



ASSISTANCE ANIMALS AND THE LAW

What is an assistance animal?

An assistance animal is usually an animal who has been trained to help with their human carer's mental or physical disability.

Assistance animals are different from 'companion' animals who are pets (ie the animals people live with who are kept for companionship).

Under Australian legislation an assistance animal is one who is either:

1. Accredited under state or territory laws or by a recognised animal training organisation, or
2. Trained:
 - To assist a person with a disability in alleviating the effect of the disability; and
 - To meet standards of hygiene and behaviour appropriate for an animal in a public place.[1]

Does an assistance animal have to be trained to do specific things?

No. In 2018 the Federal Court of Australia clarified that an assistance animal does not have to be 'trained to do specific positive acts to alleviate the effects of the relevant disability' and that 'an animal's mere calm presence' could constitute sufficient training for the purposes of the *Disability Discrimination Act 1992* (Cth) ('DDA').[2]

Does an assistance animal have to be a dog?

No. The DDA explicitly defines the term 'assistance animal' as 'a dog or another animal'. [3] Although assistance animals are commonly dogs, animals such as cats can also be recognised as assistance animals in jurisdictions such as NSW.[4]

Does it matter who provides the training?

No. In 2015 the Full Federal Court of Australia held that it does not matter who trains an assistance animal.[5] What matters is that the animal has received training to enable them to assist with their carer's condition.[6]

Can my own animal be trained as an assistance animal?

Yes. Some organisations help people to train their own animal to be an assistance animal.[7] But there are also organisations that recruit rescued dogs from shelters[8] or acquire dogs from breeders to be trained as assistance animals.[9]

Are people with assistance animals protected by anti-discrimination laws?

Yes. In general, under Australian law it is illegal to directly or indirectly discriminate against a person who has an assistance animal.[10]

In jurisdictions such as NSW and the ACT, a person with an assistance animal has the same rights to enter and use a public place as a person who doesn't have an assistance animal.[11] In addition, a person with an assistance animal must not be excluded or removed from a public place without reasonable excuse.[12]

It is also unlawful to charge higher fees to a person purely because they are accompanied by an assistance animal.[13] This includes additional charges for accommodation, goods, or services provided to or for the person with the assistance animal, and charges for access to a public place. [14] The only exception to this is if the charge is reasonable in the circumstances.[15]





Can I have an assistance animal in rental or other managed accommodation?

Yes. Australian law prohibits discrimination against a person with an assistance animal in relation to accommodation.[16] This means a person with an assistance animal cannot:

- have their application for accommodation refused,
- be placed lower down a list of applicants for accommodation, or
- be evicted from accommodation just because the person has an assistance animal.

Footnotes

[1] *Disability Discrimination Act 1992* (Cth) ('DDA') s 9(2).

[2] *Reurich v Club Jervis Bay Ltd* [2018] FCA 1220 [237].

[3] DDA s 9(2).

[4] Emma Thompson, 'Bandit the assistance cat is helping owner Anthorr deal with PTSD and get out of the house', *ABC News* (Web Page, 05 June 2023).

[5] *Mulligan v Virgin Australia Airlines Pty Ltd* [2015] FCAFC 130 [65] ('Mulligan').

[6] *Ibid*.

[7] *Mind Dog* (Web Page) <http://minddog.org.au/>.

[8] *A.W.A.R.E. Dogs Australia* (Web Page) <http://www.awaredogs.org.au/>.

[9] *Assistance Dogs Australia* (Web Page) <http://www.assistedogs.org.au/>.

[10] DDA ss 3, 8(1).

[11] *Companion Animals Act 1998* (NSW) ('CAA') Part 6 ; *Domestic Animals Act 2000* (ACT) ('DAA') Part 5.

[12] CAA s 60, DAA s 106E(1).

[13] CAA s 61, DAA s 106E(4).

[14] *Ibid*.

[15] CAA ss 60-61, DAA s 106E(2).

[16] DDA s 25; *Discrimination Act 1991* (ACT) s 21. In NSW assistance animals cannot be banned from strata properties (*Strata Schemes Management Act 2015* (NSW) s 139(5)).

[17] *Civil Aviation Regulations 1988* (Cth) regs 256A(1)-(2); *Mulligan*.

[18] <https://www.abc.net.au/news/2024-11-05/qantas-assistance-dog-federal-court-disability-discrimination/104542616>

Can I travel on an aircraft with my assistance animal?

It depends. General restrictions apply to having a live animal accompany passengers on an aircraft. There are specific exemptions applying to dogs (including assistance animals) accompanying people with visual or hearing impairment.[17] You should contact the flight company to check if your assistance animal can board the aircraft with you. In some instances, the flight company's rules may appear unduly restrictive. This was the basis of the *Rachel Fullerton v Qantas Airways* disability discrimination case, where Qantas refused to allow Rachel Fullerton's assistance dog to travel with her on the grounds that the dog had not been trained to a certain standard. Ms Fullerton argued that this standard was inconsistent with national laws (ie too high). The case was settled outside of court and as a result, Qantas has agreed to change and clarify its application and exemption processes for assistance dogs.[18]



Bandit the Assistance Cat, ACT
<https://linktr.ee/BanditandBoat>

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