

Guide, Hearing and Assistance Dogs Amendment Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the Guide, Hearing and Assistance Dogs Amendment Act 2015.

Policy objectives and the reasons for them

The Guide, Hearing and Assistance Dogs Amendment Bill 2015 (the Bill) amends provisions in the *Guide, Hearing and Assistance Dogs Act 2009* (the Act). The main purpose of the Act is to recognise the rights of people with disability to be accompanied by a guide, hearing or assistance dog at public places, public passenger vehicles and places of accommodation. Guide, hearing and assistance dogs are specially trained dogs that enrich the lives of people with disability by enabling them to participate more broadly in their community.

The Act also sets a level of quality and accountability by allowing trainers and training institutions to apply to be an approved trainer or training institution under the Act. People with disability may choose to have their dog certified by an approved trainer or training institution and obtain a government issued handler identity card. In doing so, this ensures their access rights are recognised and protected under the Act.

In late 2013, a stakeholder review panel was formed to undertake a full review of the Act. The panel consisted of a broad cross-section of government and non-government organisations to ensure the feedback of all interested parties was considered in the review. Overall, the panel concluded the Act is working well. However, the panel did make some recommendations that require legislative amendments. The purpose of the Bill is to give effect to these recommendations.

The policy rationales for the Bill are to:

- Improve the current arrangements provided for under the Act by streamlining administrative processes and reducing red tape (this will be achieved through the removal of unnecessary provisions and a reduction in the duplication of systems and processes).
- Maintain the appropriate legislative framework by promoting access rights for people with disability, without imposing unnecessary restrictions on the industry (it will also provide more flexibility to users by relaxing current legislative requirements and enabling more people with disability to enforce their rights under the Act).
- Strengthen the monitoring, investigative and enforcement powers of authorised officers (this will equip authorised officers with the necessary powers to handle any future complaints and effectively oversee and enforce the administration of the Act).

Achievement of policy objectives

The first policy objective of the Bill is to improve the access rights of guide, hearing and assistance dog users. This is to be achieved by *recognising alternative handlers*.

Currently, a person with disability who requires a guide, hearing or assistance dog may not be able to physically control the dog without the support of another person (for example, a child with autism who relies on an assistance dog and requires the support of their parent to control the dog). Under the current Act, the dog would not be able to be certified (because the person with disability is unable to control the dog), and the access rights of the person are not recognised (because the person cannot be issued with a handler identity card under the Act).

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

The second policy objective of the Bill relates to simplifying and streamlining processes for both people with disability and the industry. This is achieved through the following key changes:

- *Authorising approved trainers or training institutions to issue handler's identity cards and not government* — the Bill simplifies processes and provides a one-stop shop for guide, hearing and assistance dog users to have their dogs certified and obtain identity cards. Government will maintain a regulatory role to prevent fraud or misuse of identity cards, and to be able to effectively enforce the Act.
- *Repealing provisions around the creation of an advisory committee and recognising the chief executive may consult with any entity the chief executive considers appropriate* — this change provides more flexibility and allows the chief executive to call upon relevant experts from time to time to inform the approval and standards setting process.
- *Relax legislative requirements for proof of a person's disability every time a person renews their identity card* — this change simplifies process and removes unnecessary restrictions. People with disability will only be required to provide proof of their disability in the first instance, by submitting a certificate of disability to their trainer. Handlers will no longer be required to re-submit a certificate of disability each time they seek the renewal of their handler identity card.
- *To allow an approved training institution to certify a guide, hearing or assistance dog of a director, shareholder or employee trainer of that institution* — this change removes unnecessary requirements in the certification process and promotes access rights for people with disability.

The third policy objective of the Bill is to improve the monitoring, investigative and enforcement provisions in Part 8 of the Act. This is achieved by including the following new powers: (1) a general power to require information; (2) entry to premises by way of warrant. These changes provide authorised officers with a continuum of effective powers to monitor, investigate and enforce compliance with the Act.

The stakeholder review also recommended the development of a joint communication strategy between government and industry to increase awareness of the Act. Effectiveness of the Act and accessibility for people with disability relies heavily on community and business awareness about the Act and the needs of people with disability. The Department of Communities, Child Safety and Disability Services will work closely with industry representatives to develop material that is relevant, accessible and distributed through established networks. This process will also support the communication and education of amendments made by the Bill.

Alternative ways of achieving policy objectives

Amending the Act is the only way of achieving the policy objectives.

Estimated cost for government implementation

The proposals in the Bill will be implemented within existing resources.

Consistency with fundamental legislative principles

There are no fundamental legislative principle issues. The majority of the amendments either simplify processes for trainers or users, or alternatively potentially increase the number of people with disability who will be granted access rights under the Act.

Consultation

A stakeholder review panel was convened in late 2013 to conduct the review. The stakeholder review panel consisted of representatives from government agencies and a statutory body, as well as dog trainer/training organisations, advocacy organisations, and tourism and accommodation sectors, including: Assistance Dogs Australia; Disability Aid Dogs Australia; Guide Dogs Queensland; Lions Hearing Dogs; Queensland Advocacy Incorporated; Queenslanders with Disability Network; Queensland Tourism Industry Council; Real Estate Institute of Queensland; Residential Tenancies Authority; Smart Pups Assistance Dogs for Special Needs Children Inc.; a specialist dog trainer; and Vision Australia.

Following completion of the review, the Department of Communities, Child Safety and Disability Services published a position paper on its website, which set out the process of and recommendations from the review. Members of the public were given the chance to provide any feedback in relation to the implementation of the review recommendations.

The stakeholder review panel was re-convened in June 2015. All members were advised of the proposed amendments and given the chance to comment and provide feedback on the

Bill. On the whole, there was full support from the stakeholders in relation to the legislative reforms and the Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to Queensland and complements other state and federal discrimination laws. The Act is regarded by the sector as one of the most robust in the country and it sets an industry standard in promoting access rights for dog users, as well as ensuring good standard is maintained for the training industry.

States and Territories have legislation that regulates access rights for guide, hearing and assistance dogs. However, there is significant variation in the level and type of regulation – for example: some states only regulate guide and hearing dogs, others do not provide for a legislative approval process for trainers, and many do not provide government issued identification.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the short title for the Act is the *Guide, Hearing and Assistance Dogs Amendment Act 2015*.

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Guide, Hearing and Assistance Dogs Act 2009

Clause 3 provides that Part 2 (Amendment of Guide, Hearing and Assistance Dogs Act 2009) of the Bill amends the *Guide, Hearing and Assistance Dogs Act 2009*.

Clause 4 amends section 6 (Definitions for pt 2) by amending the definition of an *accompanied handler* to recognise an alternative handler (who is accompanied by a primary handler and their certified guide, hearing or assistance dog for which the alternative handler has a handler's identity card).

Clause 4 also removes the definitions of *public place* and *certified guide, hearing and assistance dog* from Part 2. These definitions are now set out in Schedule 4 (Dictionary) as this term does not apply exclusively to Part 2.

Clause 5 amends section 8 (People with disability may be accompanied by their guide, hearing and assistance dogs) to clarify that this right under the Act only applies when the person is accompanied by a certified guide, hearing or assistance dog.

Clause 6 inserts a new section 8A (Alternative handlers may be accompanied by a certified guide, hearing and assistance dog) to recognise the right of an alternative handler to access a place of accommodation, public place or public passenger vehicle when accompanied by a primary handler and their certified guide, hearing or assistance dog. The protections of the Act will not extend to an alternative handler as an individual.

Clause 6 also clarifies that an alternative handler who is accompanied by a certified guide, hearing or assistance dog does not commit an offence by taking the dog into a place of accommodation, public place or public passenger vehicle.

It is acknowledged that from time to time, the alternative handler and a certified dog may be separated from the primary handler. For example:

- when the alternative handler and primary handler arrive together at a café, but the primary handler has to leave the café first, leaving the alternative handler (with a certified dog) in the café without the primary handler
- when the alternative handler takes a certified dog and they travel on a train to meet the primary handler at a park (who arrived there first by separate means).

In such and similar circumstances, it is the policy intent that the alternative handler's access rights under the Act are maintained and preserved.

Clause 7 amends section 10 (Lawful presence at a place or on a vehicle) to update section numbering, resulting from consequential amendments.

Clause 8 amends section 12 (Identification procedure for handlers and trainers) to clarify that a person complies with the identification procedure by having their identity card available for inspection by a person exercising control of a place of accommodation, public place or public passenger vehicle, if asked.

Clause 8 also amends the definition of *identity card* to mean a primary handler's identity card, an alternative handler's identity card, or a trainer's identity card.

Clause 8 makes a consequential amendment and removes the definition of *valid application notice* as this notice will no longer be issued under the Act.

Clause 9 amends section 12A (Obligations of persons exercising control of places of accommodation) to clarify that it is a defence to a charge of an offence under section 12A(1) for the person exercising control of a place of accommodation to prove that the accompanied handler did not comply with the identification procedure in section 12A(2).

Clause 9 amends the notation under section 12A(4) to recognise that a person with disability may also have a right of action under the *Anti-Discrimination Act 1991* (in addition to a right of action under the *Disability Discrimination Act 1992*).

Clause 10 amends section 13 (Obligations of persons exercising control of public places and public passenger vehicles) by inserting the *Anti-Discrimination Act 1991* under the note for section 13(2) to note an additional right of action for a person with disability.

Clause 11 amends section 16 (Submissions from advisory committee) replacing it with a new section 16 (Chief executive may consult about application for approval) to provide that in considering and deciding the application, the Chief Executive may consult with any entity the Chief Executive considers appropriate.

This committee has never been established and provisions which deal with it are being repealed. The new section 16 grants the Chief Executive greater flexibility to call upon the view of industry experts when assessing an application from a trainer or training institution seeking approval under the Act.

Clause 12 amends section 17 (Decision on application for approval) to make consequential amendments resulting from insertion of the new section 16.

Clause 13 amends section 21 (Review of approval) by providing that in reviewing an approval as an approved trainer or training institution, the Chief Executive may consult with any entity the Chief Executive considers appropriate.

Clause 14 omits section 22 (Submissions from advisory committee) as a consequential amendment of removing the power for the Chief Executive to consult an advisory committee in section 16.

Clause 15 amends section 23 (Decision on review) as a consequential amendment of omitting section 22.

Clause 16 amends section 30 (Voluntary surrender of approval) by making a minor consequential amendment to reflect the new definition for *notice* under Schedule 4 (Dictionary).

Clause 17 amends section 32 (Approved trainers and approved training institution must give notice of change) by making a minor consequential amendment to reflect the new definition for *notice* under Schedule 4 (Dictionary).

Clause 18 amends section 35 (Public access test) to vary the purpose of the public access test. The test will now assess if the guide, hearing or assistance dog is able to be physically controlled by the primary handler or, the primary handler with the support of the alternative handler.

Clause 19 replace section 39 (Approved or employee trainer must not certify own dog) with a new section 39 (Approved trainer must not certify own dog) to provide that an approved trainer must not certify a guide, hearing or assistance dog if the trainer is also the primary handler of the dog.

This amendment will allow an approved training institution to certify a guide, hearing or assistance dog if the person with disability is an employee trainer, director or shareholder of the institution (this is not possible under the current Act). This will remove unnecessary and unduly restrictive processes, and empower training institutions to actively manage any potential conflicts of interests.

Clause 20 amends section 40 (Eligibility for handler's identity card) to clarify that the eligibility requirements for a handler's identity card set out in this section only apply to a primary handler. As government will no longer be issuing identity cards, clause 20 removes the requirement for the primary handler to apply for the card within 28 days after certification of the dog.

Clause 20 also provides that the requirement for a primary handler to physical control a dog does not apply if the primary handler satisfies the requirements in section 40(1)(a) and there is an alternative handler identity card in effect for the primary handler's dog. The role of the alternative handler will be to support the primary handler to handle the dog.

Clause 21 replaces the existing section 41 (Application for handler's identity card), section 42 (Notice of application) and section 43 (Decision on application) with new provisions. This is because the role of issuing handlers' identity cards is to be transferred from the Chief Executive to approved trainers and training institutions. As a result, formal applications and decision notices under the Act are no longer necessary. Once a dog is certified under the Act, an approved training institution or trainer will issue the handler with an identity card, if the handler meets the eligibility requirements.

Clause 21 inserts a new section 41 (Eligibility for alternative handler's identity card). This section provides that an adult is eligible for an alternative handler's identity card for a primary handler's dog if the primary handler relies on the alternative handler's support to physically control the dog, and the alternative handler is able to do so.

Clause 21 also inserts a new section 42 (Issue of handler's identity card) to provide that an approved trainer or training institution can only issue a handler's identity card to a person if the trainer or institution is satisfied that the person is eligible for a primary handler's identity card (under section 40) or alternative handler's identity card (under section 41).

Clause 22 amends section 44 (Term of handler's identity card) to specify that the term of a handler's identity card is to be no more than 3 years after the day it is issued.

Clause 23 replaces section 45 (Notice of expiry of handler's identity card) with a new section 45 (Form of handler's identity card) to specify that a handler's identity card issued by an approved trainer or training institution must:

- contain a recent and clear photo of the handler
- contain a recent photo of the certified dog
- comply with any additional requirements prescribed by regulation.

Clause 23 also inserts a new section 45A (Record of handler's identity card) which requires approved trainers and training institutions to keep a record of handler's identity cards they have issued, and prescribes specific details that this record must include. They are: the name of the person to whom the card was issued; a description of the handler's dog; the day the card was issued; the day the card expires; and any other information prescribed by regulation.

Clause 24 replaces section 46 with a new section 46 to set out grounds for immediately suspending or cancelling a handler's identity card. For the most part, the existing grounds for suspending or cancelling an identity card are retained. However, the following two grounds have been added:

- the alternative handler no longer supports the primary handler to physically control the dog
- the primary handler of the dog no longer relies on the alternative handler to physically control the dog.

Clause 25 amends section 47 (Immediate suspension of handler's identity card) to clarify that the Chief Executive, or an approved trainer or training institution that issued a handler's identity card have the power to suspend the card.

Clause 26 amends section 48 (Cancellation of handler's identity card) to provide that the Chief Executive, or an approved trainer or training institution that issued a handler's identity card can cancel the card if they believe a ground exists to do so.

Clause 26 also sets out the notice requirements that the Chief Executive, or an approved trainer or training institution must follow and afford a handler before cancelling the card.

Clause 27 amends section 49 (Voluntary surrender of handler's identity card) by making a minor consequential amendment to reflect the new definition for *notice* under Schedule 4 (Dictionary).

Clause 28 omits section 50 (Replacement of handler's identity card) as the Chief Executive will no longer have a role in issuing handlers' identity cards. Handlers will approach their trainer or training institution in the event they require a replacement card.

Clause 29 amends section 51 (Return of handler's identity card) to provide that if a handler's identity card is cancelled, the handler must return the card to the person or entity that cancelled the card within 1 month (unless they have a reasonable excuse). A maximum penalty of 2 penalty units may be imposed for failure to comply with this requirement.

Clause 29 also requires the return of a handler's identity card within 1 month (unless they have a reasonable excuse) following the occurrence of:

- the death or retirement of the certified dog; or
- an alternative handler no longer supports the primary handler to physical control a certified dog.

A maximum penalty of 2 penalty units may be imposed for failure to comply with this requirement.

Clause 30 amends section 56 (Issue of identity card for employee trainer or puppy carer) to make a minor wording change.

Clause 31 replaces section 68 (Reviewable decisions) with a new section 68 to set out what is a reviewable decision under the Act. Refusal to issue a handler's identity card under section 43 is no longer a reviewable decision, as this section has been repealed.

The new section 68 acknowledges that the Chief Executive, trainers and training institutions may suspend or cancel a handler's identity card. As a result, all of these decisions are subject to review by the Chief Executive.

Clause 31 also provides that a person to whom the decision applies may seek a review of the decision from the entity (chief executive, approved trainer or training institution) that issued an information notice about the decision.

Clause 32 amends section 69 (Application for review) to clarify that a person may also seek a review from an approved trainer or training institution for a reviewable decision.

Clause 33 amends section 71 (Reviewed decision) to clarify that the application for review is about a decision of the Chief Executive.

Clause 34 amends section 74 (Purpose of Pt 8) to clarify that the purpose of Part 8 is to provide powers to authorised officer to investigate, monitor and enforcement compliance with the Act.

Clause 35 amends section 79 (Production or display of identity card) to make a minor wording change and consequential section renumbering.

Clause 36 replaces section 83 (Power to enter places) with a new section 83 (General power to enter places). This section allows an authorised officer to enter a place if:

- the occupier consents to the entry
- it is a public place and entry is made when the place is open to the public
- it is not a home and entry is made when the place is open for carrying on business or otherwise open for entry
- the entry is authorised under a warrant.

Clause 36 clarifies that the power to enter by consent is subject to any conditions and that it ceases if consent is withdrawn; and that the power to enter under a warrant is subject to the terms of the warrant.

Clause 37 replaces the heading of Part 8, Division 3, Subdivision 2 (Procedure for entry) with Procedure for entry with consent.

Clause 38 amends section 84 (Entry with consent) by inserting a new section 84(1A) to provide that for the purposes of asking an occupier for consent to enter, the authorised officer may (without consent or a warrant):

- enter land around premises at the place in order to make contact with the occupier
- enter part of the place members of the public can enter to make contact with the occupier.

Clause 38 clarifies that the occupier's consent may be given subject to conditions and withdrawn at any time. It also sets out the details of what an acknowledgement of consent must contain, if consent to enter is given by the occupier.

Clause 39 inserts a new Subdivision 2A (Entry under warrant) under Part 8, Division 3, which has new sections 84A, 84B, 84C and 84D that set out the process requirement for applying for a warrant from a magistrate to enter a place, how the warrant is to be issued, what happens when there is a defect in a warrant, and the procedure for entry under a warrant. These are modelled on standards provisions across other Queensland legislation.

Clause 40 amends section 85 (General powers after entering a place) to clarify that an authorised officer can exercise powers set out in section 85, after they enter a place.

Clause 41 amends section 88 (Power to require name and address) to clarify that an authorised officer may also require an occupier to verify the correctness of their name and address where it is reasonable to do so.

Clause 42 inserts a new section 89A (General power to require information) to provide that if an authorised officer reasonably believes an offence has been committed against the Act and a person may be able to give information about the offence, the authorised officer may require the person to give information.

Clause 43 amends section 90 (Power to require particular information or inspect documents) to clarify that compliance with request for information that is an electronic document means giving of a clear image or written version of the electronic document.

Clause 44 amends section 91 (Powers relating to production of documents) to update section renumbering resulting from consequential amendments.

Clause 45 replaces section 92 (Failure to give information or produce or certify document) with a new section 92 and prescribes 50 penalty units if a person fails to comply with a request to give information, or produce or certify document as requested under the Act. Clause 45 provides self-incrimination as a reasonable excuse for non-compliance with the new section 92.

Clause 46 amends section 94 (Compensation) to update subdivision numbering resulting from consequential amendments.

Clause 47 omits the entirety of Part 10 (Advisory committee). The advisory committee has never been established and provisions which deal with it are repealed.

Clause 48 replaces section 114 (Delegation by Chief Executive) with a new section 114 to provide that the Chief Executive may delegate their powers under the Act to an appropriately qualified public service employee. The definition of 'appropriately qualified' is no longer required as the definition in the *Acts Interpretation Act 1954* can be relied upon.

Clause 49 amends the heading of section 115 (Protecting official from liability) to read as Protection from liability, and removes the definition of *official*. The protection of officials is dealt with under section 26C of the *Public Service Act 2008* (provides protection against civil liability to State employees).

Clause 50 replaces the heading of Part 12 Division 2 (Transitional provisions) with a new heading (Transitional provisions for Act No. 4 of 2009) for Division 2.

Clause 51 inserts a new Part 12 Division 3 (Transitional provision for Guide, Hearing and Assistance Dogs Amendment Act (No. ..) 2015 to set out transitional arrangements to apply to applications to Chief Executive for a handler's identity card.

Clause 51 inserts a new section 124 (Applications to Chief Executive for handler's identity cards) and section 125 (Term of current handler's identity cards). The new section 124 provides that an application for a handler's identity card made under section 41 (before the commencement of this Act) must be dealt with under the unamended Act. The new section 125 makes clear that the day of expiry of a handler's identity card that is in effect before the commencement of the Act, is the day of expiry stated on the card.

Clause 52 omits the definitions of *advisory committee*, *certified guide*, *hearing or assistance dogs*, *handler*, *handler's identity card*, *interested person* and *public place* in Schedule 4 (Dictionary). Clause 52 inserts new definitions for *alternative handler*, *alternative handler's identity card*, *authorised officer*, *certified guide*, *hearing or assistance dogs*, *handler*, *handler's identity card*, *identity card*, *interested person*, *notice*, *occupier*, *of*, *place*, *premises*, *primary handler*, *primary handler's identity card*, *public place*, and *reasonably believes that* define terms used in the Bill.