

Office of the
Director-General

Department of
**Communities, Child Safety
and Disability Services**

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29 JUL 2015

Ms Leanne Donaldson MP
Chair
Communities, Disability Services and Domestic
and Family Violence Prevention Committee
Parliament House
BRISBANE QLD 4000

Dear Ms Donaldson

Thank you for your letter regarding the Communities, Disability Services and Domestic and Family Violence Prevention Committee's (the Committee) examination of the Guide, Hearing and Assistance Dogs Amendment Bill 2015 (the Bill).

The *Guide, Hearing and Assistance Dogs Act 2009* (the Act) promotes the access rights of people with disability to enter public places, public passenger vehicles and places of accommodation. In doing so, it recognises the important role guide, hearing and assistance dogs play in enriching the lives of people with disability and enabling them to independently access their community and participate more broadly.

In relation to your request, please find enclosed the Department of Communities, Child Safety and Disability Services' written briefing on the Bill. It contains an overview of the Act, a summary of the review of the Act that was undertaken as well as an explanation of the key amendments which are included in the Bill.

Mr Jason Kidd, Acting Executive Director, Legislative Reforms is nominated as the departmental officer who will serve as your primary point of contact for the remainder of the inquiry.

If you require any further information or assistance in relation to this matter, please do not hesitate to contact [REDACTED]

I trust this information is of assistance.

Yours sincerely

[REDACTED]
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Director-General

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BRIEFING FOR THE COMMUNITIES, DISABILITY SERVICES AND DOMESTIC AND FAMILY VIOLENCE PREVENTION COMMITTEE

Examination of the Guide, Hearing and Assistance Dogs Amendment Bill 2015

Department of Communities, Child Safety and Disability Services

1. Background

Guide, hearing and assistance dogs are working dogs specifically trained to allow people with disability to participate in all aspects of society.

People with disability may require the support of these specially trained dogs that perform tasks and functions alleviating some of the effects of a person's disability, enhance the person's independence, and reduce their need for support. These dogs are not a pet or a 'companion' dog.

Examples of tasks and functions these dogs perform include:

- supporting a person with vision impairment (guide dog);
- alerting people with a hearing impairment to a sound (hearing dog); and
- pulling wheelchairs or carrying and picking up items for people with mobility impairments (assistance dog).

The *Guide, Hearing and Assistance Dogs Act 2009* (the Act) creates a right of access for people with disability who rely on certified guide, hearing or assistance dogs to a public place (for example, a shopping centre); public passenger vehicle (for example, a taxi); or place of accommodation (for example, rental and holiday accommodation). It prescribes an identification procedure to ensure that people with disability and their certified dog can be easily recognised by the public as being properly certified under the Act.

The Act also provides the framework for trainers and training institutions to apply to be approved trainers and training institutions, and sets an industry standard for the training of guide, hearing and assistance dogs. The benefits of having a dog trained by an approved trainer or training institution is to ensure the dogs are of consistent quality and standard.

This brief will detail:

- overview of the Act and how it works;
- the process and outcome of a review of the Act; and
- overview of the Bill and proposed amendments.

2. Overview of the Act

Objects

The objectives of the Act are to:

- assist people with disability who rely on certified guide, hearing and assistance dogs to have independent access to the community; and
- ensure the quality and accountability of guide, hearing and assistance dog training services.

The objectives of the Act are achieved primarily through the:

- creation of access rights;
- approval of trainers and training institutions;
- certification of guide, hearing and assistance dogs; and
- issuing of handlers' identity cards.

Creation of access rights

Part 2 of the Act creates a right of access for a person who relies on a certified guide, hearing or assistance dog to:

- a public place;
- public passenger vehicle; and
- place of accommodation (such as rental and holiday accommodation).

The right of access also applies to an approved trainer, employee trainer or puppy carer who is accompanied by a guide, hearing, assistance or trainee support dog.

Section 12 of the Act sets out the identification procedure a dog handler needs to comply with in order to invoke access rights. They are:

- displaying their handler's identity card, or having it available for inspection; and
- ensuring their dog is wearing a harness or identifying coat (depending on the type of dog).

Section 13 provides that it is an offence under the Act for a person in control of a public place, public passenger vehicle or place of accommodation to refuse entry, or to separate the person with disability from their guide, hearing or assistance dog (maximum penalty is 100 units). Part 8 of the Act allows for the appointment of authorised officers, and gives them powers to monitor, investigate and enforce compliance with the Act.

Approval of trainers and training institution

Part 3, Division 1 of the Act sets minimum standards to determine suitability for approval as an approved trainer or training institution. These standards include the ability to:

- train reliable guide, hearing or assistance dogs that are:
 - able to perform identifiable physical tasks and behaviours for the benefit of a person with disability;
 - safe and effective in public places and public passenger vehicles;
- select dogs that are able to meet the individual needs of a person with disability;
- provide ongoing and regular support to the handlers of the guide, hearing or assistance dogs trained.

The Act provides assurance and certainty to the community and businesses that certified guide, hearing and assistance dogs trained by approved trainers and training institutions are of robust standards and quality.

The Act is an opt-in scheme and does not require all trainers or training institutions to be approved under the Act. Currently, there are 11 institutions and six individual trainers who have opted in and received approval under the Act. Private trainers who do not opt in to the scheme can also train guide, hearing or assistance dogs. However, these private (unapproved) trainers and the guide, hearing and assistance dogs they train are not covered by the Act.

This means that users of the dogs trained by private (unapproved) trainers cannot enforce access rights under the Act. However, they still have other remedies under Commonwealth or State discrimination laws.

Certification of guide, hearing and assistance dogs

Part 4, Division 2 of the Act sets out minimum standards for approved trainers and training institutions to meet when certifying a guide, hearing or assistance dog. These standards include if the dog:

- is able to be used as a guide or aid by a person with disability (depending on the nature of their disability);

- has passed the public access test (which confirms the dog is effective and safe in public places, public passenger vehicles or places of accommodation, and is able to be controlled by the handler);
- is not a restricted breed under the *Animal Management (Cats and Dogs) Act 2008*
- is de-sexed and vaccinated; and
- has not been declared a dangerous dog under a local law.

Issuing of handlers' identity cards

Part 5 of the Act deals with the issuing of handlers' identity cards by the Department of Communities, Child Safety and Disability Services (the Department). The Act requires a person who relies on a certified dog to carry a handler's identity card. This helps members of the public and people in charge of public places, vehicles and places of accommodation to recognise the dog as a certified guide, hearing or assistance dog.

This is particularly important given the Act makes it an offence for a person in control of a public place, place of accommodation or a public passenger vehicle to refuse service or entry to a person because they are accompanied by a certified guide, hearing or assistance dog, or a trainee support dog. The Act requires handlers to identify themselves by displaying their handler's identity card or producing it upon request. By meeting this requirement, the handler is ensured that their access rights are enforced and protected.

3. Review of the Act

Stakeholder review panel

In 2013, a stakeholder review panel was established to undertake a review of the Act. The panel consisted of representatives from government agencies, statutory body, the dog training industry, an advocacy organisation, and the tourism and accommodation sectors – including:

- Anti-Discrimination Commission
- Assistance Dogs Australia
- Department of Tourism, Major Events, Small Business and the Commonwealth Games
- Department of Transport and Main Roads
- Department of Housing and Public Works
- Disability Aid Dogs Australia
- Guide Dogs Queensland
- Lions Hearing Dogs
- Queensland Advocacy Incorporated
- Queenslanders with Disability Network
- Queensland Tourism Industry Council
- Real Estate Institute of Queensland
- Residential Tenancies Authority
- Smart Pups Assistance Dogs for Special Needs Children Inc.
- A specialist dog trainer
- Vision Australia.

The Terms of Reference for the review were to assess and advise if:

- the Act meets its objective to support the rights of people who rely on certified guide, hearing and assistance dogs to access the community
- the Act meets its objective to ensure the quality of dog training institutions
- the Act operates as efficiently and effectively as possible in meeting these objectives
- whether there are other ways of better meeting these objectives.

The review commenced in late 2013 and concluded in mid-2014. The panel met four times and was asked to identify and prioritise key issues in the administration and operation of the Act, and these formed the basis of key topics for discussion as part of the review.

Stakeholder review panel recommendations

The overall view from the stakeholder review panel was that the Act is working well and should continue as is. As such, the panel only made modest legislative and administrative recommendations set out below to 'tweak' the Act and enhance administration of the framework.

Outcomes of the review were released and are published on the department's website at <https://www.communities.qld.gov.au/disability/key-projects/guide-hearing-and-assistance-dogs/review-of-the-guide-hearing-and-assistance-dogs-act-2009>

The table below summarises the findings and recommendations of the panel.

Recommendation	Rationale
LEGISLATIVE	
Make amendments to: <ul style="list-style-type: none"> authorise approved trainers or training institutions to issue handler identity cards, and not government maintain government oversight role to ensure identity cards are used properly 	<ul style="list-style-type: none"> Simplifies processes and provides a one-stop-shop for guide, hearing and assistance dog users to have their dogs certified and to obtain identity cards, under the Act Also ensures government maintains a regulatory role to prevent fraud or misuse of identity cards, and to be able to enforce the Act effectively
Relax legislative requirements for proof of a person's disability every time a person renews their identity card	<ul style="list-style-type: none"> Simplifies process and removes unnecessary restriction to provide proof of a permanent disability each time a person applies for an identity card
Make amendments to recognise a handler team, that is, the person with disability and their support person who assists them in controlling the dog	<ul style="list-style-type: none"> Removes unnecessary restrictions and allows more people with disability to obtain handler identity cards and enforce their rights under the Act For example, a child with autism (who cannot control the dog) and their parent (who can assist) could apply to have a handler identity card
Retain existing arrangements for approval of trainers and training institutions AND Make amendments to rename the advisory committee as an expert panel	<ul style="list-style-type: none"> Panel considered present arrangements and industry self-regulation are working Provides more flexibility and allow the CEO to call upon relevant experts from time to time to inform the approval and standards setting process (rather than establishing a formal advisory committee)
Remove section 39(2) which prevents an approved training institution certifying a guide, hearing or assistance dog of a director, shareholder or employee trainer of that institution	<ul style="list-style-type: none"> Removes unnecessary requirements in the certification process and promotes access rights for people with disability

ADMINISTRATIVE	
Maintain the certification process AND Make small improvements to the public access test to include some simple explanatory notes	<ul style="list-style-type: none"> • Panel considered that current arrangements are working well • Practice improvements to the public access test will strengthen its effectiveness and usability
Develop a joint communication strategy between government and industry to increase awareness of the Act	<ul style="list-style-type: none"> • Effectiveness of the Act and accessibility for people with disability relies heavily on community and business awareness about the Act and the needs of people with disability • The department will work closely with industry representatives to develop material that is relevant, accessible and distributed through established networks
NO CHANGE	
No change proposed to automatically recognise interstate trainers	<ul style="list-style-type: none"> • Given interstate variations in standards and differences in types of dogs recognised in each jurisdiction, this approach ensures Queensland's standards are maintained • Interstate trainers can apply to be approved under the Act as they do now

Proposed amendments separate from the stakeholder panel review

Separate from the stakeholder panel review, the department has identified an issue in relation to the monitoring, investigative and enforcement provisions under the Act. This was highlighted by a recent complaint under the Act. This complaint has provided the impetus to review all of the provisions in Part 8 of the Act to pinpoint where improvements could be made.

To identify the necessary changes, a comparison was undertaken of the current powers provided to authorised officers under the Act with the powers granted to inspectors under Chapter 2, Part 2 of the *Fair Trading Inspectors Act 2014* (the FTIA). This comparison has served a dual purpose. First, it has allowed for any 'gaps' within the current suite of enforcement provisions in the Act to be recognised. Second, the FTIA has served as a relevant example on which to model any changes to the Act.

The two main changes include:

- the power to request information
- additional powers of entry which would allow an authorised officer to enter by way of warrant.

The proposed changes will provide a continuum of measures to an authorised officer when conducting an investigation and allow the officer to be able to deal with the most cooperative of business to a recalcitrant one.

The table below sets out the proposed legislative changes.

Proposed legislative amendments	Rationale
Include additional investigative and enforcement provisions	<ul style="list-style-type: none"> • <u>Power to request information</u> – equips authorised officers under the Act with the power to require information from third parties, by way of correspondence or through other means. The power will enable the officer to request any information that would be relevant for the purposes of investigating, monitoring and enforcing compliance with the Act • <u>Warrant power</u> – allows for entry to premises by warrant for the purposes of investigating, monitoring and enforcing compliance with the Act

In June 2015, the Minister for Disability Services, Minister for Seniors, and Minister Assisting the Premier on North Queensland reconvened the stakeholder review panel to take the panel through the administrative recommendations and proposed legislative changes.

The panel was supportive of the proposed legislative changes, as well as the draft Bill.

4. Overview of the Bill and proposed amendments

The Bill implements the proposed legislative changes set out above to amend the Act. The key amendments are set out below.

Transferring the issuing of handlers' identity cards from government to approved trainers and training institutions

Currently, a dual system is in place with both government and approved training institutions issuing handlers' identity cards (note: only government-issued cards are recognised under the Act). Proposed amendments will reduce red tape and duplication by transferring the authorisation to issue cards for people with certified guide, hearing and assistance dogs from government to approved trainers and training institutions. In achieving this, the Bill strips back unnecessary processes by repealing provisions that deal with the application to government for a card as well as notice and decision requirements.

The benefits of enabling the sector to perform this function are two-fold. Firstly, it will provide for a one-stop-shop for people with disability to have a fully compliant dog under the Act. Following the certification of the dog by an approved trainer or training institution, a person with disability can be issued with a handler's identity card, without any need to engage in a government process or be 'double-handled'. Secondly, the removal of duplicative processes will allow approved trainers and training institutions to service their customers in a more streamlined fashion.

To maintain oversight of this process, the Bill includes provisions that will enable government to continue to set standards around the issuing of handler's identity cards.

These include:

- (1) stipulating the duration of the card itself
- (2) requiring trainers and training institutions to keep a register of identity cards issued, cancelled or suspended
- (3) setting minimum quality requirements for the cards (in particular, around the quality and standard of the photos of the handler and the dog).

Government will also hold other powers so that it can provide a level of quality assurance over the industry. For one, government will retain the power to suspend or cancel handlers' identity cards under certain grounds (for example, if evidence comes to light that a dog is a risk to the health or welfare of their handler or someone else). In addition, government will also be able to review how cards are issued by trainers and training institutions. If an approved trainer or training institution is found to be irresponsibly or fraudulently issuing cards, the approval of that trainer or institution may be suspended or cancelled.

The amendments contained in the Bill get the balance right – they empower the sector sufficiently while still maintaining an appropriate level of regulatory oversight and control by government. Most importantly, the changes significantly simplify processes for people with disability.

The primary clauses under the Bill that give effect to these amendments are Clauses 20, 21, 22, 23, 24, 25, 26, 28, 29, 31, 32, 33.

Removing the requirement for proof of disability every time a handler renews their identity card

Currently, an application for a handler's identity card must be accompanied by a certificate of disability for the applicant. This proof of disability must be submitted whenever any application is made – that is, whether it is an original or renewal application. On a practical level, these arrangements are unreasonable.

Under the new streamlined system, handlers will only be required to provide proof of their disability in the first instance by submitting a certificate of disability to their trainer. In accordance with the *Guide, Hearing and Assistance Dogs Regulation 2009* (the Regulation), approved trainers and training institutions will be required to keep a copy of the certificate of disability for the handler of each guide, hearing or assistance dog they certify (under section 7(3)(c) of the Regulation).

Handlers will no longer be required to re-submit a certificate of disability each time they seek the renewal of their handler identity card. The relaxing of this requirement will make what can be an overly bureaucratic and onerous task easier for people with disability.

The primary clause under the Bill that gives effect to this amendment is Clause 21.

Recognising the access rights of a handler team

Current requirements under the Act prevent a person with disability who requires a certified guide, hearing or assistance dog (the primary handler) who is not able to physically control the dog without the support of another person (the alternative handler) from obtaining a handler's identity card. For example, the access rights for a child with autism, who relies on an assistance dog and requires the support of their parent to control the dog, are not covered under the Act.

To overcome this, the Bill includes provisions which, in effect, recognise a handler team (a primary handler and an alternative handler). This is achieved by recognising the access rights of an alternative handler to be accompanied by a primary handler and the primary handler's certified guide, hearing or assistance dog in places of accommodation, public places and public passenger vehicles. Importantly, the access rights of an alternative handler are contingent on a number of criteria and can only be invoked in situations where the alternative handler is with the primary handler and their certified dog.

As a part of the certification process, trainers and training institutions will be required to be reasonably satisfied that the primary handler requires the support of an alternative handler to control the dog.

In acknowledging this, the Bill teases out the purpose of the public access test to assess if the certified dog can be physically controlled by:

- the primary handler
- the primary handler, with the support of the alternative handler (whereby the public access test will be administered in a way that assesses the primary handler and alternative handler's ability to control the dog, as a team).

To complement this reform, the Bill also authorises the issuing of identity cards to alternative handlers who meet certain eligibility requirements.

These include:

- the primary handler relies on the person to physically control the dog
- the alternative handler is able to physically control the dog.

The Regulation will also prescribe certain requirements about what must be included on an alternative handler's identity card, for example, a notation which cross-references the primary handler of the dog.

The alternative handler amendments are significant as they respond to calls from the community to recognise, in particular, the important role assistance dogs play in the cohesion of families who have a child with disability. The amendments will allow more people with disability to have their guide, hearing or assistance dog certified, obtain a handler's identity card, and properly enforce their access rights under the Act.

The primary clauses under the Bill that give effect to these amendments are Clauses 6, 7, 8, 9, 18, 20, 21.

Note: some further work is occurring around the terminology of "primary handler" and how it applies to situations in which a young child with disability requires the support of a parent to handle their guide, hearing or assistance dog. Options are to be canvassed with the Office of the Queensland Parliamentary Counsel to determine minor changes to the Bill to provide further clarification.

Providing flexibility for the Chief Executive to call upon expert advice in the approval and standard setting processes

Currently, the Act provides for the Chief Executive to establish an advisory committee to assist in the assessment of applications from trainers and training institutions seeking approval under the Act. However, this formal committee has never been established. In acknowledging this, the Bill repeals a number of unnecessary and unused provisions which provide for the creation of this committee, stipulate its membership and outline its functions.

In its place, the Bill recognises the power of the Chief Executive to consult with any entity they consider appropriate. This simple change will provide the Chief Executive (or his delegate) with greater flexibility to call upon the views of industry experts when considering applications and ensure the decision-maker has all the necessary evidence at their disposal to apply a rigorous and fair assessment. It will also provide further confidence to business and the community that guide, hearing and assistance dogs are being trained and certified by qualified trainers.

The primary clauses under the Bill that give effect to these amendments are Clauses 11, 12, 13, 14, 15, 47.

Allowing an approved training institution to certify the dog of a shareholder, director or employee trainer of that institution

Another barrier in the Act prevents training institutions from certifying a guide, hearing or assistance dog if the person with disability is an employee trainer, director or shareholder of the institution. The Bill will remove this barrier. In its place, training institutions will be empowered to actively manage any potential conflicts of interest through changes to the Regulation which will require institutions to keep records about disclosing and managing any potential conflicts of interest.

The primary clause under the Bill that gives effect to this amendment is Clause 19.

Equipping authorised officers with a greater continuum of powers to investigate, monitor and enforce compliance

Since the stakeholder panel review concluded, it was identified that further legislative amendments need to be made to strengthen the monitoring, investigative and enforcement powers in the Act. This was highlighted by a recent complaint under the Act in which Emirates refused to allow a person with vision impairment to have his guide dog accompany him in the cabin of an international flight (for which Crown Law advice was sought). This complaint has provided the impetus to review all provisions in Part 8 of the Act to pinpoint where improvements could be made.

As part of this review, the opportunity has been taken to update the monitoring, investigative and enforcement regime in the Act to better reflect the Office of Queensland Parliamentary Counsel's (OQPC) current drafting practices. This has resulted in various technical amendments to provisions in Part 8.

The two main policy changes reflected in the Bill include:

- the power to request information
- additional powers of entry which would allow an authorised officer to enter premises by way of warrant.

In order for the department to be able to properly investigate matters and build a brief of evidence, it must be able to request and assemble information from all parties (that is, both the complainant and the alleged offending party). Currently, the department is left to rely on the goodwill of third parties to cooperate when the department investigates a complaint. Should this 'goodwill' not be forthcoming, the department is significantly limited in its ability to oversee and enforce the administration of the Act, in particular, the objective to protect the access rights of people with disability.

As a result, the Bill amends the Act to provide authorised officers with a general power to request information. Authorised officers will be able to require persons to provide information if the officer believes an offence against the Act has been committed; and that a person may be able to give information relating to that offence.

The Bill also includes provisions which provide for the entry to premises by warrant. These will build on existing provisions in the Act which allow an authorised officer to enter a place if an occupier of the place consents to the entry; or it is a public place and the entry is made when it is open to the public; or it is not a home and the entry is made when the place is open for carrying on business or otherwise open for entry.

In order to obtain a warrant, an application will be required to be made to a magistrate. The magistrate may only issue a warrant for the place if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place for the next seven days, a particular thing or activity that may provide evidence of an offence against the Act.

The warrant power is intended as a last resort, if it is necessary to acquire further information, inspect anything at the premises or ask questions of persons. Authorised officers will be required to reasonably attempt to perform their function at the place without a warrant. The inclusion of this new power acknowledges that businesses that may be prosecuted by the department for their behaviour may not always be the most forthcoming in their compliance. It is unreasonable to rely solely on the goodwill of a business when conducting an investigation of a potential offence.

On the whole, changes to Part 8 of the Act are proactive and will equip authorised officers with the necessary powers to handle any future complaints. By improving the Act now, the department does not have to wait for a volume of cases (that it cannot adequately investigate due to deficient enforcement provisions) to build up before it addresses these enforcement capability issues. In particular, the inclusion of the two new powers will provide a continuum of measures to an authorised officer when conducting an investigation and allow the officer to be able to deal with the most cooperative of business to a recalcitrant one.

The primary clauses under the Bill that give effect to these amendments are Clauses 34 to 45.