Layman Summary of Discrimination Legislation

DISCLAIMER: this document is for general information purposes only. It should not be relied on as a statement of legal rights. Always seek legal advice regarding particular circumstances.

Amendments to the Disability Discrimination Act 1992 (DDA), which came into force in 2003, make it unlawful for a person to discriminate against another person because they are accompanied by an assistance animal. Further amendments in 2008, which came into effect in August 2009, clarify many of these rights and responsibilities. In particular, the amendments confirm that it is not unlawful to require evidence from a person that their animal is an assistance animal. The DDA amendments override state and organisational regulations when there is inconsistency between them.

The DDA prevents an establishment in the public realm from refusing entry to its premises because the person has an assistance animal. Although ‘assistance animals’ clearly includes guide dogs, the category is much broader. Assistance animals provide their owners with independence, a sense of self-confidence, safety, mobility and self-esteem. Studies have shown that the use of assistance animals promotes health, mobility, social interaction and facilitates employment. Thus we now see a wide range of assistance dogs, including but not limited to assistance dogs for

- Hearing impaired (Hearing or Signal Dogs),
- Epilepsy (Seizure Alert/Response Dogs),
- Anaphylaxis (Medical Response Dogs),
- Allergen alert (allergen alert dogs that alert to the presence of allergens before contact)
- Mobility/balance impaired (Mobility or Walker Dogs),
- Psychiatric disability (Mental Health Assistance Dogs (MHAD) or Psychiatric Service Dogs (PSD), Post-Traumatic Stress Disorder (PTSD)
- Autism (Autism Service Dogs),
- Blood sugar alert (Diabetic Alert Dogs),
- Vision impairment (Guide Dog)
- Other medical alert dogs (such as asthma alert dogs) and other disabilities.
One assistance dog can be trained to perform a number of tasks out of the inventory of different types of assistance dogs. For instance, a Mobility Dog can also be trained to alert the handler to oncoming panic attacks, interrupt obsessive-compulsive behaviour or mitigate the effects of depression.

An assistance animal is legally regarded as a ‘disability aid’ because it provides assistance to a person with a disability and/or alleviates the effect of the handler’s disability. Currently in Victoria the assistance animal may be professionally trained or owner trained.

It is discriminatory for a person at an establishment providing a public service to:

- Request that the dog be kept elsewhere
- Request that the person pay extra because of the dog
- Refuse entry or services because of the dog
- Request that a person produce evidence of, or reveal what their disability is.
- Make a disabled person feel uncomfortable about using their assistance animal for any situation they deem necessary.

However, the handler may be requested to provide evidence that the dog is an assistance animal trained to mitigate the effect of the handler’s disability (such as a letter from a medical practitioner stating the same without revealing the nature of the medical condition / disability) OR documentation to show that the dog is trained to meet standards of hygiene and behaviour appropriate for a public place.

There are circumstances where it is not considered discrimination to refuse access to a person accompanied by an assistance animal, for example:

If it is felt that there is evidence of an assistance animal carrying a contagious disease that could infect other animals or people in the area to be entered, concern may be expressed and entry refused, until satisfied to the contrary. The potential risk has to be considerable. For example, a dog with rabies could not be accepted just because it is a service dog. However, a restaurateur cannot say that an assistance dog poses a health risk purely because it is a dog and is going where dogs are normally not allowed.

- If it is felt the assistance animal poses a considerable safety risk to the public. Again, the potential risk needs to be considerable and demonstrable. For example no one expects a dog carrying explosives to be allowed into premises to avoid prosecution under the Discrimination Act! However entry cannot be refused to a person accompanied by an assistance animal because, for example, it poses a risk of people tripping over it. Rather, aggressive behaviour and dangerous out of control behaviour on behalf of the dog constitute grounds for denial of access.
If the animal is **uncontrollable**— this is the benchmark in states such as the ACT or NSW. While unnecessary vocalization (barking) is a disqualifying behaviour in PAT’s (Public Access Tests), an accredited dog vocalizing (barking) and stopping on the handler’s command would be considered controllable (ie the handler controls the animal).

**ADS (animal) must not interfere, even if the handler is assaulted or aggressively approached**

However the owner of the assistance animal has responsibilities. **You must:**

- Produce evidence, if requested, that the dog is an assistance animal. This may be an assistance animal identity card, pass, or permit. (If possible your assistance dog should wear an assistance dog badge or medallion displayed, for example, on its harness, collar, lead, coat, cape or vest. However this is not a legal requirement.)
- Have the dog under your control at all times. Note that “under control” under the DDA does not necessarily mean under direct physical control. A well trained dog can be off lead and under the handler’s control.
- Maintain a high standard of training for yourself and your assistance dog.
- Ensure that the dog does not pose a safety risk to the public.
- Ensure that your dog shows good manners and has good hygiene. (You will not gain community respect and support with an assistance animal that toilets inside or smells really badly)
- Accept that any damage caused by your assistance dog is YOUR responsibility.
- Understand that as a person with a disability, YOU have the rights under the DDA. Your Assistance Dog is allowed access solely because of your rights.

Currently in Victoria specific rights and regulations regarding Assistance Animals are under review. This is because in the past this term referred mostly to Guide Dogs and more recently to Hearing Dogs. With international studies now showing the major benefits of assistance animals for many other disabilities it has become necessary for governments to provide clearer guidelines, legal support and recognition of disabled people using Assistance Animals to the full community.

In Queensland the [Guide, Hearing and Assistance Dogs Act 2009](http://www.sdttraining.com.au) came into effect on 1 July 2009, and offers transparency for people accredited under this scheme where they meet the requirements stipulated in the Act. The legislation ensures that every person relying on a guide, hearing or assistance dog has the same access rights as others to public places and public passenger vehicles. This includes cafés, restaurants, pubs, clubs, sports venues, taxis and buses. SDT is an accredited trainer/assessor under the umbrella of this Act. Other States have non-specific legislation or legislation under review.
In the absence of reforms, other laws and regulations in place such as the Disability Discrimination Act and the Equal Opportunity Act offer protection against discrimination. Technically the DDA should supersede all state and territory regulations, as the DDA is (a) federal and (b) came into effect first.

Laws referring to Assistance Animals:
Beyond sections 8 and 9 of the federal Disability Discrimination Act (DDA 1992) where assistance animals are mentioned explicitly, there are numerous others areas of law that apply to and often mention assistance animals in both federal and state legalisation (Please see relevant list).

The New South Wales Companion Animals Act, for example, stipulates that assistance animals incur no registration fee when being registered with local government and under Division 1 Section 20 of the Act it states, in relation to dog’s defecating in public and a handler’s obligation by law to clean up after it, that:

3) This section does not apply when the dog is an assistance animal being used bona fide by a person with a disability to assist the person and the person’s disability makes compliance by the person with this section not reasonably practicable.

In effect if it is unreasonable to expect someone to be able to clean up after their dog due to the nature of their disability, such as if they have a vision impairment or are otherwise physically, intellectually or otherwise restricted from doing so, then they are not liable for any fine if, for this reason they fail to clean up after their dog. Importantly, however, poor hygiene, of which defecation in public areas can be defined as, is legitimate grounds for refusal of access to premises etc. As such it is the obligation of the handler to do everything reasonably practicable to ensure that their dog does not toilet indoors or on transport.

Where the above example of managing a dog’s toileting habits demonstrates potentially complex relationships between state and federal law, across these two jurisdictions there is often duplication of laws. For example, where the federal DDA specifies that it is unlawful to discriminate against a person because they are accompanied by an assistance animal, State legislation can explicitly make exemptions for assistance animals to the prohibition of dogs form certain public spaces, such as children’s playgrounds. For example, Division 1 section 14 of the NSW Companion Animals Act outlines the prohibition of dogs from certain public areas but part 8 of section 14 also states that:

This section does not apply to the following dogs:
“(b) a dog that is an assistance animal being used bona fide by a person with a disability to assist the person,”

Although the Federal DDA trumps state legislation where conflicts arise, as touched on earlier in this document, duplication of legislation can mean that there is a state level
authority that can be approached or consulted in situations of problems emerging between assistance animal handler’s and other people. In some cases State authorities can have greater powers to enforce than Federal authorities.

Resolution of discrimination:

In instances where a handler of an assistance animal experiences discrimination there are a number of actions that can be taken to resolve this. First and foremost it is advisable to try and resolve discrimination at the moment of it being experienced. For example, if a security guard at a shopping mall attempts to deny entry to the premises because you have a dog, remain calm and explain to them that the dog is an assistance animal and that it accompanies you wherever you go as you rely on it to be independent.

Where the initial step fails, try to remain calm and ask the person to put you in touch with their manager/boss so you can explain to them how you must be allowed access with your assistance dog. In other situations where seeking out a senior person is not viable, such as if a taxi driver refuses to carry you because you have a dog, ask them to contact their headquarters by radio or phone to have their manager/boss confirm with them that you must be allowed to bring your dog in the taxi. If the taxi driver simply drives off, try to take down their number and/or name and or number plate to identify them if/when lodging a complaint in their absence. Whether you called for the taxi or flagged them down or they were at a taxi rank call the operator of the company immediately so they have a record of the incident.

In instances where immediate resolution to discrimination cannot be found, a number of avenues exist to seek resolution and which avenue you choose to take depends entirely on the discrimination itself. As it is beyond the scope of this document to describe every possible form of discrimination and every possible way of responding an outline of general rules of thumb is provided along with advice on who may assist in different situations.

Start with the Australian Human Rights Commission (AHRC), the Federal body for resolving discrimination cases outside court and in a limited sense administers the DDA and has Federal jurisdiction. This means that any kind of discrimination, be it on grounds of disability, race, gender, sexuality etc can all be taken here no matter where the discrimination occurred. The AHRC is not however a court, so relies on a process of conciliation by mediation between parties as it has no actual powers to compel people to resolution/conciliation. Nor does it have the power to decide points of law. This latter point can be important in establishing liability and deciding cases where issues are not black and white.

What is most important to remember about the AHRC is that it has a lower threshold for interpreting what constitutes discrimination than the courts and unlike the Federal Court and Federal Magistrate’s Court you do not have to prove that discrimination occurred under the rules upon which courts rely. Of equal importance is that the AHRC is free whereas the Federal Court and the Federal Magistrates Court are what is called ‘cost jurisdictions’ which means costs can be awarded against you, especially if you lose.
The act of resolving cases of discrimination in the AHRC also doesn't require lawyers. The Commission has a number of methods for lodging complaints (online, over the phone, in writing etc) and once the complaint is received a delegate of the President of the Commission will assess the merits of the case and if they believe the situation warrants conciliation, meaning the case has merits and falls within the commission's jurisdiction. If so the Commission will contact the respondent on your behalf and outline to them how the Commission sees discrimination to have occurred. Following this the Commission will mediate between parties seeking conciliation of the matter.

It is important to understand that if conciliation fails the Commission will terminate the matter which opens the way to taking the case to the Federal Courts. Similarly, if the Commission rejects a complaint of discrimination, the option to take matter to the court remains.

Outside the AHRC there are a number of other avenues for making complaints of cases of discrimination. In Victoria, for example there is the Victorian Equal Opportunity and Human Rights Commission (VEO&HRC) that looks at matters of discrimination that occur within Victoria. However there are other bodies to which complaints can be made in tandem with complaints of discrimination to the AHRC and courts etc.

For example if a taxi driver in Victoria refuses a pick up because of your dog you can (and should) make a complaint to the Victorian Taxi Directorate. While such avenues as these do not offer any ability to seek redress in the form of apologies or compensatory outcomes, such as the AHRC, the VEO&HRC and courts do, they can effective in achieving structural change in so much as these extra-judicial bodies do not only have punitive powers, such as able to revoke licenses and fine people but also the capacity and powers to ensure ongoing compliance with the law by the party that discriminated in the first place. For example, in the case of the taxi being reported (see above), the Victorian Taxi Directorate (VTD) will investigate this issue and where they find the driver to have discriminated against a person they can fine the driver, warn them and put a mark against their name and if the driver does it again the VTD can revoke or refuse to renew their license to drive a taxi.

Each state has its own bodies tasked with regulation and complaint resolution and where you are unsure who to approach for assistance with a matter there exists a number of Community Legal Centres that specialise in discrimination law that can advise you of your options. They are the best point of contact to decide whether you would be better served in a Federal or State jurisdiction.

Finally, discrimination happens in both direct and indirect ways and anti-discrimination legislation acknowledges this. Therefore there is recourse to address indirect discrimination as well as the more direct types illustrated above.
In summary, in cases where you believe you are being discriminated against it is best to:

1. Attempt to address the issue at the time, where possible, advising people concerned of your rights under federal law to be accompanied by an assistance animal.
2. Where necessary or appropriate report the incident to management of the place you were discriminated at.
3. Contact a community legal centre or the Australian Human rights Commission for further advice as to how to proceed.

Remember that while it is unlawful for someone to discriminate against you because you are accompanied by an assistance animal, you have obligations to the wider community to ensure that:

1. Your animal is under control at all times.
2. Your animal is well behaved.
3. Your animal maintains a high level of hygiene appropriate for accessing public places.
4. Your animal does not pose a risk to public safety.

**NB:** The Disability Discrimination Legal Service Inc [DDLS] is a national independent community legal centre, specialising in disability discrimination legal matters. It has subdivisions in every state and territory and provides free legal services in several areas including information, referral, advice, casework assistance, community legal education and policy law reform. In Victoria, contact 03) 9654 8644 or info@ddls.org.au or www.communitylaw.org.au/ddls

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