



Disability Discrimination Act Review  
Attorney General's Department

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To whom it may concern,

## **Disability Discrimination Act Review**

Clubs Australia appreciates the opportunity to provide a submission to the Disability Discrimination Act Review.

Clubs Australia represents over 5,000 registered clubs across Australia which are visited by millions of individuals every year. All clubs are not-for-profit, owned by their members, and have a strong emphasis on assisting their local community.

Clubs take seriously their responsibility to provide a safe, respectful, and inclusive environment to all staff and patrons and Clubs Australia support all measures which advance this outcome.

## **Assistance Animals**

Clubs are visited by millions of people every year, including people with disabilities who bring their assistance animal to the club premises. It is important for clubs that the assistance animal laws satisfy two fundamental features:

- Assistance animals are hygienic, trained and obedient; and
- There is a clear and reliable method for clubs to determine whether an animal is a genuine assistance animal.

However, it is unclear which animals qualify as assistance animals and how clubs can verify a person's claim that an animal is a genuine assistance animal. The confusion stems primarily from s 9(2)(c) of the DDA, which effectively allows a person to train their animal to be an assistance animal. Further, there is no definition of the appropriate standards of hygiene and behaviour for assistance animals. Clubs Australia also notes that courts have interpreted the DDA in a manner which has broadened what is understood to be an 'assistance animal'.

Clubs commonly encounter emotional support animals which do not appear to be trained or hygienic. However, the lack of a robust accreditation system, coupled with the practical ambiguity of s 9(2)(c), compels clubs to accept a person's claim without scrutiny. By admitting an animal that is unhygienic or poorly behaved, clubs risk breaching various other legal obligations like food handling and work, health and safety laws. Clubs also expose themselves to tort liability, for instance if a dog attacks or trips a patron.

**Clubs Australia recommends amending the Disability Discrimination Act 1992 to ensure the meaning of an assistance animal is clear in practice and verifiable.**

### **Nationally consistent framework**

A multi-industry, nationally consistent accreditation scheme for assistance animals is necessary to avoid employees having to make difficult or subjective judgement calls. Clubs Australia supports the efforts of DSS forming the Assistance Animals Working Group to progress work on the development of nationally consistent regulation and accreditation of assistance animals.

Clubs Australia also supports the relevant state or territory government being responsible for the implementation of the accreditation scheme. Clubs Australia believes that a national accreditation for assistance animals will provide greater certainty and streamlined access to people with disabilities accessing licenced venues. It will also provide club employees a clear method for identifying assistance animals removing the potential for inadvertent discrimination.

Establishing nationally consistent conditions of entry for assistance animals will ensure that clubs can reliably comply with the DDA and are able to protect themselves from the regulatory and legal costs associated with an allegation of discrimination.

A nationally consistent accreditation system also ensures that suitable levels of training and standards for animals are met in order to enter a registered club. Such a consistent approach will give people with disabilities clarity and certainty that they will be permitted to enter a club or other business with their animal.

However, these benefits will only eventuate if the national accreditation is the sole and authoritative mechanism to qualify as an assistance animal.

**Clubs Australia supports the continued development of the national framework for assistance animals.**

### **Inherent Requirements Test**

Clubs Australia considers that the two proposed additional factors put forward under the inherent requirements test are already within the scope of the DDA, particularly that it already requires consideration of “any other factor that it is reasonable to take into account”.

Clubs Australia supports the position recommended by the Productivity Commission in their 2004 review, which recommends issuing guidelines to support employers and employees in factors that might be considered when identifying inherent requirements, rather than amending the legislation.

Guidelines will help ensure that there are consistency and flexibility in the assessment of inherent requirements across different workplaces and provide tools for self-assessment by employers.

**Clubs Australia recommends guidelines are issued to support employers and employees the factors that might be taken into account when identifying inherent requirements, rather than adding new factors to the legislation.**

### **Positive Duty and Inherent Requirements Defence**

Clubs across Australia encourage including people with disability in employment opportunities across various roles and operations. The DDA provides an exemption to unlawful discrimination in employment if an employer can establish that a person with disability is unable to perform the inherent requirements of the particular work.

### **Other Matters**

Clubs Australia also wishes to convey its support for ACCI's submission to this inquiry.

If you have any questions, please contact Daniel Mitchell at

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Kind regards,

Daniel Mitchell

Clubs Australia