

Date: 1 February 2012

Assistant Secretary
Human Rights Policy Branch
Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

By email: antidiscrimination@ag.gov.au

Dear Sir/Madam

Submission in Relation to Consolidation of Anti-Discrimination Laws - Assistance Animals

Queensland Rail supports the review of the current discrimination laws. It welcomes the opportunity to provide a submission for consideration in relation to these laws. In particular, Queensland Rail is experiencing difficulties complying with *Disability Discrimination Act 1992* (the DDA) with respect to section 9, which is designed to provide discriminatory free access to public places to people requiring assistance animals. There are a number of issues which will be outlined more fully below; however, fundamentally, the difficulties have arisen because of the uncertainty created by the widely drafted DDA.

Suggested solutions

Queensland Rail would prefer the federal Disability Discrimination Act to recognise and give preference to the state and territory animal assistance legislation, where it exists, to assist with the issues that are outlined in this paper.

Challenges for public transport providers

Queensland Rail provides public transport throughout Queensland and its individual passenger rail journeys are measured in the many millions each year. Crowded commuter trains and long distant regional trains pose unique conditions for both people and animals. The added stress for animals include crowded conditions, sudden unexpected movement of rollingstock, loud noises, unpredictable behaviour of children and others, unfamiliar smells and long distances between stops. In addition, some people experience extreme fear of dogs or are allergic to their fur. It is important that any animals allowed on public transport pose the least amount of disruption and discomfort to the travelling public. This can be addressed by good animal hygiene, rigorous training and clear expectations of what is acceptable behaviour for an assistance animal on public transport.

While Queensland Rail fully supports access to its services by people with disabilities including those with assistance animals, it also has responsibilities to its other passengers, including children and the elderly. It needs to have clarity and certainty around the identification of genuine assistance animals as well as belief in the effectiveness of the screening of animals that it permits on its services to ensure that they are clean, toilet trained and will not pose either a serious danger to other passengers or create a disturbance. In addition, the inability to rely on the rigor of the training and certification of assistance animals when they are on Queensland Rail property exposes the organisation to a heightened risk of legal liability to third parties who may be injured by assistance animals, which have been inadequately trained or socialized.

Queensland Rail employs a very large number of front-line staff, who interact daily with the public and need to understand their many legal and work policy obligations, including discrimination. It is difficult, if not impossible, to adequately train this many employees, who are educationally and geographically very diverse, in the finer points of assistance animal legislation as it stands at the moment. Without adequate certainty about identification of an assistance animal, front-line staff are forced to make quick evaluations about animals being brought onto the stations and trains by passengers and members of the public. Given that getting this wrong may mean that they can be personally liable under the Queensland legislation or be named as a respondent under state or federal discrimination laws, it is understandable that for many front-line staff it is easier to accept inadequate proof of the animal being appropriately trained and required by the handler, instead of facing the legal risks that a refusal to allow access to public transport may cause.

Queensland Rail must comply with the *Guide, Hearing and Assistance Dogs Act 2009* (Qld) and the *Disability Discrimination Act 1992* (Cth) with respect to assistance animals/dogs. The State regime overlaps with the federal laws with respect to assistance dogs.

The Legislation

The State (Queensland) Legislation

The Guide, Hearing and Assistance Dogs Act 2009 (Qld) (the State Act):

This Act seeks to assist people with a disability who rely on a guide, hearing or assistance dog to have independent access to the community and to ensure the quality and accountability of the dog training services.

The requirements include that the dog is trained to:

- Perform identifiable physical tasks and behaviors to assist a person with a disability in a way that reduces that person's need for support;
- Has passed a public access test conducted by an approved trainer or approved training institution within 7 days before being certified;
- Is not a restricted breed as defined under the *Local Government Act 1993*;
- Is de-sexed and vaccinated;
- Has not been declared a dangerous dog under a local law.

Public Access Test

A public access test is approved by the Department of Communities to assess if a dog is safe and effective in a public place or public passenger vehicle, and able to be controlled by its handler. All certified guide, hearing and assistance dogs must regularly take this test.

Penalties

Certified dogs can be identified by the badge on their coat or harness and people accompanying the dog, including trainers, also carry an identity card. The person with the disability and their dog must have the same access rights as other members of the public and they also must not be segregated from other patrons or separated from their dog.

Individuals in control of a public place or public transport vehicle can be fined up to \$10,000 and businesses, including restaurants, hotels, shops, theatres and sports facilities can be fined up to \$50,000.

The Commonwealth Legislation

The Disability Discrimination Act 1992 (Cth) (DDA)

The DDA includes provisions about the rights and responsibilities of both service providers and people who have assistance animals:

Section 9(2) of the Act defines an assistance animal as a dog or other animal:

- a) *Accredited under a law of a State or Territory that provides for the accreditation of animals trained to assist a person with a disability to alleviate the effect of the disability; or*
- b) *Accredited by an animal training organisation prescribed by the regulations for the purposes of this paragraph; or*
- c) *Trained:*
 - i. *To assist a person with a disability to alleviate the effect of the disability; and*
 - ii. *To meet standards of hygiene and behaviour that are appropriate for an animal in a public place.*

Section 54A of the DDA states that it is not unlawful for a person to request or require the person with the disability to produce evidence that the animal is an assistance animal or that it has been trained to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.

The Explanatory Memorandum to the 2009 amendments to the DDA

The Explanatory Memorandum states:

The purpose of this amendment is to provide greater certainty to both service providers and people with assistance animals. The third limb of the definition (paragraph 9(2)(c)) is designed to ensure that people with disability who may not live in a State or Territory that has a relevant accreditation scheme, or who may not have access to a recognised assistance animal trainer continue to be protected under the Disability Discrimination Act (if they are able to demonstrate the requirements of the relevant sections).

Inconsistency between the laws

Section 109 of the Australian Constitution provides:

When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Therefore, where a federal and a State law are in conflict, section 109 resolves that conflict in favour of the Commonwealth law, with the State law being rendered not void but inoperative for the duration of the conflict. In other words, a State law is revived and becomes operative again if the federal law is amended to remove the inconsistency.

The issue is that both Acts have to be complied with but Queensland Rail cannot chose to only comply with the more rigorous State Act. It is not clear why the 2009 DDA amendments did not reflect the apparent intention articulated in the Explanatory Memorandum to allow for recognition of a State regime, where it exists, and then for section 9(2)(c) to be rendered inoperative. While people in control of public places must comply with the State Act, there is no incentive for people with disabilities to register under the rigorous State regime when they can be easily recognised under the Commonwealth legislation. The State legislation has been rendered practically inoperative by the DDA.

Particular Issues indentified by Queensland Rail

- **Identifying bona fide "assistance animals" generally.** While the Queensland Guide Hearing and Assistance Dog Act in relation to assistance dogs is quite straightforward in that successful applicants under the Act are issued with an identification card, which must be produced on request, the requirements of the federal Disability Discrimination Act 1992 (DDA) make identification difficult if not impossible for Queensland Rail's thousands of front line staff when assessing who is permitted to bring an assistance animal onto public transport.
- **Queensland Rail has experienced a number of issues relating to assistance dogs:**
 1. A person with a disability wishing to travel with more than one assistance dog: The DDA does not limit the number of animals that a person with a disability may require.
 2. Dirty and flea infested animals: While the DDA requires assistance animals to have a degree of hygiene fit for travel on public transport, this requires a subjective decision by front-line staff when the animals are presented ready for travel. There is also no system that allows for reporting of troublesome or unhygienic animals across jurisdictions.
 3. Inadequate training/accreditation by animal training organisations: Some animals presented for travel as assistance animals are not trained sufficiently: for instance, inadequate toilet training or not trained to remain on the floor of the vehicle. Section 9(2)(b) of the DDA provides for accreditation by an animal training organisation prescribed by regulations. This has not occurred. Currently, anyone can set up a dog training organisation as there are no

nationally recognised standards, only non-binding international standards and none endorsed by the DDA through a regulation.

4. Un-desexed animals: While most well-known dog training organisations and the State Act require assistance dogs to be desexed, the DDA does not impose any such restrictions on the use of un-desexed assistance animals. The use of un-desexed assistance dogs poses a heightened hygiene and safety risk when they are on public transport. It is submitted that it is not discriminatory for people to be required to use de-sexed dogs as assistance animals for the comfort and safety of the rest of the travelling public.

- **Complaints to the Australian Human Rights Commission:**

While Queensland Rail has attempted to balance compliance with the DDA with its duty of care to other passengers using public transport, its refusal to transport some animals has resulted in complaints to the Australian Human Rights Commission. It is submitted that these complaints are the result of inadequate safeguards being inserted into the DDA to provide certainty in this area.

- **Other issues that require consideration:**

1. What is an acceptable standard for "appropriate standards of behaviour and hygiene for a public place" and how can that be measured?
2. Should there be a requirement that the assistance animal be de-sexed? It is noted that this is a requirement under the State act and most reputable animal training organisations also require it.
3. Can the service provider require the animal to be on a leash or some other form of physical restraint?
4. Should there be a standard identity card for proof of the above, since the alternative is a handful of documents which requires the approver (usually not legally trained) to peruse on the spot?
5. Are all people with disabilities capable of appropriately handling an animal when in public? Animals, notably dogs, are capable of being dangerous and unpredictable in certain circumstances, often unique to that particular animal. Some organisations that provide dogs for people with disabilities require rigorous selective breeding, screening and training of dogs before they are used to assist people with disabilities. Further, applicants for such dogs are required to go through an annual or bi-annual rigorous assessment to ensure that they understand their responsibilities to their dog and also to ensure that they maintain the level of training required to keep the dog under control. Section 9 of the DDA has legislatively relaxed those requirements and by doing so has potentially lowered the standard for behaviour and training required for assistance animals.

Conclusion

Queensland Rail, other public transport providers and other public organisations and businesses have no clear guidance as to how to apply the wide requirements of the federal DDA while also ensuring public safety. Queensland Rail requests that the DDA is amended so that state and territory legislation on assistance animals is given recognition and preference under section 9 and section 9(2)(c) does not apply when either 9(2)(a) or 9(2)(b) applies.

Yours faithfully

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Queensland Rail Limited