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. Section 139A of the SSMA provides in effect that:

- a by-law has no force or effect to the extent it would prohibit or restrict the keeping on a lot of an assistance animal used by an owner or occupier of the lot;
- a by-law has no force or effect to the extent it would restrict, or impose an unreasonable burden on a person in relation to, the use of an assistance animal on a lot or common property;
- a by-law may require a person who keeps an assistance animal on a lot to produce evidence prescribed by the legislation that the animal is an assistance animal.

An "assistance animal" is defined in section 9(2) of the Commonwealth Disability Discrimination Act *1992* ("**DDA**") as a dog or other animal:

> *(a) accredited under a law of a State or Territory that provides for the accreditation of animals trained to assist a person with a disability to alleviate the effect of the disability; or*
>
> *(b) accredited by an animal training organisation prescribed by the regulations for the purposes of this paragraph; or*
>
> *(c) trained:*
>
> *(i) to assist a person with a disability to alleviate the effect of the disability; and*
>
> *(ii) to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.*

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To the extent a by-law would seek to operate beyond the scope limited under section 139A, the wording used in the legislation indicates that an NCAT order invalidating the infringing by-law would not be required and an aggrieved party could simply take the position that the by-law has no effect. Given the potential exposure to liability and costs which may follow from adopting such a position however, an application for orders clarifying the position may be prudent.

Note that from 1 July 2025, new strata legislation will affect the by-laws concerning assistance animals in two main ways:

- by-laws requiring the supply of evidence that an animal is an assistance animal will be satisfied by the supply of any one type of prescribed evidence; and
- the forms of evidence which can be supplied in this regard will be expanded.

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The forms of evidence which will be deemed acceptable under the legislation commencing 1 July 2025 include:

- evidence the animal holds an accreditation referred to in the DDA, section 9(2)(a) or (b);
- a statutory declaration verifying the animal has received the training referred to in the DDFA, section 9(2)(c);
- an assistance animal identity card, pass or permit from an assistance animal training organisation;
- a document as evidence that the animal has completed a training program that meets the standards of Assistance Dogs International;
- a document as evidence that the animal has been accepted as an assistance animal by a government agency in Australia (e.g. a government-issued access card, transport pass or permit);
- a document issued by a local council recognizing the animal as an assistance animal;
- an assistance dog badge, medallion, harness, cape, coat or vest supplied for the animal by an assistance dog training organisation; or
- a written statement that the animal is an assistance animal from a registered health practitioner, within the meaning of the *Health Practitioner Regulation National Law (NSW)*, but only if the health practitioner is registered under that Law, Part 7, Division 1 or 2.

We have considerable experience in relation to assistance animals in strata schemes and would be pleased to assist if you require advice in relation to this topic.

Key takeaways

- By-laws cannot prohibit or restrict assistance animals in strata schemes.
- Evidence for assistance animals can include various forms of accreditation and documentation.
- New legislation effective from 1 July 2025 expands acceptable forms of evidence for assistance animals.
- Owners corporations should be aware of their liabilities regarding assistance animals.
- Legal advice may be prudent for clarifying by-law compliance.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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Updated 1 July 2025

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