

Refusing Assistance Dog Access to Public Places in Australia: Penalties, Responsible Agents, and Pathways for Reform

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Abstract

Across Australia, anti-discrimination, animal management and public transport legislation preserves the public access rights of assistance dogs and their handlers. However, assistance dog handlers are still regularly refused access to public places, undermining their legal rights. This situation is exacerbated by the inconsistency between Australian jurisdictions. This article therefore examines the extent of this inconsistency, as well as other factors which undermine legal recourse for assistance dog handlers. For civil claims of discrimination, except in cases of extremely discriminatory conduct, damages are rarely awarded. For criminal penalties for assistance dog refusal, there are significant inconsistencies in penalties between different states. Some states and territories do not provide penalties for refusal more broadly or only penalise refusal in certain places, such as public transport, along with a lack of clarity on who can enforce penalties. This article concludes by offering recommendations for law reform using the Responsive Regulation framework.

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Keywords

Assistance dogs, Disability Discrimination, Australia, Responsive Regulation

Points of interest

- Assistance dog handlers are lawfully allowed to enter public places with their assistance dogs in Australia but are still regularly refused entry.
- There are many overlapping layers of federal, state and territory anti-discrimination, animal management and transport legislation, and this complicates the reporting process.
- Different states and territories have different laws on where assistance dog handlers can enter, and on the penalties for refusing entry or who can enforce these penalties.
- Although educating the public about assistance dog handler public access rights is important, inconsistencies in penalties between states and territories causes confusion.
- The research therefore recommends greater consistency between the states and territories on penalties for refusal, as well as greater use of these penalties.

Introduction

In Australia, people with disability who rely on assistance dogs (assistance dog handlers) continue to face significant barriers when accessing public spaces including transport, retail, eateries, accommodation, and health services. These refusals occur despite legal guarantees providing access to these public spaces. However, Federal anti-discrimination laws permit the states and territories of Australia to make their own laws governing discrimination. Further, each state and territory have specific provisions which criminalise refusing public access to assistance dogs and their handlers. However, the specific provisions pertaining to assistance animals are scattered across different types of legislation and regulations. These overlapping regulatory layers have the potential to undermine the perceived legal access rights of assistance dogs and their handlers.

This article provides an interdisciplinary legal scoping review of the regulations, reporting mechanisms, and penalties for public access refusals. It combines this legal scoping review with the lived experience of the first, third and fourth listed authors who currently have assistance dogs (Arstein-Kerslake et al. 2020, 431–432). It examines the different regulations which govern where assistance dogs are allowed to enter. It then examines the different penalties that exist for refusal of access, as well as the entities that are responsible for enforcing these penalties. This article recommends Australian governments increase their efforts in collecting evidence on how often and where assistance dog handlers are refused access to public places. Further, states and territories should work together to develop a uniform set of penalties that can be enforced by police or other authorised officers when refusal occurs. This article employs the Responsive Regulation framework to determine how these penalties should be set. Specifically, these penalties should be heightened for businesses or corporations that manage public places which assistance dog handlers may attempt to access compared to individuals. Heightening penalties for businesses will encourage those businesses to take steps to educate and manage staff on assistance dog handler public access rights.

Background

The Role that Assistance Dogs Play in Public Places

Assistance dogs are defined as dogs trained to alleviate the negative symptoms of person with a disabling condition (Sedova 2024, 996). Assistance dogs are distinct from pets because they are an ‘assistive technology’ (Isaacson and Hellman 2023, 823). The most widely recognised assistance dogs are guide dogs (sometimes known as seeing eye dogs) and hearing dogs, but they may work with a range of conditions, including epilepsy, diabetes, psychosocial conditions, post-traumatic stress disorder, reduced mobility, and food allergies

(Appleby et al. 2022, e4114; Leighton, Nieforth, and O’Haire 2022, 2–3; Lloyd, Johnston, and Lewis 2019, 2). Assistance dogs may perform tasks such as orientation and navigation, alerting, detecting, prompting, carrying, disrupting, calming, and more. As such, the handler benefits from the services of their assistance dog in a public place (Harpur 2010, 51–52). Assistance dogs enable their handler to access their community and engage in public life where they otherwise may not be able to. These might have cumulative positive effects on psychosocial health and welfare (Audrestch et al. 2015, 470–473; Chan et al. 2022, 130; Iong et al. 2022, 71; Rodriguez et al. 2020, 20–21).

Prevalence of discrimination against assistance dog handlers

Unfortunately, there is a general lack of knowledge regarding the public access rights of assistance dog handlers, which may manifest in public refusals. In a survey of past and current assistance animal users conducted in 2020, Tsang and others noted that 75% of respondents experienced negative community interactions. Of those who reported negative experiences, 86% of respondents reported being challenged/denied access to a community premise (such as public transport). Further, 78% of respondents reported experiencing being unfairly treated in terms of service provision, such as being seated in the outdoor dining area of an eatery. When asked about community awareness, over 90% of respondents for the overall survey agreed more community education was required to raise awareness of the role of assistance dogs in community. Respondents also reported that there needed to be better understanding that there are regulations protecting their rights to enter and use public spaces, services and goods (Tsang et al. 2023, 946–949). Further, Iong and others report that public access concerns as one for not recommending an assistance dog to people who would otherwise benefit from one (Iong et al. 2022, 71).

Beyond the peer reviewed literature, the Australian Human Rights Commission (AHRC) indicated that reports of discrimination against assistance dogs increased by 40% in 2015

(Australian Human Rights Commission 2016). A survey conducted by Guide Dogs Australia found that 68% of guide dog handlers experienced transport refusals and 48% eatery refusals in 2020 (Guide Dogs Aust. 2022). Further, these reports may not reflect the actual prevalence of discrimination (Torrance 2020, 17). Assistance dog handlers may avoid reporting refusals because of the time and emotional costs involved in doing so, given the lengthy complaint handling and mediation processes (Brodie 2015, 1222–1223).

These studies and reports demonstrate that there is still ongoing, chronic, and widespread refusal of assistance dogs and their handlers to public places which they are legally entitled to enter. . A source for this problem is the legally fragmented landscape. A letter by Disability Discrimination Legal Service in Victoria to the AHRC in 2015 refers to differences in federal, state and territory laws posing challenges for assistance dog handlers accessing public spaces interstate (Belardo, Phillips, and O’Hagan 2015).

The Legal Framework Penalising Refusal of Assistance Dogs in Australia

Responding to Refusal via Anti-Discrimination Law

An assistance dog and their handler are entitled to enter public premises, access goods or services or apply for accommodation (Disability Discrimination Act 1992, secs. 23, 24, 25).

If an assistance dog handler is unlawfully refused access, they can complain to the AHRC (Australian Human Rights Commission Act 1986, sec. 46P(1)). The complaint can either be lodged by the person who was discriminated against, or on behalf of that person (Australian Human Rights Commission Act 1986, sec. 46P(2)). The AHRC’s report for the 2022-2023 period indicates that 6% of the complaints under the *Disability Discrimination Act* concerned persons with assistance animals. This figure represents a 2% increase from complaints in the previous year (Australian Human Rights Commission 2023, 14).

The AHRC must investigate the matter and may then determine whether the matter should proceed to reconciliation (Australian Human Rights Commission Act 1986, secs. 46PF, 46PI). The Commission must specifically terminate a complaint if there is no reasonable prospect of reconciliation (Australian Human Rights Commission Act 1986, sec. 46PH(1B)). Termination was the most common outcome for the 2022-2023 period (Australian Human Rights Commission 2023, 17). If the Commission decides to terminate the complaint, the person may then make a complaint to the Federal Court of Australia (Australian Human Rights Commission Act 1986, sec. 46PO(1)). The Commission may also terminate the case on the grounds that the matter is of public significance and therefore should be referred to the Federal Court of Australia (Australian Human Rights Commission Act 1986, sec. 46PH(1)(h)).

The assistance dog handler may opt to report through state or territory anti-discrimination law to the equivalent state body. As can be seen in Table 1, in South Australia this entity would be the Equal Opportunity Commission. These complaints must be in writing and can be filed by both the complainant, or a person who has sufficient interest in the complaint (Equal Opportunity Act 1984a, sec. 93(1)). However, a complainant cannot make simultaneous complaints to a state or territory anti-discrimination body and the federal Australian Human Rights Commission (Disability Discrimination Act 1992, sec. 13(4)). Once the state or territory commission has received the complaint, it must then determine whether the complaint can be substantiated (Equal Opportunity Act 1984a, sec. 94(1)-(2)). As with the AHRC, the state or territory commission can refer the matter to a civil or administrative tribunal if it determines that conciliation is not possible.

Once the matter is referred to the Federal Court, or a state or territory tribunal, that tribunal will determine whether discrimination has occurred. The standard of proof for this inquiry is on the balance of probabilities; that is, whether it is more likely than not that discrimination

has occurred (Hely 2020, 14–15). If the complainant successfully establishes that the respondent discriminated against them, there are a range of different penalties and remedies available. These remedies, along with the specific legislation applying to assistance animals and access to public places, are listed in Table 1.

The analysis in Table 1 reveals inconsistency with respect to the penalties available under state and territory anti-discrimination law. First, only the Northern Territory, Queensland, South Australian and Victorian legislation expressly prohibits discriminating against a person because they are accompanied by an assistance dog. Further, the Western Australian *Equal Opportunity Act* only extends as far as protecting ‘guide or hearing dogs’ rather than assistance dogs as defined under the Commonwealth *Disability Discrimination Act* (Equal Opportunity Act 1984b, sec. 66(4)).

Tasmanian legislation only prohibits refusing a person access to goods, services, or public places based on their disability. However, case law from the Australian Capital Territory Civil and Administrative Tribunal confirms this term can include transport services (*Cornwall v Aerial Capital Group Pty Ltd Trading as Canberra Elite Taxis (Discrimination)*, n.d., paras. 56–60). The Victorian *Equal Opportunity Act* extends premises to include any structure, building, aircraft, vehicle, or vessel (*Phillips v Ventura Bus Lines Pty Ltd (Human Rights)*, n.d., para. 14).

There are more significant inconsistencies between the penalties and offences that might be available under each piece of legislation. Only the South Australian *Equal Opportunity Act* includes an express penalty for separating an assistance dog from their handler (Equal Opportunity Act 1984a, sec. 88). The Northern Territory, New South Wales, Tasmanian and Western Australian laws create a cap of how much a complainant can claim for damages. The Western Australian *Equal Opportunity Act* also prohibits the SAT from making compensatory orders when a representative action has been brought. In practice, this barrier limits claims being brought by representative organisations such as the Guide Dogs. By contrast, QCAT and SACAT can make orders issuing damages they consider appropriate. Along with the QCAT, VCAT in Victoria has perhaps the broadest power to make orders addressing discrimination, including education, within an organisation.

From the perspective of an assistance dog handler, two separate jurisdictional avenues of complaint create a complicated web of overlapping jurisdictions. For those who proceed with a complaint under anti-discrimination law, there is a significant burden on the individual making the complaint. According to the lived experience of the first, third and fourth listed authors for this article, it can take up to 6 months for action. This burden represents a broader systematic issue with discrimination law in Australia in placing the evidentiary burden of proving discrimination on the complainant (MacDermott 2018, 24). It also does not resolve the immediacy of an access refusal. Handlers usually want to report an access refusal when and where it occurs, such as when trying to enter a restaurant with their friends and being the only person refused entry. It may be unclear to the individual about what to do in this situation, especially if they attempt to explain but the offender continues to refuse access.

Further, in some circumstances it may be difficult to report a refusal. For example, if a person is refused access to public transport, it may be impossible for them to gather sufficient evidence to report it (such as a licence number for a visually impaired person). For these reasons, Torrance notes that assistance dog handlers are more likely to report refusals to assistance dog organisations (such as Guide Dogs in their state or territory) than submit a discrimination complaint to formal statutory bodies (Torrance 2020, 18). However, there is limited evidence of how many complaints are filed and resolved by these organisations, which contributes to fragmented data collection and analysis of discrimination. Of the few who do report to formal statutory bodies, it is unclear how many pursue penalties or compensation and how many incidents are conciliated through private agreement of public education and awareness.

Responding to Refusal under Animal Management or Public Transport

Legislation

Assistance dog handlers can also seek to have refusal of entry to a public place prosecuted as a criminal matter under animal management or public transport legislation. These laws provide mechanisms for various registered officers to enforce penalties when the public access rights of people who rely on assistance animals are contravened. Unlike anti-discrimination legislation, these officers can issue criminal infringement notices through state and territory legislation. Criminal infringement notices are fines which can be issued by an authorised officer rather than a summons to attend court (N. Hill 2019, 20).

A person charged with a criminal infringement notice can either nominate to pay the notice, receive a summons to court or challenge the notice. The penalty is typically a fraction of the overall maximum penalty an offender might receive if they go to court. For example, in South Australia an expiation fee should be set to the smaller of \$315 or 25 percent of the maximum fine (Expiation of Offences Act 1996, sec. 5(3)(b)(ii)). An authorised officer who enforces these penalties can either be a police officer or a local council. Typically, criminal infringement notices have been available as alternatives to summary charges for either possession of prohibited substances or traffic offences (Sutton 2000, 149; N. Hill 2019, 20–21). Expiation notices are also issued for other administrative penalties, such as violations of fishing regulations (Lindley and Quinn 2023, 15). These are strict liability offences, in that the authorised officer does not need to establish the person's intent for that person to be held liable. The statutory provisions prohibiting refusing an assistance dog and their handler access to a public place vary widely across different state and territories, as shown in Table 2.

Table 2 demonstrates several key points of inconsistency with respect to penalties for assistance dog refusal. First, not all states recognise assistance dogs which have been approved under the legislation of different states. Only legislation in the Australian Capital Territory, New South Wales, South Australia and Western Australia explicitly recognises accreditation or training of assistance animals under other schemes. Although not the focus of this article, this lack of mutual recognition poses a significant challenge for assistance dog teams who are travelling between states and territories (Smith 2022, 10).

Second, there are inconsistencies with respect to the areas to which assistance dogs have access. Most state and territory regimes permit access to public places. However, the ACT *Domestic Animals Act* provide an exhaustive list of places which assistance dogs can access (Domestic Animals Act 2000, sec. 106B). Others simply provide that assistance dogs have access to public places. Further, in South Australia assistance dogs have access to public places and public passenger vehicles, whereas therapy dogs only have access to accommodation (Equal Opportunity Act 1984a, sec. 88A). Likewise, New South Wales, Queensland, Victoria and Western Australia have separate statutory regimes for access to commercial passenger vehicles and access to public places.

Third, there are wide variations in the penalties that can be awarded against legal or natural persons that refuse access to assistance animals. Northern Territory and Western Australian legislation provide that assistance animals cannot be refused access to public places but does not state specific penalties (Public Transport (Passenger Safety) Act 2008, sec. 13(2); Dog Act 1976, sec. 8(1)). There are also no specific penalties for refusal in the Victorian legislation, except for refusal from commercial passenger vehicles (Domestic Animals Act 1994, sec. 7(4)). By contrast, the Queensland *Guide, Hearing and Assistance Dogs Act* imposes a maximum penalty of up to 100 penalty units (AU\$15,480 in 2024) for refusal (at section 12A) (Guide, Hearing and Assistance Dogs Act 2009, sec. 12A). There is a separate

penalty of 20 penalty units (AU\$3,096) if the driver of a public transport vehicle refuses an assistance dog and handler access to public transport (Transport Operations (Passenger Transport) Regulation 2018, r. 234). Further, the New South Wales *Companion Animals Act* and South Australian *Dog and Cat Management Act* impose specific maximum fixed penalties. By contrast, penalties under legislation in Queensland (for refusals to public transport), Tasmania, and Victoria are all set as penalty units. These penalty units are indexed by other legislation to increase every financial year to remain in line with inflation (Penalties and Sentences Act 1992, sec. 5A; Penalties and Sentences Regulation 2015, r. 3; Penalty Units and Other Penalties Act 1987, sec. 4A; Monetary Units Act 2004, sec. 5). Yet another approach can be seen in the ACT, which sets separate fixed penalties for individuals and corporations (Legislation Act 2001, sec. 133).

Fourth, in addition to different penalties for refusal on public transport and passenger vehicles compared to public spaces more generally, there are variances in when a person with a dog can be lawfully refused access. For example, South Australia does not list any places where an assistance dog can be lawfully refused access. By contrast, under the Australian Capital Territory *Domestic Animals Act* (at section 106E(2)) and New South Wales *Companion Animals Act* (at section 60(1)) a person can refuse access to an assistance dog with a reasonable excuse or cause (Domestic Animals Act 2000, sec. 106E(2); Companion Animals Act 1998, sec. 60(1)). Neither act defines what constitutes a reasonable cause. Yet another variation exists under the Queensland *Guide Hearing and Assistance Dogs Act*, which provides that assistance dogs can be refused access to health service facilities, public places where food is served, and other prescribed places (Guide, Hearing and Assistance Dogs Act 2009, sec. 7(1)(a)). This exception is directly contradicted by the Australian Capital Territory *Domestic Animals Act*, which allows assistance dogs access to hospitals (Domestic Animals

Act 2000, sec. 106B). Further, it is unclear whether the Queensland exception extends just to sterilised facilities such as hospitals or other locations such as general practices.

Fifth, there are differences with respect to when a person in control of a passenger vehicle or a public place can refuse access to an assistance dog and their handler without identification.

The Australian Capital Territory *Domestic Animals Act* and South Australian *Dog and Cat Management Act* criminalises a person claiming a companion dog is an assistance dog when it has not been accredited (Domestic Animals Act 2000, sec. 106F; Dog and Cat Management Act 1995, sec. 81(2)). The Queensland *Guide Hearing and Assistance Dogs Act* provides a specific identification procedure that assistance dog handlers must comply with. This identification procedure requires the handler to possess identification documents and supply them, such as a Handler's Identity Card (Guide, Hearing and Assistance Dogs Act 2009, sec. 12). Failure to provide this documentation can provide a person in control of a public place with a defence if they refuse access to that person.

Complicating enforcing these provisions is what constitutes an appropriate form of identity. The Australian Human Rights Commission notes that there are separate forms of identity documents issued by public transport authorities in different states and territories (Australian Human Rights Commission 2016). For example, in Queensland the Department of Child Safety, Seniors and Disability Services can issue handlers a handler's identity card. However, Translink (the Southeast Queensland Transport Authority) also issues an Assistance Animal Pass. In the recent case of *Matthews v Woombye Pub Trading Pty Ltd*, the Queensland Civil and Administrative Tribunal held that the two passes were interchangeable insofar as public access rights are concerned (*Matthews v Woombye Pub Trading Pty Ltd*, n.d., para. 96). However, the Disability Discrimination Legal Service in 2015 reported a case study of an assistance dog handler who travelled from Western Australia to Victoria. Although the handler possessed an access pass issued by the West Australian government, they were

removed from a Victorian train for not possessing a Public Transport Victoria pass (Belardo, Phillips, and O'Hagan 2015). Requiring that an assistance dog handler apply for a new pass when they visit a different state or territory places significant financial and logistical burdens on handlers. It may also increase the risk of refusal as described by Torrance (Torrance 2020, 18).

Finally, across different states and territories there is limited guidance on who might enforce penalties for refusals. The responsibility for administering the relevant legislation is allocated to different government departments by jurisdiction. Further, within each state different departments might have responsibility for assistance animals in certain domains. For example, in New South Wales and Victoria, the Point-to-Point Transport Commissioner and Commercial Passenger Vehicles Victoria are responsible for enforcing access to commercial passenger vehicles (Commissioner 2022; *Helping Passengers With Assistance Animals | Safe Transport Victoria*, n.d.). However, these are the only agencies in Australia which have specific enforcement powers with respect to assistance dogs. By contrast, other legislation or government guidelines are silent on the question of who may enforce penalties. The South Australian *Dog and Cat Management Act* specifies that an authorised officer may enforce penalties (Dog and Cat Management Act 1995, sec. 25D(j)). These authorised officers can include police officers, as well as officials such as local council employees appointed by the Dog and Cat Management Board (Dog and Cat Management Act 1995, sec. 4) (at section 4). However, in other state/territory legislation it is unclear who may have power to enforce expiable penalties for refusal. This lack of clarity has the potential to create an evidentiary burden for handlers who are refused access. Likewise, police and local councils may not be aware that they possess enforcement powers. In these circumstances, assistance dog handlers may attempt to report their refusal to police, only to find that police are not willing to assist.

Yet another challenge exists in the dearth of case law on when these penalties have been enforced. Because expiation notices allow the refusing individual to accept and pay the fine, it is possible that this explains the lack of reporting in precedent.

Discussion and Possibilities for Law and Policy Reform

This article has identified significant areas of divergence under various forms of Australian legislation with respect to the public access rights of assistance dogs and their handlers.

These divergences can substantially undermine the public access rights of assistance dogs and their handlers. Therefore, this section provides some suggestions for both policy and law reforms. These reforms are specifically targeted at discouraging public access refusals.

Improved Data Collection on Refusals to Public Places

The most important reform to ameliorate the problems identified in this article would be to increase the amount of data collected regarding public refusals. Recent literature in Australia has focused on the question of companion animals being misrepresented as assistance animals (Harpur et al. 2018, 81). However, there is limited evidence to suggest that misrepresenting companion dogs as assistance dogs is significant and widespread in Australia. The policy literature that does contain an empirical reporting of this phenomenon focuses on other jurisdictions with different criteria for accreditation to Australia, such as the United States (D. R. Hill, King, and Mrachko 2014, 110; Yamamoto, Lopez, and Hart 2015, 4). Focusing regulatory design on punishing people who misrepresent companion dogs as animals may negate the civil rights of assistance dog handlers (Mills 2023, 18) Further, the focus on fake assistance dogs within the published literature is representative of what Dorfman terms the ‘disability con’, or the longstanding suspicion of disability fakery (Dorfman 2019, 1055–1056). By contrast, there is substantial (albeit non-peer reviewed) evidence from sources such as Guide Dogs Australia that suggests unlawful public refusals

remain widespread, including for guide and hearing dogs (Guide Dogs NSWACT 2019; Guide Dogs Aust. 2022). Unfortunately, information about the rates of refusal remains fragmented and only provides a limited picture of the problem faced by assistance dog handlers.

Any of the policy reforms proposed below depend on improved recording of data concerning assistance dog refusals. For example, the proceeding analysis shows that Queensland, New South Wales, Victoria, and Western Australia have taken steps to criminalise refusals in the context of passenger transport. New South Wales and Victoria have also established dedicated police units designed to respond to traffic offences committed by passenger vehicles (including refusals). Without any evidence about the effectiveness of these new penalties or units, it is impossible to know they could be effectively transplanted into other jurisdictions. A potential precedent exists in the requirement for state and territory agencies (as well as universities and local government in Victoria) to collect and report employment equality data (Allen 2021, 93–94). As Allen notes, collecting this data might help develop a comprehensive response to systemic refusals, rather than responding to individual cases (Allen 2021, 97).

Another issue is greater communication between government departments on rates of refusal. Whilst the question of discrimination falls within the purview of state anti-discrimination commissions, animal management or public transport legislation may be enforced by transport or environment departments. As discussed by Moses, identifying opportunities for data sharing has the potential to help generate better public policy (Moses 2020, 617). However, these policy benefits depend on building a culture of collaboration between government departments. Therefore, greater collaboration and data sharing between each of the government agencies that might receive reports of refusals is essential. This approach to

data sharing could be used to build a more complete understanding of the nature of assistance dog handler refusals.

Greater Awareness and Utilisation of Criminal Infringement Notices

Much of literature on assistance dogs and public access rights has focused on education campaigns designed to raise public awareness of these rights (Mills 2017, 651; Torrance 2020, 18; Howell and Bennett 2022, 54–55). However, public education campaigns may not be sufficient by themselves to combat assistance dog refusals (Graham et al. 2019, 224). Thus far, refusals seem to be a perpetual problem that occur despite decades of education efforts, or even using other signifiers such as identifying harnesses or identification cards, and even when disability status is visible to others. This is coupled with, as discussed in the section on anti-discrimination law, the problem that substantial damages are rarely implemented in response to instances of public access refusal. The awards of damages that are made are usually compensatory and are unlikely to discourage systemic discrimination. Instead, as White notes in citing Ayres and Braithwaite, a more effective approach involves the combined use of penalties and education (White 2007, 353; Ayres and Braithwaite 1992, 25). In particular, the previous analysis has demonstrated that authorised officers such as police do have the power to enforce penalties for refusal. However, in the experience of three of the authors of this article, police rarely exercise their discretion to prosecute, instead referring handlers to anti-discrimination commissions. If penalties were more regularly enforced, it could have the potential to deter refusals. It would also give assistance dog handlers a pathway to report refusals and receive expedited action, particularly in the face of repeated refusals from a single service provider. As discussed previously, data collected by Commercial Passenger Vehicles Victoria and the Point-to-Point Traffic Commissioner could be important to demonstrate the effectiveness of these dedicated task forces in policing refusal. However, as Methven notes, the discretionary power to issue criminal infringement

notices lies with police, and there is limited research on what factors influence police decision making (Methven 2023, 102–103). Therefore, further research is required into how police and other officers perceive these penalties.

Legislative Reform to Standardise Public Access Requirements and Penalties across States and Territories

The previous two suggestions for reform have not focused on legislative change, but greater use of existing laws. Nevertheless, one key area for law reform should be to standardise access requirements across different states and territories. For example, although assistance dogs are permitted to enter hospitals in the Australian Capital Territory, they are not permitted access to healthcare facilities in Queensland. Therefore, one target for law reform would be to ensure that there is greater consistency with respect to the places that assistance dog handlers can enter and ensure the overarching Commonwealth legislation is adhered to. Likewise, if expiation notices are to be used as an effective measurement to discourage public refusals, they need to be applied consistently across different states and territories.

The Responsive Regulation framework developed by Braithwaite and Ayres is helpful to determine how and to whom these penalties should be applied (Ayres and Braithwaite 1992, 35–36). As mentioned previously, this framework focuses on how the regulated entity is behaving before determining what regulatory response is most appropriate. Virtuous actors, or actors who have benign or confused intentions, may be more receptive to restorative justice approaches such as persuasion. By contrast, rational actors, who avoid certain prohibited conduct due to the prospect of sanctions, are more responsive to civil or criminal penalties (Braithwaite 2002, 19–20). As has been discussed in this article already, most regulatory interventions in Australia have focused on educating the public about the access rights of assistance dog handlers. If penalties for refusing assistance dog handlers are not

enforced, operators of public spaces and public transport might rationally assume the risk of enforcement is low and refuse access. Further, as Braithwaite notes (and three of the authors of this article can attest to in their lived experience), both federal and state anti-discrimination bodies can be described as conciliators. In other words, the penalties that are applied to perpetrators, except in cases of severe discrimination, are usually low (Braithwaite, Grabosky, and Rickwood 1986, 181).

Fortunately, there is guidance on how various penalty regimes can be structured to achieve appropriate outcomes. In particular, the New South Wales Law Reform Commission identified several key principles for the development of penalty regimes. These principles include proportionate and consistent offences, as well as setting higher penalty notice amounts for corporations (*Penalty Notices* 2010, 56). For example, the ACT creates a separate penalty scheme for natural and legal persons, with corporations facing significantly higher penalties. However, the focus on individual acts of discrimination does not reflect the fact that discriminatory attitudes might be systemic in an organisation (Allen 2020, 112). Therefore, higher penalties for organisations, consistent with principles of responsive regulation, would incentivise organisations such as passenger transport operators to appropriately train their staff on how to respond to assistance dog handlers (Ayres and Braithwaite 1992, 35; Braithwaite 2002, 20). These penalties might also incentivise passenger transport operators to take more comprehensive steps to stand down individuals who repeatedly refuse access to assistance dog handlers. Some passenger transport operators already do have policies in place to handle these disputes. For example, Uber's Assistance Animal Policy for Australia and New Zealand notes that drivers might be suspended if they refuse access to assistance dog handlers (Uber Legal 2021). However, this policy states that Uber will make the final determination as to whether a driver should be suspended. If this policy were not being enforced internally, higher corporate penalties could be targeted at the

platform. Applying the Responsive Regulation framework to this scenario, Uber (and other passenger transport operators) become subject to a form of meta regulation under this model.(Healy and Braithwaite 2006, S58) Further, the increased collecting of data recommended previously would help to identify repeat assistance dog refusers and scale the regulatory response appropriately.

Limits to Law and Policy Reform

One crucial limit to any potential reform in this area is the division between federal and state/territory legislative powers. Pursuant to section 51 of the Australian Constitution, the Commonwealth government has certain exclusive legislative heads of power. As Stubbs and others note, these legislative powers include the power to make laws with respect to trade and commerce, corporations, and external affairs, which underpinned the *Disability Discrimination Act* (Stubbs, Webster, and Williams 2020, 25–26). However, this power does not necessarily extend to legislation regarding animals and transport, despite ongoing debate as to whether assistance animals should be categorised as something aside from pets (Kolmes 2021, 632). This means that in Australia these remain reserved state powers. In turn, these reserved powers remain a barrier to greater regulatory consistency between the states. One strategy to overcome this inconsistency may be through the Standing Council of Attorneys-General (SCAG). This panel is comprised of the Commonwealth Attorney-General, as well as state, territory, and the New Zealand Attorney Generals. A 2008 Victorian Law Reform Commission (VLRC) report into assistance dog law across Australia suggests that SCAG may support law reform. Nevertheless, there have been limited steps to consistency in the time that has elapsed since the passage of this report (Burrell and Marrocco 2008, para. 6.53).

Conclusion

Refusals affect the day-to-day lives of assistance dog handlers, affecting their employment, restricting their movement through public spaces, reducing their socialisation with others, and affecting their wellbeing. This article has identified several sources of legal discrepancy that might undermine the public access rights of assistance dog handlers. With respect to discrimination law, only four states explicitly define refusing access to a person with their assistance dog as discrimination. Further, the remedies and penalties that can be sought in different states and territories varies, with some states offering more comprehensive remedies. With respect to animal management legislation, there are also inconsistencies between states and territories for when refusing an assistance dog handler access to a public place constitutes a criminal offence. There are also significant differences in penalties between different states and territories for refusing access.

This article highlights the inconsistencies within Australian law which undermine attempts to effectively penalise assistance dog handlers being refused access to public places. Although there are multiple pathways through which assistance dog handlers can attempt to report refusals, there are problems with each of these pathways. First, the Federal Australian Human Rights Commission or a state/territory anti-discrimination commissioner focus on conciliating matters of discrimination rather than enforcing penalties for discrimination. Further, the process of conciliating or attempting to appeal a discrimination matter through court and tribunal determination is time consuming, and places significant burdens on the complainant. Whilst a handful of cases do result in substantial penalties, these are a small minority. Second, reports of discrimination might be made to the police under either animal management or public transport legislation, but there are discrepancies between states and territories about police issuing penalties (including on the spot fines). Some states only criminalise refusing access in certain contexts, such as to public transport, and these

exceptions are not found in other states/territories. Further, there are significant inconsistencies in the penalties that can be awarded for refusal. The final problem, outside the scope of regulatory inconsistency, is the lack of reported case law on how these penalties have been enforced. This lack of precedent suggests that police (and other authorised officers) may be unaware of their enforcement powers.

This article therefore suggests several steps to bridge this enforcement gap and discourage the refusal of assistance dog handlers to public places. These strategies include improved data collection on when and where refusal to public places is occurring. Police should also be educated as to their role in potentially enforcing these penalties. Whilst some states have dedicated task forces which enforce certain types of passenger vehicle violation, there is no data on whether these task forces are effective. State and territory governments should coordinate to achieve greater consistency in the penalty regimes for public refusals. Most regulatory efforts in Australia have focused on greater public awareness regarding public access rights. However, more consistent penalties, as well as higher penalties for corporate non-compliance, may deter public refusal for assistance dog handlers.

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Declaration of Interest

The authors are currently working with Guide Dogs Victoria and Dog Guide Handlers Australia on a related project.

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Table 1: Sources of state and territory anti-discrimination law, organisations responsible for enforcement and possible penalties for discrimination

State/Territory	Anti-Discrimination Commissions	Prohibited Discrimination against Assistance Dog Handlers	Penalties or Remedies for Refusing Access
Australian Capital Territory	ACT Human Rights Commissioner	Discrimination in access to premises, goods, services, facilities, and accommodation (Discrimination Act 1991, sections 19–21)	An order not to continue the unlawful act or monetary compensation (Human Rights Commission Act 2005, section 53E(2))
New South Wales	Anti-Discrimination New South Wales	Discrimination in provision of goods and services and accommodation, or because a person is accompanied by an assistance dog (Anti-Discrimination Act 1977, sections 47–48, 49B(3)).	An order for up to AU\$100,000 compensation for any loss or damage suffered, to not continue any conduct, to perform a reasonable act to redress any loss or damage suffered, or an apology ((Anti-Discrimination Act 1977, section 108(2)(d))
Northern Territory	Northern Territory Anti-Discrimination Commission	Discrimination by refusing to allow an assistance animal or in supplying accommodation (Anti-Discrimination Act 1992, sections 21, 38).	An order to not repeat or continue something, to pay up to AU\$60,000 as compensation for loss or damage caused, or - to do specified things to redress any loss or damage suffered (Anti-Discrimination Act 1992, section 88
Queensland	Queensland Human Rights Commission	Discrimination in goods and services, in accommodation, and by refusing to allow guide, hearing or assistance dog (<i>Anti-Discrimination Act</i> 1991, sections 46, 83, 85)	An order not to discriminate further, to - pay an amount considered appropriate, perform certain acts to redress loss or damage suffered, to make a private or public apology or to implement programs to eliminate unlawful discrimination (<i>Anti-Discrimination Act</i> 1991, section 209)
South Australia	Equal Opportunity Commission of South Australia	Discrimination in provision of goods and services, in relation to accommodation and assistance animals (Equal Opportunity Act 1984a, sections 76, 77, 88)	An order to pay compensation for loss or damage, to refrain from further discrimination, to perform specific acts to redress any loss or damage (Equal Opportunity Act 1984a, section 96(1))

			There is also a separate penalty of AU\$2500 for separating a person with a disability from his or her assistance animal (Equal Opportunity Act 1984a, section 88)
Tasmania	Equal Opportunity Tasmania	Access and provision of services (Anti-Discrimination Act 1998, section 48)	An order not to repeat or continue the discriminatory conduct, to redress any loss, injury or humiliation suffered by the complainant, to pay compensation or to pay a fine not exceeding 20 penalty units, or AU\$3,900 (Anti-Discrimination Act 1998, section 89).
Victoria	Victorian Equal Opportunity and Human Rights Commission	Discrimination in offering to provide accommodation, in providing accommodation, by refusing to allow assistance dogs and access to public premises (Equal Opportunity Act 2010, sections 52, 53, 54, 57)	Broad powers to make any order appropriate preventing a person from doing anything which may contravene the Act (Equal Opportunity Act 2010, section 141(1)(a)).
Western Australia	Equal Opportunity Commission	Discrimination on grounds of impairment, access to places and vehicles, goods, services and facilities, and accommodation (Equal Opportunity Act 1984b, sections 66A(4), 66J, 66K, 66L).	An order to pay damages not exceeding AU\$40,000, not continue or repeat any conduct or perform any reasonable act or conduct to redress the loss suffered by the complainant, unless the matter is a representative action (Equal Opportunity Act 1984b, section 127)

Table 2: Comparison of penalties under Assistance Animal Legislation

State/ Territory	Public areas where animals allowed	Penalties for refusal	Who can enforce penalties?
Australian Capital Territory	Business premises, cinemas and theatres, clubs, hotels and models, community centres, halls and public libraries, government premises, hospitals, hostels and nursing homes, malls and plazas, places of worship, playgrounds, public passenger vehicles, restaurants or eateries, schools, colleges or universities, shopping centres, sporting or recreational premises (Domestic Animals Act 2000, section 106B)	Maximum penalty of 50 penalty units, or AU\$8,000 for an individual or AU\$40,500 for a business (Domestic Animals Act 2000 section 106E(1); Legislation Act 2001, section 133).	Transport Canberra and City Services ACT.
New South Wales	Buildings or places open to or used by the public, as well as public transport (Companion Animals Act 1998, section 60(1))	Maximum penalty of AU\$1,650 (Companion Animals Act 1998, section 60(1)) if the matter goes to court or AU\$330 for penalty notices (Companion	Office of Local Government is responsible for the Companion Animals Act 1998. The Point to Point Transport Commissioner and Point to Point Transport Authorised

	<p>Passenger vehicles (Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017 regulation 64(1))</p>	<p>Animals Regulation 2018 Schedule 1 (Penalty notice offences))</p> <p>Maximum penalty of AU\$1,100 if the matter goes to court or AU\$300 for penalty notices (Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017 Schedule 2, Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017, Schedule 2)</p>	<p>Officers are responsible for enforcing penalties under the Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017.</p>
Northern Territory	<p>Buses and other forms of public transport (Public Transport (Passenger Safety) Act 2008, section 13(2))</p>	N/A	N/A
Queensland	<p>Public places and public passenger vehicles, excluding health service e facilities, ambulances or places where food is prepared (Guide, Hearing and Assistance Dogs Act 2009, section 6, section 7; Transport Operations (Passenger Transport) Regulation 2018, Schedule 9)</p>	<p>Maximum penalty of 100 penalty units (AU\$15,480) if a person exercising control of a place of accommodation refuses access (Guide, Hearing and Assistance Dogs Act 2009, section 12A, section 13)</p> <p>Maximum penalty of 20 penalty units (AU\$3,096) if a driver of a public passenger vehicle refuses to allow a person to take in an assistance animal on board if</p>	N/A

		that person has control of the animal (Transport Operations (Passenger Transport) Regulation 2018, regulation 234)	
South Australia	Public places and public passenger vehicles (Dog and Cat Management Act 1995, section 4).	Maximum penalty of AU\$1,250, with an expiation fee of AU\$210 (Dog and Cat Management Act 1995, section 81).	Authorised officers appointed either by the Dog and Cat Management Board or a local council (Dog and Cat Management Act 1995, section 25A).
Tasmania	Public places and passenger vehicles (Guide Dogs and Hearing Dogs Act 1967, section 2)	Maximum penalty of 20 penalty units (AU\$3,900) (Guide Dogs and Hearing Dogs Act 1967, section 3(1)-(2); Penalty Units and Other Penalties Act 1987, section 4A(2))	N/A
Victoria	Motor vehicles for the carriage of one or more passengers for a fare in Victoria (Commercial Passenger Industry Vehicle Regulations 2018, regulation 4)	Maximum of 10 penalty units (AU\$1,849.00) for refusing an assistance dog and their handler access to a passenger vehicle (Commercial Passenger Industry Vehicle Regulations 2018, regulation 26)	Commercial Passenger Vehicles Victoria authorised officers can conduct compliance checks. These authorised officers may work with other staff, including Victorian and Federal Police, Vic Roads, Councils and Guide Dogs Victoria

Western Australia	Any building or place open to or used by the public, or in any public transport (Dog Act 1976, section 8(2)(a), Transport (Road Passenger Services) Act 2018, section 5)	Penalty of up to AU\$9,000 for refusal an assistance dog and their handler access to public transport (Transport (Road Passenger Services) Regulation 2020, regulation 137)	N/A
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