, including who uses assistance animals, how many assistance animals are in use in Victoria and the roles they fulfil.
- 1.34 Chapter 3 describes the current law and identifies some of its limitations. It also provides an overview of discrimination complaints associated with the use of assistance animals.
- 1.35 In Chapter 4 we discuss and make recommendations about possible reforms to the EOA. This Chapter outlines stakeholder views about the draft proposals flagged in the Consultation Paper and then refines those proposals into final recommendations. These include recommendations concerning the legal definition of assistance animal, the nature and scope of the specific rights and responsibilities under the EOA and the areas of activity where anti-discrimination provisions relating to assistance animals should apply.
- 1.36 Chapter 5 discusses and makes recommendations regarding the training of assistance animals. We discuss stakeholder views and provide further detail about current practice. We then propose an accreditation scheme for trainers.⁹ Recommendations are also made for the establishment of a basic public access test for assistance animals so that the community has confidence that animals can operate safely and hygienically in public.
- 1.37 Chapter 6 discusses the registration and identification of assistance animals. Informed by stakeholder feedback, we make recommendations for a simple registration and identification scheme. This will promote certainty and make it easier for people to know what is a legally recognised assistance animal and what is not. The theme of public awareness is explored further in Chapter 7 where we discuss community education.

⁹ Regulation which is not obtrusive or prescriptive and is cheap to administer and comply with may be referred to as 'light-handed'. National Economic Research Associates, *Alternative Approaches to 'Light-Handed' Regulation: A Report for the Essential Services Commission Victoria* (2004) 8.

- 1.38 This report does not discuss the law in other jurisdictions in great detail. This was considered in the Consultation Paper. A summary of the law in other states and territories is provided at Appendix 3.

TERMINOLOGY

- 1.39 Throughout this paper we use the terms 'impairment' and 'disability'. 'Impairment' is the word used in the EOA 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 *DDA*.
- 1.40 During consultation the commission was reminded that under the social model of disability, a person may have impairment, but it is sometimes society's reaction to that impairment that has the disabling effect. Hence, when we refer to people with a disability, we mean people who have impairment, who may be subject to the disabling effects of societal attitudes, structures and barriers.¹⁰
- 1.41 There are many terms used to describe assistance animals in legislation, academic research and within the industry itself.¹¹ Throughout this report, 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.¹²
- 1.42 People with a disability who are assisted by animals are described as 'assistance animal handlers'. The handler may or may not own the animal. The team of assistance animal and handler is described as an 'assistance animal partnership.'
- 1.43 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.
- 1.44 Throughout this report, the term 'guide dog' is used. The commission notes the view expressed by Vision Australia that the term 'guide dog' is a 'proprietary brand of state based organisations. The correct generic term for such dogs, is dog guide, which is a term adopted by Blind Citizens Australia (BCA).'¹³
- 1.45 However, because most members of the public use the term 'guide dog', it is used in this report to encompass all dogs trained to assist people with visual impairment.
- 1.46 The commission notes that from 4 September 2008, the HREOC will be known as the Australian Human Rights Commission. However, the organisation's legal name remains HREOC. For that reason, we refer to HREOC throughout this report.

10 Under the social model, 'disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others' *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, A/RES/61/106, Preamble (entered into force 3 May 2008).

11 Natalie Sachs-Ericsson, Nancy Hansen and Shirley and Shirley Fitzgerald, 'Benefits of Assistance Dogs: A Review' (2002) 47 (3) *Rehabilitation Psychology* 251, 252.

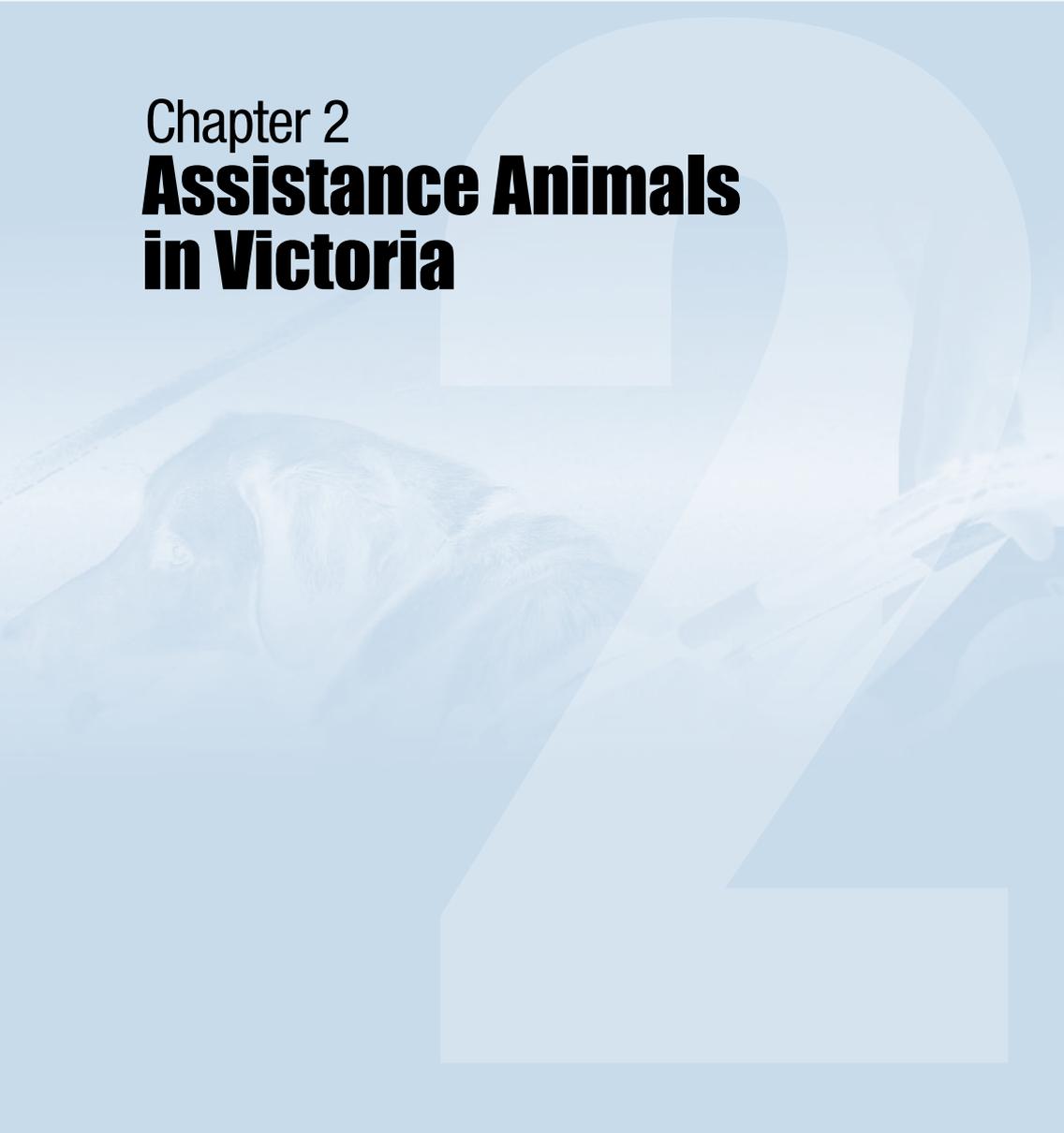
12 These animals have skills that enable them to help a person with a disability both at home and in public places. However, this report is only concerned with assistance animals in public places.

13 Submission 19 (Vision Australia).

Chapter 1

Background





Chapter 2

Assistance Animals in Victoria

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- Who trains assistance animals?
- Assistance animal organisations that provide services to Victorians
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CURRENT PRACTICE

WHAT IS AN ASSISTANCE ANIMAL?

- 2.1 Assistance animals are those that are specially trained to enable people with a disability to participate in all aspects of society. They perform tasks and functions that alleviate some of the effects of a person's disability.
- 2.2 It is unknown when animals were first used to assist people with disabilities. Some articles suggest the practice goes back to ancient Greek times where it is claimed animals were used in healing temples.¹ The discovery of a wooden plaque showing a dog on a leash leading a blind man is cited as evidence of their use medieval Europe.²
- 2.3 In modern times the first guide dog was trained in Germany in 1916 to assist World War I soldiers who had lost their sight.³ The first guide dog in Australia was imported by a Western Australian man returning from England in 1950.⁴

TYPES OF ASSISTANCE ANIMALS WORKING IN VICTORIA

- 2.4 Currently only dogs are used as assistance animals in Victoria although other species are capable of legal recognition under Commonwealth anti-discrimination law.⁵
- 2.5 The generic term for dogs trained to assist people with sight impairments is 'dog guides'.⁶ However, they are usually referred to as 'guide' or 'seeing eye' dogs. These dogs 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.
- 2.6 Labradors and Golden Retrievers are the dog breed most often used because they are large in size (enabling them to, for example, assist people through doorways) and because of their trainability. More recently crossbreeds have been used.⁷
- 2.7 In consultation, Guide Dogs Victoria and some other training organisations stressed the importance of having specialist breeds for assistance animals to ensure both public safety and service for the handler.⁸ Breeding is discussed in detail in Chapter 5.
- 2.8 **Hearing dogs** have been available in Australia since the 1980s.⁹ They work by responding to specific sounds. 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.

OTHER TYPES OF ASSISTANCE ANIMALS

- 2.9 Organisations training assistance animals for people with non-vision or hearing related disabilities began to appear in Australia about ten years ago.¹⁰ Assistance dogs are now trained to access public areas for a wide range of purposes and disabilities.¹¹ It is not known exactly how many of these assistance dogs are operating in Victoria, however there are likely to be few compared to guide or hearing dogs.
- 2.10 Under the general term 'assistance dogs' a number of specific types of support is provided.
- 2.11 **Assistance dogs for people with physical disability** are trained to help people with reduced motor skills, mobility problems or have difficulty walking or moving.¹²
- 2.12 Assistance dogs 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. Sometimes they are called 'mobility support dogs'.
- 2.13 The breeds of dog most commonly used are Labradors and Golden Retrievers.
- 2.14 **Seizure and alert dogs** 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.¹³ Diabetes dogs detect subtle changes in body scent resulting from hypoglycaemia.¹⁴ Seizure dogs are also activated by scent.¹⁵

1 Nora Wenthold and Teresa Savage, 'Ethical Issues With Service Animals' (2007) *Topics in Stroke Rehabilitation* 68.

2 Ibid.

3 Animal Legal & Historical Centre [Michigan State University College of Law], *Detailed Discussion of Assistance Animal Laws* (2007) <www.animallaw.info/articles/ddusassistanceanimal.htm> at 11 September 2008.

4 Guide Dogs Victoria, *A History of Guide Dogs in Victoria* <www.guidedogsvictoria.com.au/who-we-are/history-of-guide-dogs-in-victoria/> at 31 July 2008.

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

6 Submission 19 (Vision Australia).

7 Guide Dogs Victoria, *Guide Dog FAQ's* <www.guidedogsvictoria.com.au/faq/guide-dog-faq/> at 31 July 2008.

8 Consultations 10 (Guide Dogs Victoria); 14 (Assistance Dogs Australia); 17 (Seeing Eye Dogs Australia).

9 Lions Hearing Dogs, *History* (2008) <www.hearingdogs.asn.au/history.htm> at 22 April 2008.

10 Australian Support Dogs, *How We Began* <www.asdog.org.au/files-about-asdog/howwebegan.html> at 22 April 2008.

11 Consultation 4 (Disability Aid Dogs Australia).

12 Assistance Dogs International, *Service Dogs* <www.assistance dogsinternational.org/service.php> at 28 August 2008.

13 Susan Duncan, 'APIC State-of-the-Art Report: The Implications of Service Animals in Health Care Settings' (2000) 28(2) *American Journal of Infection Control* 171.

14 Bob Meadows et al, 'Wonder Dogs!' (2007) 68(26) *People* 72.

15 Consultation 2 (Lions Hearing Dogs Australia).

- 2.15 Dogs can also help to ensure the safety of their handler when he or she is having a seizure. Dogs can be trained to assist by lying on top of their handler during a seizure to prevent injury and can also help their handler to become reoriented and mobile after a seizure.
- 2.16 **Psychiatric service dogs** are trained to provide support to people with psychiatric disabilities.
- 2.17 These dogs assist people with disabilities including bipolar disorder, panic disorder, depression, schizophrenia, anxiety, social phobias and autism. The tasks performed are tailored to the needs of the individual handler.¹⁶ Tasks 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; or helping the handler to cope with social situations. Dogs have also been trained to wake handlers experiencing night terrors, and to turn on a touch lamp.¹⁷
- 2.18 Psychiatric service dogs are more likely to come from a range of breeds, including cross breeds.¹⁸ Some organisations will train dogs from the pound or rescue services.¹⁹ Others may use the person's existing pet, although self training is much more common in the United States than in Australia.²⁰

SPECIES OTHER THAN DOGS

- 2.19 In Australia, it is unknown for animals other than dogs to be assistance animals save for two anecdotal reports.²¹ However under Commonwealth law, other species can be recognised as assistance animals so long as they are trained to alleviate the person's disability.²²
- 2.20 The commission was unable to identify any formal training organisation in Australia that trains species other than dogs to be assistance animals. The issue of other species is discussed in detail in Chapter 4.

WHAT IS NOT AN ASSISTANCE ANIMAL?

- 2.21 Companion animals are not assistance animals. This is because assistance animals 'work'. They are not pets. Assistance animals have a different status under the law, notwithstanding that they may provide companionship in a similar way to a pet when they are 'off duty'.
- 2.22 This means that not all animals owned by people with disability are assistance animals. Only those that are trained to alleviate the effects of a person's disability meet the test.²³
- 2.23 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 companionship only. Emotional support dogs only provide companionship and a calming physical presence.²⁴ They are not assistance animals at law.²⁵
- 2.24 Therapy animals are not assistance animals. They are used to improve a person's general quality of life and to facilitate counselling or psychotherapy.²⁶ They are often used to assist older people and people with low severity physical, emotional, intellectual or developmental disabilities. However, they are not trained to the same standard as assistance animals and are not trained for public access.
- 2.25 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. However, they too are not assistance animals.
- 2.26 People who do not have a disability, cannot, by definition have an assistance animal.²⁷
- 2.27 The table below sets out what is and what is not an assistance animal.

- 16 Allie Johnson, Guard Dogs of Mental Health (2005) 31 *Bark Magazine* 41, 42.
- 17 Joan Esnayra, 'Help From Man's Best Friend' (2007) *Behavioral Healthcare* 30, 31.
- 18 A.V.A.R.E. Dogs Australia, *The Program* (2008) <www.awaredogs.org.au/the_program/> at 3 September 2008.
- 19 *Ibid.*
- 20 There are about 5,000 psychiatric service dogs in the US: Leslie Quander Wooldridge, *Psychiatric Service Dogs Are Helping* (2008) <www.samhsa.gov/samhsa_news/VolumeXVI_2/article19.htm> at 28 August 2008.
- 21 One person has claimed a dingo is an assistance animal Consultation 2 (Lions Hearing Dogs Australia). Transport providers are concerned people may claim they have a 'stress rabbit' Submission 18 (Department of Transport).
- 22 *Disability Discrimination Act 1992* (Cth) s 9(1)(f).
- 23 *Disability Discrimination Act 1992* (Cth) s 9(1)(f).
- 24 Dave Morton, 'Dogs Can Help Alleviate Depression' (2005) (Fall) *Voices of Save – Suicide Awareness Voices of Education* 4.
- 25 Definitional issues around comfort and assistance are discussed further in Chapter 3.
- 26 Claire Latter, *An Exploration of the Use of Animal Therapy in Special Education* (Unpublished Honours Thesis Bachelor of Education, University of South Australia, 1999) 10-13.
- 27 Save for animals in training to become assistance animals, or when they remain in the ownership of the training organisation, such as Seeing Eye Dogs Australia.



TABLE 1: WHAT IS OR IS NOT AN ASSISTANCE ANIMAL?

Assistance animals	Not assistance animals
Guide or seeing eye dogs Hearing dogs Assistance dogs including: Mobility dogs Seizure alert and response dogs, including diabetes and epilepsy dogs. Psychiatric service dogs In Australia, other species are recognised legally, but not in practice.	Pets Companion animals Emotional support animals Therapy animals Facility animals Animals owned by people without a disability

WHO USES ASSISTANCE ANIMALS?

- 2.28 People must have a disability for their animal to be considered an assistance animal.²⁸ Those with sensory impairment most commonly use assistance animals. However, people with many types of disability use them for everyday support.
- 2.29 The commission’s research suggests that assistance animals are most commonly used by people who have a long-term disability.²⁹
- 2.30 Each person’s experience of disability is unique, including the onset of disability at different stages in life or for different reasons. 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.³⁰
- 2.31 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. Individual training organisations keep their own records, however, private trainers and people with disability who self-train assistance animals are not included in these.
- 2.32 While it is impossible to quantify exact numbers, records from training organisations provide some indication. We estimate that there are approximately 300 people using assistance animals in Victoria, and possibly several thousand Australia-wide.

WHAT BENEFITS DO ASSISTANCE ANIMALS BRING?

- 2.33 Assistance animals provide their owners with a range of benefits. Studies have reported that use of assistance animals increases handlers’ community participation, social contact and independence.³¹

GUIDE AND HEARING DOGS

- 2.34 A South African qualitative study of guide dogs users found that dogs are ‘successful and effective mobility aids’. The researchers also found that increased mobility confidence may have a positive effect upon other aspects of the person’s life such as increased community participation and perceived independence.³² This message was echoed throughout our consultation.³³
- 2.35 Interestingly the study also found that guide dogs are very strong ‘social magnets’. This is consistent with the experience of assistance animal users who participated in our consultation. They found that their dog both attracted many people but also repelled some people, for example if people were frightened of dogs or had allergies.³⁴
- 2.36 A common theme in the South African study was that guide dog ownership entails responsibility and includes some challenges. The care of the dog may be costly and require emotional, financial and environmental changes. This point was stressed by many participants in our consultation who were concerned that the care and ethical treatment of the animal be prioritised.

28 *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).

29 Susan Modlin, ‘From Puppy to Service Dog: Raising Service Dogs for the Rehabilitation Team’ (2001) 26(1) *Rehabilitation Nursing* 12, 12.

30 See, eg, the alternative orientation and mobility services offered by Guide Dogs Victoria: Guide Dogs Victoria, *Orientation and Mobility: Getting People out the Door Again* <www.guidedogsvictoria.com.au/our-services/orientation-mobility/> at 28 August 2008.

31 MM Camp, *The Use of Service Dogs as an Adaptive Strategy: A Qualitative Study* cited in Cindy Wigggett-Barnard and Henry Steel, ‘The Experience of Owning a Guide Dog’ (2008) 30(14) *Disability and Rehabilitation* 1014, 1017.

32 Cindy Wigggett-Barnard and Henry Steel, ‘The Experience of Owning a Guide Dog’ (2008) 30(14) *Disability and Rehabilitation* 1014, 1019.

33 See, eg, Consultation 16 (Community Forum).

34 See, eg, submission 5 (Ann-Marie Kelly).

- 2.37 For example, Guide Dogs Victoria and other major training organisations invest significant time and effort to ensure dogs and their handlers are a good match.³⁵ This includes vetting applicants to ensure they have the capacity to look after the dog so that the partnership can work effectively.³⁶ It also requires regular follow up and ongoing support to the partnership.³⁷ These issues are discussed further in Chapter 5.
- 2.38 The South African study noted that ignorance about the rights of people using guide dogs can have a negative impact.³⁸ This is consistent with messages from our consultation. Participants expressed frustration that due to discrimination and inconsistency in the law, engagement with the community is limited for people with disability.³⁹

OTHER FORMS OF ASSISTANCE DOGS

- 2.39 People who have suffered significant injury, including acquired brain injury because of a transport accident may use assistance animals.
- 2.40 The Transport Accident Commission (TAC) has been running a pilot program that provides funding for assistance animals. Between nine and 12 assistance animal partnerships have been funded by the program.⁴⁰
- 2.41 *'The TAC can fund the reasonable cost of a guide dog or an assistance dog for a client as a disability service, where it can be demonstrated that the transport accident has contributed to a significant visual, mobility and/or physical impairment that affects the client's independence.'*⁴¹
- 2.42 The principle underlying the TAC program is to promote participation by people with disability following serious injury. According to the TAC, the results have been very positive. In particular use of an assistance animal has alleviated the effects of physical impairments but also has helped clients with behavioural issues. This has been an unexpected and positive effect for some clients.⁴²

PSYCHIATRIC SERVICE DOGS

- 2.43 Having emerged as a more recent form of assistance animal, data on the benefits of psychiatric service dogs is not as readily available. Psychiatric service dog organisations claim that these dogs provide a range of benefits to their owners as an adjunct to the person's mental health care.⁴³
- 2.44 Consultees experiencing mental health related disabilities emphasised the value of the dog in helping them deal with anxiety associated with depression, bipolar disorder and/or social phobias.⁴⁴ For those with social phobias, depression or other forms of disability that may lead to a reclusive life, an assistance animal may help the person to engage socially.⁴⁵
- 2.45 For some consultees, having an assistance dog meant they were able to come out of the house for the first time in many months. For others, some of whom had multiple forms of disability, employment had been secured and maintained.
- 2.46 Improved well-being and social interaction as a result of animal assisted therapy has been noted in the United States.⁴⁶ Although psychiatric service dogs and therapy dogs are legally distinct, the study of the impacts of animal interaction in therapy is illustrative of some, but not all, benefits of an assistance animal.
- 2.47 In one study, people with Anhedonia (a symptom of schizophrenia where the person loses the ability to experience pleasure) took part in therapy along with a dog. Compared to the control group, those taking part in animal assisted therapy showed modest improvements on Anhedonia testing scores, which translated into clinically significant changes in behaviour. '[P]reviously socially detached and withdrawn, the patients in the active group formed a close bond with the animal...made socially appropriate preparations in anticipation of the meetings, bathed and improved their personal appearance'.⁴⁷
- 2.48 It has been argued that 'a vital therapeutic function of a psychiatric service dog is to assist the human partners in cultivating insight into her unique manifestations of mental illness'.⁴⁸ The principle is that with warning from the dog, the person is better equipped to handle an episode. 'For many people with psychiatric disorders, calling one's dog to sit quietly while quietly stroking its fur is enough of a therapeutic redirection of one's attention to mitigate acute symptoms'.⁴⁹

35 Consultations 14 (Assistance Dogs Australia); and 17 (Seeing Eye Dogs Australia).

36 Consultation 10 (Guide Dogs Victoria).

37 Consultation 16 (Community Forum); submission 5 (Ann-Marie Kelly).

38 Wiggitt-Barnard and Steel, above n 31, 1021-23.

39 See, eg, submission 19 (Vision Australia).

40 TAC funding of a guide dog or assistance dog is subject to the client being assessed as suitable by Guide Dogs Victoria (or other state/territory equivalent) or Assistance Dogs Australia: < Transport Accident Commission, *Guide Dogs and Assistance Dogs* <www.tac.vic.gov.au/jsp/content/NavigationController.do?areaID=22&tie rID=1&navID=DF2F243E7F00000101A5D193728FF0DD&navLink=null&pageID=1388> at 3 September 2008.

41 Ibid.

42 Consultation 5 (Transport Accident Commission).

43 Esnayra, above n 17.

44 Social phobia is a type of anxiety disorder. 'People who have social phobia experience extreme and persistent anxiety associated with social or performance situations... It is estimated that around three per cent of the Australian population experience social phobia in any one year - up to 13 per cent of the population may develop social phobia during their lifetime': Better Health Channel, *Social Phobia* (2007) <www.betterhealth.vic.gov.au/bhcv2/bhcarticles.nsf/pages/Social_phobia> at 2 September 2008.

45 Submission 25 (Disability Discrimination Legal Service). They may also relieve some of the effects of the disability in the home; this means that an assistance animal would not be subject to the prohibition on pets that often appear in residential tenancy agreements or body corporate rules.

46 Note that animal assisted therapy dogs are distinct from psychiatric service dogs because they are based at a facility. In this case a psychiatric hospital.

47 Inbar Nathans-Barel et al, 'Animal-Assisted Therapy Amerliorates Anhedonia in Schizophrenia Patients - A Controlled Pilot Study' (2005) 74 *Psychotherapy and Psychosomatics* 31, 34.

48 Esnayra, above n 17.

49 Ibid 31.



SEIZURE AND ALERT DOGS

2.49 Like psychiatric service dogs, seizure and alert dogs are relatively new phenomenon in Australia. As noted by Epilepsy Victoria

'[T]here is very little scientific evidence as to the reliability of a dog performing either of these roles [seizure or alert] but there are plenty of anecdotal accounts of a dog becoming agitated before a convulsive seizure (perhaps being alerted to a partial seizure which may precede a generalized seizure), and of dogs warning carers that a generalized seizure is occurring or has just occurred, thereby enabling prompt and appropriate first aid to be given'⁵⁰

2.50 Overseas, evidence has emerged that dogs can be trained to alert or to respond to seizures.⁵¹ However there has been some concern that people misdiagnosed as epileptic are using alert dogs.⁵² These cases 'demonstrate the importance of establishing an accurate diagnosis of epilepsy before patients obtain epileptic seizure response dogs'.⁵³

2.51 In one small study at a hospital in Philadelphia it was reported that '[i]n our limited but objective experience, the 'seizure dogs' were not as effective as previously thought in predicting the seizure activity'.⁵⁴ However, in another US study more positive results were found.⁵⁵

2.52 'Prominent among reported quality of life benefits were effects on interpersonal relationships with strangers. Stigmatization of persons with epilepsy is underestimated and socially devastating and remains a major barrier to societal integration'.⁵⁶ Because of the unpredictability of seizures, many people with epilepsy 'limit their exposure to the outside world by staying at home'.⁵⁷

2.53 This benefit was expressed by a Tasmanian user of a diabetic alert dog who explained to the commission that when she has seizures in public, people often think she is drunk. She had found that since having 'her life-saving girl', being alerted to an oncoming seizure meant she could avoid potentially embarrassing situations as well as physical injury by the onset of an unexpected seizure.

WHO TRAINS ASSISTANCE ANIMALS?

2.54 The commission consulted with training organisations to identify existing training practices. There are 19 organisations across Australia training assistance animals. Of these, eight supply assistance dogs to Victorians, however only three are located here.⁵⁸

2.55 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. However there is very little information about these practices.

2.56 In Victoria, Guide Dogs Victoria (GDV) and Seeing Eye Dogs Australia (SEDA) train most assistance animals. Victorians with non-vision related disabilities must generally look interstate for assistance animals.⁵⁹

2.57 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 doctors reports, medical histories and personal references.

2.58 Most of the organisations providing assistance animals to Victorians are members of international bodies: either the International Guide Dogs Federation or Assistance Dogs International.⁶⁰ More detail about international bodies, including their accreditation standards is provided in Chapter 5.

50 Email from Epilepsy Foundation of Victoria to the commission, 15 August 2008.

51 A Kirton et al, 'Seizure Response Dogs: Evaluation of a Formal Training Program' (2008) in press *Epilepsy & Behavior*.

52 Ibid 5.

53 See 'AES Proceedings: Annual Meeting of the American Epilepsy Society' (2007) 47(s4) *Epilepsia* 246.

54 Rafael Ortiz and Joyce Liporace, "'Seizure Alert Dogs'" Observations from an Inpatient Video/EEG Unit' (2005) 6 *Epilepsy and Behavior* 620.

55 Kirton et al, above n 51.

56 Ibid 5.

57 Ortiz and Liporace, above n54.

58 Guide Dogs Victoria, Seeing Eye Dogs Australia and Righteous Pups.

59 Seizure Alert and Autism Assistance Dogs for children may be supplied by 'Righteous Pups' who are based in Victoria. The commission was unable to confirm any details of this organisation's operations.

60 Disability Aid Dogs and Righteous Pups do not appear to be members of any international organisations and are not members of either Assistance Dogs International or IGDF.

ASSISTANCE ANIMAL TRAINING PROVIDERS IN VICTORIA

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 and Assistance Dogs International (ADI) member

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

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

Assisting Wellbeing Ability Recovery and Empowerment (A.W.A.R.E.) 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

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

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

ASSISTANCE ANIMAL ORGANISATIONS THAT PROVIDE SERVICES TO VICTORIANS

GUIDE DOGS VICTORIA

- 2.59 GDV has operated since the 1950s. In addition to breeding and training dogs, it provides a range of other services for vision-impaired people including orientation and mobility training, occupational therapy, and special programs for vision impaired young people.
- 2.60 It is widely recognised in the community because of its long history and high standards. It receives most of its funding from sponsorship and donations.
- 2.61 GDV is registered charity. It is a Quality Endorsed Company and all its services must comply with the nine Victorian Standards for Disability Services.⁶¹ In addition, GDV are members of the International Guide Dogs Federation (IGDF). Among other things, this requires at least three years on the job training before staff qualify as 'guide dog mobility instructors'.⁶²
- 2.62 In common with other major providers, GDV has a detailed screening process to ensure responsible dog ownership and to facilitate an accurate matching process for applicants with disability.
- 2.63 GDV only uses dogs that it has bred. At around 12 months of age, and after 10 months of a puppy-raising program, the potential guide dog is assessed to determine its potential to become a guide dog. Just under half of the animals tested will be allowed to then enter five months of full time training before they meet their potential handler.⁶³
- 2.64 It can take many months to train a partnership. As part of the team training, the handler is with the dog 24 hours a day for at least four weeks before assessment against the public access test.⁶⁴
- 2.65 GDV do not refer to a dog as a 'guide dog' until it has completed training with its handler and passed a test for competency and public safety. There is a strong emphasis upon the handler and dog as a team. It is this team which is tested to ensure readiness for guide dog duties.⁶⁵
- 2.66 Partnerships are followed up by GDV every three months in the first year after graduation, and then annually thereafter. This includes re-testing for public access and ensuring the handler is able to look after the guide dog properly. Further training is provided where necessary to ensure the dog is assisting as required and the team is operating safely.⁶⁶
- 2.67 GDV has 167 dogs currently working in Victoria.

61 Guide Dogs Victoria, *Who We Are* <www.guidedogsvictoria.com.au/who-we-are> at 5 September 2008.

62 International Guide Dogs Federation Standards, 18 July 2007, written copy provided by Seeing Eye Dogs Australia: letter from Seeing Eye Dogs Australia to the commission, 4 September 2008.

63 Guide Dogs Victoria, *Guide Dog Training* <www.guidedogsvictoria.com.au/about-our-dogs/guide-dog-training/> at 5 September 2008.

64 Submission 5 (Anne-Marie Kelly).

65 Consultation 10 (Guide Dogs Victoria).

66 Consultation 10 (Guide Dogs Victoria).



SEEING EYE DOGS AUSTRALIA

- 2.68 Seeing Eye Dogs Australia (SEDA) is a national guide dog training organisation based in Victoria. Previously known as Lady Nell, SEDA has operated since 1960.
- 2.69 In July 2008 SEDA merged with Vision Australia. As a charity, it provides services free of charge and is reliant on donations and sponsorship.
- 2.70 It specialises in breeding and training guide dogs for the vision-impaired. It also trains assistance dogs for people who have multiple disabilities.⁶⁷ According to SEDA, it takes up to two years and costs about \$30,000 to train a dog to the required level.⁶⁸
- 2.71 SEDA generally graduates dogs when they are between eighteen months and two years old. The pups leave their mother at eight weeks of age and live with puppy carers for about 12 months.⁶⁹ Advanced training then commences, followed by client matching and partnership training.
- 2.72 Partnerships are put through public access testing. Regular follow up also occurs after graduation. The dog remains under the ownership of SEDA so that if the dog is no longer up to standard, the organisation can withdraw it from service.⁷⁰
- 2.73 SEDA is a member of Assistance Dogs International (ADI) and IGDF. In common with GDV its trainers must complete three years training to qualify as instructors. This is a requirement of IGDF membership.⁷¹
- 2.74 Currently, SEDA has 60 dogs working in Victoria.

LIONS HEARING DOGS AUSTRALIA

- 2.75 Lions Hearing Dogs have been operating in Australia for 27 years. They are based in South Australia but provide dogs across Australia and Papua New Guinea.
- 2.76 Dogs are provided free of charge to applicants who have undergone a detailed screening process. Applicants must provide Lions with a report from their medical practitioner to confirm the nature of their disability and to assess whether the applicant is physically capable of looking after their dog. This is followed by an interview in the person's home.
- 2.77 The dogs are trained to perform tasks by going to the source of a sound. For example, if the doorbell rings the dog comes back to the person to make physical contact. It takes a minimum of nine months to train a hearing dog and costs up to \$30,000.⁷² Lions train their staff on the job for at least 12 months before their trainers are allowed to train on their own.⁷³
- 2.78 In addition to the services, Lions Hearing Dogs also operates as an assessment body for the South Australian Dog and Cat Management Board. They assess animals for recognition by the board as assistance animals, against training standards in that state.
- 2.79 Currently there are 35 hearing dogs working in Victoria. Some people are using their second or third dog provided by Lions.

ASSISTANCE DOGS AUSTRALIA

- 2.80 Assistance Dogs Australia commenced operation in 1996. It is an accredited member of ADI.
- 2.81 Based in Sydney, ADA operates nationwide and is the major provider of assistance dogs for people with physical disabilities in Victoria. They have 25 partnerships currently operating in Victoria. These dogs provide support for people with a range of disabilities including quadriplegia, paraplegia and cerebral palsy.
- 2.82 ADA has a detailed application and matching process. Applicants must fill in a comprehensive form. This is followed up with an interview to facilitate the matching process and to ensure that the applicant is capable of looking after a dog.
- 2.83 Puppies commence training at 8 weeks. It takes two years and about \$20,000 to train an assistance dog.⁷⁴ After training, the partnership is put through the ADI public access test. Follow up continues after the dog graduates. In common with guide and hearing dogs, the working life of an assistance dogs is about eight to 10 years.

67 For example, 9% of people with a sight disability also have diabetes: Consultation 17 (Seeing Eye Dogs Australia).

68 Seeing Eye Dogs Australia, *What it Costs to Breed, Raise, Train and Partner a "Seeing Eye Dog"* <www.seda.org.au/frequently_asked_questions_cost_to_graduate_sed.html> at 5 September 2008.

69 Seeing Eye Dogs Australia, *What is Puppy Caring?*, <www.seda.org.au> at 5 September 2008.

70 Consultation 17 (Seeing Eye Dogs Australia).

71 Email from Seeing Eye Dogs Australia to the commission, 10 September 2008.

72 Consultation 2 (Lions Hearing Dogs Australia).

73 Consultation 2 (Lions Hearing Dogs Australia).

74 Assistance Dogs Australia, *About Us* <www.assistedogs.org.au/about.html> at 8 September.

2.84 ADA run the 'Pups in Prison' programs across prisons in New South Wales and also in Queensland, where puppies are jointly trained by inmates and officers.⁷⁵

A.W.A.R.E. DOGS AUSTRALIA

2.85 Established in 2003, A.W.A.R.E. Dogs Australia has chosen to focus on disabilities that other organisations don't cover, in particular mental health disabilities.

2.86 Applicants must provide evidence of their disability as part of the eligibility and matching process. The applicant is not required to pay for training but does need to pay for equipment such as an identification card.

2.87 Dogs are provided from a variety of sources. A.W.A.R.E. does not have a breeding program.

2.88 The initial training of the dog may take anything up to one year. The recipient of the dog then attends a training program with the dog for approximately four weeks.

2.89 As a member of ADI, A.W.A.R.E. also administers a public access test before the dog can graduate as an assistance dog. They follow up on the partnership throughout the life of the placement.

2.90 A.W.A.R.E. currently has five dogs working in Victoria. They are based in northern Queensland.⁷⁶

CANINE HELPERS FOR THE DISABLED

2.91 Based in Queensland, Canine Helpers for the Disabled⁷⁷ is a non-profit organisation that trains therapy, facility, hearing and service dogs to assist people with disabilities. They provide service dogs to adults with physical impairments.

2.92 Canine Helpers uses a variety of breeds for training and assess each applicant for their specific requirements. Canine Helpers are members of ADI.⁷⁸

2.93 It is not known how many dogs Canine Helpers currently has in Victoria.

RIGHTEOUS PUPS

2.94 The commission was unable to contact this organisation which is based in Bendigo.

2.95 The Righteous Pups Australia website reports that this not for profit organisation was established in 2003 to raise and train seizure alert dogs and autism assistance.⁷⁹

DISABILITY AID DOGS AUSTRALIA

2.96 Disability Aid Dogs (DAD) is based in Queensland. It has trained between 50 and 60 partnerships across Australia. They currently do not have any dogs working in Victoria.

WILL ASSISTANCE ANIMALS BECOME MORE COMMON?

2.97 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.

2.98 In 2003, one million Victorians, or 20% of the population had some form of disability.⁸⁰ Some 1.2 million Australians (or 6.3% of the population) always or sometimes needed assistance with self-care, mobility or communication.⁸¹ This figure increased by nearly 10% between 1998 and 2003.⁸²

2.99 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.

2.100 For example, Vision Australia notes that there is an estimated 300,000 people who are blind or have low vision in Australia, and many more are Deafblind or have a hearing loss. With an ageing population, 'this figure is anticipated to more than double over the next two decades, a trend that will inevitably mean that the prevalence of dog guides will also significantly increase'.⁸³

75 Consultation 14 (Assistance Dogs Australia).

76 A.W.A.R.E. Dogs Australia, *The Program* (2008) <www.awaredogs.org.au/the_program> at 5 September 2008.

77 The commission was unable to interview this organisation to verify how many assistance animals it is currently supporting in Victoria. However their website provides some information about their operations: Canine Helpers for the Disabled <www.therapydogs.org.au/> at 8 September 2008.

78 Canine Helpers for the Disabled <www.therapydogs.org.au/> at 5 September 2008.

79 Righteous Pups Australia, *About RPA* <www.righteouspups.org.au/AboutUs/tabid/140/Default.aspx> 8 September 2008.

80 Australian Bureau of Statistics, *Disability, Ageing and Carers*, Cat No 4430.0 (2003).

81 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.

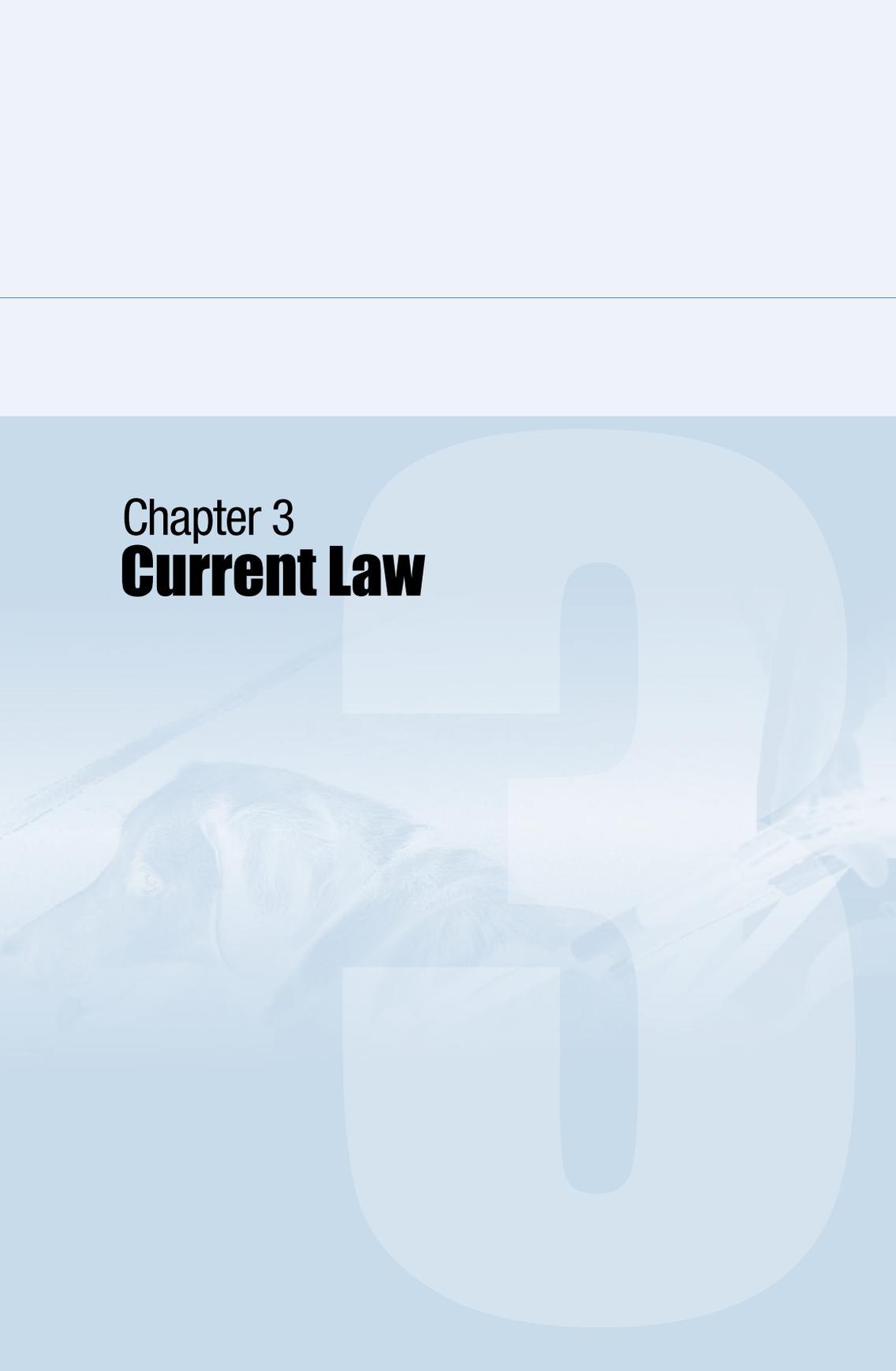
82 Australian Institute of Health and Welfare, *Australia's Welfare 2005* (2005) 219 (figure rounded to the nearest whole number).

83 Submission 19 (Vision Australia).



SUMMARY

2.101 There was strong consensus through consultation that guide, hearing and assistance dogs of all types make a significant and very positive difference to the lives of people who use them. There was also consensus that the right of a person with a disability to be accompanied by these animals is worthy of legal protection. What then is the current law of assistance animals in Victoria, and can it be improved?



Chapter 3

Current Law

CONTENTS

- State legislation
- Commonwealth legislation
- Federal case law on assistance animals
- Current problems
- Extent of discrimination
- Conclusions



CURRENT LAW

- 3.1 There is no single law that deals comprehensively with assistance animals in Victoria. There are four different Victorian Acts and 14 Regulations containing provisions that apply to assistance animal partnerships.¹ These laws recognise some animals, and protect people with some disabilities, in some circumstances.
- 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.²

STATE LEGISLATION

THE EQUAL OPPORTUNITY ACT

- 3.3 The *Equal Opportunity Act 1995* recognises assistance animal partnerships. It contains a provision which specifically deals with some forms of assistance animal partnerships (guide dogs).³
- 3.4 There are also provisions of general application that probably render it unlawful to discriminate against assistance animal partnerships in some circumstances.⁴

The EOA 'guide dog' provision

- 3.5 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 accommodation⁵
 - to require the person to pay extra for the dog
 - to keep the dog elsewhere as a condition of entry.⁶
- 3.6 The provision only protects people with a visual, hearing or mobility impairment.⁷ It does not extend to other forms of impairment such as mental health disabilities. In this regard, it provides less protection than the Commonwealth *Disability Discrimination Act 1992* (DDA).
- 3.7 Further, this provision is limited to the area of accommodation only.⁸ 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

- 3.8 However, the EOA also contains provisions that prohibit direct or indirect discrimination because of a person's impairment.⁹ These general provisions apply to many different areas, such as, employment, education, provision of goods and services, and club and sports membership.
- 3.9 It is 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 impairment 'generally has', or one 'that is generally imputed to a person with that attribute'.¹⁰
- 3.10 As a result of the operation of the 'characteristics extension' in s 7(2) a person may bring a claim of direct or indirect discrimination under the EOA as distinct from a complaint that a person has contravened the specific guide dog section of the Act. This means that the coverage of the EOA is potentially broader than that explicitly provided in the guide dog provision.
- 3.11 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 with a disability 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'. However the recent federal case of *Forest*¹¹ has made this less clear. This case is discussed later in this Chapter.
- 3.12 **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. In the present case, direct discrimination occurs when a person

1 A list of relevant Victorian Acts and Regulations can be found at Appendix 4.

2 *Disability Discrimination Act 1992* (Cth).

3 The DFNAA 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'.

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

5 "Accommodation" includes 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).

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

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

8 Accommodation includes business premises. *Equal Opportunity Act 1995* (Vic) s 4.

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

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

11 *The State of Queensland (Queensland Health) v Che Forest* [2008] FCAFC 96.

is treated less favourably, because of his or her disability, than a person without that disability would be treated in the same or similar circumstances.

- 3.13 **Indirect discrimination** occurs when a condition or requirement that applies equally to all persons operates to the disadvantage of a particular group and is not reasonable.¹² In these circumstances discrimination occurs because people of that group find it more difficult than others to comply with the particular condition or requirement.
- 3.14 The indirect discrimination provisions may apply when a person who is accompanied by an assistance animal sustains some detriment, or is denied some benefit, because of using the animal.¹³ Claiming indirect discrimination is a convoluted route to achieving a result because the task of proving indirect discrimination, although not impossible is daunting for many claimants.¹⁴
- 3.15 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. Finally, they must also establish that the requirement or condition is not reasonable when all circumstances are taken into account.¹⁵

Qualifications within the EOA

- 3.16 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 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.¹⁶
- 3.17 It is important to note that the 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.¹⁷ Hence, the qualification applies to many of the services and places that assistance animal partnerships need to access.

Implied obligations to make reasonable adjustments

- 3.18 Reasonable adjustments are those measures that need to be taken to ensure a person with impairment can have equal access to the areas of activity covered under the Act. By definition such adjustments must be 'reasonable'. If an adjustment requires disproportionately high expenditure or disruption, it would not be reasonable.
- 3.19 The EOA does not currently expressly state that service providers and employers are under an obligation to make reasonable adjustments to accommodate people with impairment.¹⁸ However, if reasonable adjustments are not made ... the person with the attribute potentially suffers the effects of indirect discrimination. A person can therefore currently lodge a complaint of indirect discrimination for failure to make reasonable adjustments'.¹⁹ Although as discussed above, the task of successfully establishing indirect discrimination is a formidable task.
- 3.20 Some of the specific exceptions in the EOA potentially contain an implied duty to make reasonable adjustments for people with impairment. For example, section 22 of the EOA allows employers to discriminate against people with impairment in circumstances where it is not reasonable for the employer to provide 'special services and facilities'. This implies that an employer should make the adjustments when it is reasonable to do so.²⁰
- 3.21 The recently released *Equal Opportunity Review Final Report* recommended that the EOA be amended to provide for 'an express duty to make reasonable adjustments for people with impairment in relation to all areas protected by the Act and in public spaces'.²¹ This recommendation, and other relevant considerations raised by the review are discussed in more detail in Chapter 4.

DOMESTIC (FERAL AND NUISANCE) ANIMALS ACT 1994

- 3.22 The *Domestic (Feral and Nuisance) Animals Act* (DFNAA) is the main Victorian legislation regulating assistance animals. However, as its name suggests, the DFNAA is not specifically an

12 Chris Ronalds, *Discrimination Law and Practice* (3rd Ed, 2008) 43.

13 However in most circumstances refusal to allow a person accompanied by an assistance animal would constitute direct discrimination.

14 Department of Justice [Victoria], *An Equality Act for a Fairer Victoria: Equal Opportunity Review Final Report* (2008) 90.

15 Ronalds, above n12, 49-51. Also note the Federal Court decision in *The State of Queensland (Queensland Health v Che Forest* [2008] FCAFC 96 discussed at 3.59 to 3.65.

16 *Equal Opportunity Act 1995* (Vic) s 46(b).

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

18 Nor does the *Disability Discrimination Act 1992* (Cth) although the Productivity Commission has recommended that the Act be amended to include such a provision. For discussion see Productivity Commission [Australia], *Review of the Disability Discrimination Act 1992*, Report No 30 (2004) 196.

19 Department of Justice [Victoria], above n14, 90.

20 For discussion of the implied obligation under s 22(1)(a)(1) see Victorian Equal Opportunity and Human Rights Commission (2008) *Submission to the Exceptions Review: Consultation Paper 2008*, 18 <www.humanrightscommission.vic.gov.au/projects%20and%20initiatives/eoa%20review.asp> at 3 September 2008; see also Department of Justice [Victoria], above n 14, 91.

21 Department of Justice [Victoria], above n14, 94, recommendation 43.



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

23 Effectively bringing guide dogs back into the common law rules. The issue of liability is discussed further in Chapter 7.

24 *Domestic (Feral and Nuisance) Animals Act 1994* (Vic) s 7(4) (emphasis added).

25 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).

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

27 Submission 19 (Vision Australia).

28 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).

29 *Commonwealth Games Arrangements Act 2001* (Vic) s 3; *Major Events (Crowd Management) Act 2003* (Vic) s 3; *Australian Grand Prix (Formula One) Regulations 2006* (Vic) r 5.

30 *Alpine Resorts (Management) Regulations 1998* (Vic) s 42; *Forests (Murrumbidgee Scenic Reserve) Regulations 1999* (Vic) r 17; *Forests (Steavenson Falls Scenic Reserve) Regulations 1999* (Vic) r 18; *Forests (You Yangs Regional Park) Regulations 2003* (Vic) r 20; *National Parks (Park) Regulations 2003* (Vic) r 37(6); *Royal Botanic Gardens Regulations 2004* (Vic) r 22(4); *Water Industry (Reservoir Parks and Lands) Regulations 2001* (Vic) r 18(4); *Wildlife (State Game Reserve) Regulations 2004* (Vic) r 18.

31 *Transport (Passenger Vehicles) Regulations 2005* (Vic) r 72; *Transport (Public Transport Corporation) Regulations 1994* (Vic) r 301(7); *Transport (Taxi-Cabs) Regulations 2005* (Vic) r 33; *Transport (Conduct) Regulations 2005* (Vic) r 20; *Transport (Ticketing and Conduct) Regulations 2005* (Vic) r 20(1)(c).

Act about assistance animals. Its main purpose is to regulate feral animals, dangerous dogs and pet dogs and cats.²²

- 3.23 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 remaining provisions of the Act that apply to all other dogs. This is a significant exemption as it removes guide dogs from the registration, nuisance, and dangerous dogs provisions of the DFNAA. It also removes them from the statutory scheme for liability for property damage or personal injury.²³
- 3.24 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'.²⁴
- 3.25 It is highly likely that section 7(4) cannot be read literally, for otherwise it would interfere with private property rights. 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.²⁵
- 3.26 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.
- 3.27 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. Regulations made under the Act do contain standards for obedience training of dogs; however such training is very different to that required for assistance animals.²⁶
- 3.28 Because the DFNAA is silent on the issue of training standards, there is no legal requirement in Victoria for assistance animals to be trained to a particular level, or for public access. Nor is there any limitation on who can hold themselves out to be a qualified trainer of assistance animals. The industry is self regulated.
- 3.29 With the emergence of new types of assistance animals, the silence of Victorian law on standards has significant consequences for public safety and the reputation of well known assistance animals. A consistent theme in consultation was that continued public acceptance of assistance animals is dependent on better regulation, including legislative standards for quality and safety.²⁷

OTHER VICTORIAN LAWS AND REGULATIONS

- 3.30 In addition to the DFNAA and the EOA there are a variety of Acts and regulations which give assistance animal partnerships specific rights.²⁸
- 3.31 These laws fall into three broad areas:
- major public events²⁹
 - national parks, reserves and gardens³⁰ and
 - public transport, taxis and other commercial passenger vehicles.³¹
- 3.32 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. Trainee assistance animals are sometimes, but not often, recognised.
- 3.33 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.
- 3.34 For example the *Royal Botanic Gardens Regulations* permit a person to bring into the gardens 'an animal that is not a dog' provided that the animal is trained to assist that person with their

disability.³² Similarly, the *National Parks (Park) Regulations* allow a person to bring a dog or horse into a national park to assist a disabled person with respect to that person's disability or to train that animal to assist disabled persons with respect to disabilities.³³

- 3.35 Transport laws³⁴ are particularly important because people with disability, like all people, require access to transport to be connected to employment, services and leisure activities. However transport regulations currently only allow guide dogs, hearing dogs and dogs in training.³⁵

HUMAN RIGHTS LAW

- 3.36 Victorian human rights legislation is also relevant to any discussion of assistance animal law.
- 3.37 The *Charter of Human Rights and Responsibilities Act 2006* includes the right to be free from discrimination.³⁶ 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 operators.³⁷ 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'.³⁸
- 3.38 The Charter also requires that all new legislation introduced in Victoria be considered for its compatibility with the Charter. 'Accordingly, in considering whether to reform the law regarding assistance animals, VLRC should take into account the human rights set out in the Victorian Charter and their implication for the Consultation'.³⁹
- 3.39 International obligations are also relevant.⁴⁰ Australia ratified the *Convention on the Rights of Persons with Disabilities* (CRPD) on 17 July 2008.⁴¹ The Convention clarifies the obligations on states to promote, protect and ensure the rights of people with disabilities.
- 3.40 As noted by the Public Interest Law Clearing House:
*By ratifying the CPRD it became incumbent on all levels of Australian government, Federal, State and Territory, to meet their obligations under the Convention... The CRPD does not address expressly assistance animals. However, the CPRD emphasises that persons with disabilities are entitled to full and effective participation and inclusion in society.*⁴²
- 3.41 Other treaty obligations, for example the non-discrimination provisions of the International Covenant on Civil and Political Rights (ICCPR)⁴³ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴⁴ also apply.

COMMONWEALTH LEGISLATION

DISABILITY DISCRIMINATION ACT

- 3.42 The *Disability Discrimination Act* (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 override state law.⁴⁵

Section 9 DDA

- 3.43 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.
- 3.44 As a definition section, it is much broader than the guide dog provision in the Victorian EOA.⁴⁶ 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.
- 3.45 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.⁴⁷ However, this is qualified when there is 'unjustifiable hardship'.⁴⁸ This is discussed further below.
- 3.46 The DDA does not specifically require an assistance animal to be under the control of its user.⁴⁹ 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.

32 *Royal Botanic Gardens Regulations 2004* (Vic) r 23.

33 *National Parks (Park) Regulations 2003* (Vic) r 37(6)(b); *Wildlife (State Game Reserve) Regulations 2004* (Vic) r 18(7)(b).

34 *Transport (Passenger Vehicles) Regulations 2005* (Vic) r 72; *Transport (Public Transport Corporation) Regulations 1994* (Vic) r 301(7); *Transport (Taxi-Cabs) Regulations 2005* (Vic) r 33; *Transport (Conduct) Regulations 2005* (Vic) r 20.

35 See, eg, *Transport (Ticketing and Conduct) Regulations 2005* (Vic) r 20; Consultation 12 (Public Transport Access Committee).

36 '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).

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

38 *Charter of Human Rights and Responsibilities Act 2006* (Vic) 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)].

39 Submission 20 (Public Interest Law Clearing House).

40 Submission 20 (Public Interest Law Clearing House).

41 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, A/RES/61/106 (entered into force 3 May 2008).

42 Submission 20 (Public Interest Law Clearing House).

43 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171, (entered into force 23 March 1976).

44 *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 Dec. 1966), 993 UNTS. 3, (entered into force 3 January 1976).

45 *Australian Constitution* s 109.

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

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

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

49 The Human Rights and Equal Opportunity Commission has previously recommended that the DDA be amended to require an assistance animal to be under the control of its user: Human Rights and Equal Opportunity Commission, *Reform of the Assistance Animals Provision of the Disability Discrimination Act* (2003) <www.humanrights.gov.au/disability_rights/inquiries/animal03/report.htm> at 3 September 2008.



- 3.47 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'.⁵⁰ 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.

General anti-discrimination provisions

- 3.48 Section 5 of the DDA defines direct discrimination, where section 6 contains a general description of indirect discrimination on the ground of disability.
- 3.49 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.
- 3.50 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.⁵¹

Qualifications within the DDA - unjustifiable hardship

- 3.51 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 prove that if he or she were compelled not to discriminate it would cause them unjustifiable hardship.
- 3.52 'Unjustifiable hardship' does not apply to all activities governed by the DDA.⁵² '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:
- (a) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and
 - (b) the effect of the disability on a person concerned; and
 - (c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship; and
 - (d) in the case of the provision of services, or the making available of facilities – an action plan given to the Commissioner under s 64.⁵³
- 3.53 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'.⁵⁴

HREOC exemptions

- 3.54 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.⁵⁵ In 2007 HREOC granted the Australasian Railways Association⁵⁶ a temporary exemption from sections 23 and 24 of the DDA in relation to assistance animals. The exemption will operate until 2010.⁵⁷
- 3.55 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.⁵⁸
- 3.56 During consultation, it was noted that the current HREOC exemption to members of the Australasian Railways is inconsistent with Victorian transport regulations, so it adds another layer of complexity.⁵⁹ The HREOC exemption is based on the DDA, and so recognises all assistance animals with adequate identification. Unlike Victorian transport regulations, it is not limited to guide and hearing dogs.

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

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

52 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)(b)); goods, services and facilities (s 24(2)); accommodation (s 25(3)(c)) and club and incorporated association membership (s 27(3)).

53 For further discussion of unjustifiable hardship see Ronalds, above n12, 161-164.

54 Human Rights and Equal Opportunity Commission, *Frequently Asked Questions: Assistance Animals* <www.hreoc.gov.au/disability_rights/faq/Companion_Animals/companion_animals.html> at 3 September 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 a restaurant.

55 *Disability Discrimination Act 1992* (Cth) ss 55(1) and 55 (1A).

56 Members include VLine. For a full list of ARA members see Australasian Railway Association Incorporated, *Member Companies* <www.ara.net.au/full.php> at 3 September 2008.

57 See Human Rights and Equal Opportunity Commission, *Notice of Decision on Application for Temporary Exemption: Australasian Railways Association: Assistance Animals* <www.hreoc.gov.au/disability_rights/exemptions/ara/dec2.htm> at 3 September 2008.

58 *Ibid.*

59 Consultation 7 (Transport Roundtable).

FEDERAL CASE LAW ON ASSISTANCE ANIMALS

- 3.57 The courts have interpreted the DDA definition of ‘assistance animal’ very broadly. In *Sheehan v Tin Can Bay Country Club*,⁶⁰ the Federal Magistrates Court held that an informally trained dog that helped a man with an anxiety disorder to feel more confident by ‘break[ing] 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.⁶¹
- 3.58 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.*⁶²

The State of Queensland (Queensland Health) v Che Forest

- 3.59 Difficulties with the interpretation of section 9(1)(f) of the DDA also arose in the more recent case of *Forest*.⁶³ 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.
- 3.60 The trial judge found Queensland Health unlawfully discriminated by refusing to allow Mr Forest to be accompanied by his assistance dog. The trial judge found that the dogs were animals trained to assist Mr Forest alleviate the effect of a psychiatric disability from which he suffered so that section 9(1)(f) of the Act applied. She also found indirect discrimination within the meaning of section 6 of the DDA. She concluded that Queensland Health had discriminated against Mr Forest in contravention of sections 23 and 24 of the DDA.
- 3.61 The Full Bench of the Federal Court overturned the decision. The majority accepted Queensland Health’s argument that they did not discriminate on the basis of Mr Forest’s disability, but rather because of concerns that the dog was ill behaved and ill-controlled, and that Queensland Health was given inadequate evidence of proper assistance dog training.⁶⁴
- 3.62 The majority held that before there can be a finding of unlawful discrimination under sections 23 or 24 by reason of discrimination under section 9 of the DDA, it is also necessary to make a finding as to the ground on which the discrimination occurs. This approach requires the claimant to prove discrimination both on the ground of use of an assistance animal, and then again on the ground of disability.
- 3.63 This approach effectively renders the characteristic extension useless.⁶⁵ This is problematic, not only for people reliant on assistance animals but for the operation of anti-discrimination law generally.
- 3.64 Whilst Chief Justice Black agreed with the majority that the trial judge was in error in her application of section 6 and the consequent finding of indirect discrimination, he disagreed with the majority on their findings regarding section 9, and its application to sections 23 and 24. In his view section 9 answers the question in the same way as section 6. That is, the ground of disability is already determined by the application of section 9.
- 3.65 The implications of the *Forest* decision for our project are significant in so far as they give further urgency to the need to clarify assistance animal law. In his judgement, Black CJ points out the deficiencies of section 9, noting the desirability of legislative reform.

*‘[T]his would provide certainty for animal owners, service providers and members of the public and, as her Honour put it, strike a balance between the needs of the disabled as recognised in the Act and the confidence of service providers and the public as to standards of assistance animals in public places’.*⁶⁶

60 [2002] FMCA 95 (9 May 2002).

61 Direct discrimination was not found.

62 Human Rights and Equal Opportunity Commission, *Discussion Paper: Assistance Animals under the Disability Discrimination Act (2002)* <www.humanrights.gov.au/disability_rights/inquiries/animal03/discuss.htm> at 3 September 2008.

63 *The State of Queensland (Queensland Health) v Che Forest* [2008] FCAFC 96.

64 *The State of Queensland (Queensland Health) v Che Forest* [2008] FCAFC 96 [115].

65 Whereby the use of an assistance animal is imputed into the attribute upon which discrimination takes place.

66 *The State of Queensland (Queensland Health) v Che Forest* [2008] FCAFC 96 [48] (Black C.J.).



CURRENT PROBLEMS

LIMITATIONS OF THE EXISTING LAW

- 3.66 The many laws that deal with assistance animals in Victoria are unclear and create conflicting obligations. The three main statutes – the DDA, the EOA and the DFNAA grant overlapping, but not totally consistent, rights. These laws grant rights to some people with some disabilities to be accompanied by some trained assistance animals in some circumstances. This makes the law confusing and impractical both for people using assistance animals and for the broader community.
- 3.67 Legislation does not clearly define the term ‘assistance animal’. In addition, there are no uniform training standards for assistance animals in Victoria. Currently, people who train assistance animals are not legally required to have any qualifications or experience. This may lead to the community losing confidence in assistance animals, especially new forms of assistance animals that do not fit the stereotype of a guide dog.
- 3.68 There is no uniform identification system for assistance animal partnerships. People who use assistance animals are not legally required to carry identification. Because no uniform identification system exists, businesses and service providers must be able to recognise a wide variety of different identification features. This is an unreasonable burden on businesses.⁶⁷ At the same time people with disability may be subject to humiliating questioning about the nature of their disability. They may also be denied access to places, goods and services to which they have a legal right.

EXTENT OF DISCRIMINATION

- 3.69 In preparing this report, the commission requested complaints data from the Victorian Human Rights and Equal Opportunity Commission (VEOHRC); Victorian Taxi Directorate (the Directorate) and the Human Rights and Equal Opportunity Commission (HREOC). The commission received statistics from all three organisations regarding complaints received since 2004. Further information regarding the nature of the complaints and their outcomes has been accessed through the organisations’ websites or sent directly to the commission.
- 3.70 All complaints received by the three organisations were received from users of assistance dogs who felt they had been discriminated against. They included complaints from users of guide dogs, hearing dogs, psychiatric service dogs, mobility dogs, therapy dogs, epilepsy alert dogs as well as guide dogs in training.
- 3.71 Most complaints fell into one of two categories: access to premises and use of/access to transport. This is consistent with the findings from consultation.⁶⁸
- 3.72 For the period 2004-2008 the Directorate received 26 complaints, the VEOHRC received 23 complaints and the HREOC received 73 complaints.
- 3.73 Unlike VEOHRC and the taxi directorate, the HREOC is a federal body. As such, it receives complaints from across all Australian jurisdictions. VEOHRC and the directorate only receive Victorian based complaints.
- 3.74 The majority of complaints received by HREOC have been in relation to guide dogs. Access to premises complaints included those relating to cafes, restaurants, nightclubs, retail outlets, shopping centres and accommodation. Transport complaints were predominantly around use of taxis and access to flights.⁶⁹
- 3.75 A limited number of complaints have progressed through the courts. The majority of these have been in relation to access to premises. For example, the Forest case concerned access to a hospital and to public dental services.⁷⁰
- 3.76 Almost all HREOC complaints were resolved by the organisation against which the complaint was made undertaking a review of the process which led to the complaint. Some of these also included an apology, compensation or a donation to a specified organisation.

67 Consultation 7 (Transport Roundtable).

68 Consultation 16 (Community Forum); submission 17 (Blind Citizens Australia).

69 The issues of access to flights was noted in submissions 17 (Blind Citizens Australia); 11 (Virgin Blue Airlines); and 21 (the Qantas Group). It is discussed further in Chapter 4.

70 *The State of Queensland (Queensland Health) v Che Forest* [2008] FCAFC 96.

- 3.77 Complaints received by VEOHRC have for the most part been in relation to guide dogs, hearing dogs and psychiatric service animals. As with HREOC, the majority of VEOHRC complaints revolve around access to premises and transport.
- 3.78 For VEOHRC complaints, outcomes have included the payment of compensation, review of process and at least one unsuccessful attempt at conciliation.
- 3.79 Compensation and/or an apology appear to be most common complaint resolution mechanism where there has been a clear instance of discrimination against a person using a guide dog. Education of staff may also result from the conciliation process.
- 3.80 We received no evidence of compensation payments being made in relation to complaints around psychiatric service dogs.

HIDDEN DISCRIMINATION

- 3.81 Consultation revealed that instances of discrimination are much more prevalent than the numbers of complaints that are made to either commonwealth or state human rights bodies indicate. Almost all consumer based consultations made this point. Blind Citizens Australia was: *'extremely mindful that people who are blind or vision impaired who use assistance animals experience high levels of discrimination, particularly when accessing public premises and using public transport. Our experience is that the level of discrimination experienced is significantly higher than what has been reported by HREOC and other bodies.*
- BCA are also contacted frequently by assistance animal owners who are told that they are not allowed to enter taxis with their assistance animal, with one young female dog guide owner told that her assistance animal would have to travel in the boot of the car for the one hour journey home. This is inexcusable and is happening more frequently than what has been reported'.⁷¹*
- 3.82 Efforts to improve accessibility were acknowledged. In 2007 VEOHRC released a report titled *Time To Respond: Realising Equality for People with a Disability Utilising Taxi Services*.⁷² This research noted difficulties some taxi users faced when accompanied by an assistance animal. VEOHRC notes in their submission that they received a response to this report from the Department of Transport, which indicates that '[t]he Transport Safety and Compliance unit of the Victorian Taxi Directorate has formed a working group with Seeing Eye Dogs Australia, Blind Citizens Australia and Vision Australia to determine how the VTD can better deal with the issue of guide dog refusal and further develop its educative strategies relating to vision impaired taxi passengers'.
- 3.83 The point was made during consultation that people may not complain about discrimination because they are worried that they may alienate themselves from the service providers upon whom they rely. As a result, discrimination is tolerated.⁷³ When asked if he had faced any problems, one person told us that he had not, but then went on to mention that he had been denied access to supermarkets, taxis, trams and a Centrelink office. Other people told us that although local service providers were helpful, problems were more likely to arise when the person is outside the local area in which the assistance animal is regularly working.⁷⁴
- 3.84 Consultees also explained that consumers are unable to complain in some instances because the (usually) taxi or tram simply does not stop and there is no way of identifying the vehicle number.⁷⁵ Training organisations also reported that assistance animal users were more likely to contact them so that the organisation providing the dog could advocate on their behalf, than use time consuming discrimination complaints mechanisms.⁷⁶
- 3.85 The community forum reported that refusal of access is a significant problem. However it was felt that refusal of access is not always malicious and is often due to a misunderstanding of the law. It was also suggested that any reforms should be aimed at preventing discriminatory behaviour in the first place rather than focusing on complaints after the event.⁷⁷

71 Submission 17 (Blind Citizens Australia).

72 Victorian Equal Opportunity and Human Rights Commission, *Time to Respond: Realising Equality for People With a Disability Using Taxi Services* (2007).

73 See, eg, submission 17 (Blind Citizens Australia); and consultation 11 (Disability Discrimination Legal Service).

74 Consultation 14 (Assistance Dogs Australia).

75 Consultation 1 (Jaebin Saunders).

76 Consultation 17 (Seeing Eye Dogs Australia).

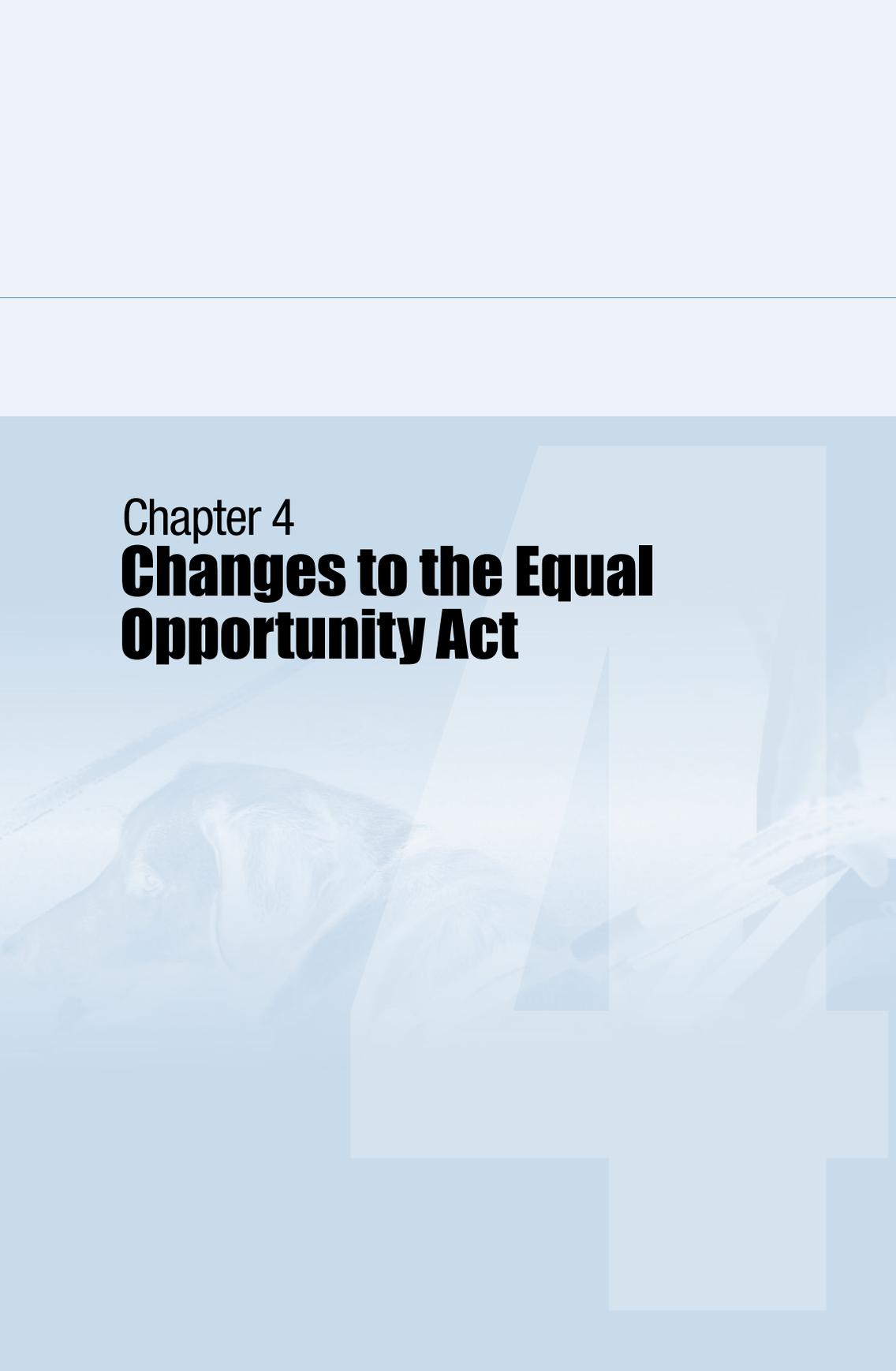
77 Consultation 16 (Community Forum).



CONCLUSIONS

- 3.86 There are many problems with the laws relating to assistance animals in Victoria.
- 3.87 Despite the existence of anti-discrimination laws for many years:
[B]y virtue of the fact that various Victorian state and Federal legislation, are not in harmony and often unclear, lack adequate prescription, and are silent on proactive measures, people with disabilities partnered by an assistance animal, all too frequently are refused entry to spaces open to the public, denied access to publicly available services and generally denied their right to be treated with dignity and respect.⁷⁸
- 3.88 These problems are systemic and affect many different interests in the community. A solution will require the development of a consistent policy towards assistance animals in Victoria. It will also require legislative change focussed on making laws dealing with assistance animals easier for the community to access, understand and comply with in day-to-day life.
- 3.89 The commission puts forward its proposals for such a scheme in the remainder of this report.

⁷⁸ Submission 19 (Vision Australia).



Chapter 4

Changes to the Equal Opportunity Act

CONTENTS

- Principles of reform
- Clarifying the meaning of 'assistance animal' in Victorian law
- Removing inequities in protection
- Enabling the right
- Consistent and comprehensive protection



CHANGES TO THE EQUAL OPPORTUNITY ACT

- 4.1 In the last Chapter we noted the limitations of existing laws with regards to assistance animals. In this Chapter we outline proposed changes to the *Equal Opportunity Act 1995*. The commission believes these changes will lead to better protection for people with disability, as well as more certainty for employers, service providers and the community as a whole.¹

PRINCIPLES OF REFORM

- 4.2 In the Consultation Paper, the commission set out the broad principles that have guided our thinking around how best to reform the law of assistance animals. With the primary aim of realising the human rights of people with disability to participate in all aspects of society, these principles focussed upon:

- clarifying and simplifying the law
- removing inequities in protection
- promoting certainty for business and the community in relation to what is or is not an assistance animal, including where such an animal can lawfully go, and
- promoting community understanding of the right to be accompanied by an assistance animal.

- 4.3 These principles were strongly supported in consultation. As noted by the Disability Discrimination Legal Centre:

'[C]hanges in Victorian laws concerning assistance animals are long overdue. The absence of a statute or regulation governing assistance animals have [sic] been detrimental to many Victorians with disabilities who rely on assistance animals in order to manage their disabilities, enjoy life and participate in society'.²

- 4.4 Service providers, transport operators, and the hospitality industry agreed. They recognised the benefit of well-trained assistance animals to people with disability. However, they were also concerned that the current legal environment is uncertain and therefore exposes them to risk.³

- 4.5 The Victorian Human Rights and Equal Opportunity Commission (VEOHRC) suggested principles that, in its view, should guide policy and legislative reform in this area.⁴ These principles include:

- assistance animal partnerships should be protected from discrimination by the EOA in all areas of public life the Act covers
- compatibility with the Charter of Human Rights and Responsibilities
- the definition of assistance animals must be clear and linked to alleviating the effects of a person's disability
- certainty around the circumstances where discrimination will not be unlawful (for example, where health and safety considerations are significant or the animal is not in the effective control of its user), and
- any proposed amendments should be made in the context of possible amendments to the EOA and DDA.

- 4.6 We agree with these principles and have sought to incorporate them into our recommendations.

CLARIFYING THE MEANING OF 'ASSISTANCE ANIMAL' IN VICTORIAN LAW

DEFINING ASSISTANCE ANIMALS

- 4.7 This is a threshold issue for reform and attracted much debate in consultation.
- 4.8 There were significant criticisms of both the current state and Commonwealth definitions. State definitions, including those contained in the EOA and the *Domestic (Feral and Nuisance Animals) Act 1994* (DFNAA) were criticized for failing to provide adequate protection for people with non-sensory or mobility impairment. This inconsistency was also noted in the final report

¹ In the following chapters we set out our proposals for an accreditation, registration and identification scheme.

² Submission 25 (Disability Discrimination Legal Service).

³ See, eg, consultation 7 (Transport Roundtable).

⁴ The Public Interest Law Clearing House made similar suggestions, with a strong emphasis on meeting human rights obligations under both state and international law. Submission 20 (Public Interest Law Clearing House).

of the Equal Opportunity Act Review recently submitted to the Attorney-General.⁵

- 4.9 The Commonwealth definition, contained in section 9 of the *Disability Discrimination Act 1992* (DDA) was criticized for vagueness. People were particularly concerned that the DDA did not define key terms including 'trained'. There was also significant concern regarding the lack of clarity about what constitutes 'alleviating' the effects of a disability.
- 4.10 Most consultees wanted a definition that would promote certainty, clarity and inclusiveness.⁶ It was felt that a clear, simple definition that can be applied consistently would benefit both service providers and users.
- 4.11 The Department of Transport noted in their submission:
'For the purposes of providing a public transport service within Victoria, a very clear definition of what a legitimate assistance animal is, and what they do (alleviate the effects of a disability), would be invaluable for service provision and the education of transport operators, staff and passengers. This definition should specify the criteria an animal must meet to be considered an assistance animal, particularly with regard to demonstrated levels of appropriate public access training. Additionally this definition should be consistent across government in Victoria and if not the same as, it should be complementary to, any such definition in the Commonwealth Disability Discrimination Act 1992 (DDA).'
- 4.12 In the consultation paper the commission proposed the following definition:
'an animal that has been certified by an approved assistance animals organisation to perform tasks and functions that assist a person with a disability to alleviate the effect of their disability'.⁷
- 4.13 This definition was generally supported because it deals with the two main criticisms of the DDA definition described above. However there was a range of views about whether the definition should be limited to dogs only. We now consider each of these issues in turn.

Species other than dogs

- 4.14 In Australia, it is virtually unheard of for animals other than dogs to be assistance animals. During consultation there were anecdotal reports of people claiming a dingo⁸ or a rabbit⁹ as an assistance animal, however these appear to be very rare occurrences.
- 4.15 There are no organisations operating domestically which train species of assistance animal other than dogs, and there appears to be no demand for such a service.
- 4.16 However, overseas formal organisations have successfully trained other animals. In the United States miniature ponies have been trained to assist people with sight impairments.¹⁰ Additionally, 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.¹¹
- 4.17 However it has been reported to the commission that although United States legislation allows for other species, there is no longer growth in this area. Seeing Eye Dogs Australia notes that 'in the USA people are pulling back from other species and too wide a definition'.¹²
- 4.18 There is controversy over the suitability of other species to undertake assistance roles¹³ including public health and animal welfare concerns. The Australian community may not feel comfortable with domesticating a monkey for example for use as an assistance animal. Moreover, the ethical treatment of the animal is an important issue to consider.¹⁴

Consultation responses

- 4.19 In consultation there was strong support for the protection of assistance animal partnerships to be limited to dogs, at least for the time being. The most common reason for not wanting other species is the impact it may have on public confidence. There was significant concern that allowing other species would lower standards. It was also felt that the Australian community is not ready to accept other species.¹⁵
- 4.20 A few organisations and individuals felt the definition should allow other species of assistance animals only if there was a clear vetting process.¹⁶ When people expressed this view it was because they did not want to exclude opportunities for better services for people with disabilities or because they felt that other species were inevitable given the experience

- 5 Department of Justice [Victoria], *An Equality Act for a Fairer Victoria: Equal Opportunity Review Final Report* (2008) 107.
- 6 See, eg, consultation 12 (Public Transport Access Committee).
- 7 Victorian Law Reform Commission, *Assistance Animals Community Law Reform: Consultation Paper 5* (2008) 35.
- 8 Consultation 2 (Lions Hearing Dogs Australia).
- 9 Submission 18 (Department of Transport).
- 10 Dan Shaw, 'Yes That's Right. It's a Seeing Eye Horse' (2006) *Newsweek* (11 November 2002); see also: The Guide Horse Foundation <www.guidehorse.org> at 5 September 2008.
- 11 See, eg, Helping Hands: Monkey Helpers for the Disabled <www.helpinghandsmonkeys.org> at 5 September 2008.
- 12 Consultation 17 (Seeing Eye Dogs Australia).
- 13 See, eg, Susan Duncan, '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.
- 14 See, eg, Nora Wenthold and Teresa Savage, 'Ethical Issues with Service Animals' (2007) 14(2) *Topics in Stroke Rehabilitation* 68.
- 15 See, eg, consultations 2 (Lions Hearing Dogs); 4 (Disability Aid Dogs Australia); 16 (Community Forum).
- 16 Submission 17 (Blind Citizens Australia).



overseas.¹⁷ However, they also stressed that the animal be properly trained by an accredited organisation.¹⁸

- 4.21 Otherwise, it was generally felt that the definition should allow other species as assistance animals in order to ensure that Victorian legislation is consistent with the Commonwealth definition.¹⁹ This is a persuasive argument, especially since one of the strongest criticisms of the law in this area is a lack of consistency. However, there is also a legitimate concern that over-reaching will effectively create more uncertainty.

Avoiding over-reaching

- 4.22 There was particular concern about whether species other than dogs should be allowed to travel on public transport. It was predicted that problems might arise with species other than dogs for reasons of size, hygiene and public confidence.²⁰
- 4.23 Qantas noted that dogs are the 'only animal commonly trained within Australia to assist people with disabilities' and that other species would create significant practical problems on aircraft. These problems include a direct conflict with air safety regulations that only permit the carriage of assistance dogs in the cabin. They noted '[d]ogs do not pose the same types of issues as animals generally because dogs are generally of a size that can be accommodated without unduly hindering other passengers'.²¹
- 4.24 Existing users of assistance animals were worried that broadening the definition of 'assistance animal' too far, especially through allowing other species, may have the unintended consequence of reducing community support for dogs.²² This would have a harmful, flow on effect for people with disability.²³

COMMISSION'S VIEWS

- 4.25 We provide two options to government. The first definition recognises dogs only, and is the commission's preferred definition. The second option recognises all species.
- 4.26 The commission was unable to identify any formal training organisation in Australia that trains species other than dogs to be assistance animals. The commission therefore concludes that despite Commonwealth law allowing for other species; this option has not been taken up by people with disability. We further conclude that it is unlikely that any significant growth in the use of other species is likely to occur in the foreseeable future.
- 4.27 The commission recognises the fine balance required to ensure inclusiveness and promote consistency, without over-reaching. We agree that 'gains in public acceptance of dog guides over the past half century, viewed on a continuum, are best further promoted by positive public experience, underpinned by clear regulative and legislative agreed standards of quality and safety'.²⁴
- 4.28 For this reason, we find the consistency argument less compelling than that which emphasises ongoing community support and acceptance of guide, hearing and assistance dogs. We therefore prefer a definition of assistance animal that is limited to dogs.
- 4.29 The recommendations throughout this report assume that only dogs are recognised in the definition but can be amended to allow all species if the Government forms the view that all species should be included.
- 4.30 For the remainder of this report we refer to 'assistance animals' to mean guide, hearing and other forms of assistance dogs.

RECOMMENDATIONS

1. The term 'guide dogs' should be omitted from the *Equal Opportunity Act 1995* and all other relevant Victorian Acts, Regulations and policies and replaced with the terms 'assistance dog' and 'trainee assistance dog'. [This is the commission's preferred option].

OR, in the alternative

1. The term 'guide dogs' should be omitted from the *Equal Opportunity Act 1995* and all other relevant Victorian Acts, Regulations and policies and replaced with the term 'assistance animal' and 'trainee assistance animal'.

17 Consultation 12 (Public Transport Access Committee).

18 Consultations 11 (Disability Discrimination Legal Service); 18 (Human Rights and Equal Opportunity Commission); submission 19 (Vision Australia).

19 See, eg, submission 20 (Public Interest Law Clearing House).

20 Consultation 7 (Transport Roundtable).

21 Submission 21 (The Qantas Group).

22 See, eg, consultations 16 (Community Forum); 19 (Disability Reference Group, Victorian Human Rights and Equal Opportunity Commission).

23 Consultation 16 (Community Forum).

24 Submission 19 (Vision Australia).

2. 'Assistance dog' should be defined in the *Equal Opportunity Act 1995* and all other relevant Acts, regulations and policies as:

'A guide dog, hearing dog or other dog, certified by an accredited assistance dog trainer as trained to perform tasks and functions that assist a person with impairment to alleviate the effects of their impairment'.

Defining 'trained'

- 4.31 For many consultees the key term in any legal definition is 'trained'. Protecting the reputation of existing, well-trained dogs was a strong theme in consultations, particularly from users of assistance animals and also long-standing training organisations.²⁵
- 4.32 Some were worried that poorly trained dogs would give all assistance dogs a 'bad name'.²⁶ Geoff Morris, a seeing-eye dog user of 40 years commented:
- With the recent advent of assistance dogs for people with other disabilities (a step forward which I applaud enormously) I am very concerned that the general public, people in business, service people, people operating public transport and the like may tend to see all assistance dogs as being the same... [M]y belief is that all assistance dogs, used for whatever purpose, need and must have a high degree of training, and likewise their owners, such that the appreciation of the general public, built up, often under duress and with great difficulty, over many years, must not be allowed to be eroded.*²⁷
- 4.33 Service providers shared this concern, conscious that they owe a duty to all their customers to maintain amenity and safety. Indeed, concerns about poorly trained animals, particularly amongst new and emerging forms of assistance dogs, and those that are informally trained permeated most discussions with service providers.²⁸
- 4.34 Almost all consultees felt that in the present context 'trained' needs to be clearly spelt out to mean 'trained by an accredited trainer'. It was felt that by having a state accreditation scheme for recognising 'trained' animals most of the community concern about emerging forms of assistance animals might dissipate, as long as these new forms of assistance animals were trained to the highest standards.
- 4.35 Our proposals for an accreditation scheme are set out in the next Chapter.
- 4.36 Some people felt that the definition of 'assistance animal' should also include a requirement that the animal has been 'bred by either the accredited organisation or by a breeder under the supervision of the accredited organisation'. Issues about breeding and matching were raised in many of the consultations and are discussed further in the next Chapter.

RECOMMENDATIONS

3. The Act should provide that 'trained' means trained by a guide, hearing or assistance dog trainer accredited under the regulatory scheme provided for in recommendations 13 to 19.

4. The *Equal Opportunity Act 1995* should include a definition of 'trainee assistance dog' to mean 'a guide dog, hearing dog, or other dog certified by an accredited assistance dog trainer as being in training'. The provisions of the Act should apply to these animals.

CLARIFYING 'ALLEVIATE' – THE LINE BETWEEN COMFORT AND ASSISTANCE

- 4.37 There was strong consensus that assistance dogs are working dogs and should be legally distinct from pets or companion animals.²⁹ Blind Citizens Australia summed up the views of many:

*[T]he definition of an assistance animal should be broad enough to ensure that people with a disability who require an assistance animal "to alleviate the effects of their disability" do not miss out, but not too broad to compromise the current rights of people who use assistance animals or muddy the intent of the legislation.*³⁰

25 See, eg, consultations 10 (Guide Dogs Victoria); 12 (Public Transport Access Committee); 16 (Community Forum); 17 (Seeing Eye Dogs Australia).

26 See, eg, consultation 14 (Assistance Dogs Australia).

27 Submission 13 (Geoff Morris).

28 Consultations 7 (Transport Roundtable); 15 (Restaurant and Catering Victoria).

29 See, eg, consultation 1 (Jaebn Saunders).

30 Submission 17 (Blind Citizens Australia).



4.38 The Disability Discrimination Legal Service thought a broad concept of ‘alleviation’ was needed. They argued:

It is not intended that all animals or pets be accorded the status of... assistance animals, however, where there is a direct link between the symptoms of a disability (i.e social phobia, panic attacks) and the animal’s assistive presence, Victoria ought to adopt concepts and objectives in defining and regulating assistance animals that are broader and [more] far reaching than the Commonwealth definition.³¹

4.39 There was a range of views about how you can determine ‘alleviation’ as distinct from ‘comfort’. One option, put forward by the commission in our consultation paper, was to include the words ‘perform tasks and functions’ in the definition.³² Some people felt that including these words would provide adequate clarification.³³

4.40 However, others were concerned that including these words might lead to people with some forms of disability missing out on having their dog recognised where the nature of the disability is such that ‘tasks and functions’ are not immediately apparent.³⁴

4.41 However VEOHRC was satisfied that the proposed definition would remain open to all forms of disability:

[VEOHRC] supports the link... between the actions of the assistance animal and the effect of alleviating disability. This definition does not mandate particular forms of assistance, nor distinguish between disabilities. In this way, the proposed definition extends the protection against discrimination for persons with a disability.³⁵

4.42 In the consultation paper, we also suggested including an explanatory note in legislation 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 will alleviate the disability.³⁶

4.43 The inclusion of such a note is compatible with current legislative drafting styles and may resolve some of the grey areas that service providers are concerned about as regards forms of disability such as social anxiety disorder.³⁷ One submitter suggested that rather than taking a note form, this clarification be included in the definition itself.³⁸

31 Submission 25 (Disability Discrimination Legal Service).

32 Victorian Law Reform Commission, above n7, 35.

33 See, eg, consultation 6 (A.W.A.R.E Dogs Australia).

34 Consultation 1 (Jaebin Saunders).

35 Submission 22 (Victorian Equal Opportunity and Human Rights Commission).

36 Victorian Law Reform Commission, above n 7, 35.

37 Social anxiety (or social phobia) is a type of anxiety disorder. Better Health Channel, *Social Phobia* (2007) <www.betterhealth.vic.gov.au/bhcv2/bhcarticles.nsf/pages/Social_phobia> at 2 September 2008.

38 Submission 21 (The Qantas Group).

39 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’. Section 52 of the Act prohibits discrimination by refusing guide dogs.

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

41 See, eg, consultations 5 (Transport Accident Commission); 8 (Brian Graham); 19 (Disability Reference Group, Victorian Equal Opportunity and Human Rights Commission).

RECOMMENDATION

5. The *Equal Opportunity Act 1995* should include an explanatory note that specifies that ‘to alleviate the effects of impairment’ means more than mere companionship or comfort. However, it may include assistance with navigating social interactions where the nature of the impairment is such that this helps to alleviate the impairment.

REMOVING INEQUITIES IN PROTECTION

4.44 As described in the previous Chapter, existing guide dog provisions in Victorian laws provide inconsistent protection. For example, The EOA guide dog provision recognises people partnered with mobility dogs as well as guide and hearing dogs.³⁹ This means a person whose impairment is not visual, hearing and mobility related, falls beyond the protective scope of these provisions.

4.45 Further, this provision is limited to the area of accommodation only, although this definition of accommodation includes access to business premises.⁴⁰ The provision does not apply to other aspects of public life regulated by the EOA such as employment.

4.46 Having laws that recognise certain disabilities and not others 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. It also creates confusion on the front line of service delivery.

4.47 During consultation there was a very clear message that these inequities must be removed so that all people with disability that use genuine assistance animals are protected, in all areas of activity that the EOA covers.⁴¹

4.48 Similarly, the Equal Opportunity Act Review stated:

[C]urrently, people who use dogs to alleviate the effects of blindness, hearing or mobility impairment have protection under the Act. Those who use dogs to alleviate other kinds of impairments should have the same level of protection. This is an anomaly that should be rectified.⁴²

RECOMMENDATION

6 The *Equal Opportunity Act 1995* should be amended to apply to dogs that assist persons with any impairment instead of being limited to vision, hearing and mobility impairments.

ENABLING THE RIGHT

- 4.49 The question now becomes, how best do we capture the principle that people have the right to be accompanied by their assistance animal in their daily lives, allowing for the small range of exceptional circumstances where it would not be appropriate for an assistance animal partnership to enter?
- 4.50 In the consultation paper, we identified a number of ways that the law could be reformed so that the existing right to be accompanied by an assistance animal is better recognised. These included mirroring the DDA provision, or introducing an express obligation to make reasonable adjustments for assistance animal partnerships.
- 4.51 During the consultation period a number of developments in the courts and in the anti-discrimination law and policy arena have helped us to sharpen our focus on how best to achieve the aim of enabling this right. These are discussed below.

EQUAL OPPORTUNITY ACT REVIEW

- 4.52 In July 2008, the report of the Equal Opportunity Act Review, *An Equality Act for Victoria* was released. The review recommends far reaching reforms of the EOA and of the institutional framework for protecting and promoting human rights in Victoria which are significant for our review of assistance animal law.⁴³
- 4.53 It recommends a new 'Equality Act' which will focus on progressively realising substantive equality. Substantive equality of opportunity is a 'broader concept than formal equality, which requires only that similarly situated people be treated equally'.⁴⁴ It recognises that the same treatment may result in unequal outcomes and that 'it is often necessary to consider how a person's individual needs or characteristics may require them to be treated differently'.⁴⁵
- 4.54 Thus the focus of substantive equality is to acknowledge and respond to difference, in a way that is more likely to produce equality in results.⁴⁶ 'A substantive sense of equality of opportunity... requires measures to be taken to ensure that persons from all sections of society have a genuinely equal chance of satisfying the criteria for access to a particular social good'.⁴⁷
- 4.55 The review also recommends a statutory duty to eliminate discrimination⁴⁸ binding on both the private and public sectors.⁴⁹ This requires a more proactive approach than that in the current EOA which is largely individualised and complaints driven.
- 4.56 The EOA review also recommends that VEOHRC have an own motion power to investigate and report on systemic issues. The commission notes that systemic issues may arise in regards to barriers to access for assistance dog partnerships.⁵⁰
- 4.57 In achieving the object of progressively realising substantive equality, the EOA review recommends changes to the definition of both direct and indirect discrimination. It also recommends that the new Act 'include an express requirement to make reasonable adjustments for people with impairment in relation to all areas protected by the Act and in public spaces. 'Reasonableness' should be clarified in the legislation'.⁵¹
- 4.58 We shall return to the concept of reasonable adjustment later in this Chapter.

AMENDMENTS TO THE DISABILITY DISCRIMINATION ACT

- 4.59 In July 2008, the Australian Government announced that the *Disability Discrimination Act 1992*

42 Department of Justice [Victoria], above n5, 108.

43 Ibid.

44 Sandra Fredman and Sarah Spencer, 'Equality: Towards an Outcome-Focused Duty' (2006) 156 *Equal Opportunities Review* 14.

45 Department of Justice [Victoria], above n5, 31.

46 Note however, that it is a long established principle that where there is a relevant difference, a failure to accord different treatment appropriate to that difference constitutes discrimination. *Street v Queensland Bar Association* (1989) 168 CLR 461, 570-571. See also A Simpson 'The High Court's Constitutional Discrimination Jurisprudence: Origins, Applications and Implications' (2007) 29 *Sydney Law Review* 263 cited in Neil Rees, Katherine Lindsay and Simon Rice, *Australian Anti-Discrimination Law* (2008) 358.

47 Rees, Lindsay and Rice, above n 46, 16.

48 As far as possible.

49 Department of Justice [Victoria], above n 5, 11.

50 Submission 17 (Blind Citizens Australia).

51 Department of Justice [Victoria], above n 5, 16.



will be amended in the spring session of Parliament.⁵² At the time of writing this report, the details of the Bill were not publicly available. However Ministerial media releases⁵³ indicate that the reforms are likely to be based on recommendations made by the Productivity Commission.⁵⁴

- 4.60 In common with the Victorian EOA review, the Productivity Commission report includes a recommendation to amend the DDA to provide an explicit duty to make reasonable adjustments in legislation. In making that recommendation the Productivity Commission noted:
- [T]he Commission considers that substantive equality is a sound basis for disability discrimination legislation. It therefore endorses the concept of reasonable adjustment as a means to this end, and recommends that it be included explicitly in the Act as a stand alone duty. This would mean that failure to provide reasonable adjustment could itself be unlawful discrimination and the subject of a complaint.*

*The Commission makes this recommendation provided that the duty is always subject to the unjustifiable hardship defence. "Reasonable adjustment" should be defined to exclude adjustments that would cause unjustifiable hardship. This safeguard is necessary to ensure that adjustments are likely to produce net benefits for the community, and do not impose undue financial hardships on the organisations required to make them.*⁵⁵

- 4.61 The commission recognises the upcoming amendments to the DDA provide an ideal opportunity to clarify the Commonwealth law of assistance animals. We note the previous recommendations of HREOC to resolve some of the definitional problems associated with section 9 of the DDA, specifically the need to clarify the meaning of 'alleviate' and to limit the definition to dogs, allowing other species to be declared by regulation.⁵⁶
- 4.62 We also note the interplay between state regulatory schemes and the rights contained in the DDA. Potentially, the DDA could be amended to recognise state schemes for the training, accreditation and identification of assistance animals.⁵⁷ In this way, the meaning of 'trained' could be clarified and the right to be accompanied by a genuine assistance animal enabled.

The State of Queensland (Queensland Health) v Che Forest

- 4.63 We discussed *Forest* in the last Chapter. In that case the majority held that before there can be a finding of unlawful discrimination the aggrieved person must establish that discrimination is based both on the use of an assistance animal, and on the ground of disability.
- 4.64 The problem with this decision is that it negates the generally accepted view that while section 9 'does not expressly deem particular matters to be characteristics of people with disabilities, it has that effect'.⁵⁸ Previously, and in the view of Black CJ, who disagreed with this aspect of the majority decision, the ground of disability was regarded as already determined by the application of section 9. Since:

*The primary object of the Act is to eliminate as far as possible discrimination on the ground of disability in certain specified areas (s3(a)) it should not be supposed that any other form of discrimination could be the intended subject of s 9; the conclusion must be that s 9 discrimination is a deemed instance of discrimination on the ground of disability.*⁵⁹

- 4.65 The commission considers this to be the correct view. To construe otherwise is to defeat the purposes of the Act.⁶⁰

SCOPE AND NATURE OF THE RIGHT

- 4.66 The three policy and legal developments outlined above have assisted us to develop recommendations designed to bring the existing right to be accompanied by an assistance animal into operation.

Attributes and the characteristic extension

- 4.67 The commission is mindful that the decision in *Forest* has complicated the law concerning the inclusion of use of an assistance animal as a characteristic of a person with disability (impairment). In order to make it absolutely clear that discrimination on the basis of use of an assistance animal constitutes discrimination on the ground of impairment, there are three options.

52 Robert McClelland (Attorney General [Australia]) and Bill Shorten (Parliamentary Secretary for Disabilities [Australia]) 'Rudd Government to Improve Australia's Disability Discrimination System' Press Release, 18 July 2008, <www.attorneygeneral.gov.au/www/ministers/robertmc.nsf/Page/Media_Releases> at 4 September 2008.

53 Ibid.

54 Productivity Commission [Australia], *Review of the Disability Discrimination Act 1992* Report No 30 (2004).

55 Ibid XL-XLI.

56 Human Rights and Equal Opportunity Commission, *Reform of the Assistance Animals Provision of the Disability Discrimination Act (2003)* <www.humanrights.gov.au/disability_rights/inquiries/animal03/report.htm> at 3 September 2008.

57 This could potentially be done by way of amending section 47(3).

58 Rees, Lindsay and Rice, above n 46, 115. [2008] FCAFC 96 [22] (Black CJ).

60 [2008] FCAFC 96 [25] (Black CJ).

4.68 The first is to make the use of an assistance animal an attribute in the EOA. This was identified as the preferred option of the VEOHRC in the event that the EOA remains in its current form. They note

*"[P]ossessing or handling an assistance animal" could be added to the EOA as an attribute. This would have a similar effect as a specific provision mirroring the DDA... without the statutory interpretation issues associated with the DDA provision, and be consistent with the current structure of the EOA.*⁶¹

4.69 They also point out:

*This option would introduce a new attribute that is closely related to the existing impairment attribute. While this may be seen as expanding the list of attributes, which may be undesirable for the clarity of the Act, the Commission notes that the existing 'pregnancy' and 'breastfeeding' attributes are closely related to the attribute of 'sex'.*⁶²

4.70 The second option is to include use of an assistance animal within the definition of impairment. This approach is taken in Tasmania where 'reliance on a guide dog' is contained within the definition of 'disability', which is one of the attributes upon which discrimination is prohibited.⁶³

4.71 The third and preferred option is to clarify that the attribute of impairment is broad enough to cover discrimination on the basis a person has, or is accompanied by an assistance animal.

4.72 VEOHRC suggest that one way to do this would be to amend section 7(2) of the Act, which deals with the characteristic extension of an attribute. VEOHRC writes:

*Section 7 could be amended by adding a paragraph that a person's possession and/or handling of an assistance animal (as defined by the Act) will be taken to be a characteristic of their impairment, regardless of whether those with the same impairment as the person generally possess and/or handle an assistance animal. This option would allow those with assistance animals meeting the definition of the EOA to enjoy the same protections from discrimination that the EOA provides for under the banner of impairment.*⁶⁴

4.73 VEOHRC points out (and in light of the *Forest* decision we agree) that other supports used by a person with impairment may require similar recognition. 'This could mean incorporating a similar paragraph to cover the use of interpreters, readers and assistants, therapeutic and palliative devices and auxiliary aides.'⁶⁵

4.74 NSW has taken this approach. The *Anti-Discrimination Act 1977* prohibits discrimination on the ground of disability.⁶⁶ Discrimination includes treating a person less favourably because of their disability, or requiring that person to comply with a condition that is unreasonable in the circumstances.⁶⁷ An act is considered to be done 'on the grounds of a person's disability' when it is done on the basis of a characteristic common to people who have that disability.⁶⁸ The use of a dog which assists the person in respect of that disability is such a characteristic.⁶⁹

RECOMMENDATION

7 The *Equal Opportunity Act 1995* should specify that the fact that a person with impairment has, or may be accompanied by, an assistance dog is taken to be a characteristic that appertains to persons who have that impairment.

REASONABLE ADJUSTMENT

4.75 During consultation, much of the conversation about how to protect the right focussed on the concept of 'reasonable adjustment', sometimes called 'reasonable accommodation'. The respective reports of the Productivity Commission and the Equal Opportunity Review recommend the inclusion in legislation of an express obligation to make reasonable adjustments for people with disability.⁷⁰

4.76 During consultation, some people expressed concern over what is meant by reasonable adjustment or accommodation.⁷¹ There was also a concern that the term 'reasonable adjustment' lacks precision. For some this was to do with difficulty in defining the term 'reasonable'⁷² and with what benchmarks could be used to determine reasonableness.⁷³

4.77 For example, PILCH were concerned that the reasonable adjustment/accommodation

61 Submission 22 (Victorian Equal Opportunity and Human Rights Commission).

62 Submission 22 (Victorian Equal Opportunity and Human Rights Commission).

63 *Anti-Discrimination Act 1998* (Tas) s 3.

64 Submission 22 (Victorian Equal Opportunity and Human Rights Commission).

65 Submission 22 (Victorian Equal Opportunity and Human Rights Commission).

66 *Anti-Discrimination Act 1977* (NSW) s 49B.

67 *Anti-Discrimination Act 1977* (NSW) s 49B(1)(a) and (b).

68 *Anti-Discrimination Act 1977* (NSW) s 49B(2).

69 *Anti-Discrimination Act 1977* (NSW) s 49B(3).

70 Productivity Commission, above n 54, XLIX, recommendation 8.1; Department of Justice [Victoria], above n 5, 16, recommendation 43.

71 See, eg, consultation 19 (Disability Reference Group, Victorian Human Rights and Equal Opportunity Commission).

72 Consultations 2 (Lions Hearing Dogs); 19 (Disability Reference Group, Victorian Human Rights and Equal Opportunity Commission).

73 Consultation 6 (A.W.A.R.E. Dogs Australia).



approach does not provide sufficient certainty to assistance animal partnerships and places disproportionate discretion as to what is reasonable in the hands of service providers'. Blind Citizens Australia shared this concern.⁷⁴

4.78 For others, the issue was the potential breadth of the obligation.⁷⁵ This was especially pertinent for those in the transport industry where unprecedented demand presents a range of challenges in delivering services.⁷⁶

4.79 The Equal Opportunity Act Review noted that:

*Making reasonable adjustments... involves balancing the need for the change with the expense or effort involved. If an adjustment requires disproportionately high expenditure or disruption, then it is not reasonable.*⁷⁷

4.80 They reported that 'an express duty would provide more clarity and emphasise the existing obligations by stating them in a positive form'.

WHAT IS 'REASONABLE ADJUSTMENT'?

4.81 The term 'reasonable adjustment' is used to describe a range of concepts.

4.82 First, it is used as a shorthand term to mean the implied duty placed on employers and service providers to take reasonable steps in individual cases to accommodate the needs of a person with a particular disability.

4.83 For example, employers are required to take reasonable steps in individual cases to physically alter the workplace, for example by providing a ramp, or to provide additional services, such as software packages to cater for the needs of a person with a particular disability. This is an acknowledgment that in some circumstances equal treatment is meaningless because a person with a disability may require reasonable variation of a workplace in order to have access to the same opportunities as people who do not have a disability.

4.84 On this view:

*[A] duty to make reasonable adjustments is meant to get people with disabilities to the same notional "starting line" as people without disabilities. It is not meant to give an advantage to people with disabilities, but to remove a source of disadvantage that arises from their disability.*⁷⁸

4.85 However this case-by-case approach may also be criticized as a slow and ineffective way of altering the world in order to be fully accessible for people with a disability.

4.86 Second, the term 'reasonable adjustment' is sometimes used to refer to an obligation that ought to be placed upon people by law to deal with potentially discriminatory situations in a positive way before any individual case arises. In the disability area this obligation does not clearly exist at present.

4.87 However, '[t]o many people, reasonable adjustments embody the very essence of disability discrimination legislation—that the disabling barriers in the community should be addressed through a duty to make adjustments'.⁷⁹ This includes service providers, employers and the community as a whole accounting for difference in all aspects of their operations, and in advance of any individual complaints.

4.88 In the case of a person with a disability seeking to access places and services with an assistance animal, the first notion of individual 'reasonable adjustment' may not be relevant because the aim is for the public to regard the animal as a mere extension of the person and to treat the partnership as one entity. Generally, making reasonable adjustments in the sense of providing changed facilities or services is not required. Instead service providers need to adopt an inclusive approach and regard the assistance animal partnership as one entity, for example by allowing an assistance animal into a shop where a pet dog would not be allowed.

4.89 In their submission VEOHRC stated:

*[I]f the EOA Review recommendations are accepted, the Commission... prefers that the duty recommended by that review to make reasonable adjustments for a person with a disability expressly include accommodating assistance animal partnerships.*⁸⁰

4.90 However, as also noted by VEOHRC a disadvantage of solely relying on 'reasonable adjustment'

74 Submission 17 (Blind Citizens Australia).

75 Consultation 7 (Transport Roundtable).

76 Consultation 12 (Public Transport Access Committee).

77 Department of Justice [Victoria] above n5, 89.

78 Productivity Commission above n54, 193.

79 Ibid 185-186.

80 Submission 22 (Victorian Equal Opportunity and Human Rights Commission).

including a specific provision requiring service providers to reasonably accommodate assistance animal partnerships, is that the protection it offers is limited.

*Not all forms of less favourable treatment can be construed as a refusal to accommodate. For example, such a provision may not be broad enough to protect a person from poor customer service, such as derogatory comments, because they are accompanied by an assistance animal.*⁸¹

- 4.91 Also, the reasonable adjustment approach may not adequately deal with clearly discriminatory behaviour such as charging an assistance animal partnership a different price for goods or services.⁸²
- 4.92 There was a theme, particularly from consumer and disability advocacy organisations, that it may derogate from existing rights if service providers were directed by law that the extent of their legal obligations was to make 'reasonable adjustments' to cater for assistance animal partnerships.⁸³
- 4.93 A stand alone right to be accompanied by an assistance animal is still required. While the clarification of the obligation to make reasonable adjustments is a welcome initiative, a 'belt and braces approach' where this obligation is complemented by a clearly stated right to be accompanied by an assistance animal would provide more comprehensive protection.

A SPECIFIC PROVISION TO PROTECT ASSISTANCE ANIMAL PARTNERSHIPS FROM DISCRIMINATION

- 4.94 Blind Citizens Australia and Vision Australia felt that a positive right of access should be included in the EOA in order to 'ensure maximum clarity and protection for people with disabilities who use Assistance Animals'.⁸⁴ HREOC and the Disability Reference Group also thought it was important to include a specific right.⁸⁵
- 4.95 PILCH argued that the inclusion in the EOA of a positive right of access *sends a strong message... that assistance animal partnerships are to be treated in a non-discriminatory fashion; and... enables people with a disability to assert with confidence their right to be accompanied by an assistance animal. This is a fundamental objective of the EOA Reform.*⁸⁶
- 4.96 In the consultation paper, we explored the option of mirroring the DDA right. However, this approach has its drawbacks. Mainly because the DDA contains 'unjustifiable hardship' provisions. Whilst the principle of unjustifiable hardship is sound, the Victorian Act contains a different form of exception.⁸⁷
- 4.97 To introduce unjustifiable hardship into the EOA for assistance animals alone may cause confusion. While to introduce it across the EOA is too large a reform, and not in keeping with the structure and form of the Act.
- 4.98 Further, as described above, the DDA is currently undergoing reform. 'In these circumstances, it is reasonably possible that section 9, or provisions affecting section 9, may be amended, so that mirroring section 9 in Victorian law may not have the desired effect of harmonising anti-discrimination law and providing certainty for Victorians.'⁸⁸
- 4.99 The commission's preferred option is to duplicate the substance of the DDA provision, in a form that is consistent with the EOA and the proposed Equality Act. We agree with the VEOHRC that 'given the uncertainty associated with section 9 and how that section interacts with other provisions the DDA... an amendment in keeping with the existing structure of the EOA would be preferable'.
- 4.100 We recommend the inclusion of a clearly stated right in the statute, with exceptions decided on a case-by-case basis. The onus of proving the exception should rest with the person claiming the exception. This approach would clarify the existing right which is currently expressed at a high degree of generality.

EXCEPTIONS

- 4.101 Generally, people were of the strong view that a person with a trained assistance animal should be able to go anywhere a person without an animal can usually go,⁸⁹ for example into the public areas of restaurants, to stay in a hotel, or to visit the cinema.

81 Submission 22 (Victorian Equal Opportunity and Human Rights Commission).

82 Submission 22 (Victorian Equal Opportunity and Human Rights Commission).

83 See, eg, submissions 17 (Blind Citizens Australia); and 20 (Public Interest Law Clearing House).

84 Submission 19 (Vision Australia).

85 Consultations 18 (Human Rights and Equal Opportunity Commission); 19 (Disability Reference Group, Victorian Human Rights and Equal Opportunity Commission).

86 Submission 20 (Public Interest Law Clearing House).

87 Special manner of service: *Equal Opportunity Act 1995 (Vic)* s 46.

88 Submission 22 (Victorian Equal Opportunity and Human Rights Commission).

89 Consultation 16 (Community Forum).



- 90 Consultations 1 (Jaebin Saunders); 2 (Lions Hearing Dogs); 4 (Disability Aid Dogs Australia); 8 (Brian Graham); 18 (Human Rights and Equal Opportunity Commission).
- 91 Consultation 18 (Human Rights and Equal Opportunity Commission). However, one submitter felt assistance animals should be allowed in zoos: submission 6 (Penny Stevenson).
- 92 Consultation 15 (Restaurant and Catering Victoria).
- 93 Regulation 256A of the *Civil Aviation Regulations 1988* (Cth) recognises guide and hearing dogs, and those carried with the written permission of the Civil Aviation and Safety Authority. However, Regulation 256A (8) provides that 'An animal must not be carried on an aircraft if carrying the animal would be likely to affect a person on the aircraft in a way that may affect adversely the safety of the aircraft'.
- 94 Submission 11 (Virgin Blue Airlines). Airline policies were mentioned frequently in consultation. Disability organisations and consumers claimed that at the moment, some airlines only allow a maximum of only two guide dogs to be taken on any one flight.
- 95 Submission 18 (Department of Transport).
- 96 Consultation 7 (Transport Roundtable).
- 97 Submission 22 (Victorian Human Rights and Equal Opportunity Commission).
- 98 Department of Justice [Victoria], above n5, 17, recommendation 58.
- 99 See, eg, consultation 6 (A.W.A.R.E. Dogs Australia).
- 100 Submissions 17 (Blind Citizens Australia); 19 (Vision Australia).
- 101 Consultation 7 (Transport Roundtable).
- 102 Metlink, *Victorian Fares and Ticketing Manual* <www.metlinkmelbourne.com.au/fares_tickets/victorian_fares_and_ticketing_manual> at 5 September 2008.
- 103 Submission 18 (Department of Transport).
- 104 Department of Justice [Victoria], above n5, 17, recommendation 58.
- 105 *Dog and Cat Management Act 1995* (SA) s 81.
- 106 *Companion Animals Act 1987* (NSW) s 60.
- 107 Consultation 17 (Seeing Eye Dogs Australia); Submission 17 (Blind Citizens Australia).

- 4.102 However, all consultees recognised that areas exist which are and should remain out of bounds for assistance animals. Sterile areas, operating theatres and commercial kitchens were among some of those mentioned.⁹⁰ Zoos were also mentioned due to their unique quarantine requirements.⁹¹
- 4.103 However some service providers thought more was required. They pointed to current inconsistencies between anti-discrimination obligations and other laws, for example food service laws⁹² and civil aviation regulations.⁹³ Virgin Blue Airlines noted:
- ...the legislative inconsistency concerning the carriage of assistance animals needs to be fixed. In Virgin Blue's opinion, the best way to do this is to ensure that the relevant discrimination law makes it clear that, in circumstances where discrimination and civil aviation safety laws conflict, civil aviation safety laws prevail.*⁹⁴
- 4.104 The Department of Transport noted:
- The Department of Transport is supportive of measures to ensure consistency and improve the accessibility of public transport, however for the health, safety and comfort of staff and passengers, and for the operation of an efficient public transport network, specific caveats may need to be placed on particular types of assistance animal and how some modes of transport can or cannot be used.*⁹⁵
- 4.105 The overall feeling from consultation was that, provided the legislation is clear, service providers could ensure that front line staff are appropriately educated to ensure compliance and limit discriminatory practices.⁹⁶ Similarly, while users of assistance animals can be relied upon to show common sense and not attempt to enter sterile areas or other places where the safety of the community might be at risk, clarity about where assistance animals can and cannot go is in the interests of all concerned.

VEOHRC GUIDELINES

- 4.106 The commission recognises that each industry has its own set of concerns and that listing exclusions in legislation risks both under and over-inclusiveness. Producing guidelines would be a useful mechanism to clarify the obligations under the Act.
- 4.107 If the recommendations of the EOA review are translated into legislation, VEOHRC guidelines will have special status.⁹⁷ The Review recommended:
- The Commission should be given an express power to issue guidelines on any matter relating to the Act. Compliance with guidelines should then be a factor that may be taken into consideration where relevant in any proceedings before a court or tribunal. The expectation is that guidelines would be prepared in consultation with those persons, organisations or sectors to which they relate.*⁹⁸
- 4.108 During consultation, most people who mentioned guidelines supported the idea.⁹⁹ Some wanted guidelines to be legally binding.¹⁰⁰
- 4.109 However, the commission notes that the Victorian Taxi Association was not supportive of a guideline making power because they felt that in practice, such guidelines would become legally binding. They preferred more flexibility to allow for the wide range of circumstances that might arise in practice.¹⁰¹ The Department of Transport preferred that public transport regulations and the Fares and Ticketing Manual¹⁰² be registered with the VEOHRC as an industry code.¹⁰³
- 4.110 The commission, in common with the community, recognises that there are some places that assistance animals should not be able to go. We consider that guidelines issued by VEOHRC under the (anticipated) guideline making power could provide for an inclusive list of exceptions as a guide. Although not strictly binding, such guidelines would be taken into account by the courts in considering a discrimination matter.¹⁰⁴

PENALTY SCHEMES

- 4.111 Some consultees contended that a penalty scheme, similar to those in other states like South Australia¹⁰⁵ and New South Wales¹⁰⁶ should be considered.¹⁰⁷ Blind Citizens Australia argued that:

*Current Federal and Victorian legislation does not appear to go far enough in enforcing that discrimination should not occur and in protecting individuals who use assistance animals. It can also be extremely difficult and intimidating to pursue a complaint of discrimination- even when a complaint is lodged, the result can often be inadequate or humiliating.*¹⁰⁸

- 4.112 Fixed penalty schemes are not a feature of the EOA, nor were they recommended in the EOA Review. Although, existing remedies under the EOA include compensation where discrimination has been found.¹⁰⁹

RECOMMENDATIONS

8. The *Equal Opportunity Act 1995* should specify that despite any other Act, it is unlawful discrimination when undertaking any of the activities that fall within Part 3 of the Act, to treat a person with impairment less favourably because that person possesses or is accompanied by an assistance dog unless there are exceptional circumstances where it would be necessary to exclude the assistance dog.

9. The *Equal Opportunity Act 1995* should provide that the onus of proving that exceptional circumstances make it necessary to treat the person who has, or is accompanied by an assistance dog less favourably rests with the person claiming such circumstances exist.

10. The *Equal Opportunity Act 1995* or guidelines made under the Act should provide that:

- ‘treating less favourably’ includes requiring a person to be separated from their assistance dog, or to occupy a specified area in the premises without reasonable cause; or charging an additional fee for entry or service because the person has, or is accompanied by an assistance dog; and
- it is not discriminatory to require a person to produce assistance dog identification provided for under Victorian legislation; and
- it is not discriminatory to require an assistance dog to be under the control of its user.

CONSISTENT AND COMPREHENSIVE PROTECTION

- 4.113 Whilst some acknowledged the benefit that may be derived from consolidating all the equalities provisions relating to assistance animals into the EOA¹¹⁰, the issue of consistency was highlighted as the overriding concern.¹¹¹ Consultee Anne-Marie Kelly summarised it well:

*It would be good to have the same right stated clearly across all the laws where assistance animal rights arise. So if you look at one law it’s the same as the other law. This would help to stop confusion about what people’s rights are and make the law simpler to use.*¹¹²

- 4.114 At the transport roundtable, one participant suggested that regulation of the use of assistance animals on public transport is best dealt with in instruments regulating fares and conditions and in key policies such as the Victorian Fares and Ticketing Manual. This was echoed in the submission from the Department of Transport.¹¹³ ‘If there is more information required than accessible in these documents and Acts, then this creates a challenge for operator, staff and passenger education.’¹¹⁴

- 4.115 As noted by the Public Transport Ombudsman:

*Passengers use a range of different transport modes. We have an integrated public transport system so we need an integrated policy approach to assistance animal status. Consistency is key. And because decisions are made at “street level” by drivers, conductors and attendants, clear and simple rules are necessary.*¹¹⁵

- 4.116 Generally people took the view that it was prudent to retain a reference to the right in other relevant laws and in particular to ensure that the definition of assistance animals is the same

108 Submission 17 (Blind Citizens Australia).

109 *Equal Opportunity Act 1995* (Vic) s 136(a)(ii).

110 See, eg, submission 19 (Vision Australia).

111 Consultations 7 (Transport Roundtable); 9 (Public Transport Ombudsman).

112 Submission 5 (Anne-Marie Kelly).

113 Submission 18 (Department of Transport).

114 Submission 18 (Department of Transport).

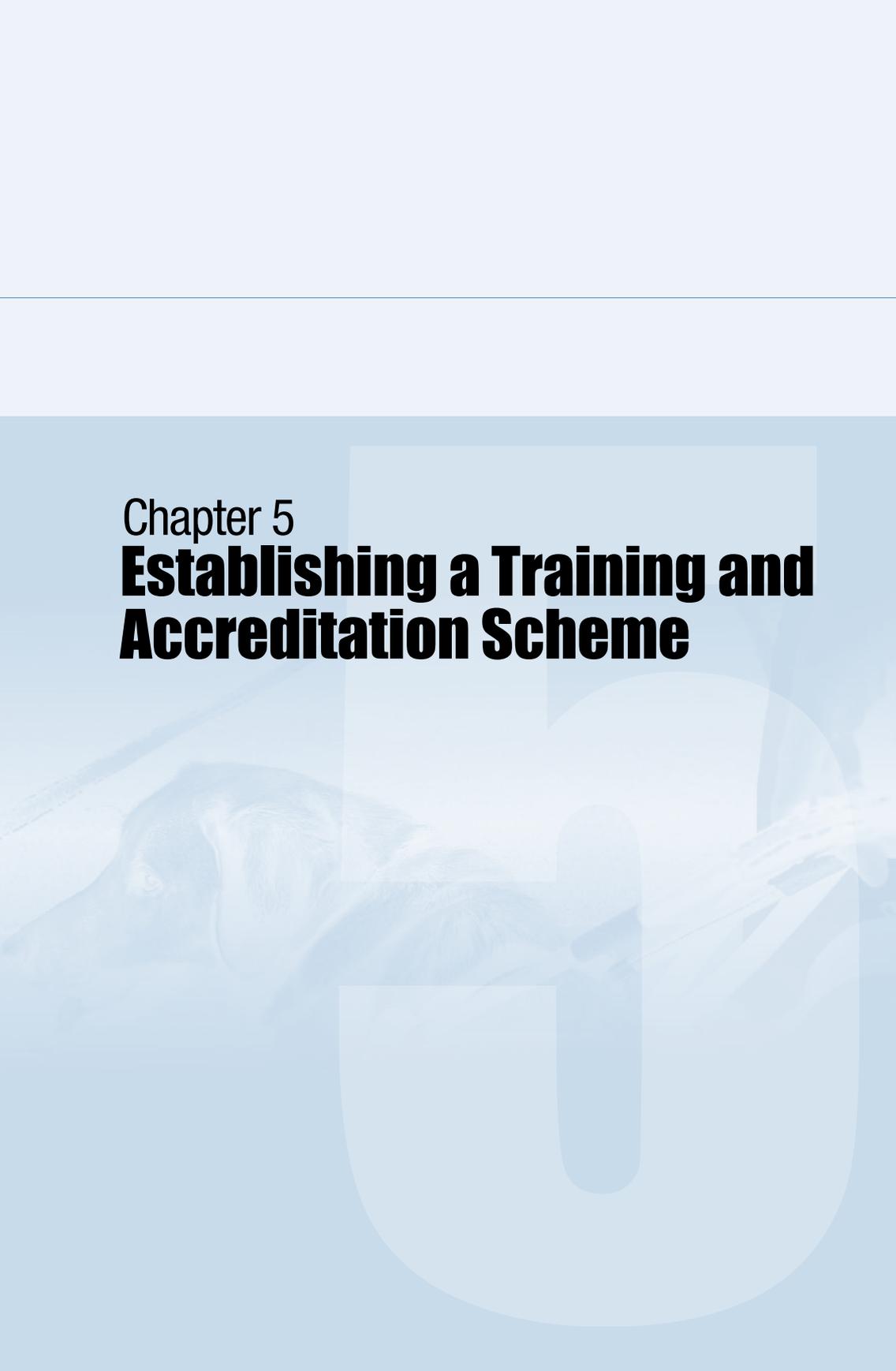
115 Consultation 9 (Public Transport Ombudsman).



across all Victorian laws. This will require consequential amendments across a range of Acts, Regulations and policies.

RECOMMENDATION

11. That consequential amendments be made to all relevant Acts, Regulations and policies that refer to guide dogs or assistance animals, so that the definition of assistance dog and the rights contained in the *Equal Opportunity Act 1995* (once amended) can be consistently applied.



Chapter 5

Establishing a Training and Accreditation Scheme

CONTENTS

- Current practice
- Consultation proposals
- Responsibility for regulating assistance animals
- Accrediting trainers
- Who should be eligible for accredited?
- Accreditation standards for trainers
- Public access test

Establishing a Training and Accreditation Scheme



CURRENT PRACTICE

- 5.1 As discussed in Chapter 3 although the *Disability Discrimination Act 1992* (Cth) (DDA) includes 'trained' in its definition of assistance animal, it does not say what this means.¹ In the absence of a regulatory scheme in Victoria, the term remains undefined.
- 5.2 There are no official training standards for assistance animals in Victoria. Any person can call themselves an assistance animal trainer. There is no regulatory body to oversee the accreditation of trainers.
- 5.3 Training organisations have independently developed their own breeding, training and accreditation criteria or affiliated themselves with international representative bodies which require their members to comply with fixed training and operational standards. However, as the law is silent on this issue, international standards are not legally recognised.
- 5.4 Addressing the current absence of uniform training standards for assistance animals in Victoria is vital. The lack of legally enforceable standards creates uncertainty for people who use assistance animals and service providers alike.
- 5.5 In this chapter, we set out our recommendations for a comprehensive yet simple regulatory scheme to accredit trainers and to set controlled standards for assistance animals. We begin by considering who should have responsibility for the regulatory scheme and whether an advisory committee might assist decision-making. We then discuss how trainers will be accredited and what accreditation standards should be used. We conclude by examining what standards individual animals will have to meet under the 'public access test'.

CONSULTATION PROPOSALS

- 5.6 In the consultation paper, the commission made draft proposals for establishing an accreditation scheme for guide, hearing and assistance dog trainers that provide services to Victorians. The commission suggested a series of amendments to the *Domestic (Feral Nuisance and Assistance) Animals Act 1994* (DFNAA) to establish the scheme.
- 5.7 During consultation, there was strong support for the principle of accrediting trainers, and for those accredited trainers to uphold minimum standards for assistance animals.² However, there was a range of views about the mechanics of such a scheme. The diversity of views related to three main themes:
 - who should have responsibility for accreditation, including who should have legislative responsibility for the regulation of assistance animals
 - the types of trainers who should be eligible for accreditation, and
 - standards that accredited trainers should be required to meet.
- 5.8 These suggestions and improvements to the commission's model of accreditation are discussed below.

RESPONSIBILITY FOR REGULATING ASSISTANCE ANIMALS

- 5.9 People generally supported separating the equalities provisions from the parts of the model regulating dogs.³ This would mean that the regulatory aspects of training, registration and identification would rest with a Minister other than the Attorney-General.
- 5.10 To ensure public confidence a government body must have responsibility for the accreditation process. The commission has identified three options for Ministerial responsibility for the accreditation scheme.
- 5.11 The first option is to amend the DFNAA. Under this model the Minister responsible would be the Minister for Agriculture. Administrative responsibility would rest with the Department of Primary Industries (Bureau of Animal Welfare).
- 5.12 The second option is to provide a regulatory scheme under a new, stand-alone Act, potentially entitled the 'Assistance Animals Act'. Feedback indicates a preference for the Minister for Community Services to have responsibility for the legislation.

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

² Consultations 7 (Transport Roundtable); 9 (Public Transport Ombudsman); 10 (Guide Dogs Victoria); 11 (Disability Discrimination Legal Service); 17 (Seeing Eye Dogs Australia); 18 (Human Rights and Equal Opportunity Commission); 19 (Disability Reference Group, Victorian Equal Opportunity and Human Rights Commission); submissions 10 (WA Assistance Dogs Inc.); 17 (Blind Citizens Australia); 18 (Department of Transport); 23 (Department of Primary Industries).

³ Submission 22 (Victorian Equal Opportunity and Human Rights Commission).

5.13 The third option would require joint administration on the scheme.

5.14 Each of these options is discussed below.

OPTION 1 – MINISTER FOR AGRICULTURE (AMEND THE DFNA)

5.15 The DFNA already contains provisions regarding guide dogs. The effect of these provisions is to exempt guide dogs, including those in training, from the general scheme of dog and cat regulation.⁴

5.16 The advantage of this option is that relatively few amendments to the DFNA will be required. Potentially all the provisions relating to assistance animals could be included in a new part.

5.17 The disadvantage of this model is that consultation revealed that it enjoys little support. The Bureau of Animal Welfare administers the Act. The role of the Bureau includes regulating animal welfare and management. Guide Dogs Victoria and other major training and disability groups were of the view that 'the best government body to administer this is the one that is most concerned with disabled people's interests'.⁵

5.18 Significantly the Department of Primary Industry is concerned that if assistance dog provisions are made under the DFNA, the objectives of that Act will be altered. Their submission states: '[t]he requirements for animals cannot be holistically addressed in the DFNA Act alone as this act is specifically designed to address the private keeping of dogs and cats as companion animals and the protection of the community'.⁶

5.19 The Department of Primary Industries would prefer a stand-alone Act. They believe 'the case is wide enough to support an Act dedicated to all interests of assistance animals'.⁷

5.20 This view may be based on an assumption that the commission will recommend legal recognition of all species of assistance animals. However, following consultation the commission has put forward two options to government. The preferred option is to recognise dogs only. The other option recognises all species.⁸

5.21 Despite supporting the principle behind the commission's proposals for accreditation and public access testing, DPI is also concerned about resource implications: '[t]he Bureau of Animal Welfare within DPI, is not currently resourced to administer such a system of accreditation and training'.⁹

5.22 They also expressed concern regarding their capacity in relation to disability issues and assistance animals. Their submission states:

*Other legislation controls who is 'disabled' or 'impaired' and the degree of assistance that an animal could provide if trained. There is no expertise in the DPI to develop such standards, identify disabilities that benefit from assistance animals and to evaluate such training programs or requirements.*¹⁰

OPTION 2 – MINISTER FOR COMMUNITY SERVICES (ASSISTANCE ANIMALS ACT)

5.23 There was a preference among community stakeholders that the most appropriate Minister for regulating training and accreditation would be one that is concerned with the interests of people with disability. The three major providers of assistance animals in Victoria: Vision Australia (incorporating Seeing Eye Dogs Australia), Assistance Dogs Australia, Guide Dogs Victoria, all shared this view.¹¹

5.24 Victorians with disability are used to dealing with the DHS, specifically the Disability Services division. This is the division of the Department which funds 'providers across the non-government sector to provide direct support and care for people with an intellectual, physical, sensory and neurological disability, and acquired brain injury in Victoria. The Division also provides some care and support services to people with a range of disabilities. These services and supports are governed by the provisions of the *Disability Act 2006*'.¹²

5.25 On a very practical level, regulating from within DHS has the advantage of familiarity for consumers and disability organisations. However it is also predicated on the argument that assistance animal providers are in effect disability services.

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

5 Consultation 10 (Guide Dogs Victoria); submissions 19 (Vision Australia); 24 (Assistance Dogs Australia).

6 Submission 23 (Department of Primary Industries).

7 Submission 23 (Department of Primary Industries).

8 See paras 4.25 to 4.30.

9 Submission 23 (Department of Primary Industries).

10 Submission 23 (Department of Primary Industries).

11 Consultation 10 (Guide Dogs Victoria); submissions 19 (Vision Australia); 24 (Assistance Dogs Australia).

12 <www.dhs.vic.gov.au/about_the_division> 9 September 2008.

Establishing a Training and Accreditation Scheme



- 5.26 Aside from industry support, the advantage of DHS being the regulator is that it posits the issue in the context of disability services that promote community participation. This is consistent with the principles contained in the *State Disability Plan 2002-2012*¹³ and *A Fairer Victoria*.¹⁴
- 5.27 Assistance animal training organisations appear to self identify as providers of services to people with disability. The charitable objects of these organisations reflect a focus on disability.¹⁵ They do not see themselves as just animal trainers. Rather, they provide a means for people with disability to live independently and participate in all aspects of the community. This approach takes a broad view of what is a disability service.
- 5.28 However, it should be noted that ‘disability services’ has a specific meaning within DHS. That is, services that are provided by DHS or by organisations that are funded by DHS to deliver services to people with disability under the Disability Act.¹⁶
- 5.29 Such services are required to be registered as ‘disability service providers’. To acquire registration they must meet certain standards in order to comply with the Act.¹⁷ In practice this means they must meet nine disability standards, comply with the service level (funding) agreement requirements and meet the priorities contained in the Policy and Funding Plan, Disability Services.¹⁸
- 5.30 ‘Disability’ also has a particular meaning under the Act, so that not all people with disability are eligible for ‘disability services’.¹⁹
- 5.31 Clearly, this view of disability and of disability services is much narrower than that which community participants in our consultation took.
- 5.32 Nevertheless, given the particular legal meaning of ‘disability services’ the *Disability Act* would not be the appropriate legislative vehicle for this reform. To regulate assistance animal organisations under that Act would cause confusion and would not be a neat administrative fit.
- 5.33 Instead a stand-alone Bill is preferred. This has implications for the legislative program, although the Bill need not be overly long or complex.
- 5.34 It should also be noted that the Disability Services division within DHS does not currently accredit organisations, although other parts of DHS do manage accreditation type approval systems.²⁰ Instead the division regulates purely through funding arrangements which contain standards.²¹
- 5.35 Establishing and administering an accreditation system is certainly less resource intensive than administering the large scale funding programs that DHS is used to. However shifting the regulatory mindset from a service level agreement framework to an accreditation approach will involve a new way of working for the Disability Services division of DHS.

OPTION 3 – SHARED ADMINISTRATION

- 5.36 Blind Citizens Australia took a different view, arguing that responsibility should be shared between the Minister for Community Services and Minister for Agriculture. They stressed however, that the DFNAA was not the appropriate legislative vehicle.²²
- The DFNA Act, by its very name, is not best placed to handle details relating to assistance animals, as this Act does not focus on equity or independent rights... we do not support the Commission’s recommendation for the inclusion of training, accreditation, registration and identification of assistance animals, nor a definition of an impairment or disability, to be included directly in the DFNAA.*²³
- 5.37 It is extremely rare for legislation to be shared in this manner, but there are isolated examples.²⁴ However, good governance is promoted by having only one Minister is responsible for an Act.
- 5.38 Alternatively, one Minister could be responsible for the Act, and the DPI and DHS could enter into arrangements for shared responsibility for the accreditation process. This would be a very unusual arrangement in Government but may help to build capacity across the two organisations.
- 5.39 The advantage of this approach would be that the two departments could learn from each other. However the disadvantage is that it may duplicate resources for what should be a very low cost scheme.

13 Department of Human Services [Victoria] *Victorian State Disability Plan 2002-2012* (2002) 9.

14 Department of Premier and Cabinet *A Fairer Victoria: Creating Opportunity and Addressing Disadvantage* (2005) 42.

15 For example, the mission of Seeing Eye Dogs Australia is to ‘[t]o enhance the mobility and independence of people who are blind or vision impaired throughout Australia by providing Seeing Eye Dogs, mobility training and rehabilitation services free of charge’: Seeing Eye Dogs Australia, *Our Mission* <www.seda.org.au/about_us_our_mission.html> at 17 September 2008.

16 *Disability Act 2006* (Vic) s 3.

17 *Disability Act 2006* (Vic) s 41.

18 See Department of Human Services, *Policy and Funding Plan* <www.dhs.vic.gov.au/disability/improving_supports/performance_reporting/policy_and_funding_plan> at 17 September 2008.

19 *Disability Act 2006* (Vic) s 3.

20 For example, adoption agencies are approved by the Secretary of the Department of Human Services: *Adoption Act 1984* (Vic) pt II, div 2. Schedule 2 of the *Adoption Regulations 2008* (Vic) set out the standards approved agencies must meet and schedule 23 contains the Code of Conduct for approved adoption agencies.

21 For example the Home and Community Care National Standards, see Victorian Government Health Information, *Home and Community Care* <www.health.vic.gov.au/hacc/quality_frmwrk/nat_serv_stnds.htm> at 17 September 2008.

22 Submission 17 (Blind Citizens Australia).

23 Submission 17 (Blind Citizens Australia).

24 Eg the *Children, Youth and Families Act 2005* (Vic) is jointly and severally administered by the Attorney-General and the Minister for Community Services.

RESOURCE IMPLICATIONS OF THE ACCREDITATION SCHEME

- 5.40 The commission estimates that the resources required to administer the scheme are modest. There are an estimated 300 assistance animals in Victoria (compared to a pet population of 1 million).
- 5.41 Under the commission's model, the relevant government agency would have no direct contact with assistance animals or their handlers. There would be no state government involvement in assessing disability or suitability for an assistance animal. This is delegated to the accredited training organisation and reflects current practice.
- 5.42 Out of the eight organisations currently providing assistance animals in Victoria, two are not members of either the International Guide Dogs Federation (IGDF) or Assistance Dogs International (ADI). This means that, at the start of the scheme, there would likely be only two applications for ministerial approval that would involve more than a straightforward process.²⁵
- 5.43 We discuss the accreditation scheme in detail below. We propose that accreditation is renewed once every five years.²⁶ This will assist in keeping costs to government to a minimum.

CONCLUSIONS

- 5.44 The commission believes the current guide dog provisions should be removed from the DFNAA. These should be replaced with a new Act – The Assistance Animals Act. Having a stand alone Act will help with community awareness as well as providing a more appropriate vehicle for establishing the regulatory scheme.
- 5.45 It should be noted that the effect of repealing section 7 of the DFNAA (the guide dog provision) is to remove the current absolute right to be accompanied by a guide, including a hearing dog 'at all times and in all places'.
- 5.46 It would also remove guide dogs from the exemption provisions of the DFNAA. Therefore, some exemptions, for example from local council dog registration fees, will need to be re-stated in the DFNAA. Recommendations to that effect will follow later in this report.
- 5.47 In regards to the three options discussed above, the commission recognises that the DPI may not currently have experience in disability issues. We also understand that the DHS does not have expertise in animal management. However, the Victorian Government has a whole of government commitment to people with disability. All government agencies share this responsibility.
- 5.48 While both DPI and DHS may need assistance in developing capacity in the field of assistance animal trainer accreditation, inaction will mean that people with a disability who use assistance animals will continue to suffer. Because current legislation is silent on quality standards for assistance animals and their trainers, people with disability currently fall between the legislative cracks. This situation is unsatisfactory.
- 5.49 Having considered the feedback from consultation our preferred option is that the Minister for Community Services should be responsible for the legislation. Administrative responsibility for the accreditation scheme would rest with DHS. The synergies between DHS responsibilities towards people with disability, its knowledge base about best practice in disability services and its organisational commitment to inclusion, commend DHS as the logical administrative point for regulation. In addition there is clear support from people with disability for the department to have this role. For these reasons it is the commission's preferred option.
- 5.50 The suggestion that DHS take responsibility was raised late in consultation and was not canvassed in the commission's consultation paper. Formal consultation with DHS has not yet been possible. This will need to take place before the government determines on who should have ministerial responsibility for accreditation.

RECOMMENDATIONS

12. That section 7 of the *Domestic (Nuisance and Feral) Animals Act 1994* be repealed.
13. That a new law - 'the Assistance Animals Act' be enacted to establish a regulatory scheme for the training and identification of assistance dogs in Victoria.

25 Meaning a process not based solely on membership of a relevant international accrediting body.

26 See para 5.80.

Establishing a Training and Accreditation Scheme



SHOULD THERE BE AN ADVISORY COMMITTEE?

- 5.51 There was general consensus that there should be ministerial responsibility for the accreditation process.²⁷ However, during consultation some discussion centred on the establishment of a committee or panel from which the Minister might seek advice about which trainers should be accredited.²⁸
- 5.52 The panel model features in the Queensland consultation draft Bill and was strongly advocated by Guide Dogs Victoria, Seeing Eye Dogs Australia, disability advocacy organisations and guide dog users.²⁹
- 5.53 There was some disagreement as to the role and scope of such a panel. Some envisaged the panel's role as advising on applications and assisting in the development of standards.³⁰ Others also saw it as contributing to industry development, particularly in providing for the full spectrum of disabilities.³¹ Some were less sure of the panel's responsibility, but were nonetheless supportive of the potential benefits a panel may present.³² Although, concern was expressed regarding having a panel that might duplicate the assessment process that already occurs within international organisations.³³
- 5.54 The commission considers there is significant value in the Minister establishing an advisory panel from which he or she may seek advice on complex applications for accreditation, industry development issues and animal behaviour standards.
- 5.55 This panel should include disability consumer representatives, people with expertise in assistance dog training, animal welfare and behaviour experts and disability peak bodies. People with non-sensory disabilities should be adequately represented. The Department of Primary Industries, Bureau of Animal Welfare should also be included to ensure consistency on issues of responsible animal ownership and animal welfare. In the event that DPI is responsible for the administration of the accreditation scheme, DHS should be a member of the advisory panel.

RECOMMENDATION

14. That the Minister for Community Services establish an advisory panel. The functions of which include providing advice on industry development issues, training standards and accreditation. Membership should include disability consumer representatives, people with expertise in assistance dog training, animal welfare and behaviour experts and disability peak bodies.

ACCREDITING TRAINERS

- 5.56 There was a strong view that an accreditation scheme is crucial to ensure high-level training standards and consistent, quality service provision for people with disabilities.³⁴ It was felt that accreditation would help to protect the good reputation of existing establishments as well as set the standard for new and emerging organisations. This in turn would enhance public confidence in the quality of assistance animals.³⁵
- 5.57 Some were opposed to the adoption of an accreditation system.³⁶ There was a concern that an accreditation scheme might create barriers.³⁷ Some organisations, while supportive of accreditation were mindful that any scheme should not be overly bureaucratic or create cost obstacles.³⁸
- 5.58 However, most thought accrediting trainers was a good idea, including consumers, major training organisations and government agencies.³⁹ Significant support came from transport operators.⁴⁰ The hospitality industry also supported accreditation.⁴¹
- 5.59 The substantive policy issues related to an accreditation scheme include:
- Whether to include private trainers and self trainers or limit the scheme to organisations only
 - Whether to rely on accreditation by a recognised international body as the basis for accreditation in Victoria, or require additional local accreditation standards.

27 See, eg, consultation 10 (Guide Dogs Victoria).

28 See, eg, consultation 10 (Guide Dogs Victoria).

29 See, eg, consultation 16 (Community Forum).

30 Consultation 10 (Guide Dogs Victoria).

31 Consultation 17 (Seeing Eye Dogs Australia).

32 Consultation 18 (Human Rights and Equal Opportunity Commission).

33 Consultation 14 (Assistance Dogs Australia).

34 See, eg, submission 17 (Blind Citizens Australia).

35 Consultation 17 (Seeing Eye Dogs Australia).

36 Submissions 1 (Karl Hell); 9 (Paws for Diabetics).

37 Submission 9 (Paws for Diabetics).

38 Consultation 5 (Transport Accident Commission).

39 Consultations 7 (Transport Roundtable); 10 (Guide Dogs Victoria); 11 (Disability Discrimination Legal Service); 17 (Seeing Eye Dogs Australia); 18 (Human Rights and Equal Opportunity Commission); 19 (Disability Reference Group, Victorian Equal Opportunity and Human Rights Commission); and submissions 10 (WA Assistance Dogs Inc.); 17 (Blind Citizens Australia); 18 (Department of Transport); 23 (Department of Primary Industries).

40 Consultation 7 (Transport Roundtable).

41 Consultation 15 (Restaurant and Catering Victoria).

WHO SHOULD BE ELIGIBLE FOR ACCREDITATION?

ORGANISATIONS

- 5.60 Almost everyone agreed that training organisations should be eligible for accreditation. However, there was some concern that the current lack of Victorian providers of non-sensory dogs may increase reliance on private or self-trainers, or force people to use interstate organisations.
- 5.61 As noted by the Human Rights and Equal Opportunity Commission (HREOC), the accredited training organisation model 'opens up the question of current gaps in provision. Both as regards geographic spread of training organisations, costs, and the range of disabilities they provide trained dogs for'.⁴²
- 5.62 We agree with HREOC that if an accreditation system is to work there needs to be a range of organisations accredited to provide well-trained assistance dogs to alleviate a range of disabilities.⁴³ The industry needs to develop further in order to ensure that people have access to the benefits that assistance animals can bring. A monopoly of trainers is to be avoided.⁴⁴

PRIVATE AND SELF-TRAINERS

- 5.63 One of the issues the commission grappled with in the consultation paper was whether accreditation should be extended to private trainers and self-trainers (sometimes called informal trainers).
- 5.64 People with a disability may wish to train their existing dog to be an assistance animal themselves. However, in its research, the commission found only one self-trainer in Victoria.⁴⁵
- 5.65 With waiting lists of up to 12 months long people may seek a private trainer if they have the means to pay.⁴⁶ One submitter told us: 'I have tried to get my privately trained dog recognised. In Victoria there is no organisation to help. [I have been] met with brick walls'.⁴⁷

Costs and benefits

- 5.66 The main benefit of including informal trainers in an accreditation scheme is that it allows greater inclusion and constitutes a more comprehensive approach.
- 5.67 The Public Interest Law Clearing House notes 'an important objective... is to facilitate more people with properly trained assistance animals. Arbitrarily restricting the ability of properly qualified individuals to accredit assistance animals seems counterproductive to such an aim'.⁴⁸
- 5.68 However, many participants expressed concern that only organisations have the capacity to provide the long-term support and follow-up that is required of an assistance animal partnership.⁴⁹ This support includes ongoing training with the animal, provision of a peer network and advocacy support, as well as financial support for veterinary costs.⁵⁰ It was suggested that private trainers may not be in a position to provide this level of ongoing support.⁵¹
- 5.69 Some strongly discouraged extending accreditation to self-trainers.⁵² They expressed the view that to accredit self-trainers would risk compromising quality.⁵³
- 5.70 Others identified that a key concern is the importance of not locking self-trainers out as this may discriminate against people with forms of disability where training organisations have not yet emerged locally.⁵⁴
- 5.71 Of those that thought that self-trainers should be included in an accreditation scheme, all were of the view that self-trainers should have their dogs certified by an accredited organisation.⁵⁵ Discussions also considered whether existing training organisations could not only test but also continue to provide ongoing follow-up for self or privately trained dogs.⁵⁶ On the other hand, some suggested self-trainers might co-train with an organisation.⁵⁷
- 5.72 A related issue was quality assurance around the sourcing of dogs and matching dogs to clients. There was a divergence of opinion as to whether accreditation should be limited to trainers who use particular breeds of dogs and purpose-bred dogs⁵⁸ or whether eligibility requirements should extend to trainers that work with any breed.

42 Consultation 18 (Human Rights and Equal Opportunity Commission); see also consultation 6 (A.W.A.R.E. Dogs Australia).

43 Consultation 18 (Human Rights and Equal Opportunity Commission).

44 Submission 17 (Blind Citizens Australia).

45 Submission 28 (Liz Schneider). Another self-trainer from NSW, now living in Victoria was identified. He had completed a 'Dog Tech' dog obedience training course. Final training was completed with a major training organisation in Sydney. For information about Dog Tech see Dogtech: The Dog Whisperer's Company <www.dogtech.com.au/> at 9 September 2008.

46 <www.seda.org.au/frequently_asked_questions_history.html> 11 September 2008.

47 Submission 2 (Anonymous).

48 Submission 20 (Public Interest Law Clearing House).

49 Consultations 17 (Seeing Eye Dogs Australia); 4 (Disability Aid Dogs Australia); 12 (Public Transport Access Committee); 14 (Assistance Dogs Australia); 16 (Community Forum).

50 Submission 17 (Blind Citizens Australia).

51 Submissions 8 (Australian Support Dogs Inc.); 17 (Blind Citizens Australia).

52 Submission 24 (Assistance Dogs Australia).

53 Submission 24 (Assistance Dogs Australia).

54 Consultations 6 (A.W.A.R.E. Dogs Australia); 4 (Disability Aid Dogs Australia).

55 See, eg, consultation 6 (A.W.A.R.E. Dogs Australia); submission 28 (Liz Schneider).

56 Consultations 16 (Community Forum); 17 (Seeing Eye Dogs Australia).

57 Consultation 10 (Guide Dogs Victoria).

58 Consultations 17 (Seeing Eye Dogs Australia); 14 (Assistance Dogs Australia).

Establishing a Training and Accreditation Scheme



5.73 Some training organisations expressed a firm view that breeding and genetic makeup is a determining factor. Guide Dogs Victoria states:

The experience of Guide Dog organisations and obedience trainers and instructors around the world is that many dogs can be trained to do numerous tasks, but a dog's ability to learn depends on the dog's genetic makeup and/or breed and reinforcement of the learning over time.⁵⁹

5.74 The commission notes that some organisations do not place particular significance on the breeding of their dogs.⁶⁰ However, most of the major training organisations including Seeing Eye Dogs Australia, Guide Dogs Victoria and Assistance Dogs Australia invest significant resources in breeding programmes in an effort to ensure the best standards.

REVISED ACCREDITATION MODEL

5.75 One solution would be to accredit all trainers, be they individuals or organisations, according to a set of minimum standards. The commission's view is that this model of accreditation is inclusive, without sacrificing quality.

5.76 Private trainers could be accredited providing they can demonstrate that they operate under the same set of objective standards.⁶¹

5.77 Self-trainers would not be eligible for accreditation but could have their dogs tested for public access by an accredited trainer, who in turn would provide follow up. Public access testing is discussed further later in this chapter.

5.78 In order for accreditation to be inclusive, well-established local training organisations need to support the development of new organisations providing services for non sensory or mobility disabilities. Otherwise, there may be a failure to provide services to people experiencing all forms of disability.⁶²

5.79 Trainers employed by accredited assistance-dog training organisations should be taken to be covered by the scheme. This is consistent with models in other states.⁶³

5.80 The commission also accepts the suggestions made during consultation, that trainer accreditation should be subject to regular renewal. A suitable suggested period for review would be once every five years.⁶⁴

5.81 Given that there are only two Victorian based training organisations currently operating, interstate trainers should be eligible for accreditation in Victoria, as long as they meet the accreditation standards discussed below.⁶⁵ This is necessary to protect the existing rights of people using hearing dogs and other assistance dogs trained by national organisations based interstate.⁶⁶

5.82 To ensure fairness, applicants should have a right of review through the Victorian Civil and Administrative Tribunal (VCAT).⁶⁷ This is consistent with provisions relating to domestic animal business under the DFNA.⁶⁸ Similarly, in instances where accreditation is withdrawn or suspended, appeal rights should apply.

5.83 Only dogs certified by accredited trainers would have the legal status of assistance animal in Victorian law. Therefore, it will be very important that people with a disability are easily able to find out which trainers can lawfully train assistance animals. To facilitate accessibility, a list of accredited trainers should be made publicly available, including on government websites.

RECOMMENDATIONS

15. That the Act provide that the Minister for Community Services accredit individuals and organizations to breed, select, train and certify assistance dogs in Victoria. Accreditation should be subject to renewal after a reasonable period.

16. The Minister may refuse or discontinue accreditation of an assistance dog trainer or organization if they fail to meet or no longer meet the criteria. A trainer or training organisation whose accreditation is refused or discontinued should have the right to appeal the decision to the Victorian Civil and Administrative Tribunal (VCAT).

17. A list of accredited trainers should be made publicly available including on government websites.

59 Consultation 10 (Guide Dogs Victoria).

60 Lions Hearing Dogs Australia, *The Dogs* <www.hearingdogs.asn.au/thedogs.htm> at 5 September 2008.

61 Submission 10 (WA Assistance Dogs Inc.).

62 See, eg, submission 17 (Blind Citizens Australia).

63 *Guide Dogs Act 1972* (QLD) s 3 ('guide dog trainee').

64 This is consistent with the renewal period of the International Guide Dogs Federation and Assistance Dogs International. Consultations 10 (Guide Dogs Victoria); 14 (Assistance Dogs Australia).

65 See Consultations 4 (Disability Aid Dogs Australia); 18 (Human Rights and Equal Opportunity Commission); submission 17 (Blind Citizens Australia).

66 These include Lions Hearing Dogs Australia and Assistance Dogs Australia.

67 Submission 20 (Public Interest Law Clearing House).

68 *Domestic (Feral and Nuisance Animals) Act 1994* (Vic) s 98.

ACCREDITATION STANDARDS FOR TRAINERS

- 5.84 Consultees acknowledged the need for stringent guidelines to ensure that assistance animals are trained to recognised standards.⁶⁹ Such standards should include both technical capacity and experience in assistance animal training along with requirements for ensuring the quality and suitability of dogs.⁷⁰
- 5.85 Proper matching of client and dog, including the person's capacity to look after the animal⁷¹ along with regular follow up of the partnership once training is completed should be mandatory requirements contained within accreditation standards.⁷² Assistance Dogs Australia explained:
- Training organisations have a duty of care to the recipient, general public and the dog. Accredited organisations should have a proper matching and follow up program to ensure quality of service and also quality of life for the dog.*⁷³
- 5.86 During consultation there was frequent reference to the importance of trainers to understand how to work with people with disability.⁷⁴ The commission agrees that 'trainers need to be highly sensitive to the needs of people with disability'.⁷⁵
- 5.87 The particular needs of people with co-morbidities⁷⁶ were also identified as an area where improved services are required.⁷⁷ As noted by Blind Citizens Australia it is important that:
- The organisation is inclusive and addresses the needs of the individual throughout the training process and during on-going support. This might include tailored one-on-one training, or the provision of Auslan or language interpreters to assist the client to communicate.*⁷⁸

INTERNATIONAL AND/OR LOCAL STANDARDS

- 5.88 Almost everyone agreed that accreditation standards were necessary. However, there was some divergence of opinion. Some felt membership of an international organisation such as Assistance Dogs International (ADI) or the International Guide Dogs Federation (IGDF) should result in automatic eligibility for accreditation.⁷⁹ Others were of the view that this alone was not sufficient.⁸⁰
- 5.89 Assistance Dogs International (ADI) has operated since 1987. It represents people who train many types of assistance dogs. These include guide dogs, hearing dogs, mobility dogs, seizure alert dogs and psychiatric service dogs.⁸¹
- 5.90 During the commission's consultation process it was noted that there are different standards of membership available through ADI. There was general agreement that membership as an organisation, rather than as a user should be the category of membership required to equate with Victorian standards.⁸² We were also informed that an Australian and New Zealand branch of ADI was being established which requires all current members to have full accreditation by 2010.⁸³
- 5.91 IGDF is a UK based organisation that has operated since 1989 as a representative body for dog training schools all over the world. It currently has 84 members worldwide.⁸⁴
- 5.92 To be a full (accredited) member of IGDF, the organisation must have, amongst other things, operated for at least five years, and successfully trained at least 20 guide dog partnerships.⁸⁵
- 5.93 GDV and SEDA are members of IGDF.⁸⁶ Many other training organisations in Australia are members of ADI. Some train to a higher standard than that required for membership.⁸⁷
- 5.94 The commission's research indicates that IGDF and ADI membership standards converge around organisational capacity and history; standards of breeding and selection; client and dog matching practice; implementation of a public access test with regular re-testing; the humane treatment of animals and proper client service standards.⁸⁸ Consultees indicated that these sorts of standards should gain legal force in Victoria.
- 5.95 Some argued that there is no need to 'reinvent the wheel' and international standards should be used as the benchmark for accreditation.⁸⁹ Assistance Dogs Australia stated:
- ADI accreditation and membership requirements are very comprehensive and would be sufficient for a local scheme. There is nothing you would put in local guidelines that aren't already in the international standards...We know we have a premium product.*

69 See, eg, consultation 4 (Disability Aid Dogs Australia).

70 Consultations 4 (Disability Aid Dogs Australia); 10 (Guide Dogs Victoria).

71 Consultation 10 (Guide Dogs Victoria).

72 Consultation 17 (Seeing Eye Dogs Australia).

73 Consultation 14 (Assistance Dogs Australia).

74 See, eg, consultation 14 (Assistance Dogs Australia).

75 Consultation 11 (Disability Discrimination Legal Service).

76 Co-morbidities describes the situation where a person has more than one form of disability or illness.

77 Submission 17 (Blind Citizens Australia).

78 Submission 17 (Blind Citizens Australia).

79 Consultations 5 (Transport Accident Commission); 8 (Brian Graham); 14 (Assistance Dogs Australia); 17 (Seeing Eye Dogs Australia); and submission 8 (Australian Support Dogs Inc.).

80 Consultations 11 (Disability Discrimination Legal Service); 12 (Public Transport Access Committee); 18 (Human Rights and Equal Opportunity Commission).

81 See Assistance Dogs International <www.assistancedogsinternational.org/> at 5 September 2008.

82 See, eg, consultation 12 (Public Transport Access Committee).

83 Consultation 17 (Seeing Eye Dogs Australia).

84 International Guide Dog Federation, *About Us* <www.ifgdsb.org.uk/page.asp?code=00010008> at 8 September 2008.

85 IGDF membership requirements can be found at: International Guide Dog Federation, *Membership Info* <www.ifgdsb.org.uk/page.asp?code=000100080005> at 9 September 2008.

86 SEDA is a member of both IGDF and ADI.

87 Consultation 12 (Public Transport Access Committee).

88 International Guide Dogs Federation Standards, 18 July 2007, written copy provided by Seeing Eye Dogs Australia: letter from Seeing Eye Dogs Australia to the commission, 4 September 2008. For ADI standards see Assistance Dogs International, *What is ADI Accreditation?* <www.assistancedogsinternational.org/adiaccreditation.php> at 10 September 2008.

89 Consultation 14 (Assistance Dogs Australia); submissions 10 (WA Assistance Dogs Inc.); 21 (Qantas Group).

Establishing a Training and Accreditation Scheme



- 5.96 One argument was that the use of international benchmarks would promote consistency of standards across Australian jurisdictions.⁹⁰
- 5.97 However, the Human Rights and Equal Opportunity Commission (among others) queried the prudence of making state governments reliant on international bodies for accreditation standards.⁹¹ As noted by Anne-Marie Kelly 'the system needs to be local to reflect local needs'.⁹²
- 5.98 One way this may be overcome is to mandate local standards, broadly equivalent to IGDF and ADI standards in Victorian law. This should be done by regulation so that they can be easily amended as standards progress.
- 5.99 This avoids having to devise entirely new standards without ceding powers to an international group. Another good reason for spelling out accreditation standards is that local accreditation by ADI (who cover both large and small providers) will not be completed until 2010.⁹³
- 5.100 The commission considers that trainers should be regarded as meeting the criteria and therefore eligible for accreditation by the Minister if they can demonstrate that their program is currently fully accredited by either the IGDF or ADI. At least three organisations are fully accredited already.⁹⁴ These organisations provide 80% of assistance animals currently working in Victoria.

RECOMMENDATION

- 18. Regulations made under the Act should provide that a trainer or training organization may be accredited by the Minister if they can demonstrate that they:**
- Understand and provide services to people with disability (impairment); and
 - Breed and/or select suitable dogs that are able to meet the needs of persons with impairment and can operate safely in public; and
 - Match individual dogs and persons to form an effective assistance dog partnership; and
 - Train reliable assistance dogs that are able to perform tasks and functions that assist a person with impairment to alleviate the effects of their impairment and are safe and effective in public; and
 - Use humane training methods; and
 - Administer and certify partnerships using the 'public access test', including at least annual re-testing of partnerships; and
 - Provide ongoing and regular support to the assistance dog partnership, including the removal of certification as an assistance dog where required; and
 - Have a transparent complaints process that is available to clients in a variety of accessible formats; and
 - Meet all other Commonwealth and State legislative requirements.⁹⁵

PUBLIC ACCESS TEST

- 5.101 So far we have concentrated on the accreditation scheme for trainers. We now turn to consider the standards that individual assistance animals must meet.
- 5.102 In this section we set out our proposals for a public access test. Under the commission's model, only those dogs certified as meeting the standards contained in the public access test would gain legal status.⁹⁶

CURRENT PRACTICE

- 5.103 Public access is the ability of the partnership to prove they are safe and unobtrusive when in the public domain.⁹⁷ 'Public access test' is a shorthand term for explaining the range of standards and tests applied by trainers to assess this. A common feature of public access tests is that some parts of the test assess the dog. Other parts of the test focus on the ability of the person to control the dog.
- 5.104 Currently, most training organisations that supply dogs in Victoria apply public access tests as

90 Consultation 14 (Assistance Dogs Australia).

91 Consultations 12 (Public Transport Access Committee); 18 (Human Rights and Equal Opportunity Commission); submission 19 (Vision Australia).

92 Submission 5 (Anne-Marie Kelly).

93 The Australian and New Zealand branch of ADI will require all current members to have full accreditation by 2010. Consultation 17 (Seeing Eye Dogs Australia).

94 Guide Dogs Victoria, Seeing Eye Dogs Australia, Assistance Dogs Australia.

95 This includes relevant criminal checks and maintaining public liability insurance.

96 Provisions are also made for trainee assistance animals. See recommendation 3.

97 Consultations 6 (A.W.A.R.E. Dogs Australia); 14 (Assistance Dogs Australia); 15 (Restaurant and Catering Victoria).

a condition of their membership of international bodies. However a public access test is not legally required.

- 5.105 The IGDF has specific minimum standards of training for guide dogs, hearing dogs and assistance dogs.⁹⁸ These include temperament and physical standards, performance standards and the ability to complete the specific tasks of a guide dog. Unless the partnership meets these standards, the guide dog cannot 'graduate'.
- 5.106 ADI publishes a public access test.⁹⁹ This is used by many training organisations and is designed to be administered by professional assistance animal trainers.
- 5.107 The purpose of the ADI public access test is to ensure that dogs are trained to a level where they 'are stable, well-behaved, and unobtrusive to the public. It is to ensure that the client has control over the dog and the team is not a public hazard'.¹⁰⁰ It measures whether or not the dog has been adequately prepared for public access so the team can go places without trainer supervision. The safety of the dog, the handler and the public are the focus of the specific exercises for testing the team.
- 5.108 A third international body, the International Association of Assistance Dog Partners, also has minimum standards for public access. This organisation is consumer based. It publishes standards for self-trainers. Their public access standards draw upon those first promulgated by ADI with consumer input. IAADP recommends that self-trainers work towards these standards and then apply the ADI public access test.¹⁰¹ The commission's research indicates no Australian organisation uses the IAADP standards. Instead most use the ADI public access test or IGDF standards.
- 5.109 Some private trainers administer a public access type test. For example, Craig Murray administers a Public Interaction and Thoroughfare Test (PITT). This tests for public access only. It does not test the capacity to alleviate the individual client's disability as this is conceptually distinct. Its purpose is to 'ensure that the dog and handler team are competent to be in public places'.¹⁰²

CONSULTATION VIEWS

- 5.110 There was much support for the development of a public access test.¹⁰³ Vision Australia saw it as being a 'positive step forward' in achieving rights for people with disability.¹⁰⁴
- 5.111 The Department of Transport stressed the value of a public access test, saying it would:

[B]e a great support in the education of transport operators, staff and passengers because it would be easier to convince members of the public that assistance animals that have passed a public access test are of no health or safety (including aggression) threat.¹⁰⁵

What should the public access test contain?

- 5.112 People agreed that the public access test is about behaviour in public, rather than the dog's functionality in alleviating specific disability.¹⁰⁶ This means that it is possible to have a general test applicable to all assistance animals,¹⁰⁷ based on the international examples discussed above.
- 5.113 Consultation suggested that dogs should be tested for safety and unobtrusiveness in public, including:
- interaction with other dogs¹⁰⁸
 - interaction with people¹⁰⁹
 - general good behaviour
 - hygiene¹¹⁰
 - temperament¹¹¹
 - soiling¹¹² (thus is especially relevant on long trips on public transport)¹¹³ and
 - ignoring food and other distractions.¹¹⁴

As well as testing the ability of the handler to control the dog.

- 5.114 This is a guide only. The detail of the public access test should be finalised following further consultation, however this should occur as a priority so as not to delay reform.

98 *International Guide Dogs Federation Standards*, 18 July 2007, 14-17, written copy provided by Seeing Eye Dogs Australia: letter from Seeing Eye Dogs Australia to the commission, 4 September 2008.

99 Assistance Dogs International, *Assistance Dogs International Public Access Test* <www.assistance dogs international.org/publicaccesstest.php> at 10 September 2008.

100 *Ibid*

101 International Association of Assistance Dog Partners, *IAADP Minimum Training Standards for Public Access* <www.iaadp.org/iaadp-minimum-training-standards-for-public-access.html> at 10 September 2008.

102 *Public Interaction and Thoroughfare Test*, information provided by email from Tracey Murray to the commission, 22 July 2008.

103 Consultations 7 (Transport Roundtable); 10 (Guide Dogs Victoria); 12 (Public Transport Access Committee); 17 (Seeing Eye Dogs Australia); submissions 17 (Blind Citizens Australia); 18 (Department of Transport); 19 (Vision Australia); 23 (Department of Primary Industries); 24 (Assistance Dogs Australia); 28 (Liz Schneider).

104 Submission 19 (Vision Australia).

105 Submission 18 (Department of Transport).

106 Consultation 19 (Disability Reference Group, Victorian Human Rights and Equal Opportunity Commission).

107 Consultations 2 (Lions Hearing Dogs Australia); 4 (Disability Aid Dogs Australia).

108 Consultation 2 (Lions Hearing Dogs Australia).

109 Consultation 14 (Assistance Dogs Australia).

110 Consultation 7 (Transport Roundtable).

111 Consultation 16 (Community Forum).

112 Consultation 7 (Transport Roundtable).

113 Consultation 7 (Transport Roundtable).

114 Consultations 7 (Transport Roundtable); 14 (Assistance Dogs Australia).

Establishing a Training and Accreditation Scheme



Testing processes

- 5.115 The importance of testing the partnership was emphasised by many people.¹¹⁵ It was suggested that the partnership should be tested in a number of different environments and in circumstances incorporating different periods in the animals working life to ensure the highest level of safety for both the partnership and the public.¹¹⁶
- 5.116 Several people raised the issue of costs of the public access test.¹¹⁷ It was generally felt that the test should be free of charge.¹¹⁸ One option would be to incorporate the costs of testing into the training organisations' operating costs. This would be likely to be more easily absorbed by larger organisations but is a real cost that would need to be covered by fundraising.
- 5.117 Another option would be to have publicly funded assessors based in a training organisation as is the case in South Australia. In that state, Lions Hearing Dogs Australia has been accredited by the Dog and Cat Management Board to conduct certification of individual dogs.¹¹⁹ This is because the Board is responsible for dog assessment. This is very different to the commission's model which does not require a government agency to individually assess dogs.

Ongoing testing/follow-up

- 5.118 Follow up and re-testing was also a strong theme in consultation.¹²⁰ This is consistent with current practice of major training organisations such as GDV, SEDA and ADA.¹²¹
- 5.119 It was noted that there should be a mechanism for withdrawing dogs.¹²² This is currently takes place at SEDA who continue to own the dog after graduation, and may withdraw it if it ceases to meet standards.¹²³ Other organisations have similar processes, including for retiring dogs.¹²⁴
- 5.120 Both issues of costs and follow-up are of particular importance if self-trainers are to be assisted by training organisations through providing public access testing. As discussed previously, under our proposals, self trainers would not be eligible for accreditation but could have their dogs tested by an accredited trainer, who in turn would provide follow up.¹²⁵ This had general support in consultation.¹²⁶ However, there was concern not to overburden existing organisations with the responsibility of training other sorts of dogs to public access standards.¹²⁷
- 5.121 The inclusiveness of the regulatory scheme is reliant, in the short term at least, on existing organisations providing public access testing and following up partnerships beyond their existing client base.
- 5.122 Some formal training organisations in other states already provide certification to privately trained assistance animals.¹²⁸ In Victoria, SEDA has indicated that they may be able to assist to certify some privately trained animals. Once certified by SEDA, the partnership would have to come under the wing of the organisation. This includes follow up and support.¹²⁹
- SEDA could take on additional assessing role until other accredited organisations develop because there are no other organisations working at the same level as SEDA in Victoria... If SEDA don't perform this function, more people will train their own assistance animal because they won't have anywhere to go.*¹³⁰
- 5.123 Other trainers were concerned about testing dogs when they did not know the full background of the animal.¹³¹
- 5.124 The fundamental principle of these reforms is to protect and promote the rights of people with a disability to participate in all aspects of society. While we appreciate that existing organisations charitable objectives are focussed on working with certain forms of disability we also consider it imperative that the industry develop in such a way that it is inclusive of all forms of disability. We are heartened by the positive and cooperative efforts training organisations have shown throughout this consultation. We trust that the industry recognises that it is in everybody's best interests to develop in such a way that new organisations can emerge and grow so the full range of disabilities is services by assistance animal organisations.¹³²

115 See, eg, consultations 6 (A.W.A.R.E. Dogs Australia); 10 (Guide Dogs Victoria).

116 Consultation 2 (Lions Hearing Dogs Australia).

117 See, eg, consultation 7 (Transport Roundtable).

118 Consultation 19 (Disability Reference Group, Victorian Equal Opportunity and Human Rights Commission).

119 Consultation 2 (Lions Hearing Dogs Australia).

120 See, eg, consultation 17 (Seeing Eye Dogs Australia).

121 For example, Assistance Dogs Australia does an annual review and re-tests the animal every year: consultation 14 (Assistance Dogs Australia). Guide Dogs Victoria does three monthly follow up in the first year and regularly thereafter: consultation 10 (Guide Dogs Victoria). A.W.A.R.E. Dogs Australia also undertakes follow up: see A.W.A.R.E. Dogs Australia, The Program <www.awaredogs.org.au/the_program/> at 10 September 2008.

122 Consultation 16 (Community Forum).

123 Consultation 16 (Community Forum).

124 Consultation 14 (Assistance Dogs Australia).

125 Consultation 16 (Community Forum).

126 See, eg, consultations 8 (Brian Graham); 16 (Community Forum); submission 17 (Blind Citizens Australia); 18 (Human Rights and Equal Opportunity Commission).

127 Consultation 19 (Disability Reference Group, Victorian Equal Opportunity and Human Rights Commission).

127 Submission 17 (Blind Citizens Australia).

128 Submission 10 (WA Assistance Dogs Inc.); see also the private certification program offered by Canine Helpers for the Disabled: <www.therapydogs.org.au/?id=privatecertification> at 10 September 2008.

129 Consultation 17 (Seeing Eye Dogs Australia).

130 Consultation 17 (Seeing Eye Dogs Australia).

131 Consultation 14 (Assistance Dogs Australia).

132 Consultation 17 (Seeing Eye Dogs Australia).

RECOMMENDATIONS

19. That only those assistance dogs that have been certified by an accredited assistance dog trainer as:

- a. Able to perform tasks and functions that alleviate the effect of the person's impairment; and
- b. Able to operate safely and unobtrusively in public (having passed the public access test)

be legally recognized as assistance dogs in Victoria.

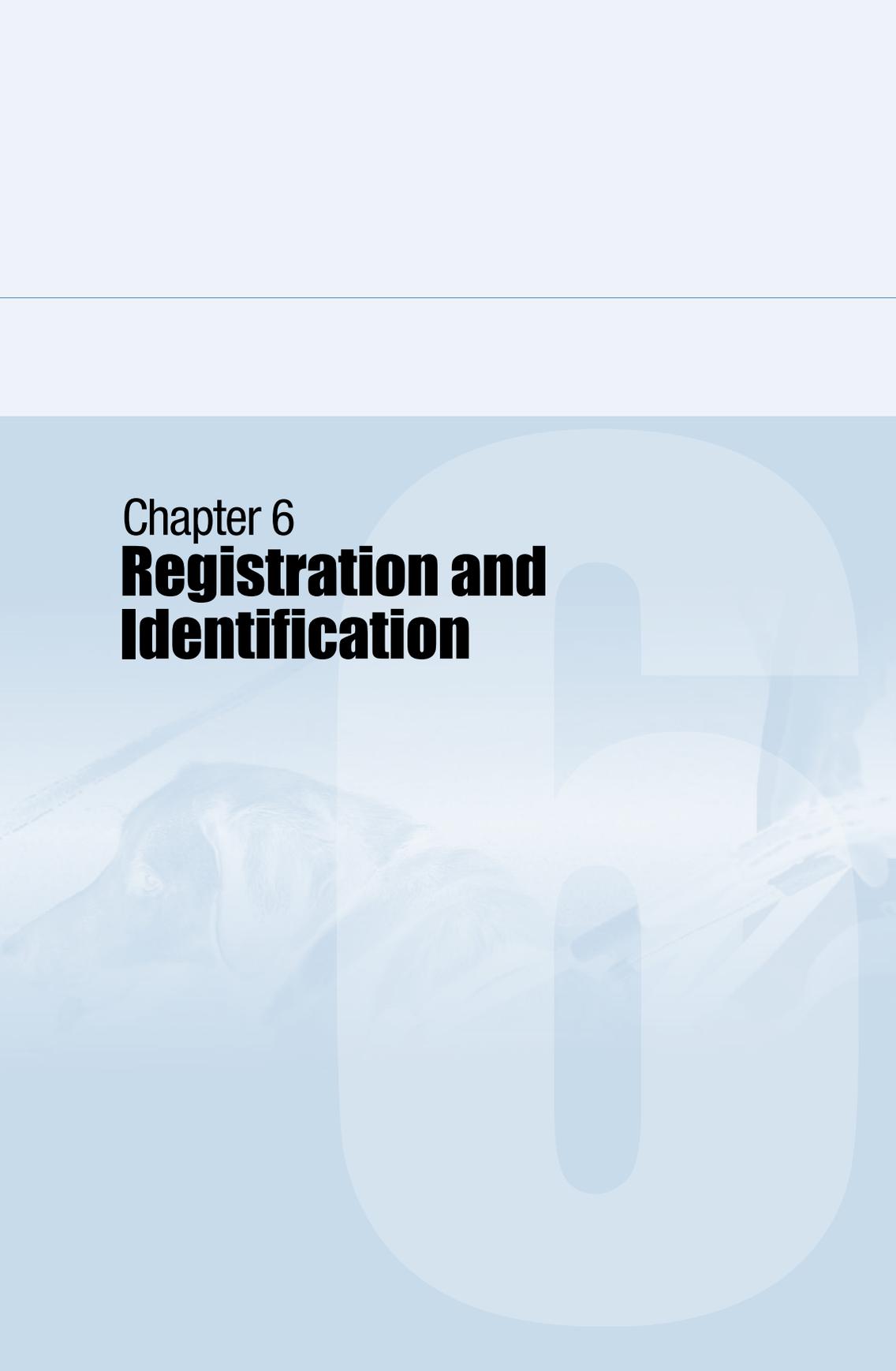
20. That accredited trainers be required to review the assistance dog partnership against the public access test on a regular basis as part of the minimum follow up required to maintain accredited trainer status.

5

Chapter 5

Establishing a Training and Accreditation Scheme





Chapter 6

Registration and Identification

CONTENTS

Registration of assistance
animals
Identification



REGISTRATION AND IDENTIFICATION

- 6.1 In Chapter 3 we noted that unlike pet dogs, there is no legal requirement to have an assistance animal registered in Victoria. Formal training organisations keep records of their own clients. However, there are no records available for assistance animals trained outside these organisations. The absence of a registration scheme makes it difficult to identify and access the assistance animal community as a whole, and to develop policies and services for their benefit.
- 6.2 There is no standard identification for assistance animals in Victoria. This creates significant problems for service providers who may not be easily able to tell what is, or what is not a legally recognised assistance animal.¹
- 6.3 In this Chapter we set out our proposals for establishing a registration scheme for assistance animals, using the existing dog and cat registration powers of local councils. We also explore options for a standard identification scheme across Victoria.

REGISTRATION OF ASSISTANCE ANIMALS

CURRENT PRACTICE

- 6.4 In Victoria, all domestic dogs and cats over three months old must be registered with the owner's local council.² Guide dogs, including hearing dogs and dogs in training are exempted from these provisions.³
- 6.5 Although it is not legally required, many people nevertheless register their assistance animal as a domestic pet.⁴
- 6.6 Guide and hearing dog handlers and training organisations do not have to pay registration fees in these circumstances.⁵ This is consistent with some other Australian jurisdictions.⁶

OTHER JURISDICTIONS

- 6.7 South Australia, New South Wales and the Australian Capital Territory have special registration requirements for assistance animals.
- 6.8 In NSW and the ACT assistance animals must be registered with the local council.⁷
- 6.9 South Australia has a centralised system. The Dog and Cat Management Board is required to keep a separate register of all accredited guide, hearing and disability dogs.⁸ When a dog graduates from training, the relevant organisation notifies the Dog and Cat Management Board by way of a monthly update.⁹
- 6.10 The register operates as a centralised form of identification ensuring consistency across the state.¹⁰ It is available for public inspection at no charge.

COMMISSION PROPOSAL

- 6.11 In the consultation paper we proposed that a person be able to register their animal as either an assistance animal, or an animal in training, at their local council. The commission supported the existing approach set out in legislation that provides that owners and trainers are eligible for a waiver of local council animal registration fees.¹¹
- 6.12 Under the model we proposed, certification by an approved assistance animal organisation would be sufficient to satisfy the local council of the bona fides of the assistance animal.
- 6.13 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 council registration record would include a reference to assistance animal status.

CONSULTATION RESPONSES

- 6.14 There was significant support for assistance animals being registered. This was seen as an aspect of responsible dog ownership.¹² Other benefits such as facilitating the return of a lost dog were noted.¹³
- 6.15 The importance of registering both the assistance animal and the handler as a team was expressed.¹⁴

1 Consultation 7 (Transport Roundtable).

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

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

4 Consultation 14 (Assistance Dogs Australia).

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

6 For example, NSW provides lifetime free registration for assistance animals: *Companion Animals Regulation 2008* (NSW) r 18.

7 *Domestic Animals Regulation 2001* (ACT) Part 2 (5)(d), (6)(d); *Companion Animals Act 1998* (NSW) s 9.

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

9 Consultation 2 (Lions Hearing Dogs Australia).

10 Consultation 2 (Lions Hearing Dogs Australia).

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

12 Consultation 13 (Municipal Association Victoria).

13 Consultation 10 (Guide Dogs Victoria); submission 28 (Liz Schneider).

14 Consultation 10 (Guide Dogs Victoria); submission 19 (Vision Australia).

- 6.16 In consultation everybody agreed that the existing waivers of the registration fee for guide dogs should be extended to all assistance animals and trainees.
- 6.17 It was felt that registration should be renewed periodically.¹⁵ Currently, council registration of domestic animals must be renewed annually.¹⁶ Guide Dogs Victoria stressed that the registration renewal process should include making sure that an assistance dog is still working in that role.¹⁷ This would require providing evidence that the assistance animal is still certified by an accredited trainer. This links to the follow-up and re-testing for public access requirements discussed in the last chapter.¹⁸
- 6.18 There was some divergence of opinion as to whether there should be a central register, or whether assistance animals should be registered with local councils, in common with domestic pets.
- 6.19 The Municipal Association of Victoria (MAV) anticipated that registration would be a simple administrative process that councils could undertake. However, proof would need to be provided to the local council so that the animal's registration is tagged with the status of assistance animal.¹⁹
- 6.20 The MAV thought that councils would be happy with a system similar to the one which currently exists with Guide Dogs Victoria (GDV). Once dogs 'graduate' with a certificate, this proof is provided to the council. On this model, the council's role is purely an administrative one.²⁰
- 6.21 However some organisations thought there would be value in also having a central record of assistance animals.²¹
- 6.22 The MAV argued that a very strong policy reason would need to exist to justify a further requirement that local government forward registration data to a central point. However, they also noted that this type of model is currently in operation between councils and the Bureau of Animal Welfare for the registration of dangerous dogs.²²
- 6.23 Vision Australia asserted that registration should be linked to the accreditation process and therefore should not lie with local council.²³ They recommended that a registration scheme be implemented through a centralised agency with expertise in assistance animals.²⁴ Under this model training organisations would have the responsibility of informing the central registration body that the animal is certified or in training and should be registered as a bona fide assistance animal.²⁵ This is similar to the South Australian scheme.
- 6.24 The commission is of the view that registration of the animal should rest with local councils, as they are already responsible for domestic animal registrations. While we recognise the value of a centralized database, we are also mindful that the registration system needs to be low cost and not create an undue administrative burden on government. At this stage, meeting the fiscal impost of creating a central registration body, when local government is willing and able to take on the role would seem to be an unnecessary additional step.

RECOMMENDATIONS

21. That the *Domestic (Feral and Nuisance) Animals Act 1994* provide that an assistance dog or trainee assistance dog must be registered by the local council upon receipt of an application accompanied by certification by an approved assistance dog trainer that the dog has passed the public access test or is in training.

22. That the existing registration fee exemption for guide dogs be extended to all assistance dogs and trainee assistance dogs.

IDENTIFICATION

- 6.25 Problems caused by the absence of a standard form of identification were a recurring theme in consultation.²⁶ Without standard identification practices it is difficult for service providers and the public to identify an animal as a genuine, trained assistance animal.
- 6.26 V-Line said that with thousands of staff, an easily recognisable identifier would help save embarrassment for both front line staff and passengers with disability. Other major transport

15 Consultation 10 (Guide Dogs Victoria).

16 *Domestic Feral and Nuisance Animals Act 1994* (Vic) s 11.

17 Consultation 10 (Guide Dogs Victoria).

18 See recommendation 20.

19 Consultation 13 (Municipal Association Victoria).

20 Consultation 13 (Municipal Association Victoria). Other training organisations also facilitate local council registration. See eg Consultation 14 (Assistance Dogs Australia).

21 See, eg, consultation 10 (Guide Dogs Victoria).

22 Consultation 13 (Municipal Association Victoria).

23 Submission 19 (Vision Australia).

24 Consultation 10 (Guide Dogs Victoria); submission 17 (Blind Citizens Australia).

25 Submission 17 (Blind Citizens Australia).

26 See, eg, consultation 7 (Transport Roundtable).



providers agreed.²⁷ The Department of Transport noted '[i]dentification is a major issue on all modes of public transport ... particularly given the expansion of Labrador Retrievers as assistance animals to other breeds of dogs'.²⁸

- 6.27 A lack of consistent, recognisable identification creates a risk that poorly trained animals may be allowed in public areas and cause nuisance or safety hazards. Conversely, genuine assistance animals may be denied entry because their handler cannot prove that their animal is legally recognised.
- 6.28 Consequently, people with disability may be subject to humiliating questioning about the nature of their disability. Furthermore, because no uniform identification exists, businesses and service providers must be able to recognise a wide variety of different identification features.
- 6.29 We believe there is a need for a consistent identification scheme that can operate across all of Victoria. This is discussed below.

CURRENT PRACTICE

- 6.30 In Victoria, people who use assistance animals are not legally required to carry identification. While no standard identification equipment is required, many organisations have their own identification jackets or insignia that are well recognised within the community.
- 6.31 GDV issues cards to handlers signed by the Attorney-General. They also put harnesses on dogs trained by them.²⁹ Seeing Eye Dogs Australia (SEDA) also issues a card. During training SEDA dogs wear coats. Following graduation the dog wears a harness.
- 6.32 Assistance Dogs Australia (ADA) dogs wear a coat and have a card that can be easily slotted into a pouch in the coat. The ADA coat indicates to the public that this is a trained assistance dog.
- 6.33 Lions Hearing Dogs issue an identification card made out of PVC, a rigid material, as they believe such a card would not be as easily subject to fraud.³⁰ A.W.A.R.E. Dogs also issue an identification card.³¹
- 6.34 Transport providers noted that some people are carrying letters from doctors certifying their dog is an assistance animal.³² Others talked of people being asked questions about their disability while restaurant owners checked with the local council about whether they should let the assistance dog partnership into the premises.³³

CONSULTATION VIEWS

- 6.35 Participants agreed on the need for an identification scheme.³⁴ Generally this was seen as being in two parts: an identification card as well as an identifying coat (or harness) for the animal. We refer to this as the 'card and coat scheme'.³⁵
- 6.36 Many people with a disability are already used to carrying a number of identification cards. As such, the principle of an identification scheme is familiar; however it may be inconvenient to have yet another card.³⁶ Relying solely on a card may also create specific challenges for people with some forms of physical disability who might face difficulties in accessing the card when it is requested.³⁷ Potentially a jacket could include a clear pocket for an ID card.³⁸
- 6.37 Further, for access to public transport such as trams, taxis and buses unless the animal is visibly identifiable as an assistance animal the driver may not stop for the passenger. The use of a visually recognisable coat or harness would make it easier for drivers.³⁹ It may also assist with public education and acceptance of assistance animals.⁴⁰
- 6.38 Branding issues also need to be considered. Some organisations have emphasised that collars and coats are integral to the branding of services by enhancing exposure and thus increasing funding opportunities.⁴¹
- 6.39 Practical concerns were expressed by some organisations regarding the use of coats with harnesses.⁴² This did not extend to the use of uniforms for non-sight dogs.⁴³
- 6.40 In general, however, it was recognised that the 'card and coat' scheme should include harnesses as these are already well recognised by the public. This means the dog would wear either a coat or a harness.

27 Consultation 7 (Transport Roundtable).

28 Submission 18 (Department of Transport).

29 Consultation 10 (Guide Dogs Victoria).

30 Consultation 2 (Lions Hearing Dogs).

31 Email from Che Forest to the commission, 23 May 2008.

32 Consultation 12 (Public Transport Access Committee).

33 Consultation 11 (Disability Discrimination Legal Service).

34 See, eg, consultations 7 (Transport Roundtable); 12 (Public Transport Access Committee); 15 (Restaurant and Catering Victoria); submissions 19 (Vision Australia); 28 (Liz Schneider).

35 Some people also suggested having a dog tag or collar: consultation 12 (Public Transport Access Committee).

36 Consultation 12 (Public Transport Access Committee).

37 Consultations 5 (Transport Accident Commission); 14 (Assistance Dogs Australia).

38 Consultation 14 (Assistance Dogs Australia).

39 Consultations 9 (Public Transport Ombudsman); 12 (Public Transport Access Committee); 14 (Assistance Dogs Australia).

40 Consultation 18 (Human Rights and Equal Opportunity Commission).

41 Submission 19 (Vision Australia).

42 Consultation 17 (Seeing Eye Dogs Australia).

43 Consultation 17 (Seeing Eye Dogs Australia).

6.41 Some people suggested assistance animals for different disabilities should have specific coats or colours.⁴⁴ However, most people thought this might lead to stigmatising some disabilities.⁴⁵ The commission is mindful that any identification scheme must not further stigmatise people with disability who may already face discrimination in their daily lives.

Minimum information for the Identification Card

6.42 There was consensus that the information contained on the card should be in relation to the animal partnership and not merely the animal as many animals look the same.⁴⁶

6.43 The card should include no information about the person's disability merely that they are a legitimate assistance animal partnership as recognised by Victorian law.⁴⁷ The information should maintain the handler's right to privacy⁴⁸ by not including their address.⁴⁹

6.44 Some organisations thought the card should include the training organisation's contact details.⁵⁰ That way if there were any problems the service provider or assistance animal user could easily contact the accredited trainer.

6.45 It was also suggested that card display an expiry date to encourage renewal and accreditation processes.⁵¹

6.46 Many people thought it was important to ensure the card was tamper proof to avoid fraud.⁵² One organisation went as far as to say that criminal penalties should be imposed for falsely claiming assistance animal status.⁵³

Responsibility for issuing identification

6.47 In our consultation paper, we proposed that local councils issue a uniform identification card upon registration of the animal. During consultation it became clear that this was a role that local government may not be able to fulfil. This is because of the inconsistency between the resource bases of local councils across Victoria. While some Victorian councils are large and have significant capacity, others are not.⁵⁴

6.48 The commission was also advised that the Department of Transport is developing an 'Assistance Animals Pass' for use on public transport.⁵⁵ At the time of writing, details of this scheme were not available.

6.49 The commission recognises that transport operators wish to avoid discrimination and an identification scheme is a vital tool in that effort. However, we believe that any centralised scheme of identification should be comprehensive and be available for use in all sectors, not just public transport. If the transport scheme is carried out it will cover only one area of operation of the *Equal Opportunity Act 1995*, namely public transport.

6.50 However, in the absence of knowing how the transport identification scheme may develop we propose that the issuing of identification rest with accredited trainers.

National recognition

6.51 During consultation there was consensus on the need for any identification scheme to have mutual recognition with other states.⁵⁶ This would assist in ensuring ease of travel for assistance animal partnerships.⁵⁷ And so protect people's freedom of movement.

6.52 The commission agrees. This will require national cooperation.

6.53 We note the work of the Standing Committee of Attorneys-General (SCAG) in regards to harmonisation of anti-discrimination laws across Australian jurisdictions.⁵⁸ The commission considers that aligning regulatory schemes for the recognition and identification of assistance animals would provide significant benefits for Australians with a disability.

PROPOSAL

6.54 We propose that a standard form of identification for assistance animal partnerships be legally mandated.

6.55 An identification 'card and coat' (or harness) should be issued by the accredited trainer when the animal is certified as an assistance animal. This is consistent with the practice of most training organisations at the moment. The only difference would be that a standard

44 Consultation 14 (Assistance Dogs Australia).

45 Consultations 5 (Transport Accident Commission); 9 (Public Transport Ombudsman); 10 (Guide Dogs Victoria); 19 (Disability Reference Group, Victorian Equal Opportunity and Human Rights Commission).

46 Consultation 10 (Guide Dogs Victoria).

47 Consultation 10 (Guide Dogs Victoria).

48 Submission 22 (Victorian Equal Opportunity and Human Rights Commission).

49 Submission 17 (Blind Citizens Australia).

50 Consultation 4 (Disability Aid Dogs Australia).

51 Consultation 4 (Disability Aid Dogs Australia).

52 See, eg, consultation 1 (Jaebin Saunders).

53 Consultation 4 (Disability Aid Dogs Australia).

54 Consultation 13 (Municipal Association Victoria).

55 Submission 18 (Department of Transport).

56 See, eg, consultations 16 (Community Forum); 18 (Human Rights and Equal Opportunity Commission); 9 (Public Transport Ombudsman).

57 Consultations 2 (Lions Hearing Dogs); 10 (Guide Dogs Victoria).

58 Standing Committee of Attorneys-General Communique 28 March 2008 < www.attorneygeneral.gov.au/www/ministers/robertmc.nsf/Page/RWPA7434F9ED00CDACBCA25741A003910D7> 19 September 2008.



identification card, stating that the animal is recognised by the state of Victoria, would be issued instead of the variety of cards at the moment. For those trainers who do not currently provide coats or harnesses, these would now be required.

- 6.56 Only accredited trainers would be authorised to issue the 'card and coat'. This identification would be recognised across all services and business in Victoria.
- 6.57 A uniform identification card is relatively easy to produce and should 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 an identity card.

RECOMMENDATIONS

23. That the Act provide that:

Upon certification, the accredited assistance dog trainer is required to issue an identifying coat or harness and a State of Victoria assistance dog identification card. In the case of trainee dogs, training jackets and identification cards should be issued.

24. Regulations made under the Act should provide that the assistance dog identification cards must be tamper proof and include the following:

- a. Photo of the handler and dog; and
- b. Name of the handler; and
- c. Date of expiry (which is the next review date for public access testing); and
- d. Name and contact details of the accredited trainer certifying the dog; and
- e. A statement that the dog meets Victorian standards for assistance dogs.

25. For avoidance of doubt a person or trainer must have the identification ready available for inspection on request, and ensure the dog is wearing:

- For a guide dog—a harness; or
- For other type of assistance dog—an identifying coat; or
- For a trainee assistance dog—an identifying coat.

Chapter 7

Other Issues

CONTENTS

Transitional arrangements
Civil liability
Community education
National consistency



TRANSITIONAL ARRANGEMENTS

- 7.1 The commission has proposed new laws that will provide more comprehensive protection for people with disability, service providers and the public. However in reforming the law it is important that provision is made to ensure that people who currently use assistance animals do not lose out while the system is in transition.
- 7.2 In law making it is common to make these provisions. They are often called 'transitional arrangements'. In the case of this reform, transitional arrangements will need to be included in the legislative scheme so that existing users of assistance dogs have legal protection.

RECOMMENDATION

26. That provisions be included in the *Equal Opportunity Act 1995* and all other relevant laws to ensure effective transitional arrangements for existing users of guide, hearing and assistance dogs recognised under the *Disability Discrimination Act 1992* (Cth).

CIVIL LIABILITY

- 7.3 During consultation, most people felt that the assistance animals should be under the effective control of the handler.¹
- 7.4 Some service providers were concerned that they would be liable for damage or injury caused by an assistance animal. Public transport providers were particularly concerned about liability issues.²
- 7.5 In Victoria, liability for attacks by dogs is provided for in section 29 of the *Domestic (Feral and Nuisance) Animals Act 1994*. Under this section, if a dog attacks or bites any person or animal or rushes at or chases any person the owner is subject to penalties including terms or imprisonment for up to six months and/or fines. In addition, the court may order that the owner pay compensation for any damage caused by the conduct of the dog.
- 7.6 However, guide dogs are exempt from the statutory provision in Victoria. As a result, the common law dictates liability for property damage and personal injury caused by guide dogs and other animals not covered by legislation.
- 7.7 There is some specific consideration of property damage caused by a guide dog or assistance animal outlined in section 9 of the *Disability Discrimination Act 1992*. It provides that a person must not treat people less favourably because a guide dog or assistance animal accompanies them but that this requirement does not affect the liability of a person with a disability for property damage caused by their guide dog or assistance animal. The effect of this section is to provide that common law rules apply.
- 7.8 At common law such claims would be pleaded under the scienter principle or alternatively in negligence.³ '[A]nyone who keeps a mischievous animal does so at his peril, being responsible for the harm it may do in indulging its dangerous instincts, provided he knows or is presumed to know its vicious disposition'.⁴ This proof is known as 'the scienter'.⁵
- 7.9 In the case of usually tame animals like dogs, the plaintiff must show that person in control of the animal knew that the particular animal was of a vicious disposition.
- 7.10 Liability for negligence in relation to damage or personal injury caused by an animal also turns on whether the owner or keeper of the animal 'knows, or ought to know, of a dangerous propensity of the animal, and if other necessary elements of the cause of action are established'.⁶
- 7.11 It should be noted that in the vast majority of cases where liability is found, it is attributed to the owner or keeper of the animal. The only circumstance where liability might rest elsewhere is where a training organisation is found to have passed the animal for public access knowing that it was of a vicious disposition.
- 7.12 The commission considers that it would be highly unlikely that a service provider which is obliged by law to grant access to an assistance animal would then be liable for property damage or personal injury caused by the animal. The commission found no cases where a business or public institution has been found liable for the acts of an animal not owned by it.

¹ See, eg, consultations 16 (Community Forum); 7 (Transport Roundtable).

² Consultation 7 (Transport Roundtable).

³ There is some overlap between a claim in scienter and negligence. A scienter claim differs from a claim in negligence primarily because of its strict liability operation in the case of species recognised as inherently dangerous (such as tigers). Knowledge of a vicious propensity in the animal must be proven to make out a claim in scienter, however, it will also be a factor in determining the standard and duty of care in a claim in negligence.

⁴ John Fleming, *The Law of Torts* (9th ed, 1998) 399.

⁵ *Ibid* 402.

⁶ *Aleksoski v State Rail Authority* (NSW) [2000] NSWCA 19 [22] (Mason P).

INSURANCE

- 7.13 During consultation it was suggested that the person with a disability should take out insurance for their animal to assist in the case of any damage.⁷ However, to compel this would be discriminatory as no other dog owners are currently required to take out such insurance.⁸ It was recognised that such a requirement may present financial difficulties for people with disability who may already be living on a low or fixed income.⁹
- 7.14 Currently, there are a range of practices regarding insurance for the assistance animals. For some organisations, such as SEDA, the animal remains the property of the organisation for life. As such, the animal is covered by SEDA public liability insurance.¹⁰ A.W.A.R.E Dogs Australia requires that people who have dogs trained by the organisation are members, and all members are covered by the organisation's insurance scheme.¹¹
- 7.15 However, for other training organisations, once the animal has completed its training and is delivered to and tested in its new home, liability moves with it.¹²
- 7.16 Some people noted that guide dog users who would like to insure their dog against loss or theft, are unable to do so to their full value under general insurance products. It should be noted that the cost of replacing an assistance animal, both financially and in terms of the independence of the person with disability, is very high.

CONCLUSIONS

- 7.17 Issues around liability and insurance appear to be hypothetical as there have been no reported instances of liability having arisen in the past. However, mindful that the public debate may be skewed by unnecessary concern that dogs will attack, or that liability will arise, we recommend the inclusion in legislation of an avoidance of doubt provision.
- 7.18 It should also be noted that in omitting section 7 of the *Domestic (Feral and Nuisance) Animals Act 1994*, the current exemption for guide dogs from section 29 would be removed, and they, along with other assistance dogs would be brought under the statutory scheme described above.

RECOMMENDATION

27. For the avoidance of doubt the *Equal Opportunity Act 1995* should specify that a person possessing or accompanied by an assistance dog does not affect their liability for personal injury or property damage caused by the dog.

COMMUNITY EDUCATION

- 7.19 During consultation, many people said that community education is absolutely vital if the commission's proposed reforms are to be effective. This was a significant concern for both service providers and consumers.¹³
- 7.20 Blind Citizens Australia noted that '[d]espite the EOA's release in 1995 and the DDA in 1992, many businesses, particularly small businesses, are unaware of their obligations under the Act'.
- 7.21 Some people conflated the issues of refusal to allow an assistance animal with cultural issues, including religious perspectives on the cleanliness of dogs. This was often based on media portrayals of the taxi industry. The commission notes that the Department of Transport '*Taxi Customer Rights & Responsibilities*' clearly state that customers have the right to be accompanied by a guide or hearing dog.¹⁴ This is displayed in every Victorian taxi.
- 7.22 The Disability Discrimination Legal Service was mindful of cultural issues and the need to resolve issues in a culturally sensitive manner without offending the rights of the person with disability. They provided a case study where a blind university student who uses a guide dog was denied access on her first attempt to use the prayer room at university. In that case a compromise was reached which allowed her to bring the guide dog to the entrance of the prayer room after which she would be provided direct assistance by another female student to and from the remainder of the prayer room.¹⁵

- 7 Consultation 7 (Transport Roundtable).
- 8 Consultation 18 (Human Rights and Equal Opportunity Commission).
- 9 Consultation 7 (Transport Roundtable).
- 10 Consultation 17 (Seeing Eye Dogs Australia).
- 11 Consultation 6 (A.W.A.R.E. Dogs Australia).
- 12 Consultation 2 (Lions Hearing Dogs Australia).
- 13 See, eg, Consultations 1 (Jaebn Saunders); 5 (Transport Accident Commission); 19 (Disability Reference Group, Victorian Equal Opportunity and Human Rights Commission); submission 5 (Anne-Marie Kelly).
- 14 Department of Transport [Victoria], *Taxi Customer Rights and Responsibilities* (2008) <www.doi.vic.gov.au/DOI/Internet/vehicles.nsf/AllDocs/C5FF8F5AFBF918F0CA257266001799F5?OpenDocument> at 8 September 2008.
- 15 Submission 25 (Disability Discrimination Legal Service).



- 7.23 It was noted that while guide dogs are well recognised in the community, other forms of assistance animals are less well known. It was noted in one consultation that even having a black Labrador goes beyond the public stereotype of an assistance animal.¹⁶
- 7.24 Anne-Marie Kelly stressed ‘we need lots of public education so people realise there are different types of assistance dogs, and people have a right to use them’.¹⁷
- 7.25 This creates significant challenges for service providers who may have to educate large numbers of staff. Keeping the law simple and removing front-line staff from having to make decisions about what is or is not an assistance animal was a major concern for both private and public sector providers, as was promoting better community understanding of the right to be accompanied by an assistance animal.
- 7.26 The Department of Transport noted:
- A broad public awareness campaign to coincide with any changes in legislation in this area would be a great support to the Department of Transport and public transport service providers in educating public transport users about the rights of handlers of assistance animals to access public transport, whether they are alleviating a disability of their handler, or in training.*¹⁸
- 7.27 Some people felt that owners or proprietors of businesses, establishments, premises or facilities open to the public should be required to display appropriate signage about assistance.¹⁹
- 7.28 An innovative scheme in the United Kingdom was noted, where 2008 has been designated the ‘year of the assistance dog’. As part of the launch of this community education campaign, Virgin Trains received an excellence award. They were acknowledged for a range of accessibility initiatives including Braille signage, in-carriage display screens for the hearing impaired, designated space for wheelchair users and ‘watering holes’ for assistance dogs on train platforms’.²⁰ This shows that it makes good business sense to provide inclusive services and that making these accommodations can be the core business of a major transport provider. Interestingly, 10 Downing Street and the UK Cabinet Office have also been given an award.²¹
- 7.29 The commission notes the community education work already undertaken by disability advocacy organisations and assistance animal training organisations.²² We also note the work of the Victorian Equal Opportunity and Human Rights Commission in educating the community about human rights, including freedom from discrimination. The commission believes additional resources should be made available to build upon these efforts with a specific focus on educating the community, including service providers about the right to be accompanied by an assistance animal.

RECOMMENDATION

28. That the Victorian Government fund the Victorian Equal Opportunity and Human Rights Commission to undertake community education to increase awareness of the rights of people with disability to be accompanied by an assistance dog. Specific campaigns should be undertaken in partnership with industry bodies including those from the hospitality, transport and accommodation sectors.

NATIONAL CONSISTENCY

- 7.30 Many people, while welcoming the commission’s work on assistance animal law, highlighted that reform is needed on a national level. Aside from mutual recognition issues discussed in Chapter 6, there was a general concern that harmonisation of laws occur sooner rather than later.
- 7.31 As noted by the Qantas Group ‘it would clearly be preferable for the introduction of a regulated assistance dog system, and its interaction with discrimination, safety and other legislation and standards, to be a nationally consistent system’.²³
- 7.32 Although Victoria can reform its own assistance animal laws to promote clear and effective

16 Consultation 14 (Assistance Dogs Australia).

17 Submission 5 (Anne-Marie Kelly).

18 Submission 18 (Department of Transport).

19 Submission 25 (Disability Discrimination Legal Service).

20 Assistance Dogs UK, ‘Virgin Trains Provide First Class Service for Guide and Assistance Dogs’ (Press Release, 6 March 2008) <www.assistedogs.org.uk/awards.htm> at 5 September 2008.

21 Assistance Dogs UK, ‘10 Downing Street & the Cabinet Offices’ (Press Release, 6 March 2008) <www.assistedogs.org.uk/awards.htm> at 5 September 2008.

22 Submission 17 (Blind Citizens Australia).

23 Submission 21 (The Qantas Group). See also submission 17 (Blind Citizens Australia).

regulation, it cannot address problems arising from Commonwealth legislation. However, reforming Victorian laws to remove current anomalies will certainly help to address the problems identified in this report and go some way towards greater consistency with federal law by ensuring all people with disability enjoy equal protection.

- 7.33 The current review of the EOA provides the Victorian Government with an ideal opportunity to enact such reform. Similarly, upcoming amendments to the DDA provide a window of opportunity to better protect the rights of people with disability and promote certainty for service providers and the community at large.
- 7.34 Promoting uniformity across Australian laws would complete the task. SCAG has agreed to consider options for harmonising Commonwealth, State and Territory anti-discrimination laws.²⁴
- 7.35 The law governing the use of assistance animals should be the same in each Australian jurisdiction. People who use assistance animals travel throughout Australia. They should be able to do so with confidence that their right to use an assistance animal in all aspects of daily life will be supported and promoted wherever they may be in the country. We have been unable to identify important points of principle which may justify different laws in different places. We urge SCAG to give this area priority when considering harmonisation of Commonwealth, State and Territory anti-discrimination laws.

24 Standing Committee of Attorneys-General *Communiqué* 28 March 2008 < www.attorneygeneral.gov.au/www/ministers/robertmc.nsf/Page/RWPA7434F9ED00CDACBCA25741A003910D7 > at 19 September 2008

Chapter 7

Other Issues



Appendix



Appendix 1

SUBMISSIONS	
1	Karl Hell
2	Anonymous
3	Confidential
4	George Wisely
5	Ann-Marie Kelly
6	Penny Stevenson
7	Darebin Disability Advisory Committee
8	Australian Support Dogs Incorporated (ASDOG)
9	Paws for Diabetics
10	WA Assistance Animals Inc.
11	Virgin Blue Airlines
12	Brian Graham
13	Geoff Morris
14	Liz Oehm
15	Confidential
16	Judy Mugavin
17	Blind Citizens Australia
18	Department of Transport
19	Vision Australia
20	Public Interest Law Clearing House
21	Qantas Airways Limited
22	Victorian Equal Opportunity and Human Rights Commission
23	Department of Primary Industries
24	Assistance Dogs Australia
25	Disability Discrimination Legal Service Inc
26	Anonymous
27	Belinda Jane
28	Liz Schneider

Appendix 2

CONSULTATION MEETINGS	
1	Jaebin Saunders
2	Lions Hearing Dogs Australia
3	Victorian Taxi Directorate, Department of Transport
4	Disability Aid Dogs Australia
5	Transport Accident Commission
6	A.W.A.R.E. Dogs Australia
7	Transport Roundtable
8	Brian Graham
9	Public Transport Ombudsman
10	Guide Dogs Victoria
11	Disability Discrimination Legal Service
12	Public Transport Access Committee
13	Municipal Association of Victoria
14	Assistance Dogs Australia
15	Restaurant and Catering Victoria
16	Community Forum
17	Seeing Eye Dogs Australia
18	Human Rights and Equal Opportunity Commission
19	Disability Reference Group, Victorian Equal Opportunity and Human Rights Commission

Appendix 3

OTHER JURISDICTIONS

INTRODUCTION

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)

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.

The Act provides that a person with a disability¹, 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.² It also prohibits additional charging when an assistance animal accompanies a person.³ 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.⁴

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.⁵

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.⁶

NEW SOUTH WALES (NSW)

In NSW, as in Victoria, assistance animals are regulated under legislation that deals with all sorts of animals including pets and dangerous dogs. Specific anti discrimination provisions also apply.

The *Anti-Discrimination Act 1977* prohibits discrimination on the ground of disability.⁷ Discrimination includes treating a person less favourably because of their disability, or requiring that person to comply with a condition that is unreasonable in the circumstances.⁸ An Act is considered to be 'on the grounds of a person's disability' when it is done on the basis of a characteristic common to people who have that disability.⁹ The use of a dog which assists the person in respect of that disability is such a characteristic.¹⁰

The *Companion Animals Act 1998* defines an assistance animal as one referred to in section 9 of the Commonwealth DDA.

Part 6 of the Act deals with assistance animals.¹¹ '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'.¹² The Act contains no provision as to whether this entitlement would include the use of a companion animal while it is in training.

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.¹³ These provisions are enforced by a maximum penalty of eight units.¹⁴

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.¹⁵

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.¹⁶ Owners can claim a registration fee exemption.¹⁷

- 1 The definition of disability is the same as that in the *Disability Discrimination Act 1992* (Cth) s 4.
- 2 *Domestic Animals Act 2000* (ACT) s 104.
- 3 *Domestic Animals Act 2000* (ACT) s 106.
- 4 *Domestic Animals Act 2000* (ACT) s 105.
- 5 *Domestic Animals Regulation 2001* (ACT) Part 2 (5)(d) and (6)(d).
- 6 *Discrimination Act 1991* (ACT) s 9.
- 7 *Anti-Discrimination Act 1977* (NSW) s 49B.
- 8 *Anti-Discrimination Act 1977* (NSW) s 49B(1)(a) and (b).
- 9 *Anti-Discrimination Act 1977* (NSW) s 49B(2).
- 10 *Anti-Discrimination Act 1977* (NSW) s 49B(3).
- 11 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).
- 12 *Companion Animals Act 1998* (NSW) s 59.
- 13 *Companion Animals Act 1998* (NSW) ss 60-62.
- 14 *Companion Animals Act 1998* (NSW) s 60(1).
- 15 *Companion Animals Act 1998* (NSW) sub-s 96(1)(e).
- 16 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.
- 17 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/documents/Forms/R2_Lifetime_Registration.pdf> at 11 September 2008.

NORTHERN TERRITORY

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.¹⁸ It includes reliance on such animals as an attribute upon which discrimination is prohibited.¹⁹

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.²⁰ This provision applies regardless of any other Territory law.

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

Some local council by-laws exempt owners of guide dogs from certain offences.²¹ These include an exemption ‘if the dog, when at large, is not under effective control’.²²

QUEENSLAND

The *Guide Dogs Act 1972* recognises guide and hearing dogs.²³ There is a specific definition of trainee assistance animals that imposes additional identification, training and ownership requirements.²⁴

The general right of access contains some limitations. Both trained and untrained guide dogs are not permitted in ambulances and certain parts of a hospital, including labour wards, operating theatres and areas where food is prepared. Guide dog trainees are not permitted in national parks.

Queensland addresses the issue of training standards by approving assistance animal partnerships or the organisation that trains them.²⁶ Only assistance animals trained at ‘approved institutions’ are recognised.²⁷ Declaration as an ‘approved Queensland institution’ is by regulation.²⁸ 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.²⁹

Queensland is the only state that specifically provides for the approval of training organisations located outside its borders.³⁰ 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.³¹ 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.

REFORMS IN QUEENSLAND

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*.³² 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.³³

The commission understands that a detailed reform proposal is now under consideration by the Minister for Disability Services. A consultation draft bill was released in 2007. It has not yet been introduced into Parliament as a formal Bill. The main elements of the consultation draft bill are as follows.

The consultation draft bill creates a broad right for a person with a disability to be accompanied by a hearing, guide or assistance dog (hereafter in this section ‘assistance dog’) in a public place or public passenger vehicle.³⁴ Entry to a public place also must not be refused to a trainer, employee trainer or puppy walker accompanied by an assistance dog.³⁵

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

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

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

21 Note that ‘guide dog’ is defined differently in different by-laws.

22 See, eg, *Jabiru Town Development (Control of Dogs) By-Laws* as in force at 14 December 2005, by-law 21; *Tenant Creek (Control of Dogs) By-Laws* as in force at 14 December 2005 bl 5.

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

24 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.

25 *Guide Dogs Regulations 1997* (Qld) reg 6.

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

27 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) 8 <www.disability.qld.gov.au/key-projects/assistance-guide-dogs/documents/review_discussion_paper.pdf> at 13 August 2008.

28 *Guide Dogs Regulation 1997* (QLD). Guide Dogs Queensland is the approved Queensland institution, *ibid* 13.

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

30 *Guide Dogs Regulation 1997* (QLD) reg 3, sch 1.

31 *Guide Dogs Regulation 1997* (QLD) reg 3.

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

33 *Ibid* 16-20.

34 Guide, Hearing and Assistance Dogs Bill 2007 (QLD) (Consultation Draft) cl 9.

35 Guide, Hearing and Assistance Dogs Bill 2007 (QLD) (Consultation Draft) cl 13.

Appendix 3

The use of an identity card is a central aspect of the proposed legislation. It requires that a person accompanied by an assistance dog in a public place carry with them, and produce on request, an identity card.³⁶ The card identifies that the person is authorised to be accompanied by an assistance dog and also indicates whether the person is a handler or trainer.³⁷ In addition, there is a requirement that the dog itself wear an identifying harness or coat.³⁸

Trainers of assistance animals must be approved and specific requirements must be met in order for a person to obtain approved status. These include that the person is able to train reliable dogs that are 'safe and effective' in public places. Among other things³⁹, the person must be able to train dogs to perform identifiable physical or behavioural tasks for the benefit of a person with a disability.⁴⁰

Finally, Part 10 establishes an advisory committee.⁴¹ Its role is to make submissions to the chief executive officer about the suitability of a person to be an approved trainer of assistance dogs. It would consist of six people. At least one must be a person with expertise in dog training and another with expertise in animal welfare. The remaining four can include a person with a disability who is assisted by a guide, hearing or assistance dog, departmental and/or local government representatives and/or a representative from the Disability Council of Queensland.

SOUTH AUSTRALIA

As well as recognising guide and hearing dogs⁴² 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'.⁴³

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.⁴⁴ Falsely claiming a dog is an assistance animal attracts a penalty of up to \$250.

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.⁴⁵

'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.⁴⁶

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.⁴⁷

The Board is able to set its own criteria for accreditation, but is bound by legislative criteria for revoking accreditation.⁴⁸ Unless accreditation is revoked or surrendered, it remains in force for the life of the dog.⁴⁹

The Board is required to keep a register of all accredited assistance animals.⁵⁰ The assistance animals register is available for public inspection at no charge.

TASMANIA

The *Guide and Hearing Dogs Act 1967* creates access rights for guide dogs users and trainers in relation to public places, accommodation and services, including transport. 'Guide dog' includes both seeing and hearing dogs, including trainee dogs.⁵¹ Hence, the legislation establishes rights for people with sight or hearing impairments only.

The Royal Guide Dogs for the Blind Association of Tasmania is the only approved assistance animal training organisation.⁵² 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.

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

- 36 Guide, Hearing and Assistance Dogs Bill 2007 (QLD) (Consultation Draft) cl 7(1)(a).
- 37 Guide, Hearing and Assistance Dogs Bill 2007 (QLD) (Consultation Draft) cl 7(3).
- 38 Guide, Hearing and Assistance Dogs Bill 2007 (QLD) (Consultation Draft) cl 7(1)(b).
- 39 The prospective trainer must also be able to select suitable dogs and provide ongoing and regular support to their handlers: Guide, Hearing and Assistance Dogs Bill 2007 (QLD) (Consultation Draft) cl 14(a)(ii)-(iii).
- 40 Guide, Hearing and Assistance Dogs Bill 2007(QLD) (Consultation Draft) cl 14(a)(i).
- 41 Guide, Hearing and Assistance Dogs Bill 2007 (QLD) (Consultation Draft).
- 42 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.
- 43 *Dog and Cat Management Act 1995* (SA) ss 4, 81.
- 44 *Dog and Cat Management Act 1995* (SA) s 81.
- 45 *Dog and Cat Management Act 1995* (SA) s 21A(1).
- 46 <www.dogsncats.asn.au/webdata/resources/files/Assessment_Criteria_for_disability_dogs.pdf> at 16 June 2008.
- 47 Information provided by Lions Hearing Dogs, 19 June 2008.
- 48 *Dog and Cat Management Act 1995* (SA) s 21A(2) and (3).
- 49 *Dog and Cat Management Act 1995* (SA) s 21A(4).
- 50 *Dog and Cat Management Act 1995* (SA) s 21A(5).
- 51 *Guide Dogs and Hearing Dogs Act 1967* (TAS) s 2.
- 52 *Guide Dogs (Approved Institution Order) 2006* (Tas) s 3.

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.⁵³ 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.⁵⁴

Tasmanian anti discrimination legislation interacts with the *Guide Dogs and Hearing Dogs Act* to provide broad protection against 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*.⁵⁵ 'Guide dog' is not defined.

WESTERN AUSTRALIA

Western Australia recognises people with vision impairments partnered with guide dogs in the *Dog Act 1976*.⁵⁶ 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.⁵⁷

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.⁵⁸

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.⁵⁹ However, the legislation also allows people partnered with guide dogs trained outside of approved organisations to apply directly to the Minister for individual approval.⁶⁰ The Minister receives one or two such applications per year.

REFORMS IN WESTERN AUSTRALIA

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.⁶¹

Legislative amendments are expected shortly.

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

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

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

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

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

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

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

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

61 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> 28 February 2007 .

Appendix 4

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

Glossary

An **accreditation scheme** is a formal system for confirming that an organisation or person providing a service meets predetermined standards.

Assistance animal is one trained to help a person with a disability to alleviate the effects of that person's disability.

Assistance animal handler describes the person assisted by the assistance animal.

Assistance animal partnership refers to both the assistance animal and its handler.

Attribute is the term used in legislation to describe a characteristic of a person, for example gender.

Companion animals are pets.

Co-morbidities describes the situation where a person has more than one form of disability.

Derogate means diminish.

Direct discrimination occurs when a person with an attribute protected by anti-discrimination legislation is treated less favourably, because of that attribute, than another person who does not possess that attribute.

Disability is the word used in the *Disability Discrimination Act 1995 (Cth)* to describe the attribute or ground upon which it is unlawful to discriminate against a person.

A **duty of care** is a legal obligation to avoid harm. It arises where harm is foreseeable if due care is not taken.

Formal equality requires that similarly situated people be treated equally.

A **guide dog**, **dog guide** or **seeing eye dog** is trained to assist people with a visual impairment.

A **hearing dog** assists people with a hearing impairment.

Impairment is the word used in the *Equal Opportunity Act 1995 (Vic)* to describe the attribute or ground upon which it is unlawful to discriminate against a person.

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.

A **mobility dog** is trained to help people who have reduced motor skills, mobility problems, or difficulty walking or moving.

Mutual recognition schemes are those that operate between states and territories to ensure that legal recognition in one place automatically entitles you to recognition in another place. For example, a doctor who trains in Queensland is eligible for registration as a medical practitioner in Victoria.

Negligence occurs when a person breaches the duty of care they owe to another, and as a result the person to whom the duty is owed suffers material damage.

Psychiatric service dogs are trained to provide support to people with psychiatric disabilities.

Public access test is a test administered by a trainer to check that the assistance animal meets minimum standards.

Reasonable adjustments are those measures that need to be taken to ensure a person can have equal access. It excludes adjustments that would cause unjustifiable hardship or are not reasonable.

Regulation means delegated legislation. Regulations are made under a power contained in the primary legislation (the Act).

A **schedule** is located at the back of an Act of Parliament and forms part of the legislation.

Scienter is a legal term meaning knowingly.

Seizure and **alert dogs** are trained to assist their handlers before and during a medical emergency such as an epileptic seizure or diabetic episode.

Substantive equality requires measures to be taken to ensure equality of outcomes.

A **trainee assistance animal** is one that is undergoing training to assist a person with a disability.

Unjustifiable hardship operates as a defence to a claim of disability discrimination under Commonwealth law. The person who has discriminated must prove that they were compelled to discriminate because to have done otherwise would have caused them a level of hardship that cannot be justified in the circumstances.

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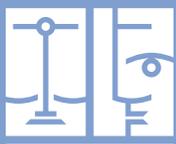
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