

# **Submission to the Victorian Law Reform Commission's Assistance Animals Consultation**

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## Part A - Introduction & recommendations

### 1 Introduction

- 1.1 The Public Interest Law Clearing House (**PILCH**) welcomes the opportunity to contribute to the VLRC's Assistance Animals Community Consultation (**Consultation**). We commend the VLRC on its initiative to undertake the Consultation.
- 1.2 The following submission considers selected aspects of the Consultation paper, drawing from our experience as facilitators of pro bono legal assistance.

### 2 Recommendations

- 2.1 PILCH submits that the VLRC should recommend:
  - (1) that the Consultation should measure the efficacy of Victoria's legislative framework in respect of assistance animals against Australia's human rights obligations to protect and promote the rights of persons with disabilities;
  - (2) that the definition of 'assistance animal' in the Equal Opportunity Act 1995 is replaced with the definition used in section 9(1)(f) of the Disability Discrimination Act 1992 (in order to promote consistency between federal and Victorian law);
  - (3) that the definition of 'assistance animal' includes a definition of 'trained' which means an animal trained and approved by an accredited trainer;
  - (4) that the current guide dogs provisions in the EOA be extended to protect all assistance animal partnerships in all areas of activity covered by the EOA;
  - (5) that all Victorian laws relating to assistance animals and assistance animal partnerships should be included in the EOA and that section 7(4) of the Domestic (Nuisance and Feral) Animals Act be repealed;
  - (6) that a positive right of access to assistance animal partnerships consistent with the DDA should be introduced into the EOA;
  - (7) that the EOA should be amended to include an unjustifiable hardship provision that is consistent with sections 15(4), 22(4), 23(4) 24(4) and 25(3)(c) of the DDA;
  - (8) that the EOA should include a general guideline making power of Victorian Equal Opportunity and Human Rights Commission that is consistent with the power of the Minister under sections 31 and 32 of the DDA;

- (9) that an Assistance Animals Board comprised of relevant experts is established, which is responsible for the accreditation of approved assistance animal trainers;
- (10) that organisations and individuals should be eligible for accreditation as approved assistance animal trainers;
- (11) that appeal rights for applicants that are refused accreditation as an 'assistance animal organisation' to VACT; and
- (12) that assistance animals be required to wear a distinctive visual identifier in order to raise public awareness and acceptance of assistance animal partnerships.

## Part B – About this submission

### 3 About PILCH

- 3.1 PILCH welcomes the opportunity to make a submission to the Consultation.
- 3.2 PILCH is a leading Victorian, not-for-profit organisation which is committed to furthering the public interest, improving access to justice and protecting human rights by facilitating the provision of pro bono legal services and undertaking law reform, policy work and legal education.
- 3.3 PILCH coordinates the delivery of pro bono legal services through five schemes:
- the Public Interest Law Scheme (**PILS**);
  - the Victorian Bar Legal Assistance Scheme (**VLAS**);
  - the Law Institute of Victoria Legal Assistance Scheme (**LIVLAS**);
  - PILCH Connect (**Connect**);
  - the Homeless Persons' Legal Clinic (**HPLC**); and
  - Seniors Rights Victoria (**SRV**).
- 3.4 PILCH's objectives are to:
1. improve access to justice and the legal system for those who are disadvantaged or marginalised;
  2. identify matters of public interest requiring legal assistance;
  3. seek redress in matters of public interest for those who are disadvantage or marginalised;
  4. refer individuals, community groups, and not for profit organisations to lawyers in private practice, and to others in ancillary or related fields, who are willing to provide their services without charge;
  5. support community organisations to pursue the interests of the communities they seek to represent; and
  6. encourage, foster and support the work and expertise of the legal profession in pro bono and/or public interest law.
- 3.5 In 2006-2007, PILCH assisted over 2000 individuals and organisations to access free legal and related services. Without these much needed services, many Victorians would find it impossible to navigate a complex legal system, secure representation, negotiate a fine, challenge an unlawful eviction, contest a deportation or even be aware of their rights and responsibilities.

#### **4 Scope of this submission**

- 4.1 PILCH has drawn upon the terms of reference and limited this submission to a consideration of key areas to which PILCH can offer particular insight and expertise.
- 4.2 In particular, this submission focuses on Assistance Animals Consultation Paper questions numbers 1-4, being:
- (1) *How should assistance animals be defined in Victorian legislation?*
  - (2) *Should the current guide dog provisions in the Equal Opportunity Act 1995 (Vic) be extended to provide protection for all assistance animal partnerships in all areas of activity covered by the Act?*
  - (3) *Does it make sense to place all Victorian laws that support the use of assistance animals in the Equal Opportunity Act 1995 (Vic)?*
  - (4) *Do you support the introduction of a law that would require organisations which train assistance animals to be accredited by a declaration by the Minister that the organisation is an "assistance animal organisation"?*
- 4.3 In doing so PILCH has considered relevant legislation, the common law in relation to discrimination and regulation and control of domestic animals and Australia's international human rights obligations.
- 4.4 PILCH's experience and expertise in relation to this submission is drawn from the following:
- (1) the personal and professional experience of the authors;
  - (2) observation and involvement in a number of discrimination cases through the facilitation of pro bono legal assistance;
  - (3) law reform activity, including a PILCH submission to the January 2008 review by the Victorian Government of the *Equal Opportunity Act 1995 (Vic)*;
  - (4) case law and social research; and
  - (5) community consultations.
- 4.5 PILCH acknowledges the valuable assistance provided to this submission by Jane Wolfe and Charles Slattery of DLA Phillips Fox.

## Part C – A human rights framework

### 5 Australia's international human rights obligations

- 5.1 PILCH considers that a necessary starting point for the Consultation is a consideration of Australia's human rights obligations, particularly in relation to discrimination and the rights of disabled persons.
- 5.2 Australia is a party to various international human rights conventions, including the International Covenant on Civil and Political Rights (**ICCPR**) and the International Covenant on Economic, Social and Cultural Rights (**ICESCR**). The ICCPR and ICESCR apply to everyone, including persons with disabilities, and protect against discrimination on any basis. The ICCPR and ICESCR do not, however, directly address the rights of persons of disabilities.
- 5.3 The Convention on the Rights of Persons with Disabilities (**CRPD**) entered into force on 3 May 2008. Australia became a signatory to the CRPD on 30 March 2007 and ratified it on 17 July 2008. The CRPD states the human rights of persons with disabilities and clarifies the obligations on States to promote, protect and ensure those rights as well as mechanisms to support implementation and monitoring. By ratifying the CRPD it became incumbent on all levels of Australian government, Federal, State and Territory, to meet their obligations under the Convention.
- 5.4 Although the CRPD does not include a specific definition of "disability" and "persons with disabilities", the following aspects of the CRPD provide guidance to clarify its application:
- **disability** is recognised as "an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others"<sup>1</sup>; and
  - **persons with disabilities** includes "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others"<sup>2</sup>
- 5.5 The CRPD does not address expressly assistance animals. However, the CRPD emphasises that persons with disabilities are entitled to full and effective participation and inclusion in society, as illustrated in the following CRPD articles:
- (a) **Accessibility:** "To enable persons with disabilities to live independently and participate fully in all aspects of life, State Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the

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<sup>1</sup> CRPD, Preamble (e).

<sup>2</sup> Ibid, Article 1.



physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and rural areas.” This includes “ensuring that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities”,<sup>3</sup>

- (2) **Living independently and being included in the community:** “State Parties... recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community”. This includes ensuring that “[p]ersons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community”,<sup>4</sup> and
- (3) **Personal mobility:** “State Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities.” This includes “[f]acilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost.”<sup>5</sup>

## 6 Other obligations at international law

- 6.1 In addition to being bound by the terms of the conventions such as the CRPD and ICCPR, Australia is also bound by the content and terms of customary international human rights law which imposes responsibilities and obligations in relation to the realisation of the rights protected by the ICCPR (among other covenants); namely obligations to respect, protect and fulfil human rights<sup>6</sup>.
- 6.2 The obligation to respect human rights requires that States parties refrain from interfering, directly or indirectly, with enjoyment of human rights. The obligation to protect human rights requires that States parties prevent third parties, including organisations and individuals, from interfering in any way with the enjoyment of human rights. The obligation to fulfil human rights requires that States parties take positive steps to promote and support the realisation of human rights and, where necessary, to provide for the realisation of human rights for marginalised or disadvantaged groups.

## 7 The Victorian Charter

- 7.1 The Victorian Charter (which entered into full force on 1 January 2008) enshrines a body of civil and political rights derived from the ICCPR. The substantive rights recognised in

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<sup>3</sup> CRPD, Article 9

<sup>4</sup> Ibid, Article 19

<sup>5</sup> Ibid, Article 20

<sup>6</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 15: The Right to Water, [17]–[29], UN Doc E/C.12/2002/11 (2002). See also UN Committee on Economic, Social and Cultural Rights, General Comment 12: The Right to Adequate Food, 66, [15], UN Doc HRI/GEN/1/Rev.5 (2001) and UN Committee on Economic, Social and Cultural Rights, General Comment 13: The Right to Education, 74, [47], UN Doc HRI/GEN/1/Rev.5 (2001).

the Victorian Charter include the fundamental rights to non-discrimination and equality before the law.<sup>7</sup> The Victorian Charter also protects the right to freedom of movement within Victoria.<sup>8</sup>

7.2 The Victorian Charter establishes a 'dialogue model' of human rights protection which seeks to ensure that human rights are taken into account when developing, interpreting and applying Victorian law and policy without displacing current constitutional arrangements. The dialogue between the various arms of government — namely, the legislature, the executive (which includes 'public authorities'<sup>9</sup>) and the courts — is facilitated through a number of mechanisms including:

- (1) public authorities must act compatibly with human rights and also give proper consideration to human rights in any decision-making process; and
- (2) so far as possible, those interpreting and applying legislation must do so consistently with human rights and with regard to relevant international, regional and comparative domestic jurisprudence.<sup>10</sup>

7.3 The following overarching principles should be considered in the interpretation and application of the Victorian Charter in conducting the Consultation:

- (1) Division 1 of Part 3 of the Victorian Charter requires that all new legislation introduced in Victoria be considered for its compatibility with the human rights set out in the Victorian Charter. Accordingly, in considering whether to reform the law regarding assistance animals, VLRC should take into account the human rights set out in the Victorian Charter and their implication for the Consultation.
- (2) Section 32(1) of the Victorian Charter states:

So far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.

The purpose and effect of this provision is to require that any person or entity that interprets and applies legislation does so in a way that gives effect to human rights.

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<sup>7</sup> Victorian Charter, section 12.

<sup>8</sup> Ibid, section 8.

<sup>9</sup> Ibid, section 4 defines public authority.

<sup>10</sup> Section 32(1) requires, as a matter of law, that a human rights consistent interpretation be adopted whenever it is possible to do so, regardless of whether there is any ambiguity and regardless of how the provision in question may have been previously interpreted and applied. *Victorian Charter* s 49(1). See, eg, *R v Offen* [2001] 2 All ER 154 which held that, in light of the interpretative requirement under the *Human Rights Act 1998* (UK), a decision made a year earlier in relation to the interpretation and application of a provision of the *Criminal (Sentences) Act 1977* was no longer good law. See also *Re S (Care Order: Implementation of Care Plan)* [2002] AC 291, 313.

- (3) The human rights contained in the Victorian Charter are largely modelled on the civil and political rights enshrined in the ICCPR.<sup>11</sup> There is a vast body of international and comparative jurisprudence that can, and therefore, should be considered in the elucidation of the content and application of the Victorian Charter.
- (4) The Victorian Charter is founded on the principle that human rights are essential in a democratic and inclusive society that respects the rule of law, human dignity, equality and freedom. Having regard to this, the rights should be interpreted broadly<sup>12</sup> which ensures that a flexible and individualised approach is employed.
- (5) The rights should be interpreted and applied in a manner which renders them 'practical and effective, not theoretical and illusory'.<sup>13</sup> Consistently with the nature of human rights obligations articulated by the HRC (namely, that states have obligations to *respect, protect* and *fulfil* human rights)<sup>14</sup> and the approach adopted by UK courts under the *Human Rights Act 1998* (UK) and the European Court of Human Rights under the *European Convention on Human Rights*,<sup>15</sup> rights may impose both negative and positive obligations on public authorities.
- (6) The Victorian Charter is a 'living document' which should be interpreted and applied in the context of contemporary and evolving values and standards.<sup>16</sup> The European Court of Human Rights has stated that:

The Convention is a living instrument which must be interpreted in light of present day conditions...the increasingly high standard being required in the area of the protection of human rights and fundamental liberties

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<sup>11</sup> Opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976). Many of these civil and political rights are also enshrined in regional human rights instruments (such as the *European Convention on Human Rights*) and domestic human rights instruments (such as the United Kingdom *Human Rights Act 1998*).

<sup>12</sup> See, eg, UN Human Rights Committee, *General Comment No 6: The Right to Life* (1982) [5], available from <http://www.ohchr.org/english/bodies/hrc/comments.htm>.

<sup>13</sup> *Goodwin v United Kingdom* (2002) 35 EHRR 447, [73]-[74]. See also *Airey v Ireland* (1979) 2 EHRR 305, 314.

<sup>14</sup> See, eg, UN Human Rights Committee, *General Comment 3: Implementation at the National Level*, UN Doc HRI/GEN/1/Rev.1 (1981) available at <http://www.ohchr.org/english/bodies/hrc/comments.htm> in which the HRC stated:

The Committee considers it necessary to draw the attention of States parties to the fact that the obligation under the *Covenant* is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights.

<sup>15</sup> See, eg, *Marckx v Belgium* (1979) 2 EHRR 330; *Gaskin v United Kingdom* (1989) 12 EHRR 36; *Airey v Ireland* (1979) 2 EHRR 305; *Plattform Artze fur das Leben v Austria* (1988) 13 EHRR 204.

<sup>16</sup> *Tyrer v United Kingdom* (1978) 2 EHRR 1, 10.

correspondingly and inevitably requires firmness in assessing breaches of the fundamental values of democratic societies.<sup>17</sup>

- (7) Recognising that human rights are interdependent and indivisible, the rights should be read so as to complement and reinforce each other.

- 7.4 PILCH emphasises the importance of a human rights approach to conducting the Consultation and drafting responses to the questions posed.

**Recommendation 1**

The Consultation should measure the efficacy of Victoria's legislative framework in respect of assistance animals against Australia's human rights obligations (including the Victorian *Charter*) to protect and promote the rights of persons with disabilities.

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<sup>17</sup> *Selmouni v France* (2000) 29 EHRR 403, [101].

## Part D – The definition of ‘assistance animals’

### 8 Consistent Commonwealth and Victorian laws

- 8.1 PILCH supports the VLRC's proposal that the definition of ‘assistance animal’ in the Equal Opportunity Act 1995 (Vic) (**EOA**) is amended so that it is consistent with the rights contained in the Disability Discrimination Act 1992 (Cth) (**DDA**).
- 8.2 Currently the EOA only recognises ‘guide dogs’ that assist people with visual, hearing and mobility impairments<sup>18</sup>, whereas the DDA recognises all types of disabilities and contains a broad definition of ‘assistance animal’ which includes:
- (1) guide dogs;
  - (2) dogs trained to assist the aggrieved person in activities where hearing is required, or because of any matter related to that fact; and
  - (3) any other animal trained to assist the aggrieved person to alleviate the effect of the disability, or because of any matter related to that fact.<sup>19</sup>
- 8.3 PILCH's preferred approach is that the DDA definition of ‘assistance animal’ should apply to the EOA for the following reasons:
- (1) the EOA needs to recognise and protect persons with all types of disabilities (including persons with psychiatric disabilities) in order to promote consistency with the broad recognition of disabilities under the DDA and the Convention on the Rights of Persons with Disabilities (CRPD)<sup>20</sup>; and
  - (2) as a federal law, the DDA overrides any Victorian law that is inconsistent with its own assistance animal provisions. The EOA therefore needs to be consistent with the DDA in order to help ensure that all people with disabilities enjoy equal protection.

#### **Recommendation 2**

PILCH recommends that the definition of ‘assistance animal’ in the EOA is replaced with the definition used in section 9(1)(f) of the DDA, in order to promote consistency between federal and Victorian law

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<sup>18</sup> EOA, section 4(1)

<sup>19</sup> DDA, section 9

<sup>20</sup> CRPD, Preamble (e) and Article 1.

## 9 The notion of 'trained'

- 9.1 PILCH however does recognise the VLRC's concerns<sup>21</sup> that there is a very real risk that a broad definition (such as the DDA definition) of 'assistance animal' may allow for species of animals that the community does not accept as appropriate, which could have a negative impact on public confidence in current assistance animals such as guide dogs.
- 9.2 In particular, PILCH recognises that the DDA definition of 'assistance animal' is problematic in that the term 'trained' is not defined, as Justice Collier observes in *Forest v Queensland Health* [2007] FCA 936 (22 June 2007):

It is perhaps unfortunate that the DDA does not, like the Guide Dogs Act 1972 (Qld) or the Dog Control Act 1996 (NZ), define assistance animals by reference to accredited training organisations. This would provide certainty for animal owners, service providers and members of the public, and strike a balance between the needs of the disabled as recognised in the DDA and the confidence of service providers and the public as to standards of assistance animals in public places.

- 9.3 Accordingly, PILCH recommends that the definition of 'assistance animal' in the EOA includes a definition of 'trained' which means an animal trained and approved by an accredited trainer. 'Accredited trainer' should be defined to mean a trainer approved by the Assistance Animals Board as recommended by Part F of this submission (or other approved training organisation as the VLRC recommends).

### **Recommendation 3**

PILCH recommends that the definition of 'assistance animal' in the EOA includes a definition of 'trained' which means an animal trained and approved by an accredited trainer.

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<sup>21</sup> Assistance Animals Consultation Paper, 5.20

## Part E - Protection for assistance animal partnerships in the Equal Opportunity Act

### 10 Protection for Assistance Animal Partnerships

10.1 PILCH supports the proposal that the current guide dogs provisions in the Equal Opportunity Act 1995 (Vic) (**EOA**)<sup>22</sup> should be extended to protect all assistance animal partnerships in all areas of activity covered by the EOA. In particular, PILCH recommends:

- (1) the definition of 'guide dog' to be amended to 'assistance animal' and to include animals trained to assist persons with visual, hearing or mobility impairment or other recognised/diagnosed medical condition;
- (2) 'recognised/diagnosed medical condition' to be defined and to include mental impairment, conditions such as epilepsy, autism or any other recognised impairment requiring the use of an assistance animal;
- (3) 'assistance Partnership' to be defined, to refer to the partnership/relationship between a person with a visual, hearing or mobility impairment or other recognised/diagnosed medical condition and their assistance animal;
- (4) provisions of the EOA to be amended where applicable to replace references to 'guide dog' with 'assistance animal' and to replace references to persons with 'visual, hearing or mobility impairment' with references to persons with 'visual, hearing or mobility impairment or other recognised/diagnosed medical condition';

10.1 While PILCH believes that dedicated legislation should deal with the regulation of assistance animals and assistance animal trainers (see Part F, below), PILCH supports the proposal that all Victorian laws relating to the protection of assistance animal partnerships should be included in the EOA and that section 7(4) of the Domestic (Nuisance and Feral) Animals Act be repealed. To reduce the possibility of inconsistent interpretation, and to provide ease of access/reference to applicable legislation, it is preferable to consolidate laws relating to the protection of assistance animal partnerships.

10.2 PILCH supports the introduction into the EOA of a positive right of access to assistance animal partnerships consistent with the Disability Discrimination Act 1992 (Cth) (**DDA**) for the following reasons:

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<sup>22</sup> *Equal Opportunity Act 1995* (Vic), s52.

- (1) the 'reasonable accommodation' approach does not provide sufficient certainty to assistance animal partnerships and places disproportionate discretion as to what is reasonable in the hands of service providers;
- (2) a positive right to access sends a strong message to accommodation providers that assistance animal partnerships are to be treated in a non-discriminatory fashion; and
- (3) a positive right test enables people with a disability to assert with confidence their right to be accompanied by an assistance animal. This is a fundamental objective of the EOA Reform which will not be provided if the reasonable accommodation approach is adopted.

10.3 Further, PILCH considers that the EOA should be amended to include an unjustifiable hardship provision that is consistent with sections 15(4), 22(4), 23(4) 24(4) and 25(3)(c) of the DDA.

## **11 Guideline Making Power**

- 11.1 PILCH supports the inclusion into the EOA of a general guideline making power of VEOHRC that is consistent with the power of the Minister under sections 31 and 32 of the DDA. Such a power will clarify the law for both service providers and animal assistance partnerships.
- 11.2 PILCH considers that VEOHRC should have the power to make guidelines it considers necessary regarding assistance animals, using section 31 of the DDA as a benchmark. This would allow VEOHRC guidelines regarding assistance animals to be considered by Victorian courts and tribunals when considering discrimination claims.

### **Recommendation 4**

PILCH supports the proposal that the current guide dogs provisions in the EOA be extended to protect all assistance animal partnerships in all areas of activity covered by the EOA.

### **Recommendation 5**

PILCH supports the proposal that all Victorian laws relating to the protection of assistance animal partnerships should be included in the EOA and that section 7(4) of the Domestic (Nuisance and Feral) Animals Act be repealed.



**Recommendation 6**

PILCH supports the introduction into the EOA of a positive right of access to assistance animal partnerships consistent with the DDA.

**Recommendation 7**

PILCH considers that the EOA should be amended to include an unjustifiable hardship provision that is consistent with sections 15(4), 22(4), 23(4) 24(4) and 25(3)(c) of the DDA.

**Recommendation 8**

PILCH supports the inclusion into the EOA of a general guideline making power of Victorian Equal Opportunity and Human Rights Commission that is consistent with the power of the Minister under sections 31 and 32 of the DDA.

## Part F – Training, accreditation and identification

### 12 Training and accreditation

- 12.1 PILCH supports the introduction of a law that would require organisations which train assistance animals to be accredited. However, PILCH does not consider that accreditation via Ministerial declaration is the most appropriate way to accredit approved organisations.
- 12.2 PILCH considers that it is desirable that new, dedicated legislation be enacted to deal with the regulation of assistance animals. A dedicated Act would generate significant public and parliamentary debate which would enhance community awareness of the importance of assistance animals and highlight the shortcomings of the present regime, PILCH considers that the centralised accreditation scheme for assistance animals established by the *Dog and Cat Management Act 1995* (SA) provides a useful starting point. Under that Act, the Dog and Cat Management Board has, subject to Ministerial control<sup>23</sup>, responsibility for the accreditation of a dog as a disability dog, guide dog, or a hearing dog<sup>24</sup>.
- 12.3 The Dog and Cat Management Board is comprised on members nominated by the Minister and the South Australian Local Government Association and required attributes include veterinary experience in the care and treatment of dogs or cats; a demonstrated interest in the welfare of dogs or cats; and a demonstrated interest in the keeping and management of dogs or cats<sup>25</sup>.
- 12.4 PILCH considers that there are several advantages in adopting a centralised accreditation scheme for approved assistance animal organisations, including that:
- (1) the scheme can be administered by a board with expertise in the training, welfare and accreditation of assistance animals;
  - (2) deliberations of the board can be transparent (and therefore decisions are more accountable)<sup>26</sup>;
  - (3) an expert board with responsibility for accrediting assistance animal organisations will be better placed to observe industry developments and to respond any systemic issues that may arise.

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<sup>23</sup> Dog and Cat Management Act 1995, ss 10 and 11

<sup>24</sup> Ibid, s21A

<sup>25</sup> Ibid, s12(2a)

<sup>26</sup> See, for example, s11(2) of the Dog and Cat Management Act 1995 which provides that 'No Ministerial direction can be given to suppress information or recommendations from a report by the Board under this Act'

- 12.5 PILCH agrees with the VLRC's suggestion to accredit trainers of assistance animals rather than the animals themselves<sup>27</sup>. PILCH considers that, upon completion of training by an accredited trainer, animals should achieve the status of an assistance animal.
- 12.6 Accordingly, PILCH recommends the establishment of an 'Assistance Animals Board' with responsibility for the accreditation of organisations and individuals approved to conduct assistance animal training.
- 12.7 The Board should be comprised of members nominated by the Minister and Appointed by the Governor in Council and include minimum appointees with experience and expertise in the following:
- (1) the training of assistance animals;
  - (2) veterinary care and treatment of animals;
  - (3) assistance animal regulation in comparative jurisdictions;
  - (4) legal practice<sup>28</sup>.

#### **Recommendation 9**

PILCH recommends the establishment of an Assistance Animals Board comprised of relevant experts and which is responsible for the accreditation of approved assistance animal trainers.

### **13 Organisations vs individuals**

- 13.1 PILCH agrees with the VLRC's suggestion that, in order to be eligible for approval as an assistance animal trainer, trainers should be required to meet minimum standards set out in guidelines consistent with the approach for 'applicable organisations' under s5 of the DFNA<sup>29</sup>.
- 13.2 Provided trainers meet such standards, PILCH sees no basis to discriminate between organisations and individuals in terms of who may be approved as an accredited assistance animal trainer. The VLRC's concern regarding the potential administrative burden on the Bureau of Animal Welfare can be addressed by the establishment of the Assistance Animals Board.
- 13.3 PILCH considers that an important objective of the Consultation is to facilitate more people with properly trained assistance animals. Arbitrarily restricting the ability of properly qualified individuals to accredit assistance animals seems counterproductive to such an aim.

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<sup>27</sup> Assistance Animals Consultation Paper, pp 5.74

<sup>28</sup> For analogous board composition, see for example the *Veterinary Practice Act 1997*, s63

<sup>29</sup> Assistance Animals Consultation Paper, pp 5.72

- 13.4 Moreover, if the effect of such an arbitrary restriction is to reduce the effective realisation of the human rights of people in need of assistance animals to adequately exercise those rights, such a restriction may be in breach of the States' human rights obligations. For example, the principles of accessibility, living independently and being included in the community under CPRD<sup>30</sup>.

#### **Recommendation 10**

PILCH recommends that organisations and individuals should be eligible for accreditation as approved assistance animal trainers.

### **14 Appeal rights**

- 14.1 PILCH agrees with the VLRC's proposal to allow appeal rights for applicants that are refused accreditation as an 'assistance animal organisation'.
- 14.2 PILCH considers that the Victorian Civil and Administrative Tribunal (**VCAT**) is an appropriate forum for a hearing *de novo* in such circumstances.
- 14.3 VCAT's Occupational and Business Regulation List has a combination of both original jurisdiction and jurisdiction to hear matters on review, including in analogous circumstances such as under the *Veterinary Practice Act 1997*<sup>31</sup>.
- 14.4 However, in the event that an Assistance Animals Board is established the VLRC may wish to consider alternatives such as allowing an initial accreditation to be made by a Board subcommittee followed by an appeal at first instance to the full Board.

#### **Recommendation 11**

PILCH recommends appeal rights for applicants that are refused accreditation as an 'assistance animal organisation' to VACT.

### **15 Identification**

- 15.1 While PILCH has not commented upon the elements of an appropriate registration system, we support the VLRC's proposal to require registered assistance animal partnerships to be issued with an appropriate identification card.

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<sup>30</sup> CRPD, Articles 9, 19 and 20 and discussed at paragraph 5.5, above

<sup>31</sup> *Veterinary Practice Act 1997*, Part 4

- 15.2 However, PILCH considers that an identification card in isolation will be insufficient to meaningfully reduce incidence of discrimination against assistance animal users. In particular, an identification card that is produced upon request will do little to increase public awareness and acceptance of the use of assistance animals.
- 15.3 Guide dogs are immediately recognisable to the public via a distinctive harness, often in conjunction with a coloured jacket. PILCH considers that such recognition might operate to diffuse situations where people would otherwise be uncomfortable in allowing access to businesses or transport etc for a person accompanied by a dog.
- 15.4 Accordingly, PILCH recommends that assistance animals be required or encouraged (via financial supplements if necessary) to wear a distinctive visual identifier such as a coloured jacket or harness. This should be accompanied by a community awareness campaign to raise the public awareness of the law in relation to assistance animals and reduce instances of discrimination.

**Recommendation 12**

PILCH recommends that assistance animals be required to wear a distinctive visual identifier in order to raise public awareness and acceptance of assistance animal partnerships.