

**DISABILITY ASSISTANCE ANIMALS OR NOT? PROBLEMS IN POLICY  
AND PRACTICE WORKSHOP**

**Summary and Scoping Discussion Paper**

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## Executive summary

The Federal *Disability Discrimination Act 1992* (Cth) (*DDA*) defines assistance animals to include dogs or other animals that are trained to assist a person with a disability to alleviate the effect of the disability and to meet standards of hygiene and behaviour that are appropriate for an animal in a public place. The Federal Court of Australia Full Court has read this definition widely to include a self-trained dog that has not been accredited or trained by a recognised specialist disability animal training association. Considering an estimated four million Australians could claim to have a disability under the wide definition of disability in the *DDA*, and the extremely low bar to establish that an animal provides assistance to a person with a disability, the impact of these laws are significant and are generating substantial concerns to government, industry and the disability community.

The current regulatory approach to defining disability assistance animals has resulted in questions that law, policy and theory are struggling to answer, such as:

- How should animals, whether they are dogs, cats, miniature horses, birds, or others, have their suitability as assistance animals determined and regulated?
- Who should be qualified to train and accredit disability assistance animals?
- Should there be legal limitations on what impairment categories or which individuals can use disability assistance animals?
- How can policies and regulations prevent pets being “passed off” as disability assistance animals?

This summary and scoping discussion paper presents the findings of a workshop held at the Queensland Supreme Court on the 27th of September 2016 with leading disability dog training organisations, industry and Federal, Queensland, New South Wales, Victorian and Western Australian government representatives. The workshop heard from expert panellists and informed discussions which were recorded, analysed and presented in this discussion paper.

The workshop identified a strong urgency for evidence based reform which is reflected in this discussion paper. This discussion paper provides the opportunity to stimulate public debate, to gather comments from the wider public, to identify the questions, which if answered, would enhance the operationalising of the definition of disability assistance animal, and to create linkages to obtain the answers to those questions. To achieve these objectives, this Summary and Scoping Discussion Paper is being distributed through various channels and people are invited to submit endorsements and comments to the lead chief investigator, Dr Paul Harpur, by e-mail at <p.harpur@law.uq.edu.au>.

## **Aims and Outcomes of Workshop**

The aims of this workshop were twofold:

1. To articulate the problems with operationalising the legal definition of a disability assistance animal in anti-discrimination laws; and
2. To consider how collaborations between industry, government, the disability community and academia can be forged to help develop operational, policy, training and regulatory measures to improve outcomes.

The outcomes from this workshop include:

1. This Summary and Scoping Discussion Paper;
2. Consensus as to the problems with the current regulatory approach to defining disability assistance animal;
3. Identification of potential data sources to analyse; and
4. Identification of ongoing partnerships for further research.

## Background

### *The federal approach to defining a disability assistance animal*

The *Disability Discrimination and Other Human Rights Legislation Amendment Act 2009* (Cth) transformed the scope of legal protection offered to persons using animals assisting persons with disabilities. This amendment introduced an increased protection for persons using disability assistance animals and introduced new definitions into the *Disability Discrimination Act 1992* (Cth). The *Disability Discrimination Act 1992* (Cth) section 9(2) which defines an assistance animal to be either:

- (a) Accredited under a law of a State or Territory that provides for the accreditation of animals trained to assist a persons 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 is appropriate for an animal in a public place.

While there are numerous associations accredited under state and territory laws, there are currently no animal training organisations accredited by regulations created under the *Disability Discrimination Act 1992* (Cth), therefore the tests under paragraphs section 9(2(a) and (c) are the only option for an animal be defined as an assistance animal.

While the accreditation process for disability assistance animals is legislatively and operationalised differently across Australian jurisdictions, the lack of clarity in paragraph (c) has resulted in the most concerning outcomes. In September 2015 when the Full Court of the Federal Court handed down its judgment in *Mulligan v Virgin Australia Airlines Pty Ltd* [2015] FCAFC 130, the court determined that an assistance dog that was not accredited by a disability training organisation was entitled to claim protection as an assistance animal under anti-discrimination laws.

The wide approach to defining what constitutes a protected disability assistance animal has a significant impact on:

- Parties who attract duties under anti-discrimination laws, including public and private transport operators, tourist operators, hotels, cafes, restaurants, educational providers, aged care facilities, schools and a range of other parties who manage public spaces; and
- On how public and charitable resources are allocated; and
- On the capacity of persons with disabilities to exercise their human right to be accompanied and use their disability assistance animal.

## ***The interaction between federal, state and territory laws that regulate disability assistance animals***

While the *Disability Discrimination Act 1992* (Cth) applies to all Australians, section 13 explains that this act does not exclude or limit the operation of a law of a state or territory that is capable of operating concurrently with the *Disability Discrimination Act 1992* (Cth). This has resulted in a patchwork of federal, state and territory anti-discrimination acts concurrently operating with considerably different approaches to regulating disability assistance animals.

The Commonwealth and all states and territories provide some protection to some form of disability assistance animal, however the nature and extent of this protection varies greatly. The widest approach to protecting animals can be found in South Australia, where the *Equal Opportunity Act 1984* (SA) ss 88 and 88A extends protection to both assistance animals and therapeutic animals. The *Anti-Discrimination Act 1991* (Qld) s 85 distinguishes between guide dogs and assistance animals but extends protection to both. The *Discrimination Act 1991* (ACT) s 9 mirrors the Commonwealth legislation and simply extends protection to assistance animals.

Some anti-discrimination laws do not extend protection to all animals and instead limit protection to dogs. The *Equal Opportunity Act 2010* (Vic) ss 4 and 7(4) provide protection to “assistance dogs” where the *Anti-Discrimination Act 1977* (NSW) s 49D (3) and the *Anti-Discrimination Act 1998* (Tas) s 3(g) expressly limits protection to guide dogs assisting any particular disability. It is accordingly possible that “guide dog” might be read widely to include assistance dogs for a wide range of disabilities. The *Anti-Discrimination Act* (NT) ss 4 and 21 and the *Equal Opportunity Act 1984* (WA) s 66(4) however define “guide dog” to be limited to dogs that provide assistance to persons with vision or hearing impairments. This means that all other assistance animals would not receive protection under these regimes. However, in Western Australia, the *Dog Act 1976* provides wider coverage and grants public access rights to “assistance dogs”.

The level of inconsistency across Australia is even experienced within single jurisdictions. For example, New South Wales *Anti-Discrimination Act 1977* (NSW) only extends protection to dogs, while the *Rail Safety (General) Regulation 2003* (NSW) REG 3 defines assistance animal by reference to the *Disability Discrimination Act 1992* (Cth) and thus extends its scope to all animals.

## Method

This Discussion and Scoping Paper reports on data collected during a workshop conducted on 27 September 2016 in the Queensland Supreme Court Library held by The University of Queensland. To identify participants for the workshop three strategies were used. First, stakeholders from academics' existing networks were invited. Second, using a snowball sampling approach, referrals to others with an interest or responsibility in the area were identified and invited. Last, a list of key organisations was developed and used to identify and contact most relevant participants for the workshop.

Invitations were sent explaining the purpose of the day and the intention to use the discussions to inform the policy debate through the publication of a grey paper, thus this document has been prepared and published.

While the workshop included persons with disabilities, a limitation of this method was that it did not include groups that advocated for persons with disabilities. The sampling strategy resulted in representatives from national and international disability assistance animal training organisations, the tourism and aged care sectors and key government and transport representatives from federal, Queensland, New South Wales, Victoria and Western Australia governments. Representatives are listed in Appendix A.

The purpose of the workshop was to discuss the issues around the legal definition of disability assistance animals and how collaborations between industry, government, the disability community and academia can be forged to help develop operational, policy, training and regulatory measures to improve outcomes. For this purpose, the workshop was structured into five panel sessions, as reported in this document. In addition, the workshop included a keynote speech by the former Disability Human Rights commissioner, Graeme Innes AM. Time was equally divided between a panel of experts and plenary discussions.

The presentations and discussions were recorded by a rapporteur, Ellen Wood, as well as by the other participants. In addition to discussions in plenary forum, during breaks a number of valuable discussions took place, the content of which were noted and also included in this document.

This discussion paper will be used to motivate public debate, gather additional data and help develop a research and reform agenda. The qualitative data drawn from the workshop provides a map to where the disability assistance animal reform agenda should focus. The open discussion format provides rich qualitative data which can help articulate the problems experienced by participants and people they represent in the operationalising of the current framework. The data from the workshop is presented as questions to emphasise the need to gather additional evidence before recommending policy or regulatory reforms.

## What animals can become disability assistance animals?

### *What animals are used to alleviate a disability?*

#### Summary

The *Disability Discrimination Act 1992* (Cth) has used the word “animal” from its first enactment. Graeme Innes AM, who was involved with the drafting of the Disability Discrimination Bill 1991 (Cth) explained that it was the intent of the drafters to use the word “animals” to ensure that all species of animals used to assist persons with disabilities would be protected. The *Americans with Disabilities Act Regulations* expressly extend protection to miniature horses and a wide range of animals are used in animal assisted therapy, including domestic animals, such as dogs, cats and fish, and farm animals, such as chickens and donkeys, and more exotic animals, such as dolphins or snakes.

#### Scope for future research

1. What animals are being used in Australia and across the world to alleviate the impact of disability?
2. Should a distinction in policy and law be made between animals that provide mobility, physical or therapeutic assistance?
3. What is the market for other animals?
4. Could other species provide better outcomes for persons with disabilities? For example, miniature horses live longer than labradors, so might they provide a more efficient assistance animal option?
5. Should people training animal assistance therapy animals factor in the public interest test when deciding on species? While dogs are by far the most common of animal used to assist people with disabilities, animal assisted therapy and animals used to assist people with mental disabilities include a far wider range of animals, including many that would be less likely to satisfy a public access test. Even more traditional animals used as disability assistance animals, such as dogs and cats, can create difficulties for people with allergies or religious beliefs which exclude contact with certain animals. While a wide range of animals are used to alleviate the impact of disability, is it possible for animals to be utilised in the future which better manage the rights of people with disabilities and people that manage and use public spaces? For example, is there any therapeutical basis for animal assisted therapy to use a rabbit over a cat or a golden retriever over a labradoodle?
6. How do persons with disabilities decide they would benefit from a disability assistance animal and how do they decide which organisation to source an animal from? Are persons with disabilities able to access enough information to make an informed choice?

## **When will an animal be held to assist a person with a disability to alleviate the effect of their disability?**

### ***How much assistance should be required from an animal for it to be classified as a disability assistant animal?***

#### **Summary**

There was considerable uncertainty about when an animal provides sufficient support to a person with a disability to be classified as an assistance animal. Animals that are held out as providing assistance are referred to as guide dogs, companion animals, therapy animals, assistance dogs and service animals. Leaving aside the varied and sometimes contradicting labels, it is possible to divide the levels of support by a therapeutic hierarchy.

The therapeutic hierarchy for animals providing assistance focuses on the level of support that the animal provides a person with a medical condition. At the bottom of the hierarchy are animals which have a passive role and have no specialist training. Such animals settle children down or are in a psychologist's room to enable patients to pat the animal. Some intensive care units encourage patients to have their pets brought into the hospital setting as this has been found to speed up recovery.

The next stage in the hierarchy involves animals that interact with patients. For example, a psychologist can use animals to help a person manage their anxiety. During therapy a psychologist may encourage their patient to interact with a highly nervous animal, and then a less nervous and finally a confident animal. In most situations these animals are not taken home by a patient, but it is possible for a patient to be left with an animal for a different therapeutic outcome.

The next level in the hierarchy involves animals that are trained to assist people with disabilities in everyday tasks. This might involve picking up items from the ground, helping detect a diabetic event or reducing depression by specific interactions. While these animals clearly assist people with disabilities, without the support the person could cope with difficulty in day-to-day operations through other measures.

The highest level is where the animal provides assistance that is essential for a person to perform daily tasks. A person who uses a guide dog for the blind may have no functional white cane skills, so if they did not have their guide dog they would not be able to effectively or safely mobilise to university, work, and shops, on public transport or generally outside the home environment.

A discussion focused around examples that participants gave from their work. Several participants explained that people are asking for government to accredit their animal when their animal makes them have an improved emotional state of being when they go out in public. Typically in these situations, the person seeking the government accreditation has some form of minor disorder which classifies them as disabled under the *Disability Discrimination Act 1992* (Cth). The consensus was

that, even though the benefit may appear small, this relationship is probably protected under the *Disability Discrimination Act 1992* (Cth). Whether the act should provide protection in such situations should be critiqued and analysed by law makers.

### **Scope for future research**

7. How much support should an animal provide a person with a disability for that animal to be classified as a disability assistance animal?

### ***Should or does the protection of anti-discrimination laws extend to the provision of disability assistance animals to prevent future disabilities?***

#### **Summary**

The *Disability Discrimination Act 1992* (Cth) provides that a disability, in relation to a person includes a disability that may exist in the future (including because of a genetic predisposition to that disability). The protection against future disabilities was introduced to avoid people being discriminated against due to their genetic makeup and to focus society on merit rather than irrelevant ability differences.

The desire to use an animal to help reduce the probability of developing a disability could arise in various situations, such as: A psychologist may determine that a person needs a disability assistance animal to avoid their low level anxiety developing into a disorder; If a person has a history of dementia in their family and they may desire an animal to help keep their mind active; If a person is overweight and at risk of developing diabetes they may want an animal to help motivate them to walk and avoid developing the disease.

### **Scope for future research**

8. How has the protection against future or potential disabilities been operationalised?
9. Could a person with a future or potential disability use an animal to alleviate the effect of the disability and have that animal recognised as a disability assistance animal?
10. If the disability has not occurred but may occur, how strong does the expectation or probability of the person developing a disability need to be?

### ***Should the soft benefits of an assistance animal be considered when determining the impact of the exclusion?***

#### **Summary**

The therapeutical hierarchy discussed above is often complicated by an individual having several disabilities and reasons for seeking an animal bond. A person who uses a guide dog to help with their

blindness may use their animal for a range of soft purposes. These soft purposes are not disability specific and arise by virtue of having an animal present; for example, as an icebreaker. Like any other dog, guide dogs provide their handlers emotional support and companionship.

### **Scope for future research**

11. When the impact of exclusion is considered does and should the law recognise the real impact of the discrimination?

## **When is training sufficient to enable an animal to qualify as a disability assistance animal?**

### ***What standards should be used to judge training and safety for different species and who should set such standards?***

#### **Summary**

A disability assistance animal is required to be trained to meet standards of hygiene and behaviour that are appropriate for an animal in a public place. This test is however impossible to meet for certain species that are used in animal assisted therapy. It is difficult to accept that birds can be trained to meet standards of hygiene and behaviour that are appropriate for an animal in a public place. Birds can be trained to hunt in the sport of falconry, and to sit on a person's shoulder, but hygiene training would seem to be beyond the capacity of birds. Despite this fact, birds have been provided accreditation in several jurisdictions. In one jurisdiction a government authority reportedly accredited a bird, even though it had not been, and could not be, trained.

#### **Scope for future research**

12. Even if an animal can be trained, what are standards of hygiene and behaviour expected of different species of animals?
13. Should different standards be applied depending where a person seeks to take the animal? A person with a psychological condition may desire to take a cat into rental accommodation or hotel rooms, but not seek to take it on public transport or into cafes. Should the law be this flexible?
14. How should such standards be developed, maintained and enforced?

### ***Who should be authorised to train disability assistance animals?***

#### **Summary**

The *Disability Discrimination Act 1992* (Cth) does not specify who must train an animal for it to qualify as a disability assistance animal. Paul Harpur noted that this issue was raised in the leading disability assistance animal cases in Australia: *The State of Queensland (Queensland Health) v Che Forest* [2008] FCAFC 96, where the 2 dogs were trained by the person with a disability (IE Self-trained) and *Mulligan v Virgin Australia Airlines Pty Ltd* [2015] FCAFC 130, where the dog was trained by the Coffs Harbour Dog Training Club (which is a regional dog training school, which has no disability expertise).

In contrast to self-trained and animals trained by generalists, the established guide dog and assistance dog associations have international accreditation, have their training and outcomes annually assessed, employ trainers with post graduate qualifications, use a geneticist to maximise

the breeding program, source and share breeding stock and animals with other associations and have intensive programs that last between 1.5 years and two years.

In the past 90 per cent or more of disability assistance animals were trained by guide dog associations for the blind or deaf. Now there are a substantial number of small operators and many people are training their own animals. The issue of self-trained animals was of particular concern to many participants.

Western Australia has a scheme to test the training of self-trained dogs seeking accreditation as disability assistance dogs. Western Australia has assessors who will work with people seeking their self-trained dog to become accredited. These assessors will provide additional training and support until the dog reaches the appropriate standard and can be accredited. This service costs money and the individual seeking accreditation needs to pay for the service.

In addition to the concern over self-trained animals, participants were unsure who had the appropriate skills to train non-dog species. Western Australia's assessment scheme is only offered to dogs.

### **Scope for future research**

15. What are the differences between how guide dogs and other disability assistance animals are sourced and trained?
16. Who has the expertise to ensure disability assistance animals are appropriately trained?
17. What training standards should be applied when non-dog species are being trained to be disability assistance animals?

### ***Who should be able to determine that an animal qualifies as a disability assistance animal?***

### **Summary**

Dogs that come out of schools associated with Guide Dogs Australia and Assistance Dogs Australia are tested in public spaces to ensure the dog can work in crowds, with loud noise, on public transport, in aircraft, in shopping centres, in cafes, in different forms of weather and times of the day and night. The testing regime ensures that the dog can operate safely and effectively in the environments that it will be required to work in if it becomes a disability assistance animal. If the dog passes these tests, then the dog is placed with a person with a disability and tested to ensure that the team is effective and can operate safely.

In contrast to this high level of assessment, there is an increase of disability assistance animals being self-trained and trained by emerging associations which do not follow such a rigorous assessment. Participants reported that it is extremely common for veterinarians to assess self-trained animals and determine they satisfy a public safety test. While veterinarians are trained to manage the health of an animal, they do not have any training to determine if an animal can conduct itself in public

spaces while assisting a person with a disability. Arguably assessing an animal in a clinic would not determine if the animal could do its job in public spaces. As one participant observed, “a veterinarian or a general practitioner determining that a disability assistance animal and a person with a disability should work together is like his dentist giving him an assessment for his motor vehicle driving license”. Both medical professionals lack the skill to determine the relevant facts in a visit to a clinic.

The State of Victoria has recognised the problems associated with evidence and the requirements to obtain an identification card were increased in 2014. Prior to 2014 it was sufficient for a general practitioner to provide a letter to state the person needed the assistance animal. Now there is a requirement that a qualified person states that the animal has been specifically trained to help with the disability. Approximately 40 per cent of applications in past two years have been declined on the basis of level of training.

### **Scope for future research**

18. How should standards be formulated to determine who should be qualified to train and accredit disability assistance animals?
19. What are the qualifications of the people that are assessing disability assistance animals?
20. What disability assistance animal associations are operating to train and assess animals?
21. How many of these assessors are assessing non-dog species?
22. Should trainee disability assistance animals and trainers from accredited associations obtain public access rights?
23. Should trainee disability assistance animals have public access rights if the animal is being trained by a person with a disability (self-trained) or trained by an association that is not accredited?

***Does the test for a disability assistance animal adequately assess the capacity of the animal across the entire working life of the animal?***

### **Summary**

Determining that an animal meets standards of safety and hygiene and can provide support at a particular time is important, however this does not mean that animal will operate effectively as a disability assistance animal in the future. A person who has taken their pet dog to obedience school will quickly see the dog lose its training if the dog education is not continued. An animal that is accredited as passing the test for a disability assistance animal could lose all its training in a year and become a threat to the handler and to the public. It is for this reason that the schools associated with Guide Dogs Australia and Assistance Dogs Australia have regular check-ups with handler teams, provide support to handlers when problems arise and provide handlers training in dog education.

If an animal is self-trained or provided through an association that does not have adequate follow up support, then it is foreseeable that the person with a disability and the public could be placed at risk from the animal.

### **Scope for future research**

24. Should the accreditation process require a disability assistance animal to be registered with an accredited training organisation?
25. Who should pay for the breeding, raising, training and certification of disability assistance animals?

## **How can a member of the public distinguish between a disability assistance animal and a pet?**

### **Summary**

The *Disability Discrimination Act 1992* (Cth) does not require a person with a disability who is accompanied by a disability assistance animal to carry any identification cards, information about their disability or evidence that their animal is appropriately trained. Section 54A(5) of the *Disability Discrimination Act 1992* (Cth) however provides that it is not unlawful for a duty holder to request the person with the disability to produce evidence that the animal is a disability assistance animal or that the animal is trained to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.

Participants explained that some transport operators and airlines impose a requirement on persons with disabilities to demonstrate that their animal is appropriately trained or accredited with a disability training association. Imposing this requirement on a person with a disability is potentially in breach of the *Disability Discrimination Act 1992* (Cth) if the requirement or condition is not reasonable. Whether or not it is reasonable will depend on the situation. Arguably it is reasonable for an airline that is giving up a seat to the disability assistance animal and taking an animal into the air, where it is almost impossible to remove the animal if it creates a risk, to demand more evidence than a cafe, hotel or bus. Using an identification card intended for one purpose to gain access to other spaces, such as hotels, sporting arenas or medical facilities, may involve different tests to determine whether the animal is appropriately trained to operate in that setting.

Leaving aside government issued identification cards; each association has its own jackets, equipment and documentation. In addition, animals that are self-trained may have no branded equipment to help identify the animal as a disability assistance animal.

Whether or not a person will be able to take their disability assistance animal into a public space will require advocacy skills. This can be especially problematic for people with communication, mental or intellectual disabilities who have their disability assistance animal to help with those conditions. For example, dementia dogs help people with memory loss. If a person in authority tells this person to remove the dog they may react by leaving, violently or not in a way that enables them to exercise their rights in a way that society requires.

Even if the person with a disability has documentation and is able to advocate for their rights, the current system places a significant amount of authority on frontline staff who need to make a judgment call that has significant implications.

### **Scope for future research**

26. How can disability specific factors reduce the potential for people accompanied by a Disability Assistance Animal to advocate for their rights?

27. Without assessment from an accredited association or government, is there any practical means of operationalising the test for a disability assistance animal?
28. How could regulatory intervention assist in clarifying this problem?
29. Who should assess and issue disability assistance animal identification cards?
30. How has a lack of a national approach undermined the disability assistance animal identification card schemes?

***How are government agencies that provide identification cards responding to the evidential uncertainty about when is an animal alleviating a disability or not?***

### **Summary**

The uncertainty in operationalising the benefit test has resulted in varied responses by assessors. Participants explained that how the test is operationalised often comes down to the manager responsible for determining if an animal is a disability assistance animal or not. Some managers adopt the position that they should read the definition widely while others adopt a strict approach. One participant explained that the approach to the test altered substantially when a new manager took over the group.

### **Scope for future research**

31. Should clarity be provided to result in a more consistent approach when determining whether an animal should be issued a disability assistance identification card or not?

***How many disability assistance animals are in use in Australia now?***

### **Summary**

As formal accreditation is not required to claim protection under the *Disability Discrimination Act 1992* (Cth) it is highly probable that many people that use disability assistance animals have not bothered to obtain an identification card. Many guide dog users who are blind have not historically worried about identification cards in those jurisdictions where they need to make applications for such cards. In other jurisdictions any dog that is trained by one of the established and accredited guide dog associations is given a government accreditation card when they graduate from the association with their new dog.

Each government department that issues disability assistance animal identification cards retains statistics on their own department. Due to privacy concerns departments do not share who has applied, been rejected or issued disability assistance animal identification cards. This means one person may have been rejected from several accreditation bodies or could have multiple cards from each jurisdiction.

Some data was available on numbers of identification cards issued, however this data requires checking as some of the sources were not complete:

- Reportedly 46 Translink animal assistance passes have been issued in Queensland. In the last year 5 applications have been rejected for various reasons. All of the current passes are for dogs. However, there has been one case of a bird being used for assistance on long distance trains within the last ten years.
- The Communities, Child Safety and Disability Services also issues accreditation cards.
- Queensland Communities in Qld also issue cards so there could be an overlap. Under this scheme 241 handler teams have obtained identification cards and 68 employee trainers and puppy carers have identification cards. All of these identification passes are for dogs.
- Old data indicated that there were 125 active disability assistance animal cards issued in Victoria, when at the time of this data, there were double that number of disability assistance animals in operation from the established associations.
- 300 assistance dog users but only 125 have passes.

Participants were aware of animals that have obtained accreditation after they or the association/department they worked for had rejected the disability assistance animal and handler as meeting the statutory test. The risk of disability assistance animal identification card forum shopping is not potential it is real and occurring.

### **Scope for future research**

32. What is the prevalence of access accreditation forum shopping for trainer or disability assistance animal accreditation?
33. Should the data from government departments and accredited disability assistance animal training schools be gathered in a single register?
34. If a single register was created, should it include who has had their application for a disability identification card rejected and approved?
35. What are the privacy implications with such a register?
36. Who should have partial or full access to the register?

***As the numbers of disability assistance animals grows, how many animals may obtain this status in the future?***

### **Summary**

The definition of Disability in the *Disability Discrimination Act 1992* (Cth) is very wide. It covers essentially every medical condition, whether it be present or in the future. If a person needs glasses, has a minor mental condition, any disease or disorder or has a short term or long term condition. Graeme Innes AM estimated that the definition of disability includes about 4 million Australians. This wide definition of disability captures millions of people who currently do not think of themselves as disabled. For example, many people in aged care facilities, retirement homes, who receive workers

compensation payments, who take medication, see a psychologist, a grief and loss counsellors or have a range of sensory, physical, mental or intellectual abilities, fall outside, whether permanently or temporarily, the range that the medical profession has categorised as “normal”. Many of these disabilities could benefit from a disability assistance animal. While a person may not assert they have a disability under normal circumstances, if they are seeking to bring an animal into a nursing home, rental property, hotel or other space, then that person may identify as a person with a disability in order to gain access for their animal. This means there could be millions of disability assistance animals seeking to enter public spaces in the near future.

### **Scope for future research**

37. How many disability assistance animals are in use in Australia now?
38. How many disability assistance animals could be used in Australia in the future?

### ***What are the legal remedies if an identification card or trainer accreditation is inappropriately given or not given?***

#### **Summary**

When an association or government agency accredits a disability assistance animal and handler as a team, that accreditation asserts that the animal is able to operate as a disability assistance animal and is safe and that the person using it is able to work with the animal safely. Not all animals are safe. A participant reported that they dealt with the situation where a disability assistance animal bit a child on public transport.

The decision not to accredit the animal or handler means that the person may have their access rights denied. This can have significant health and economic implications for an individual as the animal may enable them to attend school, work, meetings and operate in public spaces.

There are significant administrative law implications for the decision to issue or not to issue a disability assistance animal identification card. When a government department is approached by a person seeking accreditation and a disability assistance animal identification card the decision to refuse that accreditation can be expensive. The refusal to provide the identification card often costs the department over \$30,000 in administrative and legal fees; if the dispute goes to court and appeal the amount of money is significantly higher.

If a disability assistance animal identification card is issued, and if the person with a disability or another person is injured, then this might provide grounds for negligence. Equally, if a person is refused the right to be accompanied by their disability assistance animal and they suffer harm, such as a psychiatric injury associated with a break in their animal assisted therapy, then this might give rise to a suit of negligence.

### **Scope for future research**

39. What are the risks to persons with disabilities and the wider public if animals are not appropriately trained to act as disability assistance animals?
40. How might the process for distinguishing between a disability assistance animal and a pet be clarified to reduce the need to go to a human rights commission or the courts to make this determination?

### ***Is there evidence that people are using fraud to pass their pets off as disability assistance animals?***

#### **Summary**

Participants in the disability community are concerned about the high number of fake assistance dogs in Australia and overseas. The fake disability assistance animal market is increasing at a rapid rate. There are now websites where people can purchase documentation and jackets that claim that an animal is a disability assistance animal. Some of these websites purport to be legitimate. On such websites a person can fill in an on-line form which is then assessed by a psychologist. The applicant pays a fee and then the applicant is issued with an identification card and a letter from a medical professional.

Some websites are openly fraudulent. One participant has had the unfortunate experience of their name and signature appearing on letters that they have not authorised or signed. Two situations they are aware of involved attempts to take animals onto aircraft. These two situations are currently being investigated by the relevant criminal enforcement authorities.

While criminal laws prohibit fraud, there is a gap surrounding a person making misleading statements about the status of an animal. Participants argued that it is critically important to have an offense provision for claiming a pet is a disability assistance animal when it is not. There must be criminal consequences that filters the right people in and keeps the bad people out.

### **Scope for future research**

41. How does the law respond to passing off pets as disability assistance animals?
42. Should criminal laws be amended to include attempting to pass a pet off as a disability assistance animal?
43. Should eBay or other on-line shops be required to assist authorities when items are sold through them that are sold to perpetrate a fraud?
44. Should law enforcement authorities become involved to shut down websites that distribute documentation and other items used to pass pets off as disability assistance animals?

## **How is the definition of disability assistance animal impacting on stakeholders?**

### ***Could the uncertainty about the definition of disability assistance animal result in increased discrimination?***

#### **Summary**

Anti-discrimination laws are victim enforced. Persons with disabilities are some of the most economically disadvantaged members of the community and often lack the financial and emotional resources to bring legal action.

In many situations it is difficult to identify the cause of the exclusion. For example, was a person not given a job interview or rental property because they have a disability assistance animal, or was it on the grounds on which discrimination is permitted?

In other situations the cause of the discrimination is extremely apparent. One situation where it is clear that discrimination is occurring is when a person seeks to book on-line to be accompanied by their disability assistance animal. It is very uncommon for on-line booking forms to enable a person to book on-line with a disability assistance animal without the need to make a follow up phone call. These follow up phone calls can take literally hours waiting on hold and dealing with rude and aggressive staff. While airlines and concert venues websites reportedly do not have the capacity to book with a disability assistance animal, hotels and restaurants are reportedly enable booking through simply making a comment in the comment box. While this situation is painful for the person with a disability, how can a duty holder distinguish between a pet and disability assistance animal?

A number of legislative regimes include a prosecution power. Despite this option being available, in many cases education is preferred over prosecution.

#### **Scope for future research**

45. To what extent are persons with disabilities, disability assistance animal training associations and government encountering disability assistance animal discrimination?
46. How does the uncertainty around distinguishing between a pet and a disability assistance animal result in devaluing the disability assistance animal brand?
47. Where discrimination is occurring, are any reasons given to justify the discrimination?
48. When a person books on-line what should be sufficient evidence to determine that they will be accompanied by a disability assistance animal?
49. Could an on-line register of disability assistance animals enable more efficient on-line booking?
50. Leaving aside rights under anti-discrimination laws and international human rights, what are the expectations of people that use the different forms of disability assistance animals?

51. When responding to breaches of laws that protect a person's right to be accompanied by assistance animals, how does government respond and might different response strategies result in greater legal compliance?

***What is the impact on frontline staff when they are required to determine to permit access or exclude?***

**Summary**

The current regulatory regime relies heavily upon the person with a disability to advocate for their rights and for frontline persons to make a call whether or not access should be permitted or denied. This places enormous pressure on someone to make a rapid judgment. A bus, ferry, tram or train conductor has at most a minute to determine whether access should be permitted or denied. A small business operator or a café may have longer, but are still confronted with a question that will have significant implications if they make the wrong decision. A small business operator who makes the wrong call could end up being taken away from their business to defend their conduct in a human rights commission. An employee could have a negative note made on their personnel record, and if they are casual, may lose their job altogether.

Participants noted that staff in some positions are well trained on the operation of the law, but such staff are often not qualified to perform a public access test on an animal. While a person can be confident that an animal trained by a guide dog association has training, people presenting with other animals for a wide range of disabilities require more detailed consideration. Unfortunately the current framework does not enable frontline staff to make an appropriate assessment.

One participant gave the example of where the current system is failing. They gave the example of a long distance train journey with animals they claimed were assistance animals. This journey required the passenger to spend two hours on a train to come into a capital city and then an additional hour on a different line. When the passenger sought to board the second train the conductor determined that the animals were not disability assistance animals and refused to let the person board. This resulted in the passenger missing the connecting train. This left the person with a disability unable to continue their journey. The decision was made; since the first conductor had let the passenger onto the train the passenger should have the right to finish the journey. Since the passenger had already missed the connecting train the decision was made to pay a taxi to finish the journey for the passenger and their animals. The confusion in this situation resulted in the conductors being stressed that they had made a mistake, the transport operator being out of money and the passenger being distressed.

Even if there was certainty about the status of the animal, people with disability assistance animals still get refused access.

### **Scope for future research**

52. How are frontline services determining if an animal is a disability assistance animal or not?
53. What documentation and identification cards have frontline services and small businesses encountered?
54. How have frontline services and small businesses dealt with disputes over the status of animals?
55. Do frontline services feel confident that their employer will support their decision?
56. Does small business feel supported by industry groups or other agencies when attempting to distinguish between a pet and a disability assistance animal?

## **What other factors are relevant to the regulation of disability assistance animals?**

*To what extent are and should duty holders be required to devote resources to enable a person to be accompanied by their disability assistance animal?*

### **Summary**

In some situations permitting a person to be accompanied by a disability assistance animal has a definable cost. This can arise where the presence of the disability assistance animal requires a duty holder to provide an additional seat to enable the disability assistance animal to be present. Airlines and concerts generally provide a person with a disability an additional seat without charge if they are bringing a disability assistance animal with them. For this reason airlines have policies to limit the number of disability assistance animals on each flight.

In other situations the presence of a disability assistance animal requires support from the provider. This can arise in education and aged care settings. For example, autism dogs are used to support children in primary schools. In such settings the child with a disability will require support from teaching staff to avoid their disability assistance animal from being interfered with by other children. In aged care facilities patients cannot always care for the disability assistance animal without help. While the patient may have the capacity most of the time, there are situations when the patient temporarily or permanently loses capacity. In such a situation the aged care facility might be called up on to provide help or to facilitate the provision of such help by calling a family member.

### **Scope for future research**

57. Where a school or health facility is directly assisting a disability assistance animal, what legal duties do the duty holders have to their employees, to the person with a disability, to the animal itself and to the wider public?
58. How should the rights of the person with a disability be balanced with the wellbeing of the animal and others? For example, when animals are used to help people with mental health this can place the animals at risk. Some psychiatric wards are locked down and people with dementia can be unpredictable.

## ***How can the built environment negatively impact on the capacity of a person using disability assistance animals to use public spaces?***

### **Summary**

The disability community has long identified the impact the built environment can have on turning impairment into a disability. The social model identified that people with wheelchairs are disabled when buildings put in steps rather than ramps and lifts. Structural issues can create difficulties for people being accompanied by disability assistance animals. As areas become more developed the grass areas or gardens that animals can toilet in are replaced with cement.

It is not just the lack of animal toileting areas, but decisions to permit unsafe and untrained animals to occupy public spaces. This can be the decision to cafes to let dogs into the café without any public safety test, local governments not enforcing rules pertaining to dogs being off leashed in parks and inadequate fencing to contain family pets around the suburbs. Permitting a guide dog for the blind onto a ferry or bus is essential, but if that guide dog is distracted by dogs running out of unfenced yards and chased while walking through local government parks, then the ability to use that guide dog is substantially reduced.

### **Scope for future research**

59. Should disability assistance animal access and toileting areas be included in city planning?
60. How many disability assistance animals are attacked or interfered with by dogs off leash every year?
61. How can the public be educated regarding the role of and interaction with disability assistance animals?
62. Should civil and criminal laws respond differently when disability assistance animals are injured by uncontrolled animals, negligence or assault?

## ***How effective are Australian anti-discrimination laws when people bring disability assistance animals from other jurisdictions?***

### **Summary**

Foreign flagged aircraft and ships operate within Australia. There have been situations where planes that are registered in other countries have had problems accommodating passengers with disability assistance animals due to conflicts of cultures and laws. This issue is especially problematic when a person with a disability assistance animal desires to fly through another jurisdiction on transit to their final destination.

### **Scope for future research**

63. Can Australian laws and policies be improved to better manage the rights of persons seeking to be accompanied by their disability assistance animals on foreign flagged aircraft and ships?
64. How can the international transit of disability assistance animals be improved?

***How the use of robotics could transform how people with disabilities manage their disabilities and is law and policy prepared for this technological development?***

### **Summary**

Robots could be used instead of animals to assist with mobility. It is possible that in a few years, robots may reduce the need for animals for mobility purposes. Currently such devices would be expensive, but technology associated with autonomous vehicles is likely to alter the cost of such mobility aids. While robots can assist with mobility, they will not provide support for every disability; for example persons who use their animal for emotional support will not gain such support from a robot.

### **Scope for future research**

65. What would be the benefits and limitations of using a robot instead of a disability assistance animal?
66. Could such a robot be designed to provide sufficiently reliable direction when compared to a disability assistance animal?
67. Could such a robot be designed and manufactured at a viable price?
68. Who would pay for the provision and maintenance of such a robot?

***How are other jurisdictions around the world regulating disability assistance animals?***

### **Summary**

Disability assistance animal laws are on the books across Europe, North America and in Asia. In particular, participants were interested in how the USA determined to expressly recognise miniature horses and how access rights differs between OECD countries.

### **Scope for future research**

69. How have laws, courts and policies approached the regulation and operationalising of disability assistance animals in other OECD countries?

## Next steps

We envisage that the next steps will be as follows:

1. The workshop held on 27 September 2016 has summarised the key issues in the regulation of disability assistance animals and set the agenda for future advocacy, research, responses and reform.
2. This Discussion and Scoping Paper is distributed to stimulate debate and motivate moves for regulatory reform.
3. Using this Discussion and Scoping Paper, and the momentum from the workshop, the academic team will contact participants to further discuss strategies to help influence policy debates and build research linkages to achieve mutually beneficial outcomes.
4. This paper will also inform the research agenda of the academic team.

It is the goal of the research group to ensure that, based on the consensus that there is a problem with operationalising the current definition of disability assistance animal, we will play a role to inform and advance public policy debates.

## Appendix – List of Workshop Participants on 27 September 2016

Paul Adrian	Guide Dogs NSW/ACT
Jaci Armstrong	Guide Dogs Australia
Sandra Arnold	Queensland Dept. of Communities, Child Safety and Disability Services
Peter Billings	TC Beirne School of Law, The University of Queensland
Natalie Billings	Queensland Rail
Simon Bronitt	TC Beirne School of Law, The University of Queensland
CarmenButtery	TC Beirne School of Law, The University of Queensland
Lyn Carlson	Churches of Christ, Queensland
Marcus Dobinson	Queensland TransLink
Ann Donaghy	Queensland Centacare
Tony Gallagher	Queensland Dept. of Tourism, Major Events, Small Business and the Commonwealth Games
Paul Harpur	TC Beirne School of Law, The University of Queensland
Errol Ingram	Guide Dogs Queensland
Graeme Innes AM	Guest Speaker
Tanya Jones	Commonwealth Infrastructure and Regional Development
Gail Le Bransky	Transport for New South Wales
Richard Lord	Assistance Dogs Australia
Viv McKeown	Commonwealth Department of Social Services
Darrelle Merritt	Western Australian
Nha Nguyen	Public Transport Victoria
Nicolas Olivares	Public Transport Victoria
Nancy Pachana	School of Psychology, The University of Queensland
Tiffany Richards	Vline, Victoria
Brent Ritchie	UQ School of Business, The University of Queensland
Geoff Smith	Commonwealth Infrastructure and Regional Development
Peter Stafford	Commonwealth Infrastructure and Regional Development
Sonja Wigney	Commonwealth Attorney-General's Department
Ellen Wood	TC Beirne School of Law, The University of Queensland
Robin Zakharov	Queensland Dept. of Communities, Child Safety and Disability Services