

Issues paper – Should it be unlawful to discriminate against someone because they use an assistance or therapeutic animal?

Section 66A(4) of the Act provides that a person discriminates against a person who is blind, deaf, partially blind or partially deaf if the discriminator treats the aggrieved person less favourably on the ground of the fact that the aggrieved person possesses, or is accompanied by, a guide dog or hearing dog, or on the ground of any matter related to that fact. This protection is not a separate and distinct ground; rather, it falls within the impairment ground. The protection does not extend to use of any other type of animal.

In all other Australian jurisdictions, except the ACT and South Australia, legislation protects discrimination based on 'guide dog', 'hearing dog' or 'assistance dog'. In the South Australian Act, the protection is provided in the context of accommodation and it is given to 'therapeutic animals'.

'Therapeutic animal' is defined to mean an animal certified by a medical practitioner as being required to assist a person as a consequence of the person's disability, or an animal of a class prescribed by regulation. It is also unlawful to impose a condition that would result in a person with a disability being separated from their 'assistance animal', defined to mean a dog that is an accredited assistance dog under the *Dog and Cat Management Act 1995* (SA) or an animal of a class prescribed by regulation. In the ACT Act, protection is provided to those with a disability, which is defined to include reliance on an assistance animal. Like the South Australian Act, the ACT Act does not specify which animal can be regarded as an 'assistance animal' as long as that animal is trained to assist a person with disability and satisfies any requirements prescribed by regulation.

The DDA protects against discrimination based on the aid of assistance animals. The DDA defines 'assistance animal' as 'a dog or any other animal' and includes a set of requirements which the animal must meet to qualify as a disability aid.

The current wording in the Act reflects the traditional view that assistance or therapeutic animals have predominantly been recognised as a 'guide dog' or 'hearing dog' for individuals who are blind or vision impaired or hearing-impaired. However, assistance or therapeutic animals may also be required for other types of work. By way of example, they may act as an 'alert function' for individuals with mobility issues, or experiencing changes in blood pressure or blood sugar, psychiatric illnesses or epilepsy. Further, such assistance may be proffered by a wider variety of animals, and is not limited to dogs.

If it is now generally accepted that a variety of forms of assistance or therapeutic support can be provided by a variety of animals, the question arises not only as to whether the provisions should be extended but what the proper limits of those provisions might be if they were to be extended. There is some risk that an expansion to include assistance or therapeutic animals other than guide dogs or hearing dogs may cast the application of the Act too wide, and lead to ambiguity as to what evidence is required to prove that an animal is a therapeutic animal. However, ambiguity may be resolved by including a provision to the effect that a therapeutic animal means an animal certified by a medical practitioner as being required to assist a person as a consequence of that person's disability, or an animal prescribed by regulation. The EOC could also be given a role in the certification of a therapeutic animal.

The Commission invites submissions as to whether the protections in the Act relating to guide or hearing dogs should be extended to any therapeutic animal certified by a medical practitioner or regulation.

A full discussion of these issues is in the Discussion Paper at pages 18, 41 and 106-7.