

Guide, Hearing and Assistance Dogs Amendment Bill 2015

Report No. 4, 55th Parliament
**Communities, Disability Services and Domestic
and Family Violence Prevention Committee**
October 2015

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Abbreviations

the Act	<i>Guide, Hearing and Assistance Dogs Act 2009</i>
ASD	Autism Spectrum Disorder
the Bill	Guide, Hearing and Assistance Dogs Amendment Bill 2015
CASA	Civil Aviation Safety Authority
the Committee	Communities, Disability Services and Domestic and Family Violence Prevention Committee
the Department	Department of Communities, Child Safety and Disability Services
the Minister	Minister for Disability Services, Minister for Seniors and Minister Assisting the Premier on North Queensland
QDN	Queenslanders with Disability Network
the Regulation	Guide, Hearing and Assistance Dogs Regulation 2009

Chair's foreword

This Report presents a summary of the Communities, Disability Services and Domestic and Family Violence Prevention Committee's examination of the Guide, Hearing and Assistance Dogs Amendment Bill 2015.

The Bill was introduced into the Legislative Assembly by the Minister for Disability Services, Minister for Seniors and Minister Assisting the Premier on North Queensland on 15 July 2015. The Committee was required to report to the Legislative Assembly by 2 October 2015.

The Bill amends the *Guide, Hearing and Assistance Dogs Act 2009* to give effect to the recommendations of a stakeholder review panel, which conducted a full review of the Act from late 2013 to mid-2014. The amendments are intended to maintain an appropriate legislative framework by streamlining administrative processes and reducing red tape, while also broadening access rights to accommodate alternative handlers of guide, hearing and assistance dogs where primary handlers require assistance to handle their dogs.

In addition, the Bill introduces new investigative and enforcement provisions to support improved monitoring and compliance with the Act.

In examining the Bill, the Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on the Bill. I also thank the Department of Communities, Child Safety and Disability Services, the Committee's secretariat and the Technical Scrutiny Secretariat.

I commend this Report to the House.



Ms Leanne Donaldson MP

Chair

Recommendations

Recommendation 1

The Committee recommends that the Guide, Hearing and Assistance Dogs Amendment Bill 2015 be passed.

1. Introduction

1.1 Role of the Committee

The Communities, Disability Services and Domestic and Family Violence Prevention Committee (the Committee) is a portfolio committee of the Legislative Assembly established on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The Committee's primary areas of responsibility include:

- Communities, Women, Youth, Child Safety and Multicultural Affairs
- Domestic and Family Violence Prevention, and
- Disability Services and Seniors.²

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

1.2 Committee process

The Guide, Hearing and Assistance Dogs Amendment Bill 2015 (the Bill) was introduced into the Legislative Assembly on 15 July 2015 by the Hon Coralee O'Rourke MP, Minister for Disability Services, Minister for Seniors, and Minister Assisting the Premier on North Queensland (the Minister). The Bill was referred to the Committee for examination. The Committee was required to report to the Legislative Assembly by 2 October 2015.

On 21 July 2015, the Committee wrote to the Department of Communities, Child Safety and Disability Services (the Department) seeking advice on the Bill. The Department provided a written briefing on 29 July 2015.

The Committee invited submissions on its website and by notice to subscribers to updates about the work of the Committee. The Committee also directly invited submissions from 46 stakeholder organisations. Two submissions were received (see **Appendix A**).

1 *Parliament of Queensland Act 2001*, section 88 and Standing Rules and Orders of the Legislative Assembly, Standing Order 194.

2 Standing Rules and Orders of the Legislative Assembly, Schedule 6.

The submissions received and accepted by the Committee and the Department's response are available on the Committee's website:

[\[http://www.parliament.qld.gov.au/work-of-committees/committees/CDSDFVPC/inquiries/current-inquiries/GuideDogsBill2015\]](http://www.parliament.qld.gov.au/work-of-committees/committees/CDSDFVPC/inquiries/current-inquiries/GuideDogsBill2015).

1.3 Policy objectives of the Bill

The Bill amends the *Guide, Hearing and Assistance Dogs Act 2009* (the Act) to:

- improve the access rights of guide, hearing and assistance dog users by recognising alternative handlers
- simplify and streamline processes for both people with a disability and the industry, by:
 - authorising approved trainers or training institutions to issue handler's identity cards, rather than the government
 - repealing provisions around the creation of an advisory committee and providing that the chief executive officer may instead consult with any entity the chief executive considers appropriate
 - relaxing the legislative requirements to provide proof of a person's disability every time a person renews their identity card, and
 - allowing an approved training institution to certify a guide, hearing or assistance dog of a director, shareholder or employee trainer of that institution, and
- improve the monitoring, investigative and enforcement provisions in the Act.³

1.4 Should the Bill be passed?

Standing Order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed.

After examination of the Bill, including its policy objectives and consideration of the information provided by the Department and from submitters, the Committee recommends that this Bill be passed.

Recommendation 1

The Committee recommends that the Guide, Hearing and Assistance Dogs Amendment Bill 2015 be passed.

³ Guide, Hearing and Assistance Dogs Amendment Bill 2015, Explanatory Notes, pp. 2-3.

2. Policy background and context

Guide, hearing and assistance dogs are working dogs specifically trained to allow people with a disability to participate in all aspects of society.⁴ These dogs perform an array of tasks and functions to alleviate some of the effects of a person's disability and to enhance the person's independence and reduce their need for support. These tasks and functions include:

- supporting a person with vision impairment – a guide dog
- alerting people with a hearing impairment to a sound – a hearing dog, and
- pulling wheelchairs or carrying and picking up items for people with mobility impairments – an assistance dog.⁵

2.1 Current Legislation

Legislative provisions for the accreditation and access rights of guide and hearing dogs have been in place in Queensland since the enactment of the *Guide Dogs Act 1972*. However, this certification and access scheme was only recently extended to assistance dogs under the Act.⁶ The main objects of the Act are to:

- assist people with a disability who rely on certified guide, hearing and assistance dogs to have independent access to the community, and
- ensure the quality and accountability of guide, hearing and assistance dog training services.⁷

The Act achieves these objectives by:

- creating rights of access for people with a disability to be accompanied by a certified guide, hearing or assistance dog (including offence provisions for unlawfully denying access)
- providing a framework for:
 - the approval of trainers and training institutions
 - the certification of guide, hearing and assistance dogs, and
 - the issuing of handler identity cards, and
- establishing monitoring and enforcement powers to support the implementation of the Act.⁸

⁴ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.1.

⁵ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.1.

⁶ Guide, Hearing and Assistance Dogs Bill 2008, Explanatory Notes, p.1.

⁷ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.1.

⁸ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.1.

2.2 Consultation and Review Panel

Initially, the Act only provided explicit access rights for public places and public passenger vehicles. In 2013, the Act was amended to extend the right of access to places of accommodation (including residential and holiday accommodation).⁹

Following the 2013 amendments, a stakeholder review panel was convened to conduct a full review of the Act. 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.*¹⁰

The panel was asked to assess the Act and advise:

- whether it met its key objectives
- whether it operated as efficiently and effectively as possible in meeting those objectives, and
- whether there were other ways of better meeting those objectives.¹¹

Following the completion of the review in mid-2014, the Department published a position paper on its website including recommendations arising from the review. The public was given the opportunity to provide feedback on the implementation of the review recommendations.¹²

The Department was also made aware of a complaint, under the Act, about an airline which refused to allow a person with a vision impairment to have their guide dog accompany them in the cabin for an international flight. The complaint prompted the Department to review the Act's monitoring, investigation and enforcement provisions to identify improvements.¹³

In June 2015, the Minister reconvened the stakeholder review panel to comment on a draft version of the Bill.¹⁴

⁹ Hon. TL Mander MP (former Minister for Housing and Public Works), Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill, Explanatory Speech, *Record of Proceedings of the Queensland Legislative Assembly* (Hansard), 10 September 2013, p.2877.

¹⁰ Guide, Hearing and Assistance Dogs Amendment Bill 2015, Explanatory Notes, pp.3-4.

¹¹ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.3.

¹² Guide, Hearing and Assistance Dogs Amendment Bill 2015, Explanatory Notes, pp.3-4.

¹³ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.9.

¹⁴ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.6.

The Explanatory Notes state that:

*All members [of the review panel] 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.*¹⁵

During its consideration of the Bill, the Committee noted that no direct consultation had occurred with private operators of public passenger vehicles as part of the stakeholder review panel process.

In response, the Department advised that it has had conversations with transport groups, such as the Taxi Council and Civil Aviation Safety Authority (CASA) since the commencement of the Act. The Department has also conducted specific education campaigns with the Taxi Council to ensure operators are aware of access rights and engaged in “productive dialogue with CASA and various airlines in the last year with regard to the access rights of guide, hearing and assistance dog users”.¹⁶ In addition, the Department advised that:

*... private transport operators will form a large focus for the Department’s communication strategy. As part of this, the Department will proactively engage with key stakeholders and use the existing networks of the Department of Transport and Main Roads to increase awareness of the Act. Stakeholders will also be consulted as part of the operationalisation of the legislative changes.*¹⁷

Committee Comment

The Committee notes the extent of the Department’s consultation on the proposed amendments in the Bill. The Committee also notes the Department’s commitment to proactively engage with key stakeholders to increase awareness of the requirements of the Act, including the proposed amendments in the Bill.

¹⁵ Guide, Hearing and Assistance Dogs Amendment Bill 2015, Explanatory Notes, pp.3-4.

¹⁶ Department of Communities, Child Safety and Disability Services, *Correspondence*, 18 September 2015, p.4.

¹⁷ Department of Communities, Child Safety and Disability Services, *Correspondence*, 18 September 2015, p.4.

3. Recognising alternative handlers

The Bill proposes to improve the access rights of guide, hearing and assistance dog users by recognising alternative handlers.

Clause 52 of the Bill amends the definitions of *handler* in Schedule 4 of the Act to specify that a handler of a guide, hearing or assistance dog means a primary handler or an alternative handler of the dog. Clause 52 inserts definitions of alternative handler and primary handler as follows:

Alternative handler, for a guide, hearing or assistance dog, means a person who supports the primary handler of the dog to physically control the dog...

Primary handler, of a guide, hearing or assistance dog, means a person with a disability who relies on the dog to reduce the person's need for support.¹⁸

Clause 6 inserts a new section 8A into the Act to provide that an alternative handler may, in a place of accommodation, public place or public passenger vehicle, be accompanied by a primary handler and the primary handler's certified guide, hearing or assistance dog for which the alternative handler has an identity card. The new section 8A also makes it explicit that an alternative handler who is accompanied by the primary handler and their certified dog "does not commit an offence merely by taking the dog into a place of accommodation, public place or public passenger vehicle".¹⁹

The Explanatory Notes state:

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.²⁰

¹⁸ Guide, Hearing and Assistance Dogs Amendment Bill 2015, clause 52.

¹⁹ Guide, Hearing and Assistance Dogs Amendment Bill 2015, clause 6.

²⁰ Guide, Hearing and Assistance Dogs Amendment Bill 2015, Explanatory Notes, p.2.

The Department advised that as part of the certification process, trainers and training institutions will be required to be reasonably satisfied that the primary handler requires the support of an alternative handler to control the dog.²¹

Clause 18 of the Bill amends the legislative requirements for public access tests to assess whether the certified dog can be physically controlled by either:

- the primary handler, or
- the primary handler, with the support of the alternative handler (whereby the Department advises that tests will be administered in a way that assesses the primary handler and alternative handler's ability to control the dog as a team).²²

Clauses 20 and 21 establish requirements for eligibility and issuing of an alternative handler's identity card. The Department advised that regulations will prescribe what must be included on an alternative handler's identity card (including, for example, a notation cross-referencing the primary handler of the certified dog).²³

3.1 Submissions

Queenslanders with Disability Network (QDN) submitted that it was important that the development of regulations and the implementation of handler-team amendments enable users and people responsible for access to public spaces "to be clear about the different range of scenarios where it (the new provisions] will apply". QDN stated that:

*Alternative handlers, and consequently the primary handler should not be denied access, discriminated or disadvantaged because of misinterpretations of this provision.*²⁴

Service Dog Training recommended that accreditation arrangements be introduced for third party handlers, in addition to the primary handler and alternative handlers, "under certain conditions and parameters (e.g. applicable to proven ASD [autism spectrum disorder] cases – subject to proper medical evaluation)".²⁵ Service Dog Training submitted that this would allow:

*... the child eg to be taken to school by a parent, where the responsibility is handed over to a special needs carer or teacher who becomes the guardian of the child and their dog till mum collects them after school. It is proven that a well-trained dog in a class environment can do a lot of good for the other kids as well!*²⁶

²¹ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.7.

²² Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.8.

²³ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.8.

²⁴ Queenslanders with Disability Network, Submission no.2, p.5.

²⁵ Service Dog Training, Submission no.1, p.2.

²⁶ Service Dog Training, Submission no.1, p.2.

The Department clarified that the amendments would support arrangements for multiple alternative handlers to be accredited for a guide, hearing and assistance dog.²⁷ In addition, it stated that the Department's communication strategy for the Bill will build on and better coordinate existing communication material, including providing:

- resources to assist businesses to understand their obligations under the Act as well as wide discrimination laws
- material targeting guide, hearing and assistance dog users in order to clearly explain access rights and remedies under the Act, and
- broader information for the community about the Act and the etiquette for dealing with people with a disability.²⁸

Committee Comment

The Committee is satisfied with the Department's response to the issues raised in submissions and notes the Department's intention to engage with stakeholders to promote awareness of the new requirements under the Act.

²⁷ Department of Communities, Child Safety and Disability Services, *Correspondence*, 18 September 2015, p.1.

²⁸ Department of Communities, Child Safety and Disability Services, *Correspondence*, 18 September 2015, pp.2-3.

4. Simplifying and streamlining processes

The Bill proposes to simplify administrative processes, reduce red tape, and provide more flexibility to users by:

- authorising approved trainers or training institutions to issue handler's identity cards, rather than the government
- providing more flexible arrangements for the chief executive to call upon expert advice in approval and standard setting processes
- relaxing legislative requirements to provide proof of a person's disability every time a person renews their identity card, and
- allowing an approved training institution to certify a guide, hearing or assistance dog of a director, shareholder or employee trainer of that institution.

4.1 Authorising approved trainers or training institutions to issue handler's identity cards

Queensland currently operates a dual authorisation system, with both government and approved training institutions issuing handler's identity cards; though only government-issued cards are recognised under the Act. In order to obtain the government-issued identity card, handlers are required to separately apply to government for a card upon the completion of their training with an approved institution.

The Bill amends the Act to transfer the authorisation to issue appropriate identity cards from government to approved training institutions. The Department stated that this would simplify processes and bring greater consistency to the accreditation regime.²⁹

Clause 20 of the Bill omits section 40(c) to remove the requirement that a person make a separate application to the Government for a handler's identity card within 28 days after an approved trainer or approved training institution certified the dog for the person. Clause 28 omits section 50 which provides for a similar application process for replacement identity cards.

Clause 21 omits sections 41 to 43 which specify requirements for applications and decisions on applications which are no longer relevant, and inserts new sections 41 and 42. New section 42(1) states that a person may ask an approved trainer or training institution to issue a handler's identity card to the person. Sections 42(2) to 42(4) specify the requirements for issuing a card.

The Department stated that the benefits of enabling the sector to perform this accreditation function are two-fold:

Firstly, it will provide for a one-stop-shop for people with disability to have a fully compliant dog under the Act. Following the certification of the dog by an approved trainer or training institution, a person with disability can be issued with a handler's

²⁹ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.6.

*identity card, without any need to engage in a government process or be 'double-handled'. Secondly, the removal of duplicative processes will allow approved trainers and training institutions to service their customers in a more streamlined fashion.*³⁰

The Explanatory Notes emphasise that “Government will maintain a regulatory role to prevent fraud or misuse of identity cards, and to be able to effectively enforce the Act”.³¹ Accordingly, the Bill includes provisions that will enable the Government to continue to set standards around the issuing and review of handler’s identity cards and approvals for trainers or training institutions.

Clauses 25 and 26 amend sections 47 and 48 of the Act to provide that an approved trainer or approved training institution that issued a handler’s identity card may immediately suspend or cancel the card on certain grounds. The chief executive also retains the power of suspension or cancellation. The Department stated that retention of these powers by chief executive will support the Government in maintaining levels of quality assurance across the sector.³²

In addition, section 17 of the Act allows the chief executive to impose conditions on an approval or to refuse to grant an approval.

4.1.1 Submissions

Service Dog Training expressed concerns that handler-issued cards will not carry the same level of authenticity and credibility as government-issued identity cards, which are professionally produced and recognisable. Service Dog Training stated that the government-issued identity cards create “trust with users, recipients and those that decide access based on the requirements of the Act” and/or anti-discrimination legislation.³³

In addition, Service Dog Training suggested that industry ownership of accreditation may jeopardise the credibility of the system, citing adverse impacts of industry-issued identity card schemes reported in the USA and Europe:

*...removing the requirement for the Government to issue the ID card would likely enhance the 'abuse' [of the system], allow rogue operators to cut corners, and issue cards to handler/dog teams that are not up to standard.*³⁴

In response, the Department emphasised that as part of implementing these changes:

*...the Department of Communities, Child Safety and Disability Services is committed to working with trainers and training institutions to ensure there is one consistent identification card that is easily recognisable by business and the community.*³⁵

³⁰ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.6.

³¹ Guide, Hearing and Assistance Dogs Amendment Bill 2015, Explanatory Notes, p.2.

³² Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.6.

³³ Service Dog Training, Submission no.1, p.2.

³⁴ Service Dog Training, Submission no.1, p.2.

In addition, the Department stated:

*The amendments contained in the Bill get the balance right – they empower the sector sufficiently while still maintaining an appropriate level of regulatory oversight and control by government. Most importantly, the changes significantly simplify processes for people with disability.*³⁶

4.2 Providing more flexible arrangements for the chief executive to consult expert advice

Part 10 of the Act provides for the chief executive to establish an advisory committee to assist in the assessment of applications from trainers and training institutions seeking approval under the Act.³⁷ However, this formal advisory committee has never been established.

Accordingly, the Bill “repeals a number of unnecessary and unused provisions which provide for the creation of this committee, stipulate its membership and outline its functions”.³⁸

Clause 11 of the Bill amends section 16 (Submissions from advisory committee), and replaces it with a new section 16 to provide that “in considering and deciding the application, the chief executive may consult with any entity the chief executive considers appropriate”.³⁹

The Explanatory Notes state that clause 11 “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”.⁴⁰

The Department stated that clause 11 will also ensure the decision-maker “has all the necessary evidence at their disposal to apply a rigorous and fair assessment” and will “provide further confidence to business and the community that guide, hearing and assistance dogs are being trained and certified by qualified trainers”.⁴¹

4.2.1 Submissions

QDN supported the shift away from an advisory committee mechanism to more flexible consultation provisions, noting that it “supports any approach which brings about streamlined processes and less red tape”.⁴² In so doing, QDN recommended that any definition of industry experts within regulations include people with disability as a key stakeholder, arguing that “it is essential that they are called upon to share their views to inform decision-making and deliver good governance”.⁴³

³⁵ Department of Communities, Child Safety and Disability Services, *Correspondence*, 18 September 2015, p.2.

³⁶ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.7.

³⁷ *Guide, Hearing and Assistance Dogs Act 2009* (Qld), Part 10.

³⁸ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.8.

³⁹ Guide, Hearing and Assistance Dogs Amendment Bill 2015, clause 11.

⁴⁰ Guide, Hearing and Assistance Dogs Amendment Bill 2015, Explanatory Notes, p.2.

⁴¹ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.8.

⁴² Queenslanders with Disability Network, Submission no.1, p.6.

⁴³ Queenslanders with Disability Network, Submission no.1, p.6.

In response, the Department advised that the amendments will enable the chief executive to consult with any number of different stakeholder groups, “which may include people with a disability, disability advocacy groups or guide, hearing and assistance dog trainers or training organisations”.⁴⁴

Committee Comment

The Committee notes that the Bill does not refer to industry experts per se, specifying only that “the chief executive may consult with any entity the chief executive considers appropriate”.

The Committee considers this approach will afford latitude for consultation with a range of different stakeholders and groups.

4.3 Streamlining identity card terms and requirements for identity card renewal

The Act currently provides that assistance dog identity cards are valid for two years while guide and hearing dog identity cards are valid for five years. Service Dog Training submitted that “it is questionable that this is fair and realistic”, especially given “people needing assistance dogs are likely to have a more varied pattern that offers far greater socialisation for the handler and dog alike, therefore remaining fresh in their experience and training”.⁴⁵

The Bill proposes to remove the discrepancy in the length of identity card terms. Clause 22 amends section 44 to remove the different terms and specifies that “the day of expiry for a handler’s identity card must not be more than three years after the day the card is issued”.⁴⁶

In addition, the Bill relaxes legislative requirements for proof of a person’s disability in obtaining identity cards. The Explanatory notes state that “this change simplifies processes 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.*⁴⁷

Clause 21 removes the requirement that an eligible applicant make an application to government for a handler’s identity card and that “the application must be in the approved form and accompanied by... the documents or information prescribed under a regulation, including evidence of the person’s disability”.⁴⁸

⁴⁴ Department of Communities, Child Safety and Disability Services, *Correspondence*, 18 September 2015, p.3.

⁴⁵ Service Dog Training, Submission no.1, p.2.

⁴⁶ Guide, Hearing and Assistance Dogs Amendment Bill 2015, clause 22.

⁴⁷ Guide, Hearing and Assistance Dogs Amendment Bill 2015, Explanatory Notes, p.2.

⁴⁸ Guide, Hearing and Assistance Dogs Amendment Bill 2015, clause 21.

The Department advised that in accordance with the Guide, Hearing and Assistance Dogs Regulation 2009 (the Regulation), approved trainers and training institutions will be required to keep a copy of the certificate of disability for the handler of each guide, hearing or assistance dog they certify.⁴⁹

4.4 Allowing an approved training institution to certify an employee, director or shareholder's dog

Clause 19 inserts a new section 39 to remove a catch-all prohibition on an approved training institution certifying the guide, hearing or assistance dog of any person with a disability who is an employee trainer, director or shareholder of the institution. New section 39 provides that the prohibition applies only if the approved trainer is also the person with a disability who relies on the guide, hearing or assistance dog.⁵⁰

The Explanatory Notes state that this change “removes unnecessary requirements in the certification process and promotes access rights for people with a disability”:

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.⁵¹

The Department advised that “training institutions will be empowered to actively manage any potential conflicts of interest through changes to the Regulation which require institutions to keep records about disclosing and managing any potential conflicts of interest”.⁵²

⁴⁹ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.7.

⁵⁰ Guide, Hearing and Assistance Dogs Amendment Bill 2015, clause 21.

⁵¹ Guide, Hearing and Assistance Dogs Amendment Bill 2015, Explanatory Notes, p.2.

⁵² Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.9.

5. Improving monitoring, investigative and enforcement provisions

The two main policy changes resulting from the Department's review of the Act's monitoring and enforcement provisions are the introduction of:

- a new general power to request information, and
- additional powers of entry, which would allow an authorised officer to enter premises by way of warrant.⁵³

5.1 Power to request information

The Department stated that:

In order for the Department to be able to properly investigate matters and build a brief of evidence, it must be able to request and assemble information from all parties (that is, both the complainant and the alleged offending party). Currently, the Department is left to rely on the goodwill of third parties to cooperate when the Department investigates a complaint. Should this 'goodwill' not be forthcoming, the Department is significantly limited in its ability to oversee and enforce the administration of the Act, in particular, the objective to protect the access rights of people with disability.⁵⁴

Clause 42 inserts a new section 89A into the Act which provides 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.⁵⁵

Clause 42 and clause 43 clarify that for information that is an electronic document, compliance with powers to require information or inspect documents "requires the giving of a clear image or written version of the electronic document".⁵⁶

Clause 45 inserts a new section 92 and prescribes a maximum penalty of 50 penalty units if a person fails to comply with a request by an authorised officer to give information or produce or certify a document under the Act. The Explanatory Notes state that clause 45 provides self-incrimination as a reasonable excuse for non-compliance with the new section 92.⁵⁷

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

⁵³ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.9.

⁵⁴ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.9.

⁵⁵ Guide, Hearing and Assistance Dogs Amendment Bill 2015, clause 42.

⁵⁶ Guide, Hearing and Assistance Dogs Amendment Bill 2015, clauses 42 and 43.

⁵⁷ Guide, Hearing and Assistance Dogs Amendment Bill 2015, Explanatory Notes, p.10.

5.2 Power of entry

The Bill introduces provisions which provide for entry to premises by warrant, building on existing provisions for entry with consent. The Department stated that:

The inclusion of this new power acknowledges that businesses that may be prosecuted by the Department for their behaviour may not always be the most forthcoming in their compliance.⁵⁸

Clause 39 inserts a new Subdivision 2A, which:

- sets out the process requirement for applying in writing to a magistrate for a warrant for a place
- specifies how the warrant is to be issued, including the particulars which must be stated in the warrant
- states that a warrant is not invalidated by a defect in the warrant or compliance with the subdivision unless the defect affects the substance of the warrant in a material particular, and
- sets out the procedure for entry under warrant, including requirements that the authorised officer make a reasonable attempt to identify themselves and give the person a copy of the warrant and the opportunity to allow entry without force; unless the officer believes on reasonable grounds that entry without compliance is required “to ensure the execution of the warrant is not frustrated”.⁵⁹

Clause 40 amends section 85 to clarify that an authorised officer can exercise general powers for investigating an offence under the Act after they enter a place under a warrant, and inserts new section definitions of *examine*, *film* and *inspect* which set out a broad range of actions which may be carried out in discharging these powers.

Clause 46 updates section 94 to provide that a person may be eligible to claim compensation from the chief executive for any loss incurred because of the exercise of powers associated with entry under warrant.

The Department advised that the warrant power is intended as a last resort and that authorised officers “will be required to reasonably attempt to perform their function at the place without a warrant”. The Department stated that:

... on the whole, changes...are proactive and will equip authorised officers with the necessary powers to handle any future complaints. By improving the Act now, the Department does not have to wait for a volume of cases (that it cannot adequately investigate due to deficient enforcement provisions) to build up before it addresses these enforcement capability issues.⁶⁰

⁵⁸ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.9.

⁵⁹ Guide, Hearing and Assistance Dog Amendment Bill 2015, clause 39.

⁶⁰ Department of Communities, Child Safety and Disability Services, *Correspondence*, 29 July 2015, p.10.

In keeping with this, clause 43 amends section 74 to insert a new purpose of investigating compliance with the Act, in addition to monitoring and enforcing compliance.

5.3 Submissions

QDN submitted that appropriate resourcing needs to be available “to ensure enforcement officers are able to be both proactive and to respond in a timely and effective way when complaints are received”.⁶¹

In response, the Department stated that:

*...the Department acknowledges and is aware of the need for the effective and timely response to complaints in relation to access rights of people with disability... Appropriate resourcing will be made available to ensure the department can respond appropriately to complaints.*⁶²

⁶¹ Queenslanders with Disability Network, Submission no.1, p.6.

⁶² Department of Communities, Child Safety and Disability Services, *Correspondence*, 18 September 2015, p.4.

6. Fundamental legislative principles and Explanatory Notes

6.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the “principles relating to legislation that underlie a parliamentary democracy based on the rule of law”. The principles include that legislation has sufficient regard to:

- the rights and co-liberties of individuals, and
- the institution of Parliament.

Committee comment

The Committee has examined the application of the fundamental legislative principles to the Bill.

The Committee considers that the Bill does not raise any significant issues in relation to fundamental legislative principles, and notes that the Explanatory Notes identify that “the majority of 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.”⁶³

6.2 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* requires that an Explanatory Note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an Explanatory Note should contain.

Committee comment

The Committee notes that Explanatory Notes were tabled with the introduction of the Bill, and that the Explanatory Notes were detailed and contained the information required by Part 4 and a reasonable level of background information and commentary to facilitate an understanding of the Bill’s aims and origins.

⁶³ Guide, Hearing and Assistance Dogs Amendment Bill 2015, Explanatory Notes, p.3.

Appendix A – List of Submissions

Sub #	Submitter
001	Service Dog Training
002	Queenslanders with Disability Network

