

Guide, Hearing and Assistance Dogs (Places of Accommodation) Amendment Bill 2013

Explanatory Notes

Title of the Bill

The short title of the Bill is the *Guide, Hearing and Assistance Dogs (Places of Accommodation) Amendment Bill 2013*.

Objectives of the Bill

The object of this Bill is to amend the *Guide, Hearing and Assistance Dogs Act 2009* to make it an offence for a person in control of accommodation offered to the public to deny accommodation to a person with a disability who relies on a certified guide, hearing or assistance dog.

Alternative Ways of Achieving Policy Objectives

Legislation is the only way of providing the appropriate protections that are required to ensure that the objectives of the Bill are achieved.

Consistency with Fundamental Legislative Principles

The following aspects of the Bill may represent breaches of fundamental legislative principles, which are justified in the circumstances.

The amendment introduces a new offence where a person in control of a place of accommodation refuses to accept a reservation or application, or enter into or fulfil an agreement for accommodation (such as residential or holiday accommodation) for an accompanied handler because the accompanied handler is accompanied by a guide, hearing or assistance dog or trainee support dog.

The creation of this new offence potentially breaches the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals. The introduction of an offence is consistent with the government's obligations under the United Nations Convention on the Rights of Persons with Disabilities, and the government's commitment to promoting equality of opportunity and access for people with a disability, and preventing discrimination on the basis of disability.

A breach of these offences will attract a maximum penalty of 100 penalty units. This is the same as the penalty imposed under the *Guide, Hearing and Assistance Dogs Act 2009* where a person denies access to a public place or public passenger vehicle.

The new offence does not impose new obligations on accommodation providers who are already obliged under the *Anti-Discrimination Act 1991 (Qld)* not to refuse accommodation because a person relies on a guide, hearing or assistance dog. Instead, it provides an alternative avenue for redress when these existing obligations are breached.

While the offence is a strict liability offence, it does require the prosecuting authority to prove that the accommodation provider denied accommodation because the person is accompanied by a guide, hearing or assistance dog, and does not impose obligations on the accommodation provider around matters of proof.

Estimated Cost for Government Implementation

There will be no costs associated with implementation of the Bill.

Consultation

In the development of the previous amendments to the Act contained in the *Law Reform Amendment Bill 2011*, consultation was undertaken with the Residential Tenancies Authority, the Anti-Discrimination Commission and relevant Departments.. Further consultation on the draft Bill will be conducted with key stakeholders and the public after introduction of the Bill.

Notes on Provisions

Short Title

Clause 1 provides for the short title of the Act.

Act amended

Clause 2 sets out that this Act amends the *Guide, Hearing and Assistance Dogs Act 2009*.

Amendment of s 3 (Objects of Act)

Clause 3 amends section 3, which relates to how the objects of the Act are mainly achieved. The amendments expand this section to provide that the objects of the Act are mainly achieved by protecting the rights of people with a disability who rely on guide, hearing or assistance dogs, and trainers of these dogs, to be accompanied by the dog in places of accommodation.

Amendment of pt 2, hdg (Guide, hearing and assistance dogs in public places and public passenger vehicles)

Clause 4 amends the Part 2 heading to include a reference to 'places of accommodation' in the heading.

Amendment of s 6 (Definitions for pt 2)

Clause 5 amends section 6 by inserting the definition of an 'accompanied handler', 'certified guide, hearing or assistance dog', 'place of accommodation' and 'term' for the purposes of Part 2 of the Act.

The current definition of 'accompanied handler' includes a person with a disability who is accompanied by the guide, hearing or assistance dog which the person relies on to reduce the person's need for support; or an approved trainer, employee trainer or puppy carer who is accompanied by a guide, hearing, assistance or trainee support dog.

This clause also includes a provision in the definition of 'accompanied handler' to make it clear that an accompanied handler includes a person with a disability accompanied by their certified guide, hearing or assistance dog.

This is to ensure that the new offence in section 12A only applies where a person with a disability is accompanied by their certified guide, hearing or assistance dog, as these dogs have met certain requirements under the Act such as passing a public access test and have been specially trained by an approved trainer.

The clause also defines the term 'certified guide, hearing or assistance dog' to mean a dog certified under Part 4 of the Act.

The new definition of 'place of accommodation' includes the following:

- (a) a house or flat; and
- (b) a hotel or motel; and
- (c) a boarding house or hostel; and
- (d) a caravan or caravan site; and
- (e) a manufactured home under the *Manufactured Homes (Residential Parks) Act 2003*; and
- (f) a site within the meaning of the *Manufactured Homes (Residential Parks) Act 2003*, section 13; and
- (g) a camping site.

This is an inclusive definition of accommodation, which is intended to capture types of accommodation typically used for personal purposes, such as residential and holiday accommodation.

The clause also provides a definition for 'term' to clarify that it need not be in writing.

Amendment of s 8 (People with a disability may be accompanied by their guide, hearing and assistance dogs)

Clause 6 amends sections 8 of the Act to make it clear that a person with a disability who relies on a guide, hearing or assistance dog to reduce the person's need for support may be accompanied by the guide, hearing or assistance dog in a place of accommodation, in addition to a public place or public passenger vehicle. The clause also expands section 8 of the Act to make it clear that a person with a disability who relies on a guide, hearing or assistance dog to reduce the person's need for support does not commit an offence merely by taking the dog into a place of accommodation.

Amendment of s 9 (Trainers and puppy carers may be accompanied by guide, hearing, assistance and trainee support dogs)

Clause 7 expands section 9 of the Act to make it clear that an approved trainer, employee trainer or puppy carer may be accompanied by a guide, hearing, assistance or trainee support dog in a place of accommodation, in addition to a public place or public passenger vehicle. The clause also expands section 9 of the Act to make it clear that an approved trainer, employee trainer or puppy carer does not commit an offence merely by taking the dog into a place of accommodation.

Amendment of pt 2, div 3, hdg (Obligations of persons exercising control of public places and public passenger vehicles)

Clause 8 amends the Part 2, Division 3 heading to include a reference to 'places of accommodation'.

Amendment of s 11 (Who is a *person exercising control of a public place or public passenger vehicle*)

Clause 9 amends section 11 heading to include a reference to ‘places of accommodation’. It also expands section 11 to make it clear that the section applies to a person exercising control of a place of accommodation.

Amendment of s 12 (Identification procedure for handlers and trainers)

Clause 10 amends section 12(2)(a)(ii) to include a reference to ‘places of accommodation’ to make it clear that the section also applies to a person exercising control of a place of accommodation.

Insertion of new s 12A

Clause 11 inserts a new section 12A in the Act to create a new offence where a person exercising control of a place of accommodation denies accommodation to certain persons accompanied by a guide, hearing or assistance dog or trainee support dog.

Specifically, the clause provides that it is an offence for a person exercising control of a place of accommodation, to –

- refuse to accept a reservation or application at the place for accommodation for an accompanied handler;
- refuse to enter into or fulfil an agreement to provide accommodation at the place for an accompanied handler;
- refuse to renew or extend the supply of accommodation for an accompanied handler at the place; or
- impose a term as part of an agreement (such as an extra payment) to provide accommodation for an accompanied handler at the place because the accompanied handler is accompanied by a guide, hearing or assistance dog or a trainee support dog.

The clause makes it clear that the section only applies to an accompanied handler who has complied with the identification procedure.

The clause also makes it clear that the section does not apply to a term about a guide, hearing, assistance or trainee support dog entering a part of the place where food is ordinarily prepared for consumption by other residents at the place or members of the public.

The clause also provides a defence where the action was reasonable in the circumstances and did not relate to the accompanied handler being accompanied by a guide, hearing, assistance or trainee support dog.

A breach of the section attracts a maximum penalty of 100 penalty units

Amendment of s 13 (Obligations of persons exercising control of public places and public passenger vehicles)

Clause 12 omits section 13(3) of the Act, as the definitions contained in the existing s 13(3) have been placed in s 6 (Definitions for pt 2).

Amendment of sch 4 (Dictionary)

Clause 12 makes it clear that the reference in Schedule 4 (Dictionary) to the definitions of 'accompanied handler', 'certified guide, hearing or assistance dog', 'place of accommodation' and 'term' for Part 2 of the Act are those contained in section 6 of the Act.