

Who's a Good Dog? – Assistance Animals Update

There are certain provisions in the Strata Schemes Management Act 2015 (“SSMA”) in relation to assistance animals that an owners corporation or lot owner should be aware of. Sections 139(5) & (6) of the SSMA provide in effect that:

- a by-law has no force or effect to the extent to which it restricts the keeping or use of an “assistance animal” as defined in section 9 of the Commonwealth Disability Discrimination Act 1992 (“DDA”) on a lot or common property; but
- a by-law may require a person who keeps an assistance animal on a lot to produce evidence that the animal is an assistance animal.

Given the wording used, an NCAT order invalidating an infringing by-law is not required and an aggrieved party could simply take the position that the by-law has no effect. However, given the potential exposure to liability and costs, an application for orders clarifying the position would be prudent.

A recent NCAT decision, *Trustees of Catholic Aged Care Sydney v Murphy* [2017] NSWCATCD 46, has considered previous authorities and clarified NCAT’s approach to determining whether an animal is an assistance animal in the sense of the DDA. Key findings include:

- The person keeping the assistance animal must have, have previously had or potentially have in the future a disability, which is defined broadly to extend beyond physical disability and include a “disorder, illness or disease that affects...thought process, perception of reality, emotions or judgement or that results in disturbed behaviour”.
- The assistance animal should have training to assist in alleviating the effect of the disability and should be trained to meet standards of hygiene and behaviour that are appropriate for an animal in a public place, mere obedience training being insufficient. That training may be undertaken by any person or organisation qualified to do so, but there must be a specific nexus between the training undertaken and the alleviation of the effects of a disability. Bear in mind that, in NSW, there is no statutory regime for accreditation of hearing dogs or training organisations for hearing dogs, let alone assistance animals generally.
- In this case, the Member found that there was no relevant disability and also was not convinced that the animal had the requisite level of training.

It seems clear that, although not limited to dogs, let alone guide dogs or hearing dogs, in order for an assistance animal to be outside the scope of a by-law which would otherwise prohibit the keeping of the animal:

- The person keeping the animal must, in the past, presently or potentially in the future have a disability as defined in the DDA.



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- The animal must assist in alleviating the effect of the disability.
- The animal must be trained with respect to assisting in alleviating the effect of the disability and meet appropriate standards of hygiene and behaviour.

The recent NCAT decision of *The Owners - Strata Plan 36965 v Alexander* [2021] NSWCATAP 407 confirmed that an animal does not need to be trained by an animal training organisation or certified by a government agency in order to be considered an assistance animal. Furthermore, it was confirmed that an ordinary individual can train an animal to become an assistance animal.

We have considerable experience in relation to assistance animals in strata schemes and can assist if you require advice in relation to this issue.

Prepared by Bannermans Lawyers
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