

Guide, Hearing and Assistance Dogs Bill 2008

Explanatory Notes

Short Title of the Bill

Guide, Hearing and Assistance Dogs Bill 2008

Objectives of the Bill

The main objectives of the Guide, Hearing and Assistance Dogs Bill 2008 (the Bill) are to:

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

The Bill repeals the *Guide Dogs Act 1972* and also repeals the *Legacy Trust Fund Act 2001*.

Reasons that the proposed legislation is necessary

Guide dogs and hearing dogs enjoy public recognition of their access rights in supporting people with a vision or hearing impairment. In contrast, people using assistance dogs have reported difficulties in gaining access to public places with their assistance dogs. These difficulties have arisen because assistance dogs are not recognised as guide dogs and discrimination laws are not readily known and understood.

The use of assistance dogs is still a relatively new concept. However, in recent years assistance dogs have been trained to assist people with physical, neurological or sensory disabilities to do everyday tasks. These include activities such as opening and shutting doors for a person in a wheelchair, turning light switches on and off, pressing pedestrian crossing buttons, retrieving items that have fallen on the ground and alerting people if their handler is in difficulty, for example, if the person is having a

seizure. Assistance dogs also go with their handler into public places so that they do not have to be accompanied by another person.

Under the Queensland *Guide Dogs Act 1972*, only guide dogs and hearing dogs trained by recognised institutions are able to access public places and public passenger vehicles. Assistance dogs are not given specific access rights under the Queensland legislation, nor are they mentioned in the Queensland *Anti-Discrimination Act 1991*. However, the Commonwealth *Disability Discrimination Act 1992* (DDA) makes it unlawful to discriminate against a person because they are accompanied by an animal trained to assist a person to alleviate the effect of their disability.

Although the DDA makes it unlawful to discriminate against a person because they are accompanied by an animal trained to assist the person to alleviate the effect of their disability, the DDA does not define this phrase. The DDA also fails to provide any requirements, safeguards or standards for the training of assistance dogs. Accordingly, there is uncertainty for users of assistance dogs, assistance dog trainers and the public.

People using an assistance dog have reported inconsistencies and difficulties in gaining access to public places with their assistance dog. These difficulties have arisen because:

- assistance dogs are not recognised as guide dogs under the *Guide Dogs Act 1972*;
- discrimination laws are not readily known and understood;
- both people with a disability and members of the community do not understand the difference between an assistance dog which has access rights in public places and a pet or companion dog which does not;
- there are no legislative requirements for training, presentation or identification of assistance dogs therefore they are not readily distinguishable from a pet or companion dog; and
- concerns that admitting an assistance dog to particular places may involve committing an offence under health and hygiene laws.

The lack of any provision in the DDA regarding training and accreditation of assistance animals was identified in the Human Rights and Equal Opportunity Commission's (HREOC) report *Reform of the assistance animal provisions of the Disability Discrimination Act* released in November 2003.

The HREOC report commented that details of accreditation or certification regimes would be more appropriately developed by authorities who regulate dogs, in consultation with training organisations and the disability community, than being specified in the DDA itself. HREOC stated that it would be preferable for state governments to develop accreditation processes. With the exception of South Australia, other Australian jurisdictions do not have any legislated accreditation processes.

The Bill also repeals the *Legacy Trust Fund Act 2001* (LTFA). The Legacy Trust Fund contained funds to be used for the benefit of people with a vision impairment and had accumulated over a period in excess of 100 years from a variety of sources including legacies, public gifts and Government donation. The purpose of the LTFA was to give Disability Services Queensland (DSQ) the ownership and management of the Legacy Trust Fund free of any legal ambiguity. The LTFA vested the funds in the State of Queensland and enabled the Minister to pay the funds out to organisations benefiting people with a vision impairment. DSQ advertised widely for grant applications in April 2002, and distributed the funds to 24 services that could demonstrate that their innovative projects assisted people with a vision impairment. These projects included recreation and leisure activities, equipment, skill development, advocacy and community awareness, information services, and staff training.

All funds were expended and, as this was a one-off project, no further funds are available for distribution. As the Legacy Trust Fund is exhausted the LTFA is no longer required and is to be repealed to ensure that the legislation for which DSQ is responsible remains relevant and up to date.

How the policy objectives will be achieved

The Bill provides that a person with a disability may be accompanied by a guide, hearing or assistance dog in a public place or public passenger vehicle in much the same way as the *Guide Dogs Act 1972* confers this right on people with a vision or hearing impairment accompanied by a guide or hearing dog.

The Bill empowers the chief executive of DSQ (the chief executive) to approve guide, hearing and assistance dog trainers. Trainers may include institutions and individual trainers. Trainers will have to apply to the chief executive for approval and provide information as to their qualifications, knowledge, experience and methods of training. Individual applicants and

employee trainers of institutions will be criminal history screened as part of this process.

The Bill enables the chief executive to convene an advisory committee to consider applications for approval as a trainer, to inspect training facilities and determine the merits of an application or review of approval in order to make submissions to the chief executive about an applicant under part 3, an approved trainer, or an approved training institution. The Bill requires that the advisory committee comprise of a person with expertise in specialist dog obedience training; a person with experience in the area of dog behaviour; a person with a disability who relies on a guide, hearing or assistance dog; a representative of DSQ, together with three persons from any of the following: the department in which the *Animal Care and Protection Act 2001* is administered; the department in which the *Transport Operations (Passenger Transport) Act 1994* is administered; the Disability Council of Queensland; and local government.

The Bill provides for review of the approved status of trainers every three years, to ensure that they continue to be able to satisfy the criteria for eligibility. The chief executive may also suspend or cancel a trainer's approved status if specific grounds exist for cancellation.

Approved trainers will be entitled to access public places accompanied by trainee support dogs. The Bill also allows puppy carers who are employed, whether in a paid or voluntary capacity, by approved training institutions to access public places with dogs under 18 months of age that are placed in their care for socialisation and basic obedience training.

The Bill provides for guide, hearing and assistance dog handlers and trainers to carry an identity card. Dogs will have to wear an identifying harness or coat. This will enable members of the public and people in charge of public places to be able to easily recognise the dog as a guide, hearing or assistance dog. It will be an offence for a person in control of a public place or a public passenger vehicle to refuse entry or service to a person because they are accompanied by a trained guide, hearing or assistance dog, or a trainee support dog or for separating a person with a disability from his or her guide, hearing or assistance dog.

The Bill excludes specific places where guide, hearing and assistance dogs have no right of access to ensure health and hygiene standards are maintained or for environmental reasons. These reflect the places and vehicles from which guide dogs are excluded under the *Guide Dogs Act 1972*. Allowance is made for other excluded places to be prescribed by

regulation. The places where guide, hearing and assistance dogs are excluded under the Bill include, for example:

- (a) ambulances;
- (b) parts of hospitals consisting of operating suites, recovery areas, procedure rooms, sterilising areas and storage rooms;
- (c) areas where food is ordinarily prepared.

The Bill sets out the grounds upon which an approved trainer may certify a dog as a guide, hearing or assistance dog for a person with a disability. Trainers may only certify a dog if certain requirements are met including that the dog has passed a public access test within the previous 7 days and is de-sexed and vaccinated.

The Bill provides for the chief executive to issue an identity card to a dog handler once an approved trainer has certified the dog as a guide, hearing or assistance dog. A handler is eligible for an identity card if:

- the person reasonably requires the dog for support;
- the person is able to physically control the dog; and
- the dog has passed a public access test approved by the chief executive.

The Bill enables the chief executive to appoint authorised officers to monitor and enforce compliance with the Bill. These authorised officers are given a limited range of powers sufficient to enable them to enforce compliance with the Bill. Authorised officers may enter a place with the occupier's consent and when it is open to the public. Following entry authorised officers have powers to monitor compliance with the Bill, for example, for the purpose of investigating an offence against the Bill to search any part of the place, copy a document and require a person to answer any questions.

The Bill repeals the *Guide Dogs Act 1972* and the *Legacy Trust Fund Act 2001*.

Estimated cost to government implementation

Implementation of the proposed Bill will not result in any additional cost to DSQ that cannot be met from within the existing budget.

Consistency with fundamental legislative principles

Section 4(2) of the *Legislative Standards Act 1992* requires that legislation must have sufficient regard to the rights and liberties of individuals and the institution of Parliament. Aspects of the Bill that raise possible fundamental legislative principles are outlined below:

- Section 4(3)(d) of the *Legislative Standards Act 1992*

Defence – reversal of the onus of proof

Clauses 13(1)(a) and (b) provide offences for a person exercising control of a public place or public passenger vehicle to refuse entry to, or permission to be in, or service to an accompanied handler who is complying with the identification requirement. Clause 13(1)(c) makes it an offence for the person exercising control to impose a term that would result in the person with a disability being separated from their guide, hearing or assistance dog.

Clause 13(2) provides a defence if the person exercising control can prove that the contravention was for a reason that was reasonable in the circumstances and did not relate to an accompanied handler being accompanied by a guide, hearing, assistance or trainee support dog.

Establishing a defence will require the defendant to prove, on the balance of probabilities, the elements of the defence. However, placing the onus of satisfying the elements of the defence on the defendant is considered justified as it relates to matters that are peculiarly within the defendant's knowledge.

- Sections 4(3)(a) and (b) of the *Legislative Standards Act 1992*

Criminal history reports

The Bill requires an approved or employee trainer to disclose his or her criminal history to the chief executive (clauses 15 and 57). The Bill also requires an approved trainer or employee trainer to notify the chief executive if there is a change in the person's criminal history (clause 58).

People with a disability can be more vulnerable to abuse, neglect or exploitation than other members of the community. One important and practical way to promote their safety is through criminal history screening of people who may come into contact with them at times of vulnerability in order to increase their protection from harm. Approved trainers and

employee trainers will have contact with people with a disability when the trained dog is ready to be placed with its future handler. The trainers will work directly with the person with a disability to teach them about working with the trained dog. This contact may involve going into the person's home.

The provision of the criminal history information is designed to assist the chief executive in deciding whether an approved trainer or training institution is, or continues to be, suitable to work with people with a disability or animals.

However, the criminal history screening requirements of the Bill are not as broad as the scope of criminal history screening provisions under the *Disability Services Act 2006*. Under the Bill, the *Criminal Law (Rehabilitation of Offenders) Act 1986* will apply and will prevent disclosure of spent convictions.

These powers are considered necessary to protect people with a disability, and animals under the control of an approved trainer or training institution, from harm.

The proposal incorporates several protections for applicants, approved trainers, approved training institutions and employee trainers to ensure the process is fair:

- before using the information about a person's criminal history, the chief executive must disclose the information to the person and allow the person a reasonable opportunity to make written representations (clause 61);
- the person has a right of review to the chief executive (clause 67);
- the person has a right of appeal to an external tribunal on an adverse finding by the chief executive (clause 70);
- the Bill does not override the *Criminal Law (Rehabilitation of Offenders) Act 1986* (the Rehabilitation Act). Therefore, the chief executive is only able to access unspent convictions on a person's criminal history in accordance with the Rehabilitation Act;
- the chief executive must develop guidelines for dealing with criminal history information (clause 63). The purpose of these guidelines is to ensure natural justice is present and only relevant

information is used in assessing the suitability of a person to work with people with a disability or animals; and

- there are strict controls on the use of, and access to, any police information gained by DSQ through criminal history screening. In particular, it will be an offence for a person to disclose or give access to this information to anyone other than for the purposes of the Act or as required by another law (clause 64).
- Sections 4(3)(a) and (b) of the *Legislative Standards Act 1992*

Power to immediately suspend registration

The Bill confers on the chief executive the power to immediately suspend:

- the approval of an approved trainer or approved training institution if a ground exists for immediately suspending the approval and it is necessary to immediately suspend the approval to prevent or control harm happening to a person or animal (clause 26).
- a handler's identity card if a ground exists for immediately suspending the card and it is necessary to immediately suspend the card to prevent or control harm happening to a person or animal (clause 45).

In view of the need for action to be taken immediately, the chief executive is not required to provide the person or training institution with an opportunity to be heard before making the decision to suspend under these clauses.

This power of the chief executive arguably breaches the principles of natural justice. However, it is defensible on the ground that action may only be taken if there is an imminent risk of harm to a person or animal.

The Bill provides safeguards by providing that if the chief executive immediately suspends an approval or identity card, the suspension cannot operate for longer than three months. In addition, if the chief executive proceeds to cancel the approval or identity card, the chief executive must give the person a right to make representations as to why the cancellation should not happen (clauses 27 and 46). The person or training institution also has a right of review to the chief executive and a right of appeal to an external tribunal against a decision to immediately suspend or cancel the approval or card.

- Sections 4(3)(a) and (e) of the *Legislative Standards Act 1992*

Strengthened investigative powers and sanctions

The Bill provides that authorised officers may enter a place if the occupier of the place consents, it is a public place and the entry is made when it is open to the public, or it is not a home and the entry is made when the place is open for carrying on business (clause 81). This clarifies that authorised officers may enter premises of trainers and others either with consent or when the premises are open for entry.

Once lawful entry is made the authorised officers have certain powers available to them for the purpose of monitoring compliance with the Bill and broader powers for investigating offences against the Bill.

The powers for monitoring an approved trainer's or approved training institution's compliance with the Bill includes power to ask an approved trainer or approved training institution to give particular information about the provision of a training service by the trainer or institution, including information about a matter dealt with in the prescribed requirements; to make a document available for inspection by the authorised officer, or produce a document to the authorised officer for inspection, at a nominated time and place. The authorised officer can also require a person to make available for inspection by the authorised officer, or produce to the authorised officer for inspection, at a reasonable time and place nominated by the authorised officer—(a) a document issued to the person under the Bill; or (b) a document required to be kept by the person under the Bill. Failure to comply without a reasonable excuse will be grounds to suspend or cancel a trainer's or institution's approval. Self-incrimination will be a reasonable excuse.

The powers for investigating offences against the Bill include the power to search or inspect the premises, inspect records and ask questions. These are considered necessary to allow thorough investigation of alleged offences so that relevant reliable evidence can be obtained for presentation to a court in a prosecution for an offence against the Bill.

It is arguable that these provisions negatively impact on the rights and liberties of persons in charge of public places, approved trainers and approved training institutions.

The potential fundamental legislative principle breach is justified to ensure that the matters with which approved trainers or approved training

institutions must comply and the offences in the Bill are able to be monitored and enforced effectively.

- Section 4(3)(h) of the *Legislative Standards Act 1992*

Protection from liability for officials

Clause 113 of the Bill provides that an official or a person acting under direction of an official is not civilly liable for an act done, or omission made, honestly and without negligence under the Bill.

It is not considered appropriate for an official or a person acting under his or her direction to be made personally liable as a consequence of carrying out his or her responsibilities under the Bill in good faith. As such, the provisions in the Bill prevent civil liability from being attached to an official or person acting under direction. Instead liability will attach to the State. The proposed immunity does not extend to an official or person who has been negligent, even though they may have acted honestly.

- Section 4(3)(d) of the *Legislative Standards Act 1992*

Executive officers must ensure corporation complies with Act

Clause 104 of the Bill provides that if a corporation commits an offence under the Bill, then each of the corporation's executive officers also commits an offence. An executive officer has a defence if the person was not in a position to influence the conduct of the corporation or the person was in a position to influence but exercised reasonable diligence to ensure compliance by the corporation. Although this clause reverses the onus of proof it is considered justified as the Bill deals with vulnerable people and reasonable defences have been included.

Consultation

Community

In 2003, DSQ canvassed community views regarding the legal recognition of assistance dogs as part of the review of the *Disability Services Act 1992*.

This was followed by site visits by DSQ officers to dog training institutions both in Queensland and other jurisdictions, and discussions with key Queensland government agencies, and the Human Rights and Equal Opportunity Commission with a view to formulating a legislative response.

In 2005, DSQ consulted on the *Assistance Dogs and Guide Dogs Review Discussion Paper*. This discussion paper sought public feedback on proposed new laws to recognise the role assistance dogs play in improving the quality of life for people with a disability. Feedback indicated that a proposal for a legislative solution was well received.

Most recently, targeted consultation was undertaken regarding the Bill. Consultation took place from 23 August to 10 September 2007. The draft Bill was sent to:

- the Disability Council of Queensland;
- peak disability bodies representative of people with a disability that would benefit from assistance dogs including Better Hearing Australia, Spinal Injuries Association, Queenslanders with a Disability Network, Epilepsy Queensland, Carers Queensland, the Queensland Alliance;
- organisations expert in the training and behaviour of dogs including Guide Dogs Queensland, Seeing Eye Dogs Australia (Queensland Branch), Lions Hearing Dogs Incorporated, Australian Veterinary Association (Queensland Division) and Queensland and New South Wales assistance dog trainers;
- representative bodies for the business, retail and private transport sectors including the Queensland Retail Traders and Shop Keepers Association, Restaurant and Catering Queensland, the Taxi Council of Queensland, Yellow Cabs and Black and White Cabs;
- the Local Government Association of Queensland and the Brisbane City Council;
- the Human Rights and Equal Opportunity Commission.

As part of the consultation process DSQ conducted three consultation forums comprising invited representatives of key community stakeholder organisations. Feedback was received at the consultation forums, by telephone and in written submission. Submissions were also received from Cairn Community Legal Centre Inc and Welfare Rights Centre Inc in 2008.

Interstate guide dog training institutions were also contacted and consulted regarding the Bill and their desire to become approved guide dog training institutions under the new legislation. The following organisations were provided with details of the legislative framework: Association for the Blind of Western Australia, Guide Dogs NSW/ACT, Guide Dogs Victoria,

Guide Dogs Association of SA and NT Inc, the Royal Guide Dogs for the Blind Association of Tasmania (trading as Guide Dogs Tasmania).

Government

Key Government departments have been consulted throughout the development of the legislative proposal and the Bill. Select Government departments were provided with a consultation draft of the Bill and invited to attend an information forum held on 5 September 2007. Government departments and agencies consulted include: Department of the Premier and Cabinet, Department of Justice and Attorney-General, Queensland Health, Queensland Transport, Queensland Rail, Queensland Corrective Services, Queensland Police Service, Environmental Protection Agency, the former Department of Tourism, Fair Trading and Wine Industry Development, the former Department of Local Government, Planning, Sport and Recreation, and Department of Education, Training and the Arts.

Consultation has also occurred with the Anti-Discrimination Commission Queensland, the Human Rights and Equal Opportunity Commission and the Federal Attorney-General's Department.

Notes On Provisions

Part 1 Preliminary

Division 1 Introduction

Short title

Clause 1 describes the short title of the Bill as being the *Guide, Hearing and Assistance Dogs Act 2008*.

Commencement

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

Objects of Act

Clause 3 provides the objects of the Bill. These are:

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

Sub clause (2) provides that these objects are mainly achieved by:

- protecting the right of people with a disability who rely on guide, hearing or assistance dogs to be accompanied by their dog in particular public places and public passenger vehicles; and
- protecting the right of guide, hearing and assistance dog trainers to be accompanied by the dogs in particular public places and public passenger vehicles; and
- providing a simple and consistent means of identifying properly trained guide, hearing and assistance dogs; and
- providing for the approval of guide, hearing and assistance dog training services.

Division 2 Interpretation

Dictionary

Clause 4 provides that particular words used in the Bill are defined in the dictionary in schedule 4 of the Bill (located at the end of the Bill).

What is a *disability*

Clause 5 provides the definition of “disability” for the purposes of the Bill. The definition adopts the definition in the *Disability Services Act 2006* but with some modification to increase its coverage to all people who have an

impairment that results in any level of reduction in their capacity for communication, social interaction, learning, mobility, or self care or management, not just a ‘substantial’ reduction. The definition includes the presence in a person’s body of organisms capable of causing illness or disease to ensure that the definition includes people who would be considered to have an impairment for the purposes of the *Anti-Discrimination Act 1991*.

Part 2 Guide, hearing and assistance dogs in public places and public passenger vehicles

Division 1 Preliminary

Definitions for pt 2

Clause 6 explains the meaning of “public passenger vehicle” and “public place” as used in part 2.

Examples of a public passenger vehicle include a bus, ferry, plane, taxi or train. Examples of a public place include a beach, restaurant or shopping centre.

Public places and public passenger vehicles to which this part applies

Clause 7 specifies the places to which a person accompanied by a guide, hearing or assistance dog does not have a right to be accompanied under part 2. These include:

- a part of a health service facility mentioned in schedule 1 of the Bill;
- an ambulance;
- a part of a public place or public passenger vehicle where food is ordinarily prepared;
- a public place or public passenger vehicle prescribed under a regulation for this clause.

Sub clause (2) provides that the Minister may recommend the making of a regulation under sub clause (1)(d) only if satisfied the presence of a dog in the public place or public passenger vehicle would be a risk to the health or welfare of people ordinarily at the place or on the vehicle, or a serious risk to a plant or animal native to the public place.

Clause 7 recognises that for reasons associated with the maintenance of health and hygiene standards or for environmental reasons, there are some places where a dog should not go. The clause also will enable a regulation to be made in the future if it is necessary to restrict a dog's access because of a human health or welfare risk, or to preserve native flora and fauna in certain places.

Division 2 Right to be accompanied by a guide, hearing or assistance dog

People with a disability may be accompanied by their guide, hearing and assistance dogs

Clause 8 makes 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 public place or public passenger vehicle.

Sub clause (2) also makes it clear that such a person does not commit an offence merely by taking the guide, hearing or assistance dog into a public place or public passenger vehicle.

The clause recasts section 5 of the *Guide Dogs Act 1972* and extends its operation to assistance dogs.

Trainers and puppy carers may be accompanied by guide, hearing, assistance and trainee support dogs

Clause 9 makes 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 public place or public passenger vehicle.

Sub clause (2) also makes it clear that an approved trainer, employee trainer or puppy carer does not commit an offence merely by taking a guide, hearing, assistance or trainee support dog into a public place or public passenger vehicle.

The clause recasts section 6D of the *Guide Dogs Act 1972* and extends its operation to puppy carers and assistance dogs.

Lawful presence at a place or on a vehicle

Clause 10 clarifies that clauses 8 and 9 do not:

- affect the lawfulness of a person with a disability, trainers or puppy carers to be at a place or on a vehicle; or
- prevent a person from lawfully refusing entry, to a place or vehicle, to a person accompanied by a guide, hearing, assistance or trainee support dog for a reason other than the person being accompanied by their dog; or
- prevent a person from lawfully requiring a person accompanied by a guide, hearing, assistance or trainee support dog to leave a place or vehicle for a reason other than the person being accompanied by their dog.

The clause makes it clear that the Bill does not affect other legal rights relating to entry or access by persons to public places or public passenger vehicles.

Division 3 Obligations of persons exercising control of public places and public passenger vehicles

Who is a *person exercising control* of a public place or public passenger vehicle

Clause 11 explains the meaning of a “person exercising control” of a public place or public passenger vehicle as used in the Bill. This is defined as a person exercising control, or purporting to exercise control, over:

- access to, or permission to remain in, the place or vehicle; or
- the delivery of a service in the place or vehicle.

Identification procedure for handlers and trainers

Clause 12 explains the meaning of “identification procedure” as used in the Bill. This is defined as a procedure that a person complies with in order to

identify themselves as a person who is accompanied by a properly trained guide, hearing or assistance dog or a trainee support dog.

Sub clause (2) provides that a person complies with the identification procedure by:

- having their identity card visibly displayed or available for inspection; and
- ensuring the dog is wearing: for a guide dog – a harness; or for an assistance dog – an identifying coat; or for a hearing or trainee support dog – a harness or identifying coat.

Sub clause (3) makes it clear that a person does not comply with the identification procedure if the person's identity card is suspended, cancelled or expired.

Sub clause (4) explains the meaning of “identifying coat” and “identity card” as used in the clause.

This procedure to bring a person and their accompanying dog under the terms of the Bill is entirely optional and voluntary. If a person chooses to comply with this scheme, it places an obligation on persons exercising control of a public place or public passenger vehicle not to contravene the provisions of the Bill with associated penalties for non compliance.

Obligations of persons exercising control of public places and public passenger vehicles

Clauses 13(1)(a) and (b) contain offences for a person exercising control of a public place or public passenger vehicle to refuse entry to, permission to be in, or service in the place or vehicle to an accompanied handler who is complying with the identification procedure. Clause 13(1)(c) contains an offence for imposing a term that would result in a person with a disability being separated from their guide, hearing or assistance dog while in the place or vehicle. These offences are punishable by a maximum penalty of 100 penalty units.

Under the *Guide Dogs Act 1972* the offences of unlawfully denying access, accommodation or service to a person accompanied by a guide dog attracted a penalty of only 1 penalty unit. The offence of unlawfully imposing a term that requires a dog to be separated from its handler was previously located in section 225 of the *Anti-Discrimination Act 1991* and attracted a penalty of 35 penalty units. The increase in penalties to a maximum of 100 penalty units for the offences in the Bill reflects the

importance of the offences in deterring or punishing offenders who would deny the rights of persons accompanied by trained guide, hearing, or assistance dogs, and trainee support dogs in accessing public places and public passenger vehicles.

Sub clause (2) provides a defence to a contravention of sub clause (1) for the person to prove that he or she acted for a reason that did not relate to the accompanied handler or person with a disability being accompanied by a guide, hearing, assistance, or trainee support dog; and that this reason was reasonable in the circumstances.

Sub clause (3) explains the meaning of “accompanied handler” and “term” as used in clause 13.

Part 3 Trainers of guide, hearing and assistance dogs

Division 1 Approval of trainers of guide, hearing and assistance dogs

Who is suitable for approval

Clause 14 sets out the attributes that will make a person suitable to be an approved trainer or approved training institution under part 3 of the Bill. A person is suitable for approval if:

- (1) The person is able to:
 - train reliable guide, hearing or assistance dogs that are able to perform identifiable physical tasks and behaviours for the benefit of a person with a disability; and that are safe and effective in public places and public passenger vehicles; and
 - select dogs that are able to meet the individual needs of a person with a disability; and
 - provide ongoing and regular support to the handlers of the guide, hearing or assistance dogs trained by the person.
- (2) The person does not have a criminal history that makes him or her unsuitable to work with animals or people with a disability, or for an

approved training institution, that it does not employ trainers that have a criminal history that would make them unsuitable to work with animals or people with a disability.

Application for approval

Clause 15 enables an individual or a corporation (the applicant) to apply to the chief executive for approval in 1 or more of the categories of approved trainer or approved training institution.

Sub clause (3) stipulates that the application must be in the approved form and accompanied by the following:

- documents or information establishing the applicant's suitability for approval;
- a consent to a criminal history check for an individual or each employee trainer of an institution;
- disclosure of criminal history (if any);
- the fee (if any) prescribed in a regulation.

Sub clause (4) requires the applicant to provide additional information and documents if reasonably requested by the chief executive.

Sub clause (5) specifies the 3 categories of approved trainer or approved training institution for the Bill. These are: guide dog trainer, hearing dog trainer and assistance dog trainer.

Submissions from advisory committee

Clause 16 enables the chief executive to request a submission about the applicant from an advisory committee (see part 10). If an advisory committee receives such a request, the committee must, within 28 days, give the chief executive a written submission about the applicant. The advisory committee must also give a copy of the submission to the applicant, together with a notice advising the applicant about the right to make written representations to the chief executive about the committee's submission within 14 days.

Sub clause (3) provides that the applicant may make written representations to the chief executive about the submission within 14 days of receipt of the advisory committee's submission and notice. This sub clause allows the applicant to place before the chief executive any material

to be considered by the chief executive together with the advisory committee's submission.

Decision on application for approval

Clause 17 requires the chief executive to grant or refuse to grant the approval upon consideration of the application. Under sub clause (4) if the chief executive is satisfied that the applicant is suitable for approval, the chief executive must decide to grant the approval and sub clause (5) allows the chief executive to impose any reasonable and relevant conditions. Under sub clause (6) the chief executive must decide to refuse to grant the approval if the chief executive is not satisfied about the suitability of the applicant. Sub clause (2) sets out the criteria which must be considered for assessing the application which include:

- the applicant's, or for a corporation, the applicant's employees', qualifications, knowledge or experience in dog obedience training;
- the training methods to be used by the applicant;
- a submission made to the chief executive about the applicant by an advisory committee and any representations by the applicant;
- the criminal history of the applicant, or employee trainers if the applicant is a corporation;
- another matter prescribed under a regulation.

Sub clause (3) allows the chief executive to also consider the applicant's:

- membership of an organisation that promotes standards of dog training;
- qualifications, knowledge or experience that demonstrates an understanding of the needs of people with a disability.

Notification of decision

Clause 18 requires the chief executive to immediately provide a successful applicant with a notice of the decision, as well as notify the name and category of the approved trainer or approved training institution in the Queensland Government Gazette.

If an approval is granted with conditions or refused, sub clauses (2) and (3) require the chief executive to immediately provide an information notice to

the applicant. An information notice is defined in schedule 4 and includes certain requirements.

Approval remains in force unless immediately suspended, cancelled or surrendered

Clause 19 provides that an approval remains in force unless immediately suspended, cancelled, or surrendered under part 3.

Division 2 Review of approval

Definitions for div 2

Clause 20 explains the meaning of “trainer” and “institution” as used in division 2.

Review of approval

Clause 21 requires the chief executive to conduct a review of the trainer’s or institution’s approval 3 years after the approval was granted and then at least every 3 years. The chief executive must give written notice to the trainer or institution before conducting the review, and the trainer or institution must within 28 days provide documents and information required under the notice that the chief executive reasonably requires to conduct the review.

Submissions from advisory committee

Clause 22 enables the chief executive to request a submission about the trainer or institution from an advisory committee (see part 10) for the review. If an advisory committee receives such a request, the committee must, within 28 days, give the chief executive a written submission about the trainer or institution. The advisory committee must also give a copy of the submission to the trainer or institution, together with a notice advising the trainer or institution about the right to make written representations to the chief executive about the committee’s submission within 14 days.

Sub clause (3) provides that the trainer or institution may make written representations to the chief executive about the submission within 14 days of receipt of the advisory committee’s submission and notice. This sub

clause allows the trainer or institution to place before the chief executive any material to be considered by the chief executive together with the advisory committee's submission.

Decision on review

Clause 23 requires the chief executive when deciding the review to consider whether the trainer or institution is suitable for continued approval. The clause sets out the matters which the chief executive must consider in deciding a review, which include:

- the trainer's, or for an institution, the institution's employees' qualifications, knowledge or experience in dog obedience training;
- the training methods used or to be used by the trainer or institution;
- a submission made to the chief executive about the trainer or institution by an advisory committee and any representations by the trainer or institution;
- the criminal history of the trainer or for an institution, the institution's employee trainers;
- another matter prescribed under a regulation.

Sub clause (2) provides that the chief executive may have regard to:

- the trainer's or institution's membership of an organisation that promotes standards of dog training;
- the trainer's or institution's qualifications, knowledge or experience that demonstrates an understanding of the needs of people with a disability;
- the trainer's or institution's history of compliance with the prescribed requirements; and
- any complaints made to the chief executive about the trainer or institution.

After conducting the review, if the chief executive is satisfied that an approved trainer or approved training institution is suitable for continued approval, the chief executive is required to give the trainer or training institution a notice stating that the review has been completed.

Division 3 Immediate suspension, cancellation and voluntary surrender of approval

Subdivision 1 Preliminary

Definitions for div 3

Clause 24 explains the meanings of “show cause notice” and “show cause period” as used in division 3 are set out.

Grounds for immediate suspension or cancellation of approval

Clause 25 sets out the grounds of immediate suspension or cancellation for an approved trainer’s or approved training institution’s approval. They are:

- the trainer or institution is no longer suitable for approval;
- the trainer or institution has contravened the prescribed requirements;
- the trainer or institution has contravened a provision of the Bill;
- the institution employs an unsuitable person as an employee trainer;
- the trainer or institution has intentionally or recklessly certified a dog as a guide, hearing or assistance dog and the dog has not, or should not have, passed a public access test;
- the approval was granted because of a materially false or misleading representation or declaration.

Sub clause (2) explains the meaning of “unsuitable person” as used in clause 25.

Subdivision 2 Immediate suspension

Immediate suspension of approval

Clause 26 allows the chief executive to immediately suspend a trainer’s or approved training institution’s approval by information notice if the chief executive reasonably believes a ground exists for immediately suspending

the approval and it is necessary to immediately suspend the approval to prevent or control harm happening to a person or an animal.

Sub clause (3) limits the suspension to a period of not more than 3 months. The suspension will have effect immediately when an information notice is given to the trainer or institution.

Subdivision 3 Cancellation

Show cause process

Clause 27 requires the chief executive to supply the approved trainer or approved training institution with a show cause notice if the chief executive proposes to cancel an approval. The chief executive must believe a ground exists to cancel the approval. The show cause notice must state that the chief executive proposes to cancel the approval; the grounds for cancellation; an outline of the facts and circumstances forming the basis for the grounds; and that the trainer or institution may make written representations explaining why the trainer's or institution's approval should not be cancelled, within a stated period of not less than 21 days after the show cause notice is given.

Sub clause (4) requires the chief executive to consider all written representations made by the trainer or institution within the show cause period.

Ending show cause process without further action

Clause 28 requires that if, after the show cause period, the chief executive no longer believes the ground exists to take the proposed action, the chief executive must:

- take no action about the show cause notice; and
- give notice to the approved trainer or approved training institution that no further action is to be taken. This notice must be given as soon as practicable.

Cancellation of approval

Clause 29 allows the chief executive to cancel an approval if, at the end of the show cause period, the chief executive still believes cancellation is

warranted. Sub clause (2) requires the chief executive to give an information notice about the decision to the approved trainer or approved training institution. Sub clause (3) provides that the cancellation will take effect on the day the information notice is given to the approved trainer or approved training institution, or on a day stated in the notice, whichever is the later.

Subdivision 4 Voluntary surrender of approval

Voluntary surrender of approval

Clause 30 allows an approved trainer or approved training institution to surrender their approval by written notice to the chief executive. Sub clause (2) provides that the surrender will take effect on the day the notice is given, or on a day stated in the notice, whichever is the later.

Division 4 Prescribed requirements

Prescribed requirements

Clause 31 allows a regulation to prescribe requirements relating to the provision of training services by an approved trainer or approved training institution. Without limiting the matters which may be prescribed, sub clause (2) lists what the prescribed requirements could be, for example a regulation may prescribe requirements for trainers or institutions about:

- assessments and training of clients in relation to the control and care of guide, hearing or assistance dogs and information to be given to clients;
- the types of records to be kept about employment of employee trainers and puppy carers (including volunteers); the issue of trainer's identity cards; training of dogs; and veterinary history of dogs;
- policies to be prepared, maintained, published or implemented;
- insurance coverage;
- maintaining accreditation on the basis of industry standards or other relevant standards.

A breach of the prescribed requirements is a ground for immediately suspending or cancelling a trainer's or institution's approval under clause 25.

Division 5 Other matters

Approved trainers and approved training institutions must give notice of change

Clause 32(1) requires an approved trainer or approved training institution to notify the chief executive in writing within 14 days after becoming aware of a change of address or a matter prescribed under a regulation, unless the trainer or institution has a reasonable excuse.

A breach of the sub clause is a ground for immediately suspending or cancelling a trainer's or institution's approval under clause 25.

Clause 32(2) contains an offence for an approved training institution to fail to give the chief executive a consent to a criminal history check from a new employee trainer within 14 days of employing the trainer. The offence is punishable by a maximum penalty of 20 penalty units.

Claims by persons about approval

Clause 33 contains an offence for a person who is not an approved trainer or approved training institution to hold out, or attempt to hold out, to be approved by the chief executive for training guide, hearing or assistance dogs. The offence is punishable by a maximum penalty of 100 penalty units.

Part 4 Certification of guide, hearing and assistance dogs

Division 1 Interpretation

Definitions for pt 4

Clause 34 explains the meaning of “approved assistance dog trainer”, “approved guide dog trainer” and “approved hearing dog trainer” as used in part 4.

Public access test

Clause 35 explains the meaning of “public access test” as used in the Bill. This is defined as a test approved by the chief executive to assess if a guide, hearing or assistance dog is safe and effective in a public place or public passenger vehicle, and is able to be controlled by the handler of the dog.

Sub clause (2) sets out where a copy of the public access tests may be inspected by the public free of charge. This includes at the department’s head and regional offices and on the department’s website on the internet.

Division 2 Certification of guide, hearing and assistance dogs

Certification of guide dogs

Clause 36 mandates that an approved guide dog trainer may only certify a guide dog for a person with a disability if the dog:

- is capable of being used as a guide dog by a person with a vision impairment;
- has passed a public access test conducted in the previous 7 days by the approved trainer or an employee trainer of the approved training institution;
- is not of a restricted breed as defined under the *Local Government Act 1993*;

- is de-sexed and vaccinated; and
- has not been declared a dangerous dog under a local law.

Certification of hearing dogs

Clause 37 mandates that an approved hearing dog trainer may only certify a hearing dog for a person with a disability if the dog:

- is capable of being used as an aid by a person with a hearing impairment;
- has passed a public access test conducted in the previous 7 days by the approved trainer or an employee trainer of the approved training institution;
- is not of a restricted breed as defined under the *Local Government Act 1993*;
- is de-sexed and vaccinated; and
- has not been declared a dangerous dog under a local law.

Certification of assistance dogs

Clause 38 mandates that an approved assistance dog trainer may only certify an assistance dog for a person with a disability if the dog:

- is capable of performing identifiable physical tasks and behaviours to assist the person in a way that reduces the person's need for support;
- has passed a public access test conducted in the previous 7 days by the approved trainer or an employee trainer of the approved training institution;
- is not of a restricted breed as defined under the *Local Government Act 1993*;
- is de-sexed and vaccinated; and
- has not been declared a dangerous dog under a local law.

Approved or employee trainer must not certify own dog

Clause 39 stipulates that an approved trainer who has a disability must not certify a dog as a guide, hearing or assistance dog if they are the person

who relies on the dog. Sub clause (2) also stipulates that an approved training institution must not certify a dog as a guide, hearing or assistance dog for a person with a disability who is employed by that institution as a trainer, or a director or shareholder of the institution.

A breach of the clause is a ground for immediately suspending or cancelling a trainer's or institution's approval under clause 25.

Part 5 Identity cards for handlers, trainers and puppy carers

Division 1 Identity cards for handlers

Subdivision 1 Issue of handlers' identity cards

Eligibility for handler's identity card

Clause 40 sets out the eligibility requirements for a person with a disability who relies on a guide, hearing or assistance dog to obtain a handler's identity card. The person will be eligible for a card if:

- the person reasonably requires the dog to reduce the person's need for support;
- the person is able to physically control the dog; and
- the application is made within 28 days after an approved trainer or approved training institution has certified the person's dog.

Application for handler's identity card

Clause 41 allows a person with a disability who relies on a guide, hearing or assistance dog (the applicant) to apply to the chief executive for a handler's identity card.

Sub clause (2) sets out the requirements for the application. The applicant must use the approved form and provide documents or information prescribed by regulation, including evidence of their disability; a photo of

the applicant and their dog that complies with the requirements prescribed by regulation; and a fee (if any) prescribed by regulation.

Sub clause (4) requires the chief executive to consider and make a decision to either issue or refuse to issue the handler's identity card within 28 days of receipt of the application. To issue the identity card the chief executive must be satisfied that the applicant has satisfied the requirements set out in clause 40. Sub clause (6) requires the identity card to be issued as soon as practicable. Sub clause (7) requires the chief executive to immediately give an information notice to the applicant if a decision is made to refuse the application.

Term of handler's identity card

Clause 42 sets out the term of a handler's identity card. The card will become effective on the day it is issued and will expire, unless it is sooner suspended, cancelled or surrendered, on the expiry date indicated on the card. An identity card relating to the use of a guide or hearing dog may have a term of up to 5 years from the day the card is issued. An identity card relating to the use of an assistance dog may have a term of up to 2 years from the day the card is issued.

Hearing or vision impairments are less likely to fluctuate over time than other physical disabilities. The extent and degree of other physical disabilities could vary markedly and therefore it will be necessary to reassess any change in the person with a disability's situation and needs, and ensure that their dog is able to accommodate and attend to these changes effectively.

For this reason, the training and certification of an assistance dog should be monitored at shorter intervals and this is reflected in the maximum 2 year term for an identity card for the use of an assistance dog.

Notice of expiry of handler's identity card

Clause 43 requires the chief executive to give a handler at least 60 days notice that the identity card is due to expire. The notice provided to the handler must indicate the date the card will expire and how the handler may apply for another identity card.

Subdivision 2 Immediate suspension, cancellation and voluntary surrender of handlers' identity cards

Grounds for immediate suspension or cancellation of handler's identity card

Clause 44 stipulates the grounds for immediate suspension or cancellation of a handler's identity card. The grounds are that:

- the dog is a risk to the health or welfare of the handler or someone else;
- the handler no longer relies on the dog;
- the dog was certified because of a materially false or misleading representation or declaration;
- the identity card was issued because of a materially false or misleading representation or declaration.

Sub clause (2) explains the meaning of "handler's dog" as used in clause 44.

Immediate suspension of handler's identity card

Clause 45 allows the chief executive to immediately suspend a handler's identity card. The chief executive may immediately suspend a handler's identity card by information notice if the chief executive reasonably believes that a ground exists for immediately suspending the card and it is necessary to immediately suspend the card to prevent or control harm happening to a person or animal. Sub clause (2) requires the suspension period to be stated in the information notice. Sub clause (3) allows the chief executive to determine the length of the suspension period but the period cannot be longer than 3 months. The suspension takes effect immediately when the notice is given.

Cancellation of handler's identity card

Clause 46 allows the chief executive to cancel a handler's identity card if the chief executive believes that a ground exists for cancellation. Sub clauses (2) and (3) set out the process that must be followed for

cancellation of a handler's identity card. Before cancelling the identity card the chief executive must give the handler a notice which sets out:

- that the chief executive proposes to cancel the card;
- the reasons and bases for the reasons for the proposed cancellation;
- an invitation to provide a written response as to why the card should not be cancelled within a period of not less than 28 days.

The chief executive must consider any written response received from either the handler, or an approved trainer or approved training institution before cancelling the identity card. If the chief executive decides to proceed with the cancellation of the identity card the chief executive must immediately give the handler an information notice about the decision. The decision will take effect on the day the information notice is given to the handler or the day stated in the information notice, whichever is the later.

Voluntary surrender of handler's identity card

Clause 47 allows a handler to voluntarily surrender their identity card by giving the card and a written notice of surrender to the chief executive.

Subdivision 3 Other matters

Replacement of handler's identity card

Clause 48 allows a handler to apply to the chief executive for a replacement card where the handler's card has been damaged, lost or stolen. The application must be in the approved form and be accompanied by the fee (if any) prescribed by regulation. The chief executive must replace the card if satisfied the card has been damaged, lost or stolen.

However, a handler cannot apply for a replacement card while the identity card is suspended or cancelled, or if it has expired.

Return of handler's identity card

Clause 49 contains an offence for a handler to fail without reasonable excuse to immediately return their identity card to the chief executive if the

card is cancelled or the dog to which the card relates, dies or is retired. The offence is punishable by a maximum penalty of 2 penalty units.

Sub clause (2) explains the meaning of “retirement” as used in clause 49.

Division 2 Identity cards for approved trainers

Issue of identity card for approved trainer

Clause 50 requires the chief executive to issue an identity card to each approved trainer.

Term of identity card for approved trainer

Clause 51 provides for the term of an identity card for an approved trainer. The identity card becomes effective on the day the card is issued and expires on the expiry date stated on the card.

Replacement of identity card for approved trainer

Clause 52 allows an approved trainer to apply to the chief executive for a replacement card where the trainer’s card has been damaged, lost or stolen. The application must be in the approved form and be accompanied by the fee (if any) prescribed by regulation. The chief executive must replace the card if satisfied the card has been damaged, lost or stolen.

However, an approved trainer cannot apply for a replacement card while the identity card is suspended or cancelled, or if it has expired.

Return of identity card for approved trainer

Clause 53 contains an offence for an approved trainer whose approval has been cancelled or surrendered to fail without reasonable excuse to return the trainer’s identity card to the chief executive within 7 days. The offence is punishable by a maximum penalty of 20 penalty units.

Division 3 Identity cards for employee trainers and puppy carers

Issue of identity card for employee trainer or puppy carer

Clause 54 requires an approved training institution to issue identity cards to its employee trainers and puppy carers. Sub clause (2) requires an approved training institution not to issue an identity card to anyone other than an employee trainer or puppy carer of that institution, or to issue an identity card that does not comply with the requirements prescribed under a regulation.

Sub clause (3) explains the meaning of “identity card” as used in clause 54.

A breach of the clause is a ground for immediately suspending or cancelling the institution’s approval under clause 25.

Return of identity card for employee trainer or puppy carer

Clause 55 requires an approved training institution to collect an employee trainer’s or puppy carer’s identity card as soon as practicable after the trainer or carer stops being a trainer or carer.

A breach of the clause is a ground for immediately suspending or cancelling the institution’s approval under clause 25.

Part 6 Screening of approved and employee trainers

Division 1 Preliminary

Main purpose of pt 6

Clause 56 provides that the main purpose of part 6 is to enable the chief executive to obtain the criminal history of, and related information about, approved trainers and employee trainers.

People with a disability can be more vulnerable to abuse, neglect or exploitation than other members of the community. One important and

practical way to promote their safety is through criminal history screening of people who may come into contact with them at times of vulnerability in order to increase their protection from harm. Trainers will have direct contact with people with a disability when training a dog to work with the person and this may involve going into the person's home.

For this reason the Bill provides for criminal history screening of approved trainers and employee trainers. However, the criminal history screening requirements of the Bill are not as broad as the scope of criminal history screening provisions under the *Disability Services Act 2006*, and the *Criminal Law (Rehabilitation of Offenders) Act 1986* will apply and will prevent disclosure of spent convictions.

Division 2 Disclosure of criminal history

Employee trainers must disclose criminal history

Clause 57 contains an offence for an employee trainer not to disclose to the chief executive whether or not the trainer has a criminal history, and if so, the trainer's complete criminal history.

The offence is punishable by a maximum penalty of 20 penalty units.

Approved and employee trainers must disclose changes in criminal history

Clause 58 contains an offence for an approved or employee trainer not to immediately disclose to the chief executive details of a change in the criminal history of the trainer. The offence is punishable by a maximum penalty of 20 penalty units.

Sub clause (2) makes it clear that for an approved or employee trainer who does not have a criminal history, their criminal history is taken to have changed if the trainer acquires a criminal history.

Requirements for disclosure

Clause 59 sets out how an approved trainer or employee trainer should comply with clause 57 or 58. An approved trainer or employee trainer must give the chief executive a disclosure in the approved form and must

include the following information about a conviction of an offence in the trainer's criminal history:

- the existence of the conviction;
- when the offence was committed;
- details of the offence; and
- whether or not a conviction was recorded and the sentence imposed on the trainer.

Division 3 Chief executive may obtain report about criminal history

Chief executive may obtain report from commissioner of the police service

Clause 60 allows the chief executive to ask the commissioner of the police service (the commissioner) to give the chief executive certain information about an approved trainer, employee trainer or a person who has provided the chief executive with a consent to a criminal history check. The chief executive may ask the commissioner for a written report about the person's criminal history and a brief description of the circumstances of a conviction mentioned in the person's criminal history. The commissioner must give the chief executive the information requested but only if the information is in the commissioner's possession or if the commissioner has access to the information.

Division 4 Use of information

Person to be advised of information obtained

Clause 61 requires the chief executive to disclose the criminal history information obtained about a person from the commissioner to the person and allow the person a reasonable opportunity to make a written submission to the chief executive before the chief executive may use the information to make an assessment of the suitability of the person to work with animals or people with a disability.

Use of information obtained under this part

Clause 62 provides that the chief executive must not use information about a person's criminal history for any purpose other than assessing the person's suitability to work with animals or people with a disability. Sub clause (3) stipulates that the chief executive must have regard to the following matters relating to information about a conviction for an offence when making an assessment of a person's suitability:

- when the offence was committed;
- the nature of the offence and its relevance to the person's ability to work with animals or people with a disability;
- any written representation by the person;
- anything else the chief executive considers relevant to the assessment of the person.

Division 5 Controls on information

Guidelines for dealing with information

Clause 63 requires the chief executive to make guidelines for dealing with the information obtained under part 6. The guidelines must be consistent with the Bill. The purpose of these guidelines is to ensure that:

- natural justice is afforded to the persons about whom the information is obtained;
- only relevant information is used in assessing the suitability of a person to work with animals or people with a disability; and
- decisions based on the information are made consistently.

Sub clause (3) requires the chief executive to give a copy of the guidelines to a person who has or will have a duty to disclose under clause 57 or 58.

Confidentiality of information about criminal history

Clause 64 contains an offence for a public service employee who has acquired information or gained access to a document about a person's criminal history under part 6, to disclose that information, or give access to

that document to anyone else. The offence is punishable by a maximum penalty of 100 penalty units or 2 years imprisonment.

However, it will not be an offence to disclose information or give access to a document about a person's criminal history:

- to the chief executive or a public service employee for the purpose of assessing the person's suitability to work with animals or people with a disability; or
- if the person, being an adult, consents to the disclosure; or
- if the disclosure or giving of access is required under an Act.

Part 7 Reviews and appeals

Division 1 Interpretation

Definitions for pt 7

Clause 65 explains the meanings of "interested person", "reviewed decision", "reviewable decision" and "reviewed decision notice" as used in part 7 are set out.

Division 2 Reviewable decisions

Reviewable decisions

Clause 66 lists the decisions of the chief executive that can be reviewed under the Bill. The reviewable decisions are:

- to impose conditions on a grant of approval under section 17; or
- to refuse to grant an approval under section 17; or
- to immediately suspend an approval under section 26; or
- to cancel an approval under section 29; or
- to refuse to issue a handler's identity card under section 41; or

- to immediately suspend a handler's identity card under section 45; or
- to cancel a handler's identity card under section 46.

Sub clause (2) provides that the person who may seek to have the decision reviewed is the person (called the interested person) to whom the chief executive was required to provide an information notice about the decision.

Division 3 Review of decision

Application for review

Clause 67 allows the interested person to apply for a review of a reviewable decision within 28 days of receipt of the information notice about the decision. However, the chief executive can extend the usual 28 day time limit. Also, if the chief executive has not given the interested person an information notice about the decision, the person can still apply to the chief executive to have the decision reviewed. An application for review must be in the approved form and be supported by enough information to enable the chief executive to decide the application.

Stay of operation of original decision

Clause 68 makes it clear that an application for review of a decision does not prevent the decision from taking effect. However, before the decision takes effect, the chief executive by notice can stay the operation of the decision for a specified time and on any conditions that the chief executive considers appropriate.

Sub clause (4) makes it clear that whether or not the applicant has asked the chief executive to stay the decision the applicant may apply to the Commercial and Consumer Tribunal (the tribunal) for a stay of the decision. The tribunal may stay the decision to secure the effectiveness of the review and any later appeal to the tribunal, and may do so for a specified time and on any conditions it considers appropriate.

Sub clause (7) provides that if the matter is stayed, the period of the stay cannot be longer than the time when the chief executive makes the reviewed decision and any later period the tribunal allows to enable the applicant to appeal against the reviewed decision.

Review decision

Clause 69 makes it clear that for a review by the chief executive of the original decision, the chief executive must ensure the application is not dealt with by the person who made the original decision or a person in a less senior position than the person who made the original decision. The only exception to this is if the chief executive personally made the original decision.

Within 28 days after receiving the review application, the chief executive (or an authorised delegate) must review the original decision and make a decision to confirm, amend or substitute the original decision.

Immediately after deciding the application, the chief executive must give the interested person a written notice stating:

- the reviewed decision;
- reasons for the reviewed decision;
- that within 28 days after receiving the notice, the interested person may appeal against the reviewed decision to the tribunal; and
- how they may appeal to the tribunal.

Sub clause (5) provides that if the chief executive does not decide the application within the required 28 days after receiving the review application, the chief executive is deemed to have made a reviewed decision confirming the original decision.

Division 4 Appeal against reviewed decision

Appeal against reviewed decision

Clause 70 allows the interested person a right of appeal against the review decision made by the chief executive. Within 28 days after receiving a reviewed decision notice the interested person may appeal against the decision to the tribunal.

Appeal is by way of rehearing

Clause 71 specifies how the tribunal reviews the decision of the chief executive. The tribunal reviews the matter by way of rehearing based on the evidence that was before the chief executive.

However, the tribunal can give the interested person leave to adduce fresh, additional or substituted evidence (the new evidence) if the tribunal is satisfied:

- the interested person did not know, or could not reasonably be expected to have known, of the existence of the new evidence on or before the day the reviewed decision was made; or
- in the special circumstances of the case, it would be unfair not to allow the interested person to introduce the new evidence.

However if the tribunal gives leave for the new evidence to be introduced it may:

- adjourn the proceeding to allow the chief executive to reconsider the reviewed decision together with the new evidence; or
- continue with the appeal by way of rehearing on the evidence that was before the chief executive and on the new evidence.

Sub clause (4) requires the tribunal to give an adjournment for a specified reasonable time, if the chief executive asks for an adjournment to reconsider the reviewed decision together with the new evidence.

Part 8 Monitoring and enforcement

Division 1 Preliminary

Purpose of pt 8

Clause 72 explains that the purpose of part 8 is to provide powers to authorised officers for the purpose of monitoring and enforcing compliance with the Bill.

Division 2 Authorised officers

Powers generally

Clause 73 provides that an authorised officer has the powers given under the Bill and will be subject to the directions of the chief executive when exercising those powers.

Appointment and qualifications

Clause 74 provides that the chief executive may appoint a public service employee as an authorised officer, only if the employee has the necessary expertise or experience to qualify for appointment.

Appointment conditions and limit on powers

Clause 75 states that the conditions of appointment of an authorised officer can be stated in their instrument of appointment, a written notice signed by the chief executive or in a regulation. The authorised officer's powers may also be limited by the instrument of appointment, a signed notice given to the authorised officer or a regulation.

Issue of identity card

Clause 76 requires the chief executive to issue each authorised officer with an identity card. The identity card must include a recent photo of the authorised officer, a copy of the authorised officer's signature, identify that they are an authorised officer appointed under the Bill and state an expiry date.

Production or display of identity card

Clause 77 requires an authorised officer to produce for a person's inspection before, or display his or her identity card when, exercising a power under the Bill in relation to the other person. If this is not practicable in the circumstances the authorised officer must produce the identity card for the other person's inspection at the first reasonable opportunity.

Sub clause (3) makes it clear that an authorised officer does not exercise a power in relation to a person merely because the authorised officer has entered a place as mentioned in clauses 81(1)(b) or (c) or 81(2).

When authorised officer ceases to hold office

Clause 78 specifies that an authorised officer ceases to hold office when either their term or another condition of appointment ends, or they resign.

Resignation

Clause 79 states that an authorised officer may resign by giving a signed written notice to the chief executive.

Return of identity card

Clause 80 makes it an offence for a person who ceases to be an authorised officer to fail without reasonable excuse to return their identity card to the chief executive within 21 days after ceasing to be an authorised officer. The offence is punishable by a maximum penalty of 20 penalty units.

Division 3 Powers of authorised officers

Subdivision 1 Entry of places

Power to enter places

Clause 81 specifies in what circumstances an authorised officer can enter a place. An authorised officer may enter a place if:

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

An authorised officer may enter land around the premises without consent in order to contact the occupier to ask for consent to enter.

Subdivision 2 Procedure for entry

Entry with consent

Clause 82 sets out what the authorised officer must do if they intend to seek the consent of the occupier of a place before they enter.

Before asking for consent, the authorised officer must tell the occupier the purpose of the entry and that the occupier is not required to consent. If consent is provided, the authorised officer can ask the occupier to sign an acknowledgement of consent. Sub clause (4) lists what the acknowledgement must contain. A copy of the acknowledgement must be provided to the occupier.

If, in a proceeding, a dispute arises about whether consent was provided, a signed acknowledgement properly made under clause 82 is evidence that the occupier consented to the entry.

Subdivision 3 Powers after entry

General powers after entering a place

Clause 83 lists the powers to investigate an offence against the Act an authorised officer has upon lawful entry to a place. These powers include to:

- search the place;
- inspect, photograph or film any part of the place or anything at the place;
- copy a document;
- confer alone with a person at the place;
- require a person at the place to provide reasonable assistance in the exercise of the authorised officer's powers (when making this requirement, the authorised officer must warn the person that it is an offence not to comply unless they have a reasonable excuse); and
- require a person at the place to answer questions to help the authorised officer determine whether or not the Bill has been

complied with (when making this requirement, the authorised officer must warn the person that it is an offence not to comply unless they have a reasonable excuse).

Failure to help authorised officer

Clause 84 makes it an offence for a person required under clause 83(3)(e) to give reasonable help to the authorised officer to fail to comply unless they have a reasonable excuse. The maximum penalty is 50 penalty units.

Failure to answer questions

Clause 85 makes it an offence for a person required under clause 83(3)(f) to answer questions to fail to comply unless they have a reasonable excuse. The maximum penalty is 50 penalty units. The clause confirms that it is a reasonable excuse for a person who is an individual to not answer any questions if that might tend to incriminate the person.

Subdivision 4 Power to obtain information

Power to require name and address

Clause 86 applies if an authorised officer:

- finds a person committing an offence against the Bill;
- finds a person in circumstances that lead the authorised officer reasonably to suspect the person is committing, or has just committed, an offence against the Bill;
- has information that leads the authorised officer reasonably to suspect the person is committing, or has just committed, an offence against the Bill.

The authorised officer may require the person to state the person's name and residential address. Before asking the person for these details, the authorised officer must warn the person that failure to comply with the request is an offence unless the person has a reasonable excuse. The authorised officer may require the person to give evidence of the correctness of their stated name or residential address.

Failure to give name or address

Clause 87 makes it an offence not to comply with clause 86 without a reasonable excuse and is punishable by a maximum penalty of 50 penalty units. However, a person does not commit an offence against sub clause (1) if the person was required to state their name and residential address by an authorised officer who suspected the person had committed an offence against the Bill and the person is not proved to have committed the offence.

Power to require particular information or inspect documents

Clause 88 contains powers for an authorised officer to monitor compliance with the Bill. Sub clause (1) allows an authorised officer to require an approved trainer or approved training institution to give particular information about the provision of a training service by the trainer or institution, including information about a matter dealt with in the prescribed requirements; to make a document available for inspection by the authorised officer, or to produce a document to the authorised officer for inspection, at a nominated time and place.

Sub clause (2) allows an authorised officer to require a person to make available for inspection by, or produce to, the authorised officer at a reasonable time and place nominated by the authorised officer a document issued to the person or required to be kept by the person under the Bill.

Powers relating to production of documents

Clause 89 applies to a document made available or produced to an authorised officer under clause 88(1)(b) or (2).

Sub clause (2) allows the authorised officer to keep the document to copy it and sub clause (3) allows the authorised officer to require the person responsible for keeping the document to certify the copy as a true copy of the original. Sub clause (4) makes clear that the authorised officer must return the document to the person as soon as practicable after copying it.

Failure to give information or produce or certify document

Clause 90 provides that a person must comply with a requirement made under clause 88 unless the person has a reasonable excuse.

Sub clause (2) makes clear that it is a reasonable excuse for a person not to comply with the requirement that complying with the requirement might tend to incriminate the person.

Sub clause (3) provides that a person must comply with a requirement made under clause 89(3) unless the person has a reasonable excuse.

Failure to comply with this clause without a reasonable excuse will be grounds to suspend or cancel a trainer's or institution's approval. Self-incrimination will be a reasonable excuse.

Division 4 Other matters

Notice of damage

Clause 91 applies if an authorised officer or a person acting under their direction or authority damages property when exercising or purporting to exercise a power. The authorised officer must immediately give notice of particulars of the damage to the person who appears to be the owner of the property. If the authorised officer believes the damage was caused by a latent defect in the property or circumstances beyond the authorised officer's control, they may state that belief in the notice. If it is impracticable to comply with the notice requirement, the authorised officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened. This clause does not apply to damage which the authorised officer reasonably believes is trivial.

Compensation

Clause 92 allows a person to claim compensation if they incur loss or expense because of the exercise, or a purported exercise, of a power under division 3, subdivision 1 or 3, or if they incur loss or expense in complying with a requirement made under part 8.

The relevant court decides whether or not compensation is payable. The person may bring a claim for compensation in a court with relevant monetary jurisdiction or if they have been charged with an offence under the Bill, in the court hearing the offence. A court may only order compensation if it is satisfied that it is just in the circumstances of the particular case.

False or misleading statements

Clause 93 makes it an offence for a person to state anything to the chief executive or an authorised officer that the person knows is false or misleading. This offence is punishable by a maximum penalty of 100 penalty units.

False or misleading documents

Clause 94 makes it an offence for a person to provide a document to the chief executive or an authorised officer containing information that the person knows is false or misleading. This offence is punishable by a maximum penalty of 100 penalty units.

However, it is not an offence if the person, when giving the document:

- tells the chief executive or authorised officer (to the best of their ability) how it is false or misleading; and
- if they have or can reasonably obtain the correct information - gives the correct information.

Obstructing an authorised officer

Clause 95 makes it an offence to obstruct an authorised officer, in the exercise of a power under the Bill, unless the person has a reasonable excuse. This offence is punishable by a maximum penalty of 100 penalty units.

If the person has obstructed the authorised officer and the officer decides to proceed with the exercise of the power, the officer must warn the person that it is an offence to obstruct the officer without reasonable excuse, and that the officer considers the person's conduct an obstruction.

Impersonation of an authorised officer

Clause 96 makes it an offence to pretend to be an authorised officer. This offence is punishable by a maximum penalty of 100 penalty units.

Part 9 Legal Proceedings

Division 1 Application

Application of pt 9

Clause 97 provides that part 9 applies to a proceeding under the Bill.

Division 2 Evidence

Appointments and authority

Clause 98 provides that the following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it:

- the chief executive's appointment;
- an authorised officer's appointment;
- the authority of the chief executive or an authorised officer to do anything under the Bill

Signatures

Clause 99 provides that a signature purporting to be that of the chief executive or an authorised officer is evidence of the signature it purports to be.

Evidentiary provisions

Clause 100 provides for a number of evidentiary matters. A certificate signed by the chief executive and stating any of the following is evidence of the matter:

- a stated document is one of the following things made, given, issued or kept under the Bill – an appointment/approval/decision; a notice/requirement; or a record/extract of a record;
- a stated document is a copy of a stated thing (mentioned above);

- on a stated day or stated period, the appointment of an authorised officer was, or was not, in force for a stated person;
- on a stated day, a stated person was given a stated notice under the Bill;
- on a stated day, a stated requirement was made of a stated person.

Also, in a complaint starting a proceeding, a statement that the matter of complaint came to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.

Division 3 Proceedings

Summary proceedings for offences

Clause 101 requires proceedings for an offence against the Bill to be taken in a summary way in accordance with the *Justices Act 1886*.

Sub clause (2) specifies that a proceeding for an offence must commence within the later of the following periods:

- 1 year after the commission of the offence; or
- 6 months after the offence comes to the complainant's knowledge but within 2 years after the offence is committed.

Allegations of false or misleading information or document

Clause 102 makes it clear that in any proceeding for an offence against the Bill, which involves false or misleading information or a false or misleading document, it is enough for a charge to state that the information or document was 'false or misleading' without specifying which.

Responsibility for acts or omissions of representative

Clause 103 provides that if it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show that the act was done or omitted by a representative of the person within the scope of the representative's actual or apparent authority, and that the representative had the state of mind.

Sub clause (2) explains the meaning of “representative” and “state of mind” as used in the clause.

Executive officers must ensure corporation complies with Act

Clause 104 provides that the executive officers of a corporation must ensure the corporation complies with the Bill. If a corporation commits an offence against a provision, each of the corporation’s executive officers also commits an offence. The maximum penalty is the same as the penalty for a breach of the provision by an individual.

It is a defence for an executive officer to prove that, if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision, or was not in a position to influence the conduct of the corporation in relation to the offence.

Part 10 Advisory committee

Establishment of advisory committee

Clause 105 allows the chief executive to establish an advisory committee from time to time.

Membership of advisory committee

Clause 106 provides the membership of an advisory committee as follows:

- a person the chief executive considers has expertise in dog obedience training;
- a person the chief executive considers has expertise in dog behaviour;
- a person with a disability who relies on a guide, hearing or assistance dog;
- a representative of the department in which the Bill is administered;
- any three of the following persons decided by the chief executive:

- a representative of the department in which the *Animal Care and Protection Act 2001* is administered;
- a representative of the department in which the *Transport Operations (Passenger Transport) Act 1994* is administered;
- a representative of the advisory committee known as the Disability Council of Queensland and established under the *Disability Services Act 2006*;
- a representative of local government.

Functions of advisory committee

Clause 107 explains that the function of the advisory committee is to make a submission to the chief executive about the suitability of:

- an applicant seeking approval to be an approved trainer or training institution under part 3; or
- an approved trainer; or
- an approved training institution.

Investigations by advisory committee

Clause 108 enables the advisory committee, for the purpose of making a submission under clauses 16(1) or 22(1), to inform itself about the matters mentioned in clause 14(1). The advisory committee may inspect the training facilities of an applicant if the applicant consents to the inspection.

Dissolution of advisory committee

Clause 109 allows the chief executive to dissolve the advisory committee at any time.

Other matters

Clause 110 allows the chief executive to decide matters about an advisory committee, for example, the way a committee must conduct committee activities.

Part 11 Miscellaneous

Confidentiality of other information

Clause 111 makes it an offence for a person who gains access to confidential information (other than information mentioned in clause 64(1)) because of their involvement in the Bill's administration, to disclose that information to anyone else except as provided in sub clause (4). The offence is punishable by a maximum penalty of 100 penalty units.

Sub clause (3) makes it clear that a person will gain access to information through involvement in the Bill's administration where the person gains information by reason of them being:

- (a) the chief executive;
- (b) an authorised officer;
- (c) an employee in the department; or
- (d) a member of an advisory committee.

Sub clause (4) sets out the circumstances in which the disclosure of information is permitted:

- (a) for administering, monitoring or enforcing compliance with the Bill;
- (b) to discharge a function under another law;
- (c) for a court or tribunal proceeding;
- (d) if authorised under another law or a regulation made under the Bill;
- (e) where the person to whom the information relates, being an adult, has authorised the disclosure in writing; or
- (f) if the disclosure is to protect a person with a disability or an animal from abuse, neglect or exploitation.

Delegation by chief executive

Clause 112 allows the chief executive to delegate his or her powers under the Bill to an appropriately qualified person who is a public service employee.

Protecting officials from liability

Clause 113 protects an official or a person acting under the direction of an official from being civilly liable for an act done, or omission made, honestly and without negligence under the Bill. An “official” means:

- the chief executive;
- an authorised officer;
- a public service employee; or
- a member of an advisory committee.

Service of documents

Clause 114 allows service by facsimile transmission to a person’s last facsimile number which they gave or at their address. For a corporation, service can given to its facsimile number operated at its registered office under the Corporations Act.

Approval of forms

Clause 115 provides that the chief executive may approve forms for use under the Bill.

Regulation making power

Clause 116 provides that the Governor in Council may make regulations under the Bill.

Sub clause (2) makes it clear that a regulation may relate to the fees, including the waiving or refunding of fees, payable under the Bill.

Part 12 Repeal and transitional provisions

Division 1 Repeal

Repeal of Guide Dogs Act 1972

Clause 117 repeals the *Guide Dogs Act 1972*.

Repeal of Legacy Trust Fund Act 2001

Clause 118 repeals the *Legacy Trust Fund Act 2001*.

Division 2 Transitional provisions

Definitions for div 2

Clause 119 explains the meaning of “commencement day” and “repealed Act” for division 2. Repealed Act means the *Guide Dogs Act 1972*.

Certain institutions taken to be approved training institutions

Clause 120 provides for the entities listed to be approved training institutions for the purposes of the Bill. This provision means that these institutions do not need to apply for approval under part 3. However, these institutions are still subject to the other requirements contained in the Bill. The institutions listed are:

- Association for the Blind of Western Australia;
- Guide Dogs Queensland;
- Guide Dogs Victoria;
- Guide Dog Associations of SA and NT Inc;
- Lions Hearing Dogs Incorporated;
- Royal Guide Dogs for the Blind Association of Tasmania (trading as Guide Dogs Tasmania);
- Seeing Eye Dogs Australia.

Certain guide or hearing dogs may be certified

Clause 121 allows any of the institutions listed in clause 120(1) to certify a dog as a guide dog or a hearing dog if, before the commencement of the Bill, the institution had trained the dog to be used as a guide or hearing dog.

Part 13 Amendment of other Acts

Amendment of Acts

Clause 122 states that schedule 2 amends the *Anti-Discrimination Act 1991* and that schedule 3 amends the Acts mentioned in it.

Schedule 1 Parts of a health service facility exempt from part 2

Schedule 1 lists the parts of a health service facility which are exempt from part 2 of the Bill under clause 7(1)(a) of the Bill.

Schedule 2 Amendments of the Anti-Discrimination Act 1991

Schedule 2 makes amendments to the *Anti-Discrimination Act 1991*.

Schedule 3 Consequential amendments

Schedule 3 sets out the consequential amendments to the following legislation:

- Body Corporate and Community Management Act 1997;
- Building Units and Group Titles Act 1980;
- Commercial and Consumer Tribunal Act 2003;

- Criminal Code;
- Motor Racing Events Act 1990;
- Recreation Areas Management Act 2006;
- South Bank Corporation Act 1989.

Schedule 4 Dictionary

Schedule 4 defines certain terms used in the Bill.

© State of Queensland 2008