

3 August 2012
[18-12]

Approval Report – Proposal P1018 (amended 15 August 2012)

Companion Dogs in Outdoor Dining Areas

Food Standards Australia New Zealand (FSANZ) has assessed a proposal prepared by FSANZ to remove restrictions on the presence of companion dogs in outdoor dining areas.

On 2 May 2012, FSANZ sought submissions on a draft variation and published an associated report. FSANZ received ninety submissions.

FSANZ approved the draft variation on 26 July 2012. The COAG Legislative and Governance Forum on Food Regulation¹ (Forum) was notified of FSANZ's decision on 2 August 2012.

This Report is provided pursuant to paragraph 63(1)(b) of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act).

¹ Previously known as the Australia and New Zealand Food Regulation Ministerial Council

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Supporting documents

The following documents used to prepare this Report are available on the FSANZ website at <http://www.foodstandards.gov.au/foodstandards/proposals/proposalp1018compani5440.cfm>

SD1 Food safety risk arising from the presence of companion dogs in outdoor dining areas

1. Executive summary

FSANZ prepared a proposal to amend clause 24 (Animal and pests) of Standard 3.2.2 – Food Safety Practices and General Requirements, to remove a restriction on the presence of companion dogs in outdoor dining areas operated by food businesses.

This Proposal was developed at the request of the Food Regulation Standing Committee following a concern raised by the Western Australian Department of Health that the previous restrictions under paragraph 24(1)(a) in relation to dogs did not appear to be based on risk. This concern and inconsistencies in enforcement of this Standard across different Australian jurisdictions were determining factors of this proposal.

FSANZ prepared a risk assessment evaluating the food safety risk arising from the presence of companion dogs in outdoor dining and drinking areas. The risk assessment concluded that the overall level of food safety risk arising from the presence of companion dogs in such settings was expected to be very low to negligible.

FSANZ sought submissions on a draft variation removing the restriction, with ninety submissions being received. The majority of these submitters supported the proposed draft variation. A number of additional issues were raised but fell outside the scope of the Food Standards Code. Overall the previous Standard was considered to be unnecessarily restrictive in regard to the presence of companion dogs in outdoor dining areas with regards to food safety.

2. Introduction

2.1 The Proposal

The proposal was prepared to amend the *Australia New Zealand Food Standards Code* (the Code), to remove restrictions on the presence of companion dogs in outdoor dining areas operated by food businesses. Outdoor dining areas include outdoor drinking areas operated by food businesses.

2.2 The current Standard

Clause 24 of Standard 3.2.2 – Food Safety Practices and General Requirements, restricts the presence of live animals, including companion dogs, in areas where food is handled (with the exception of seafood, or other fish or shellfish, and assistance animals).

2.3 Reasons for preparing the Proposal

Paragraph 24 (1)(a) of Standard 3.2.2 was considered to be unnecessarily restrictive in relation to the presence of companion dogs in outdoor dining areas. There were concerns that the restrictions in this paragraph with respect to dogs were not based on the risk to food safety and this had led to inconsistencies in enforcement of the presence of dogs in outdoor dining areas amongst State and Territory food regulation enforcement agencies.

2.4 Procedure for assessment

The Proposal was assessed under the General Procedure.

2.5 Decision

The draft variation to clause 24 of Standard 3.2.2, as proposed following the assessment that was released for public comment on 2 May 2012, is approved with amendments. The draft variation, as varied after submissions were received, is at Attachment A.

The draft variation on which submissions were sought is at Attachment C.

3. Summary of the findings

3.1 Risk assessment

The risk of foodborne transmission of zoonotic agents to humans from companion dogs in outdoor dining settings is considered to be very low to negligible.

This consideration is supported by the following factors:

- The likelihood of direct contact of food or food preparation areas with infected companion dogs or dog faeces is negligible as dogs would not ordinarily be allowed into food preparation areas.
- Acquiring diseases through indirect foodborne transmission routes requires the involvement of an intermediate vector. As illustrated in Figure 1, such vectors may include food preparation personnel, food service personnel or rodents/insects.

A successful foodborne disease transmission through an intermediate vector is dependent on (1) a successful transmission of pathogens carried by companion dogs to an intermediate vector, and (2) a successful transmission of such pathogens to humans through food contaminated by the intermediate vector. Therefore, the likelihood of acquiring diseases carried by companion dogs in outdoor dining areas involving an intermediate vector is predicted to be very low, because the probability of the occurrence of one event that is dependent on the occurrence of two consecutive events is very low when the probabilities of the occurrence of the two consecutive events are themselves both low.

- Potential contamination of food directly from companion dogs, or indirectly through contaminated intermediate vectors, in outdoor dining settings is managed through compliance with food safety standards and food safety management or control programs for food hygiene applicable to food service establishments.
- Studies on human-dog interactions indicate that, in general, contact between people and dogs that are not their own pet/s is limited. This minimises the potential for contact and consequently the transmission of pathogens from dogs in outdoor dining settings to humans.

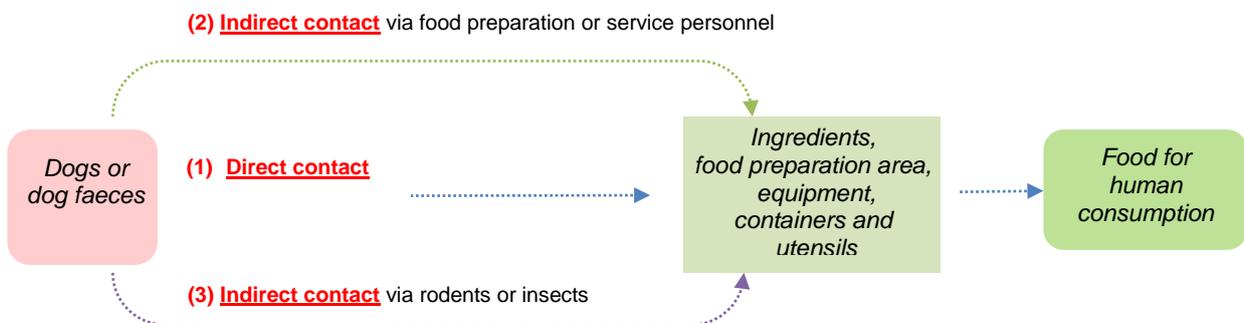


Figure 1: Possible mode of transmission of pathogens from infected dogs to food

The FSANZ assessment of food safety risk arising from the presence of companion dogs in outdoor dining areas is provided as Supporting Document (SD1) to this report.

3.2 Risk management

Previously, under paragraph 24(1)(a) of Standard 3.2.2, companion dogs (other than assistance animals) were not permitted in areas of a food service establishment where food is handled. Implementation of this requirement differed between Australian jurisdictions. For example, the presence of companion dogs in outdoor dining areas operated by food businesses such as restaurants, cafés and takeaway food outlets is permitted in New South Wales, South Australia and Victoria, subject to determination by the owner of the food business. During October 2010, the Western Australian Department of Health issued guidelines for the enforcement of subclause 24(1)(a). These specified that unless there is a food hygiene risk, the presence of companion dogs in outdoor dining areas operated by food businesses is not restricted in Western Australia, subject to determination by the owner of the food business. These various measures resulted in national inconsistencies to the implementation of paragraph 24(1)(a).

Based on the outcomes of the risk assessment (SD1), an amendment to clause 24 of Standard 3.2.2 has been approved to remove the restrictions on the presence of companion dogs in the outdoor dining or drinking areas of a food service establishment. The decision to allow the presence of a companion dog in the outdoor dining or drinking areas of a food service establishment is to be determined by the operator of the food business.

3.2.1 Summary of submissions

Consultation is a key part of FSANZ's standards development process. FSANZ acknowledges the time taken by individuals and organisations who have made submissions to this proposal.

Every submission on this proposal has been reviewed by FSANZ. While not all comments can be taken on board in the final risk management decision making, they are valued because they all contribute to the rigour of our assessment.

Public comments were invited on the draft variation to the Code from 2 May to 13 June 2012. Ninety submissions were received; the majority of these were received from individuals, along with several submissions received from the food service industry and state/territory and local governments. Eight-two submissions supported the proposed draft variation. Overall, the current standard was considered to be unnecessarily restrictive in regard to the presence of companion dogs in outdoor dining areas.

A number of issues raised in submissions, such as dog behaviour, community/social benefits, animal rights and local environmental conditions and similar, fell outside of the scope of this Proposal which is focused on food safety. FSANZ recognises that these issues are important to the community, individuals and local authorities, and consider they should be dealt with under appropriate local laws and regulations (for example animal management, companion dog laws).

Submissions received during the public comment period are available on the FSANZ website. A summary of the main issues raised and the FSANZ response is in Table 1 below.

FSANZ sought public comment on the draft variation at Attachment C. Following public comment and taking into account submissions on the original draft variation, FSANZ has amended the draft variation to correct a typographical error (see Attachment A). It referred incorrectly to Standard 3.3.2. It was amended to refer instead to Standard 3.2.2.

Table 1: Summary of issues raised in submissions

Issue	Raised by	FSANZ Response (including any amendments to drafting)
<p>Economic benefits to small businesses and the likely increase in business/profitability</p> <p>Economic benefits specifically to tourism/ encouraging pet friendly tourism</p>	<p>Several submitters, particularly from residents in Queensland and Tasmania, along with tourists travelling with companion dogs across jurisdictional borders</p> <p>Individuals Dog owners Dog Walking Association Dog Grooming business Food service business operators (cafes/ restaurants)</p>	<p>FSANZ recognised that it was important to allow flexibility for food businesses to decide if companion dogs will or will not be permitted in outdoor dining areas.</p>
<p>Giving food service operators greater choice/ discretion. Improving the rights of food business to run their business as they seem fit</p> <p>Giving consumers/café users the choice/benefit/right to visit a café (dine/drink) with their companion dog</p>	<p>Individuals Food service business operators (cafes/ restaurants) Dog Walking Association</p>	<p>FSANZ agreed that the discretion would be up to the individual business operator to allow or prohibit companion dogs in outdoor dining areas, based on their assessment of their ability to manage the potential risks and the cost/benefits balance of this option for their individual business.</p>
<p>Hygiene and related food safety issues relating to the presence of companion dogs in outdoor dining areas</p> <p>Staff unnecessarily handling dogs</p>	<p>Individuals Local council Environmental Health Officers</p>	<p>The risk assessment concluded that the overall level of food safety risk arising from the presence of companion dogs in outdoor dining areas was expected to be very low to negligible.</p> <p>FSANZ accepted that business operators (in consultation with their local food/health authority) who decide to allow dogs in outdoor dining areas will manage any risk of potential foodborne transmission of pathogens accordingly.</p>
<p>Inconsistency across states and territories</p> <p>Applying a national approach to food Regulation</p>	<p>Individuals Local council State government</p>	<p>This issue was the basis for preparing this Proposal. The amendment to the existing clause will facilitate a consistent approach across Australia in relation to dogs in outdoor dining and drinking areas.</p>

Issue	Raised by	FSANZ Response (including any amendments to drafting)
<p>Consistency with regards to the status of dogs as outdoor dining companions across international countries (e.g. Europe and USA)</p> <p>Discrimination against dog owners</p> <p>Discrimination against non-dog owners</p>	<p>Individuals</p>	<p>These issues are outside of the scope of the Code.</p>
<p>Health benefits to the community of companion dogs</p> <p>Imparting a greater sense of community. Opportunity for non-dog owners to enjoy the companionship of others' dogs</p> <p>The improved wellbeing of dogs not being left at home and included in 'family outings'</p> <p>A 'common-sense' approach to regulation</p> <p>Social changes to the acceptance of dogs in the greater community</p> <p>High rate of pet ownership in Australia</p>	<p>Several individual, animal support groups, dog walking and grooming associations</p>	<p>Whilst FSANZ acknowledges the stated health and social benefits of companion animals, these issues are outside the scope of the Code.</p>
<p>Ensuring dogs are tethered to an appropriate structure/ tether point</p>	<p>Small business owner Local council</p>	<p>Whilst FSANZ acknowledges this is an issue for the individual business operator and local authorities to consider, this is outside of the scope of the Code.</p>
<p>The risk of leashes being a trip hazard</p>	<p>Local council</p>	<p>Whilst FSANZ acknowledges this issue need to be effectively managed, it is outside of the scope of the Code.</p>

Issue	Raised by	FSANZ Response (including any amendments to drafting)
Ensuring dogs are registered with their local council before being allowed	Individual	This issue is outside the scope of the Code.
<p>The risk of nuisance/behavioural issues/barking, dangerous dogs and dog fighting</p> <p>Staff, customer and animal protection from potentially dangerous dogs (dog bites/scratches)</p> <p>The emotional risk to children and adults with a fear or phobia to dogs</p> <p>The risk of people allergic to dogs being affected whilst dining in outdoor dining areas of food businesses whom permit dogs</p>	Local council	Whilst FSANZ acknowledges these issues need to be effectively managed, they are outside of the scope of the Code.
<p>Removal of dog's urine/excrement</p> <p>The risk of fleas/parasites, dog-to-human transmission risk</p>	Individuals Local council	<p>Whilst FSANZ acknowledges this may be an issue that needs to be considered by the business operator, it is outside of the scope of the Code.</p> <p>The risk assessment considered three different modes (see Figure 1) of potential foodborne transmission of pathogens from companion dogs in outdoor dining settings to humans and considered the risk to be very low to negligible.</p>
Drafting should specify 'only if applicable law of a State or Territory expressly provides'	State government	FSANZ was requested by FRSC to consider amending Standard 3.2.2 to allow dogs in outdoor dining/drinking areas because some states had separately legislated to allow dogs in these areas in certain circumstances. This resulted in an inconsistent approach to this issue. In line with FRSC's recommendations, FSANZ is ensuring a national approach to the presence of dogs in outdoor dining/drinking areas and therefore does not support this recommendation.

Issue	Raised by	FSANZ Response (including any amendments to drafting)
Definition of an enclosed area – altering the definition of an enclosed area to only include permanently enclosed areas	Animal support group	FSANZ considers the proposed definition of enclosed areas appropriate. This definition is not likely to exclude the majority of structures/blinds etc. often used in the case of inclement weather by food service businesses in their outdoor dining areas.
Changing the wording of paragraph 24(1)(a) to also include ‘and/or consumed’ in addition to handled would allow for animals to enter into any outdoor eating area including outdoor dining areas where food is NOT being handled	Local council	The scope of Standard 3.2.2 is up until the point of sale. The Code has not previously restricted animals from entering outdoor dining areas where food is not handled i.e. food consumed after purchase (for example beach/park side kiosks/ outdoor markets etc.).
Companion animals other than dogs (e.g. cats, birds, snakes, guinea pigs) Discrimination against companion animals, other than dogs	Local council	FSANZ recognised this issue, but notes there is no demonstrated demand from food service businesses or consumers to no longer restrict companion animals other than dogs from outdoor dining areas. An individual submitter also highlighted the extensive history and tradition of the dog as man’s most recognised animal companion.
FSANZ should produce amended/ new guidelines/ enforcement guide to enable effective regulation of any changes to the Standard	Local council	FSANZ proposes to update Safe Food Australia, which provides guidance on Standard 3.2.2, to include an explanation of the new requirements in relation to dogs in outdoor dining/drinking areas. ²⁴ .
Additional activities such as the provision of dog food by food businesses	State government	The scope of Standard 3.2.2 is food that is handled by the business for human consumption. This issue is therefore outside the scope of the Code.
Correction of a typographical error	FSANZ & State Government	The draft variation circulated for public comment incorrectly referred to Standard 3.3.2. This has been corrected to Standard 3.2.2.

3.3 Risk communication

A basic communication strategy had been applied to this Proposal.

All calls for submissions are notified through the FSANZ Notification Circular, a media release and through FSANZ's social media tools and *Food Standards News*.

The process by which FSANZ considers Standard matters is open, accountable, consultative and transparent. Public submissions were sought to obtain the views of interested parties on the issues raised by the Proposal and the impacts of regulatory options.

4. Reasons for decision

FSANZ has decided to vary the Code to remove a restriction on the presence of companion dogs in outdoor dining areas operated by food businesses.

FSANZ had regard to the following matters under section 59 of the FSANZ Act:

- *whether costs that would arise from a food regulatory measure developed or varied as a result of the Proposal outweigh the direct and indirect benefits to the community, Government or industry that would arise from the development or variation of the food regulatory measure*

The Office of Best Practice Regulation (OBPR), in a letter to FSANZ dated 27 February 2012 (reference number 13575), confirmed that a Regulation Impact Statement was not required for this Proposal as it did not appear to have more than a minor impact on businesses or the non-profit sector. FSANZ has, however, performed an impact analysis in the first Call for Submissions report. In this report, it was found that consumers and the food service industry would likely benefit from the proposed changes, with minimal potential impact on government.

- *whether other measures (whether available to FSANZ or not) would be more cost-effective than a food regulatory measure developed or varied as a result of the Proposal*

There are no other measures that would be more cost effective to achieve the same aim than a variation to Standard 3.2.2.

- *any relevant New Zealand standards*

This is not relevant as Standard 3.2.2 applies in Australia only.

- *any other relevant matters.*

There are no other measures that would be more cost-effective to achieve the same aim than a variation to Standard 3.2.2.

4.1 Addressing FSANZ's objectives for standards-setting

FSANZ has considered the three objectives in subsection 18(1) of the FSANZ Act during the assessment of this Proposal as follows.

4.1.1 Protection of public health and safety

The protection of public health and safety would be maintained even with the restriction removed as the risk assessment has concluded the risks to public health and safety to be very low to negligible.

4.1.2 The provision of adequate information relating to food to enable consumers to make informed choices

There are no relevant issues identified.

4.1.3 The prevention of misleading or deceptive conduct

There are no relevant issues identified.

4.1.4 Subsection 18(2) considerations

FSANZ has also had regard to the objectives set out in subsection 18(2):

- *the need for standards to be based on risk analysis using the best available scientific evidence*

FSANZ's risk analysis, performed as part of the assessment of Proposal P1018, was based on the best available scientific evidence. FSANZ evaluated the available information on food safety risk associated with companion dogs in outdoor dining areas in the risk assessment.

- *the promotion of consistency between domestic and international food standards*

There are no relevant international food standards.

- *the desirability of an efficient and internationally competitive food industry*

There are no relevant issues identified.

- *the promotion of fair trading in food*

There are no relevant issues identified.

- *any written policy guidelines formulated by the Ministerial Council².*

No Policy Guideline is applicable.

4.2 Implementation

The variation takes effect on gazettal.

Attachments

- A. Approved variation to the *Australia New Zealand Food Standards Code*
- B. Explanatory Statement
- C. Draft Food Regulatory Measure

² Now known as the COAG Legislative and Governance Forum on Food Regulation

Attachment A – Approved variation to the *Australia New Zealand Food Standards Code*



Food Standards (Proposal 1018 – Companion Dogs in Outdoor Dining Areas) Variation

The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The Standard commences on the date specified in clause 3 of this variation.

Dated TO BE COMPLETED

Standards Management Officer
Delegate of the Board of Food Standards Australia New Zealand

1 Name

This instrument is the *Food Standards (Proposal P1018 – Companion Dogs in Outdoor Dining Areas) Variation*.

2 Variation to Standards in the *Australia New Zealand Food Standards Code*

The Schedule varies the Standards in the *Australia New Zealand Food Standards Code*.

3 Commencement

The variation commences on **the date of gazettal**.

SCHEDULE

[1] **Standard 3.2.2** is varied by omitting clause 24, substituting –

24 Animals and pests

(1) A food business must –

- (a) subject to subclauses (2) and (3), not permit live animals in areas in which food is handled, other than seafood or other fish or shellfish; and
- (b) take all practicable measures to prevent pests entering the food premises; and
- (c) take all practicable measures to eradicate and prevent the harbourage of pests on the food premises and those parts of vehicles that are used to transport food.

(2) A food business must permit an assistance animal in areas used by customers.

(3) A food business may permit a dog that is not an assistance animal to be present in an outdoor dining area.

(4) In this clause –

assistance animal means an animal referred to in section 9 of the *Disability Discrimination Act 1992* of the Commonwealth.

enclosed area means an area that, except for doorways and passageways, is substantially or completely closed, whether permanently or temporarily, by –

- (a) a ceiling or roof; and
- (b) walls or windows or both walls and windows.

outdoor dining area means an area that –

- (a) is used for dining, drinking or both drinking and dining; and
- (b) is not used for the preparation of food; and
- (b) is not an enclosed area; and
- (c) can be entered by the public without passing through an enclosed area.

Editorial note:

Section 9 of the *Disability Discrimination Act 1992* refers to a guide dog, a dog trained to assist a person in activities where hearing is required and any other animal trained to assist a person to alleviate the effect of a disability.

Attachment B – Explanatory Statement

1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 2 of Part 3 of the FSANZ Act specifies that the Authority may prepare a proposal for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering a proposal for the development or variation of food regulatory measures.

FSANZ prepared Proposal P1018 to remove restrictions on the presence of companion dogs in outdoor dining areas of food premises. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft Standard.

Following consideration by COAG Legislative and Governance Forum on Food Regulation³, section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the standard or draft variation of a standard.

Section 94 of the FSANZ Act specifies that a standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument, but is not subject to parliamentary disallowance or sunseting under the *Legislative Instruments Act 2003*.

2. Purpose and operation

The Authority has approved amending Standard 3.2.2 to remove the restriction on the presence of companion dogs in outdoor dining areas. This move will allow for greater consistency across jurisdictions and would effectively be a deregulation.

3. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference.

4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1018 has included one round of public consultation following an assessment and the preparation of a draft Standard and associated report. Submissions were called for on 2 May 2012 for a six-week consultation period.

A Regulation Impact Statement (RIS) was not required because the proposed variations to Standard 3.2.2 are likely to have a minor impact on business and individuals and is deemed to be a de-regulation.

5. Statement of compatibility with human rights

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

³ Previously known as the Australia and New Zealand Food Regulation Ministerial Council

6. Variation

Item 1 omits clause 24 in Standard 3.2.2 and substitutes a new clause to provide food businesses with the discretion to permit dogs other than assistance animals to be present in outdoor dining areas.

The new clause does not expressly limit the discretion to dogs that are companion animals. This avoids the need for the new clause to define a companion animal and to incorporate legal tests of ownership of or effective control over dogs that food businesses must apply in determining when to allow a dog to be present . In practice, the dogs present will be customers' companion animals and food businesses retain the right to exclude for any reason any dog that is not an assistance animal. Food businesses also remain subject to the Code's other food safety requirements.

The new clause prohibits a dog other than an assistance animal from being in an area used for the preparation of food. Assistance animals are restricted to areas used by customers.

Attachment C – Draft variation to the *Australia New Zealand Food Standards Code*



Food Standards (Proposal 1018 – Companion Dogs in Outdoor Dining Areas) Variation

The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The Standard commences on the date specified in clause 3 of this variation.

Dated TO BE COMPLETED

Standards Management Officer
Delegate of the Board of Food Standards Australia New Zealand

1 Name

This instrument is the *Food Standards (Proposal P1018 – Companion Dogs in Outdoor Dining Areas) Variation*.

2 Variation to Standards in the *Australia New Zealand Food Standards Code*

The Schedule varies the Standards in the *Australia New Zealand Food Standards Code*.

3 Commencement

The variation commences on **the date of gazettal**.

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- (a) is used for dining, drinking or both drinking and dining; and
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- (c) can be entered by the public without passing through an enclosed area.

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Section 9 of the *Disability Discrimination Act 1992* refers to a guide dog, a dog trained to assist a person in activities where hearing is required and any other animal trained to assist a person to alleviate the effect of a disability.