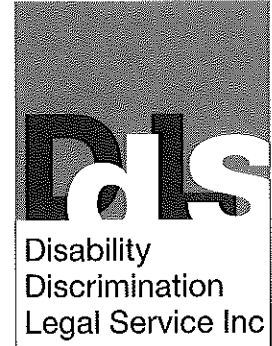


29 June 2015



Hon. Susan Ryan
Disability Commissioner
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

Level 2
247-251 Flinders Lane
Melbourne Vic 3000

Tel 03 9654 8644
Fax 03 9639 7422
~~TTY 03 9654 6817~~
Freecall 1300 882 872

Email info@ddls.org.au
www.communitylaw.org.au/ddls

By Email: communications@humanrights.gov.au

Dear Madame Commissioner

Policy and Law Reform on Assistance Animals

We are writing to bring to your attention the urgent need for clarity and renewed fairness in the law and policy governing the rights of people with a disability who rely on an assistance animal. Such reliance includes social activities and accessing venues of services, particularly public transport.

While unlawful discrimination based on the use of an assistance animal is prohibited in Australia, residual inconsistencies in laws and policy in this area mean that people who use assistance animals continue to face discrimination and struggle to come to terms with what they feel strongly is unfair but are told is legal. Federal and state laws are not consistent, and neither are laws, regulations and policy between states. This disparity presents significant difficulties for those accompanied by assistance animals using public transport interstate. It creates confusion, uncertainty and an unreasonable cost and administrative burden.

Assistance animals

An assistance animal is an animal trained to accompany a person with a disability and perform functions and tasks that alleviate the effects of that disability. The Disability Discrimination Act 1992 ("the DDA") provides a definition that is mirrored in the corresponding legislation of each State. Assistance animals are increasingly used to lessen the negative aspects of a wide range of disabilities. Assistance animals may provide an "alert" function for people with epilepsy or diabetes, assist with mobility issues, or help a person with a psychiatric illness to manage social interactions.

Case Study

Our organisation has provided assistance to a number of clients who have either been refused services or subjected to detriment due to their reliance on assistance animals. Most recently a client contacted us in regard to an

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incident that occurred on public transport in Victoria. Our client has a disability and is accompanied by an assistance dog. Her assistance dog is an Approved Assistance Dog under the Dog Act 1976 (WA). Under the WA Act, her dog has public access rights in Western Australia, including the right to accompany our client on public transport. Her dog wears a suitably marked harness and our client carries photo identification in accordance with the Act. The dog is also registered overseas as a service dog which provides the same rights within the foreign jurisdiction.

Our client regularly needs to travel interstate and overseas for work purposes. In Victoria, passengers need to obtain a Public Transport Victoria pass. Upon boarding a V Line train, our client was questioned by a conductor about her dog's status. The conductor noted the WA pass and advised her to obtain a Victorian Assistance Animal Pass; otherwise, she may be refused carriage in the future.

On a subsequent trip, the conductor asked her to leave the train as she did not have a Victorian Assistance Animal Pass. Our client refused to leave the train. She felt she had complied with the DDA and was being discriminated against. The train was delayed by two hours and police were called to remove her from the train. The attending officers did not remove her from the train but issued her with an infringement notice.

This was not the first time our client has experienced great difficulty accessing places and services normally open to the public. Each time this occurs she experiences enormous frustration and humiliation.

Public Transport Victoria has advised us that our client may travel on V Line services with her Western Australian accreditation and that they would make favourable representations to Victoria Police for the cancellation of the infringement notice. Public Transport Victoria has also undertaken to issue a memorandum reminding all front line staff to accept recognised interstate animal accreditation.

While this is a welcome response from Public Transport Victoria or V Line, our concern is that this may prove to be little more than a temporary solution and confined to travel within Victoria. Due to the significant variation in laws and regulations governing public access rights for people using assistance animals across Australia, our client and others will continue to face significant difficulties travelling interstate.

Assistance Animals and Public Transport within each State and Territory

Under the DDA, people with disabilities have the right to bring their assistance animals on public transport in all States and Territories. However, in accordance with the DDA, transport providers are entitled to ask for evidence that a dog is an assistance dog or is trained to meet the standards of hygiene and behaviour that is appropriate for a public place. Failure to produce such evidence may result in denial of access.

A requirement to travel on public transport carrying supporting documentation at all times is burdensome and inconvenient. It also requires front line public transport staff to make time consuming and possibly difficult assessments. A system of accreditation or registration hence became a common approach. The accreditation systems of Australian States and Territories is set out below.

Victoria - Public Transport Victoria issue an Assistance Animal Pass ("AAP") permitting assistance animals to travel on public transport.

The application must be signed by a medical practitioner to establish that the animal alleviates the effects of the applicant's disability. The applicant must state that the animal has been trained as an assistance animal and provide contact details for the animal's trainer as well as current qualifications. The applicant must also agree to certain terms and conditions relating to the behaviour of the animal on public transport. The pass is valid for three years. Assistance animal passes are not required for guide or hearing dogs.

Western Australia - The Public Transport Authority in Western Australia does not require or issue special permits for assistance animals to travel on public transport. Dogs that are approved by local government under the Dog Act 1976 (WA) may travel on public transport if they have an ID card and a dog coat or harness. The accreditation must be renewed every two years.

Queensland - Handlers who have a Handler's Identity Card issued in accordance with the Guide Hearing and Assistance Dog Act 2009 (QLD) are permitted to travel on public transport. The card is valid for five years.

Alternatively, a Translink Assistance Animal Pass may be obtained, though the pass is valid on Translink services in South East Queensland only. To obtain the pass, an applicant must provide a declaration from a medical practitioner and a declaration that the dog meets certain standards of behaviour in public.

South Australia - A Disability Dog Pass granted by the Dog and Cat Management Board is considered a valid pass for travel on public transport. There is no current requirement to renew the pass. A new application will have to be made for a different animal.

New South Wales - Commuters require an Assistance Animal Permit to travel on public transport with an assistance animal. Guide dogs and hearing dogs do not require a permit. The travel permit must be renewed every year.

To obtain a permit, an applicant must provide documentary evidence of a disability, and that the assistance animal has been trained to alleviate the effects of the disability. The applicant must also provide documentary evidence that the animal has received training in appropriate behaviour from a training or breeding organisation recognised by Rail Corp. A list of conditions and an indemnity must also be signed. Requirements for acceptable

behaviour training are stipulated and they include non barking behavior, controlled response to noise and obedience to handler's commands.

In the Australian Capital Territory, the Northern Territory and Tasmania, no system of accreditation of assistance animals exists and there are no specific assistance animal travel passes issued.

Travelling Interstate with Assistance Animals

Western Australia is the only state that provides legislative recognition for any assistance dog that has been approved under the law of another State or Territory.¹ Consistent with the provisions of the Dog Act 1976 (WA), dogs approved under interstate law may also travel on public transport if they have an ID card and a dog coat or harness. This means there is no additional burden on interstate visitors with interstate accreditation to obtain WA certification or a permit. It follows that a person travelling in WA who comes from States or Territories where no system of approval under law exists, namely Tasmania, the Australian Capital Territory and the Northern Territory, must comply with the WA Act.

At the time of writing, during which correspondence between DDLs and PTV has been exchanged, Public Transport Victoria "recommends" that interstate visitors obtain an Assistance Animal Pass. Under this guideline, it is not clear whether obtaining an Assistance Animal Pass is mandatory or not. Provision is made in the application form for assistance dog card numbers to be recorded, including numbers from interstate. Where this occurs, the requirements for obtaining the pass, including the medical declaration, are relaxed.

Public Transport Victoria has recently advised us, in response to a client's complaint as described above, that assistance dog users from interstate may travel freely on Victorian public transport without obtaining an Assistance Animal Pass. This would mean access to public transport for interstate visitors would be automatic, as it is in Western Australia. It remains to be seen whether this advice will be adopted formally as a policy, made explicit and filtered down to staff at street level on a permanent basis. The policy will not help those travelling in Victoria from States and Territories where no accreditation process exists. It is also not clear whether it would apply to Queensland's Translink Assistance Animal Pass.

The South Australian Dog and Cat Management Board's policy statement in regard to accreditation of disability dogs grants 28 day temporary accreditation of interstate assistance dogs.² This however still presents an administrative burden as a temporary accreditation application form must be completed and submitted to the Dog and Cat Management Board prior to entering South Australia.

¹ Dog Act 1976 (WA) s 8(1)E

² Dog and Cat Management Board Policy Statement "Assistance Dogs", 29th April 2014 s 6.

In Queensland no special provision is made for visitors from interstate. Interstate assistance dog users who have approval from organisations already recognised by the Guide Hearing and Assistance Dog Act 2009 (such as Assistance Dogs Australia) may obtain a dog handler's identity card. This however is an additional administrative burden for those who already have interstate accreditation. A handler's identity card must be applied for within 28 days of the dog's certification. This presents strict time limits which an interstate visitor is unlikely to be able to comply with.

Similarly no provision is made for interstate visitors in New South Wales. Interstate guide and hearing dogs that wear a suitable harness may travel without an Assistance Animal Permit, but the NSW guidelines make no mention of interstate accredited assistance dogs.

No provision is made for public transport travel permits for assistance animals for local or interstate commuters in Tasmania, the Australian Capital Territory and Northern Territory. Assistance animal users with interstate accreditation have rights to travel freely in Tasmania, the Australian Capital Territory and the Northern Territory in accordance with sections 8 and 9(2)(a) of the DDA. Commuters from interstate in Tasmania, the Australian Capital Territory and the Northern Territory from States or Territories without an accreditation process must, in the same way as local commuters, be able to produce evidence that their dog is an assistance dog or is appropriately trained. Presumably, a NSW or Victorian public transport permit would suffice.

Current anti-discrimination laws

Under section 8 of the DDA, discrimination is prohibited on the grounds that a person is accompanied by an assistance animal. An assistance animal includes the following: assistance animals accredited under any law of a State or Territory; assistance animals accredited by any organisation prescribed by regulations made under the DDA; and any animals trained to alleviate the effects of disability and trained to meet the standards of hygiene and behaviour appropriate for an animal in a public place.³ Some exemptions apply, including circumstances of unjustifiable hardship. If avoiding discrimination against a person accompanied by an assistance dog causes unjustifiable hardship within the meaning of the Act, the discrimination is not unlawful.⁴

Under section 54A it is also not unlawful to require evidence that the animal is an assistance animal or that the animal has been trained to an appropriate standard of behaviour and hygiene.

In contrast with federal anti-discrimination law, only the Australian Capital Territory and South Australian anti-discrimination laws provide broad based and express protection for people who use assistance animals.⁵ Other state

³ S 9 Disability Discrimination Act 1992 (Cth)

⁴ Ibid s 29A

⁵ Discrimination Act 1991 (ACT) s9, Equal Opportunity Act 1984(SA) s 88

based anti-discrimination legislation provides limited or no express protection for people who use assistance animals.

The Equal Opportunity Act 2010 (Vic) and the Anti Discrimination Act 1991 (Qld) 1991 give express protection to people who use an assistance animal only in relation to accessing accommodation services.⁶ Arguably, the provisions of the Equal Opportunity Act 2010 (Vic) on the definition of indirect discrimination and the positive duty to provide reasonable adjustments to a person with a disability would cover allowing a person to use an assistance animal.

The Equal Opportunity Act 1984 (WA) refers only to guide and hearing dogs.⁷ The Anti –Discrimination Act (NT) provides protection only for dogs trained to assist with hearing, visual or mobility impairments.⁸ The Anti Discrimination Act 1988 (TAS) makes no direct reference to assistance animals.

It must be noted that while state based anti-discrimination legislation may not provide express protection to those who rely on assistance animals, protection may be found in the general provisions of the legislation.

Other applicable legislations

In addition to anti-discrimination legislation, the legal status of assistance animals is recognised and regulated in varying degrees by other state based legislation.

In Queensland the Guide, Hearing and Assistance Dog Act 2009 (Qld) grants assistance dogs public access rights including access to public passenger vehicles.⁹ Dogs may be certified under the Act if they pass a public access test conducted by an approved trainer or approved training institution and if the animal can perform functions that reduce their handler's need for support.¹⁰ The Act sets out an approval process for trainers. Certified dogs must wear an identifying badge on their harness or coat and handlers must carry a handler's identity card.¹¹ The certification process allows certified assistance dogs to be easily identified by members of the public who control access to public places and public transport.

In Western Australia assistance dogs are given public access rights, including access to public transport, under the Dog Act 1976.¹² The Act provides an approval process for trainers and dogs and a process of certification and identification. The Department of Local Government and Communities administers the Act. Dogs trained by approved organisations are recognised as well as privately trained dogs that have passed a Public Access Test.

⁶ The Equal Opportunity Act 2010 (Vic) s 54 and the Ant Discrimination Act 1991 (QLD) s85

⁷ The Equal Opportunity Act 1984 (WA) s66A

⁸ Anti –Discrimination Act (NT)s 21

⁹ Hearing and Assistance Dog Act 2009 (Qld), s8

¹⁰ Ibid s 38

¹¹ Ibid s 12

¹² Dog Act 1976 s 8

Approved Assistance Dogs obtain Assistance Dog and Handlers identification cards. Assistance dogs approved under a law of another State or Territory are also automatically considered to be assistance dogs.¹³

Assistance Dogs are given public access rights in South Australia under the Dog and Cat Management Act 1995 (SA).¹⁴ The Dog and Cat Management Board administers the accreditation process. No specific training organisations are recognised or given special approval status. Assistance animals gain accreditation by passing a Public Access test. Applicants must also provide a medical report and a veterinary report. An accredited Disability Dog is given a Disability Dog identification Card. The accreditation lasts for the life of the dog unless it is revoked or surrendered.

In New South Wales, under the Companion Animals Act 1998 and in the Australian Capital Territory under the Domestic Animals Act 2000, public access rights of people who use assistance animals are recognised.¹⁵ However no regulations regarding the training, accreditation or identification of assistance animals have been made.

In Victoria, Tasmania and the Northern Territory, there is no legislation establishing a process for the accreditation of assistance animals.

Issues with Current Law

Those who control access to public places must comply with both federal and state laws. However, federal and state laws create different regimes of compliance. The DDA definition of assistance animals was amended in 2009 to give the existing law greater clarity, but ambiguity remains. The definition includes state based accredited animals as well as animals with appropriate training. This creates conflicting obligations in states where an accreditation system exists. An animal with appropriate training but without accreditation in a state where an accreditation system exists is still an assistance animal under section 9 of the DDA. Obviously, though, the record or accreditation addresses convenience and the need to provide evidence.

Only three states have enacted legislation that provides training standards and accreditation processes. Those who gain accreditation in those states benefit by obtaining readily identifiable evidence that their assistance animal is entitled to accompany them. The remaining States and Territories have no system of accreditation. Obligations under the DDA mean that even in states with accreditation systems, it may be unlawful to discriminate against appropriately trained assistance animals without official accreditation if the handler is in possession of evidence that the animal is an assistance animal. Accreditation and registration also have a validity period. Many would argue against renewal quite logically on the basis that their disability has not changed and that the animal's training has not been affected by the passage of time.

¹³ Ibid s 8(1)E

¹⁴ Dog and Cat Management Act 1995 (SA) s 81

¹⁵ Companion Animals Act 1998 (NSW) s 59 and Domestic Animals Act 2000 (ACT) s 104

The definition of assistance animals in the DDA has also been criticised for lacking a practical focus.¹⁶ It specifies no rule for determining exactly what are appropriate standards of “hygiene and behaviour” in a public place. While evidence of training may be requested, it is not clear what evidence would be sufficient and how a person who controls access to a public place is supposed to assess this evidence.

Dogs and Aviation

Air transport requires additional consideration. Due to the nature or demands of air travel and the aviation industry standards, the carriage of animals, including assistance animals are subject to strict conditions.

The Civil Aviation Safety Authority (“CASA”) (according to Civil Aviation Regulation 256(1)) will issue permission for assistance dogs to travel on aircraft on a case by case basis. CASA has also provided permission to some airline operators to allow carriage of assistance animals from some training organisations without further recall to CASA.

CASA will approve an assistance animal if it has passed a public access test as assessed by a qualified dog trainer. They require an assistance animal to be trained to at least the minimum standard of Assistance Dogs International or those required by Queensland Guide Hearing and Assistance Dog Act (i.e. as a benchmark). CASA accepts the lists of trainers currently accepted by **Qantas** but may also accept assessments by other trainers provided there is documentary evidence of training qualifications.

Jetstar requires detailed information 14 days prior to departure including who provided the training and how much training occurred. It also requires information regarding the disability and how the assistance animal alleviates the disability.

Virgin allows assistance dogs in the cabin if the passenger can provide documents confirming the animal has been trained by an approved organisation, documents detailing the training and a current public access test. It refers to an approved organisation as one that meets the minimum standards set by Assistance Dog International or by the Queensland Guide Hearing and Assistance Dog Act (2009);

The CASA permission recognises that an assistance dog has been qualified by one of the named charitable organisations, registered as full members of 'Assistance Dogs International'.

¹⁶ Harpur, Paul “The Convention on the Right of Persons with Disabilities and Anti Discrimination Laws: What happened to Legal Protection for People Using Guide & Assistance Dogs?” [2010] University of Tasmania Law Review 49

In order to meet the conditions of the permission, the operator must be satisfied that the assistance dog is in fact providing assistance to a person with a disability. The owner must also produce to the operator formal identification of their assistance dog, which has been issued by the Australian organisations listed on the permission. This identification should attest to the dog's high standard of training, behaviour, health and welfare, providing certainty to the operator and other relevant parties where necessary.

Operators wishing to accept the carriage of an assistance animal, which falls outside the provision of the regulation and supporting permission, must still apply to CASA. A standard fee will apply for the consideration of such an application.

Need for Reform

In its report on assistance animals in 2008, the Victorian Law Reform Commission predicted that the use of assistance animals in Australia would increase.¹⁷ This prediction was based on demographic trends and the likelihood that the use of assistance animals would grow as the industry and public awareness increased. As the numbers of assistance animals grow, so too does the need for consistent, clear and uniform law and policy.

Discrimination against assistance animal users is prohibited where the animal is appropriately trained and evidence of training can be produced. Hence, clear and uniform standards of training and identification must be developed in each State and Territory to give practical effect to this protection. Unless service providers or business owners can easily identify assistance animals, instances of discrimination will continue. Public awareness of the rights of those who are accompanied by assistance animals will not increase until assistance animals become more readily identifiable.

Free movement around Australia is something that is enjoyed by all Australians. Those without disabilities are not hindered in their domestic travels by the need to fill out lengthy forms or the need to obtain medical declarations as they pass state borders, not to mention the financial costs of compliance. Those who travel accompanied by assistance animals should enjoy similar freedoms. Obtaining assistance animal accreditation in Queensland, Western Australia or South Australia is a time consuming, expensive and intrusive process. For example, in South Australia, the public access test takes around 4 hours to complete and costs about \$230. Other animal training providers charge \$500 or more. The costs are repeated each time the accreditation, travel pass or permit for the animal is renewed. Particularly for those who rely on disability support pensions, these recurrent costs could be prohibitive.

Recommendations

¹⁷ Victorian Law Reform Commission, Final Report "Assistance Animals" (2008), p25.

National model or Interstate Recognition - Without greater certainty and uniformity in Australia regarding training standards and identification systems for assistance animals, incidents of discrimination against those who are accompanied by assistance animals will not decrease. Animals like dogs are commonly perceived as posing a risk to public health and safety. They are capable of causing injury or disruption and their behaviour is considered unpredictable by many in the community.

Training standards and identification systems are needed to give the community confidence in assistance animals. Service providers and business owners need to be able to quickly and easily identify assistance animals. Similarly, assistance animal users need to be able to distinguish their animals from companion animals quickly and easily, without having to answer intrusive questions about their disability and without having to carry bundles of paperwork.

To enable assistance animal users to travel on public transport interstate without having to carry extensive paperwork to show that their animal is appropriately trained, or to repeat the process to satisfy another State authority, a uniform accreditation processes in each state and territory may need to be introduced which would make recognition of interstate accreditation automatic. All States and Territories could introduce a provision recognising assistance animals that have been approved under the law of another state or territory similar to section 8(1)E of the Dog Act 1976 (WA). The WA model will enable commuters from interstate to travel without any unnecessary administrative burden.

Short of a national card, if states introduce identification cards with a similar appearance; it should not be difficult for public transport officers at any level to recognise interstate accreditation. There are ample reasons to follow the example set by nationally recognised parking permits for people with disabilities.

With a national model for accreditation animals, there seems to be no remaining rationale why additional requirements need to be imposed when travelling by air or sea. This submission doesn't take away the differences between air, sea or land travel but only reiterates that those differences are best addressed by a fair, well informed and cost efficient accreditation regime.

One permit for any legitimate purposes - A person may need assistance animals when using public transport, accessing services in general, attending an educational institution, or engaging in employment. Each venue has different dynamics but the essential requirements that constitute an assistance animal are often the same. Rather than limiting the permission to public transport and creating doubts that may lead to unlawful exclusion, the accreditation must serve a wider purpose and utility.

Validity period and renewal - As described above, the time and money involved in processing and reprocessing initial applications and renewals are quite significant, in particular where the permission granted is valid only for a

12 month period. The South Australian model of indefinite permits is most generous whereas the Queensland's five year renewal period appears to recognise the financial costs and inconvenience that result from frequent renewals of a permit for the same person and the same animal.

Whilst patients may have an affordable access to Medicare in obtaining updates on their medical condition, they have no other recourse for the more expensive professional services of veterinarians and dog trainers but to disadvantage themselves financially. Whilst one may be able to train the animal themselves, not everyone would have professional competence or qualification to do so. Accreditation or endorsements of animals from a registered trainer person or organisation mean guarantees and accountabilities, which a private individual would not be able to provide or undertake. They also avoid the potential disagreements about the type, nature, extent of the animal training and assessments. Hence, the key to make the process more equitable is not to do away with professional accreditation but to promote costs reduction. Animals act by instinct and the probability of the animal unlearning acquired behavior or what it does in order to function as an assistance animal is quite small and supports the view that frequent renewals not only do not really achieve the purposes sought, but also create an expensive compliance mechanism for those who may have very few financial resources in the first place.

We thank you for your time and consideration of this submission. If you have any questions, please contact:

Placido Belardo, DDLS Principal Solicitor
Julie Phillips, DDLS Manager, or
Kerry O'Hagan, DDLS Volunteer Lawyer

Yours sincerely



Placido Belardo

Copy:
Stepan Kerkyasharian
President of the Anti-Discrimination Board of NSW
PO BOX A2122
SYDNEY SOUTH NSW 1235

By Email: adbcontact@agd.nsw.gov.au

Kevin Cocks
Queensland's Anti-Discrimination Commissioner
City East Post Shop
PO Box 15565

CITY EAST QLD 4002

By Email: info@adcq.qld.gov.au

Anne Gale

South Australia's Commissioner for Equal Opportunity
GPO BOX 464
ADELAIDE SA 5001

By Email: eoc@agd.sa.gov.au

Robin Banks

Anti-Discrimination Commissioner
GPO Box 197
HOBART TAS 7001

By Email: antidiscrimination@justice.tas.gov.au

Kate Jenkins

Victorian Equal Opportunity and Human Rights Commissioner
Level 3, 204 Lygon Street
CARLTON VIC 3053

By Email: enquiries@veohrc.vic.gov.au

Allanah Lucas

Commissioner for Equal Opportunity
PO BOX 7370
Cloisters Square
PERTH WA 6850

By Email: eoc@eoc.wa.gov.au

Sally Sievers

Northern Territory Anti-Discrimination Commissioner
LMB 22 GPO
DARWIN NT 0801

By Email: antidiscrimination@nt.gov.au

Helen Watchirs

Human Rights & Discrimination Commissioner
GPO Box 158
CANBERRA ACT 2601

By Email: humanrights@act.gov.au

Hon. John Ajaka, MLC

Minister for Disability Services
GPO Box 5341

SYDNEY NSW 2001

By Email: office@ajaka.minister.nsw.gov.au

Hon. Coralee O'Rourke
Minister for Disability Services
GPO Box 806
BRISBANE QLD 4001

By Email: disabilityandseniors@ministerial.qld.gov.au

Hon. Tony Piccolo
Minister for Disabilities
GPO Box 668
ADELAIDE SA 5001

By Email: ministerpiccolo@sa.gov.au

Hon. Jacquie Petrusma
Minister for Human Services
Level 8, 10 Murray Street
HOBART TAS 7000

By Email: jacquie.petrusma@parliament.tas.gov.au

Hon. Martin Foley
Minister for Housing, Disability and Ageing
GPO Box 4057
MELBOURNE VIC 3000

By Email: martin.foley@parliament.vic.gov.au

Hon. Helen Margaret Morton
Minister for Mental Health; Disability Services
12th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

By Email: helen.morton@mp.wa.gov.au

Hon. Johan (John) Wessel Elferink
Minister for Disability Services
GPO Box 3146
Darwin NT 0801

By Email: Minister.Elferink@nt.gov.au

Hon. Joy Burch, MLA
Minister for Disability
GPO Box 1020

CANBERRA ACT 2601

By Email: BURCH@act.gov.au

Hon. Andrew Constance

Minister for Transport and Infrastructure
GPO Box 5341
SYDNEY NSW 2001

By Email: bega@parliament.nsw.gov.au

Hon. Jackie Trad

Minister for Transport, Minister for Infrastructure
PO Box 15009
CITY EAST QLD 4002

By Email: deputy.premier@ministerial.qld.gov.au

Hon. Stephen Mullighan

Minister for Transport and Infrastructure
PO Box 4019
SEATON SA 5023

By Email: lee@parliament.sa.gov.au

Hon. Rene Hidding

Minister for Infrastructure
9 Gordon St
SORELL TAS 7172

By Email: rene.hidding@parliament.tas.gov.au

Hon. Jacinta Allan

Minister for Public Transport
PO Box 399
BENDIGO VIC 3552

By Email: jacinta.allan@parliament.vic.gov.au

Hon. Dean Nalder

Minister for Transport
PO Box 7084
APPLECROSS NORTH WA 6153

By Email: Minister.Nalder@dpc.wa.gov.au

Hon. Peter Glen Chandler

Minister for Transport
GPO Box 3146

DARWIN NT 0801

By Email: Minister.Chandler@nt.gov.au

Hon. Shane Rattenbury, MLC

Minister Assisting the Chief Minister on Transport Reform

GPO Box 1020

CANBERRA ACT 2601

By Email: RATTENBURY@act.gov.au