



Guidelines

Assistance Animals in ACT Independent Schools

Contents

1.0 Background	3
2.0 Initial considerations prior to an Assistance Animal in a school.....	4
2.1 Considerations for Schools.....	4
2.2 Owner’s responsibilities for the Assistance Animal	5
2.3 Documentation/evidence	5
2.3.1 Standards of hygiene and behaviour in a public place for Assistance Dogs	5
3.0 Supporting Legislation.....	7
3.1 Discrimination under the Disability Discrimination Act 1992 (Commonwealth) (DDA)	7
3.1.2 Assistance animals	7
3.1.3 Discrimination by educational authorities and education providers.....	9
3.2 Discrimination Act 1991 (ACT) — (the ACTDA)	10
3.3 Domestic Animals Act 2000 (ACT).....	12
3.4 Additional Legislation	12
4.0 Common Assistance Animals (Australian Human Rights Commission, 2016)	13
Guide dogs.....	13
Hearing dogs.....	13
Service dogs.....	13
Facility or Educational Support dogs.....	13
Seizure response dogs.....	13
Emotional Support Animal	13
Therapy animals	14
5.0 References.....	15

1.0 Background

Some Australians with disability currently use Assistance Animals as a disability support. For example, Assistance Animals have assisted people with severe vision impairment to successfully navigate through their communities for decades.

More recently, Assistance Animals have been used by people to manage a range of other types of need, including social and emotional support, diabetes and epilepsy (more examples are provided in section 4).

The implementation of the National Disability Insurance Scheme (NDIS) has seen an increase in the use of Assistance Animals. Participants of the NDIS are now able to have the training of an Assistance Animal included in their plan if it is deemed necessary and reasonable.

The National Disability Insurance Agency defines an Assistance Animal as an animal which is part of a goal oriented, planned and structured therapeutic intervention. (National Disability Insurance Agency , 2017).

These guidelines have been developed by the Association of Independent Schools of the ACT to support Member Schools to develop policies which may be used when requests by families and students to use Assistance Animals are made.

2.0 Initial considerations prior to an Assistance Animal in a school

Before a student has an Assistance Animal at school to support them, all parties should be involved in the planning process: the Principal, classroom teacher, learning support staff, parents/carers and the student (if appropriate).

If the Assistance Animal is a dog families must provide schools with the following documentation under the ACT Domestic Animals Act 2000:

- That the dog is registered with the ACT government Domestic Animal Services; and the dog must wear their registration tag at all times
- is desexed; and
- is microchipped.

2.1 Considerations for Schools

The following considerations are for schools guidance throughout the planning process:

- Whether having the Assistance Animal in the school would constitute an unjustifiable hardship as per the Disability Discrimination Act 1992 and the ACT Discrimination Act 1991 (see page 7.)
- The duty of care to students and staff in considering all the health and safety risks associated with the presence of an Assistance Animal, e.g. allergies, fears, etc.
- The types of evidence the owner of the Assistance Animal needs to provide to ensure that the animal meets hygiene and behaviour standards that are appropriate in a public place (see page 5).
- How the Assistance Animal will accompany the student at all times.
- How to induct/introduce the Assistance Animal to the student's class.
- The reasonable adjustments required to ensure that the animal remains under the control of an adult on behalf of the student, or the student if of sufficient age and maturity to control the animal, at all times that it is on the school grounds.
- The care being provided to the Assistance Animal while at school or on school-approved activities.
- When, where and by whom the animal is to be toileted and walked.
- Access to food and water, including the appropriate timing to offer treats.
- Where is an appropriate rest area away from students for the animal, if required.
- Supervision of the animal so that it is not left with students unattended at any time.
- Will the animal be included in activities such as school photos, dress up days, classroom parties, and larger events.
- In the case of two or more Assistance Animals are at the school, the procedures around interaction.
- How will the animal be identified as an Assistance Animal to the school community.
- How to communicate to the community about the role of the Assistance Animal.
- Means to respond to any instances of cruelty to the animal, seeking guidance from the RSPCA ACT.

2.2 Owner's responsibilities for the Assistance Animal

The following are considered to be the owner's (be that the student or the parents/carers) responsibility:

- Provide food, water bowls and appropriate bedding/matting for the animal's comfort as required.
- Ensure the animal's health and hygiene with regular veterinary treatments.
- Provide contact details for emergency veterinary care.
- Meet veterinary costs and transport to a veterinary location.
- Plan for the travel arrangements of the Assistance Animal to and from the school.
- If the Assistance Animal is a dog, ensure it meets the necessary requirements of the *Domestic Animal Act 2000 (ACT)* and has not been declared a dangerous dog under that Act.
- Provide evidence that the animal meets hygiene and behaviour standards that are appropriate in a public place.
- Contact a training organisation for assistance and advice if the standard behaviour of school staff or students causes inappropriate behaviour in the animal.

2.3 Documentation/evidence

The owner of the Assistance Animal is required to provide the following evidence to the school

- Evidence the animal is an Assistance Animal and proof that the animal meets the standards of hygiene and behaviour that are appropriate for an animal in a public place.
- If the Assistance Animal is a dog documentation that it is
 - o registered with the ACT government Domestic Animal Services; and
 - The dog must wear their registration tag at all times
 - o desexed; and
 - o microchipped.

Additional evidence that schools could request throughout the planning process include:

- Evidence that the Assistance Animal's vaccinations and vet visits are up to date.
- Evidence that the Assistance Animal does not carry an infectious disease.
- Supporting documentation from the student's psychologist or doctor recommending the use of an Assistance Animal.
- Evidence of training accreditation (if applicable).

Note: owners are only required to provide documentation/evidence which supports the claim that the animal is an Assistance Animal and that the animal is trained to meet standards of hygiene and behaviour that are appropriate for an animal in a public place. Other documentation can be requested, however is not a requirement under the DDA.

2.3.1 Standards of hygiene and behaviour in a public place for Assistance Dogs

To meet the standards of hygiene and behaviour an Assistance Dog must go through a Public Access Test. The Public Access Test (PAT) is a set of standards determined by Assistance Dogs International (ADI), to be used by its member organisations, to regularly assess the public appropriateness of their accredited assistance dog teams (Australian Support Dogs, 2013)

ADI outlines the purpose and benchmark of the PAT:

The purpose of this Public Access Test is to ensure that dogs that have public access are stable, well-behaved, and unobtrusive to the public. It is to ensure that the client has control over the dog and is not a public hazard.

Any dog that displays any aggressive behaviour will be eliminated from the test. Any dog that does not meet hygiene standards or shows uncontrollable behaviour will be eliminated from the test.

The bottom line of this test is that the dog demonstrates that he/she is safe to be in public and that the person demonstrates that he/she has control of the dog at all times.

Assistance dog teams must successfully demonstrate superior control and behaviour in a range of nominated situations in each of the mandatory assessment categories:

- Controlled unload out of vehicle
- Approaching the building
- Controlled entry through a doorway
- Heeling through the building
- Six foot recall on lead
- Sits on command
- Downs on command
- Noise distraction
- Canteen
- Off lead
- Controlled entry and exit
- Controlled load into vehicle

3.0 Supporting Legislation

3.1 Discrimination under the Disability Discrimination Act 1992 (Commonwealth) (DDA)

Section 12 of the DDA applies 'throughout Australia'. The DDA prohibits both direct discrimination and indirect discrimination against a person with a disability. Direct disability discrimination is more fully spelt out in section 5 of the DDA, and indirect disability discrimination in section 6.

Section 4 of the DDA provides — "**disability**", in relation to a person, means:

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;
- (h) and includes a disability that:
 - (i) presently exists; or
 - (j) previously existed but no longer exists; or
 - (k) may exist in the future (including because of a genetic predisposition to that disability); or
- (l) is imputed to a person.

To avoid doubt, a **disability** that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.

3.1.2 Assistance animals

Section 8 of the DDA provides:

- (1) This Act applies in relation to having [an]...assistance animal...in the same way as it applies in relation to having a disability.

Example: For the purposes of section 5 (direct discrimination), circumstances are not materially different because of the fact that a person with a disability requires adjustments for the...assistance animal... (see subsection 5(3)).

- (2) For the purposes of subsection (1), but without limiting that subsection, this Act has effect in relation to a person with a disability who has [an]... assistance animal or... as if:
 - (a) each reference to something being done or needed because of a disability were a reference to the thing being done or needed because of the fact that the person has the... animal... and
 - (b) each other reference to a disability were a reference to the...animal...
- (3) This section does not apply to section 48 (infectious diseases) or section 54A (exemptions in relation to assistance animals).

Section 9 of the DDA provides in part that:

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

- (4) For the purposes of this Act, a person with a disability has...an assistance animal...if the person...
 - (a) is presently accompanied by, or possesses, the animal... or
 - (b) was previously accompanied by, or possessed, the animal... or
 - (c) may be accompanied by, or possess, the animal... in the future;; or
 - (d) is imputed to be accompanied by, or to possess, the animal...'

Section 54A of the DDA provides:

- (1) This section applies in relation to a person with a disability who has an assistance animal.

*Note: For when a person with a disability **has an assistance animal**, see subsections 9(2) and (4).*

- (2) This Part does not render it unlawful for a person to request or to require that the assistance animal remain under the control of:
 - (a) the person with the disability; or
 - (b) another person on behalf of the person with the disability.
- (3) For the purposes of subsection (2), an assistance animal may be under the control of a person even if it is not under the person's direct physical control.
- (4) This Part does not render it unlawful for a person (the **discriminator**) to discriminate against the person with the disability on the ground of the disability, if:
 - (a) the discriminator reasonably suspects that the assistance animal has an infectious disease; and
 - (b) the discrimination is reasonably necessary to protect public health or the health of other animals.
- (5) This Part does not render it unlawful for a person to request the person with the disability to produce evidence that:
 - (a) the animal is an assistance animal; or
 - (b) the animal is trained to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.
- (6) This Part does not render it unlawful for a person (the **discriminator**) to discriminate against the person with the disability on the ground that the person with the disability has the assistance animal, if:
 - (a) the discriminator requests or requires the person with the disability to produce evidence referred to in subsection (5); and
 - (b) the person with the disability neither:
 - (i) produces evidence that the animal is an assistance animal; nor

- (ii) produces evidence that the animal is trained to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.
- (7) This Part does not affect the liability of a person for damage to property caused by an assistance animal.

3.1.3 Discrimination by educational authorities and education providers

Section 22 of the DDA provides:

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's disability:
 - (a) by refusing or failing to accept the person's application for admission as a student; or
 - (b) in the terms or conditions on which it is prepared to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of the student's disability:
 - (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority; or
 - (b) by expelling the student; or
 - (c) by subjecting the student to any other detriment.
- (2A) It is unlawful for an education provider to discriminate against a person on the ground of the person's disability:
 - (a) by developing curricula or training courses having a content that will either exclude the person from participation, or subject the person to any other detriment; or
 - (b) by accrediting curricula or training courses having such a content.
- (3) This section does not render it unlawful to discriminate against a person on the ground of the person's disability in respect of admission to an educational institution established wholly or primarily for students who have a particular disability where the person does not have that particular disability."

Section 4 of the DDA provides that:

“educational authority means a body or person administering an educational institution”

and

“educational institution means a school, college, university or other institution at which education or training is provided”

and

“education provider means:

- (a) an educational authority; or
- (b) an educational institution; or
- (c) an organisation whose purpose is to develop or accredit curricula or training courses used by other education providers referred to in paragraph (a) or (b).”

Section 55 of the DDA provides that the Australian Human Rights Commission may, on application, grant an exemption from the operation of the discrimination prohibition provisions of the DDA, such as, for example, section 22."

3.2 Discrimination Act 1991 (ACT) — (the ACTDA)

Section 4: Assistance Animal, provides that the ACTDA must be interpreted in a way that is beneficial to a person with a disability to the extent that it is possible to do so consistently with the ACT *Human Rights Act* (HRA).

Section 27A of the HRA provides that every child has the right to have access to free, school education *appropriate to his or her needs and without discrimination*.

The ACTDA is largely capable of operating concurrently with the DDA and to that extent therefore applies to ACT schools.

Section 13(3) of the DDA provides: “This Act [DDA] is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.”

Section 5: Assistance Animal, of the ACTDA provides that, for the purposes of the ACTDA: disability includes “(d) reliance on...(iii) an assistance animal”; and “‘assistance animal’ means an assistance animal trained to assist a person with disability to alleviate the effect of the disability, that satisfies any requirements prescribed by regulation.”

For this purpose, Regulation 2 of the Discrimination Regulation 2016 provides:

“An assistance animal must be—

- (a) accredited as an assistance animal under a law of a State or the Territory; or
- (b) trained—
 - (i) as an assistance animal by a training organisation recognised for that purpose; and
 - (ii) to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.”

Note: Within the ACT there is no system of accreditation and no specific passes issued to Assistance Animals. (Australian Human Rights Commission, 2016a) therefore, Regulation 2 (b) above applies.

Section 8 of the ACTDA provides, amongst other things:

- (1) “For this Act, **discrimination** occurs when a person discriminates either directly or indirectly, or both, against someone else.
- (2) For this section, a person **directly** discriminates against someone else if the person treats, or proposes to treat, another person unfavourably because the other person has 1 or more attributes mentioned in section 7.
- (3) For this section, a person **indirectly** discriminates against someone else if the person imposes, or proposes to impose, a condition or requirement that has, or is likely to have, the effect of disadvantaging the other person because the other person has 1 or more attributes mentioned in section 7.”

The ‘attributes’ mentioned in section 7 of the ACTDA include ‘disability’ which is defined by section 5 Assistance Animal to include reliance on an assistance animal.

Section 18 of the ACTDA provides:

- (1) “It is unlawful for an educational authority to discriminate against a person—
 - (a) by failing to accept the person's application for admission as a student; or

- (b) in the terms or conditions on which it is prepared to admit the person as a student.

*Note: The Legislation Act, dict, pt 1 defines **fail** to include refuse.*

- (2) It is unlawful for an educational authority to discriminate against a student—
 - (a) by denying the student access, or limiting the student's access, to any benefit provided by the authority; or
 - (b) by expelling the student; or
 - (c) by subjecting the student to any other detriment."

The ACTDA Dictionary provides that 'educational authority' means a body or person administering an educational institution" and "educational institution' means a school, college, university or other institution at which education or training is provided.

Section 51 of the ACTDA provides:

- (1) "Section 18 does not make unlawful discrimination on the ground of disability in relation to a failure to accept a person's application for admission as a student at an educational institution that is conducted solely for students with a disability that the applicant does not have.

*Note: The Legislation Act, dict, pt 1 defines **fail** to include refuse.*

- (2) Section 18 does not make unlawful discrimination on the ground of disability in relation to a failure to accept an application by a person with a disability for admission as a student at an educational institution if the person, if so admitted, would require services or facilities that are not required by students who do not have a disability, the provision of which would impose unjustifiable hardship on the relevant educational authority.'

As regards what constitutes unjustifiable hardship, section 47 of the ACTDA provides:

'In deciding what is unjustifiable hardship for this division, all the relevant circumstances of the particular case must be taken into account, including the following:

- (a) the nature of the benefit or detriment likely to accrue or be suffered by all people concerned;
- (b) the nature of the disability of the person concerned;
- (c) the financial circumstances of, and the estimated amount of expenditure by, the person claiming unjustifiable hardship.'

Further, section 33(2) of the ACTDA provides:

'Section 18 does not make it unlawful for a person (the **first person**) to discriminate against someone else in relation to the provision of education or training by an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first person so discriminates in good faith to avoid injury to the religious susceptibilities of adherents of that religion or creed.'

3.3 Domestic Animals Act 2000 (ACT)

If the assistance animal is a dog under the *Domestic Animals Act 2000 (ACT)* the owners must have the dog:

- registered with the ACT government Domestic Animal Services; and
 - o The dog must wear their registration tag at all times
- desexed; and
- microchipped.

The dog must also not be a restricted dog, breed of dog that is currently on the prohibited list of importations to Australia, or a breed of dog that is the full or cross-bred offspring of those dog breeds listed including, but not limited to:

1. American Pit Bull Terriers or Pit Bull Terriers
2. Japanese Tosas
3. Dogo Argentino (Argentinean Fighting Dogs)
4. Fila Brasileiro (Brazilian Fighting Dogs)

3.4 Additional Legislation

Discrimination Regulation 2016 (ACT)

Domestic Animals Regulation 2001 (ACT)

4.0 Common Assistance Animals (Australian Human Rights Commission, 2016)

Guide dogs

This type of dog is most often paired with individuals that are blind or visually impaired. A guide dog often accompanies the owner wearing a U-shaped harness, which allows the human to control the dog using a series of directional commands. These dogs are trained to identify – and avoid – potential obstacles both inside and outside of the home. Often, guide dogs are trained to negotiate busy areas, including city sidewalks and public transportation.

Hearing dogs

A hearing dog is a service animal that alerts deaf or hearing impaired people to events that are happening around them. Noises that occur out in public or at home, such as a siren or the ring of a telephone, are events that a deaf person needs to know about to live their daily lives. When alerting, a dog will physically contact his or her owner. The contact will be different based on the type of sound that is occurring; this makes it possible for an owner to know how to respond. Hearing dogs undergo extensive audio response training, which allows them to recognize, and identify, sound. Generally, hearing dogs must be able to alert owners to sound within seconds of its occurrence.

Service dogs

A service dog is an animal that assists people that have disabilities other than visual or hearing impairments. This is one of the most common dogs employed by a family; as they can render assistance to people with physical disabilities. A service dog is trained to help mitigate a physical disability; for example they are trained to pull wheelchairs or assist a person in maintain proper balance. They also serve people with cognitive difficulties or psychiatric conditions. Other common tasks service dogs perform include retrieving dropped objects that are out of reach, closing or opening doors, finding other people, or turning a light switch on or off.

Facility or Educational Support dogs

This type of dog provides assistance to individuals in an institutional setting. They are supervised by facilitators in a healthcare or educational facility; the direct care of the animal is the responsibility of the facilitator and the organisation that owns the dog. A common presence in special education facilities, facility dogs can help provide a sense of companionship for children at school or at a health care facility. The dogs also provide assistance during physical therapy sessions.

Seizure response dogs

Although seizure dogs are trained to assist people that have seizures, they cannot predict an oncoming seizure. However, they can activate life-saving alert systems that summon medical help, roll a person into proper position, or retrieve medications that can be administered to help put an end to a seizure. They can also provide physical stability if a person requires support.

Emotional Support Animal

An emotional support animal is often not a dog. Sometimes called a psychiatric service animal, the creature may be a dog, cat, guinea pig, horse or rabbit. The animal's role is to assist people with emotional troubles or mental health conditions by providing a stable, comforting presence. A person must have a prescription for an animal from a licensed therapist; a person will have to

prove that he or she needs the animal to cope with everyday stressors. Typically, a person that has an emotional support animal may experience depression, bipolar disorder, hallucinations, anxiety, panic attacks, post-traumatic stress disorder or behavioural/personality disorders.

Therapy animals

Like emotional support animals, therapy animals are often, but not always dogs. These animals will most often be found in senior's homes, rehabilitation centres, schools, hospitals or nursing homes to bring comfort and hope to children and adults. Therapy animals provide emotional support that allows people to be more optimistic about their treatment; the animal helps provide a coping mechanism for people facing serious medical challenges.

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