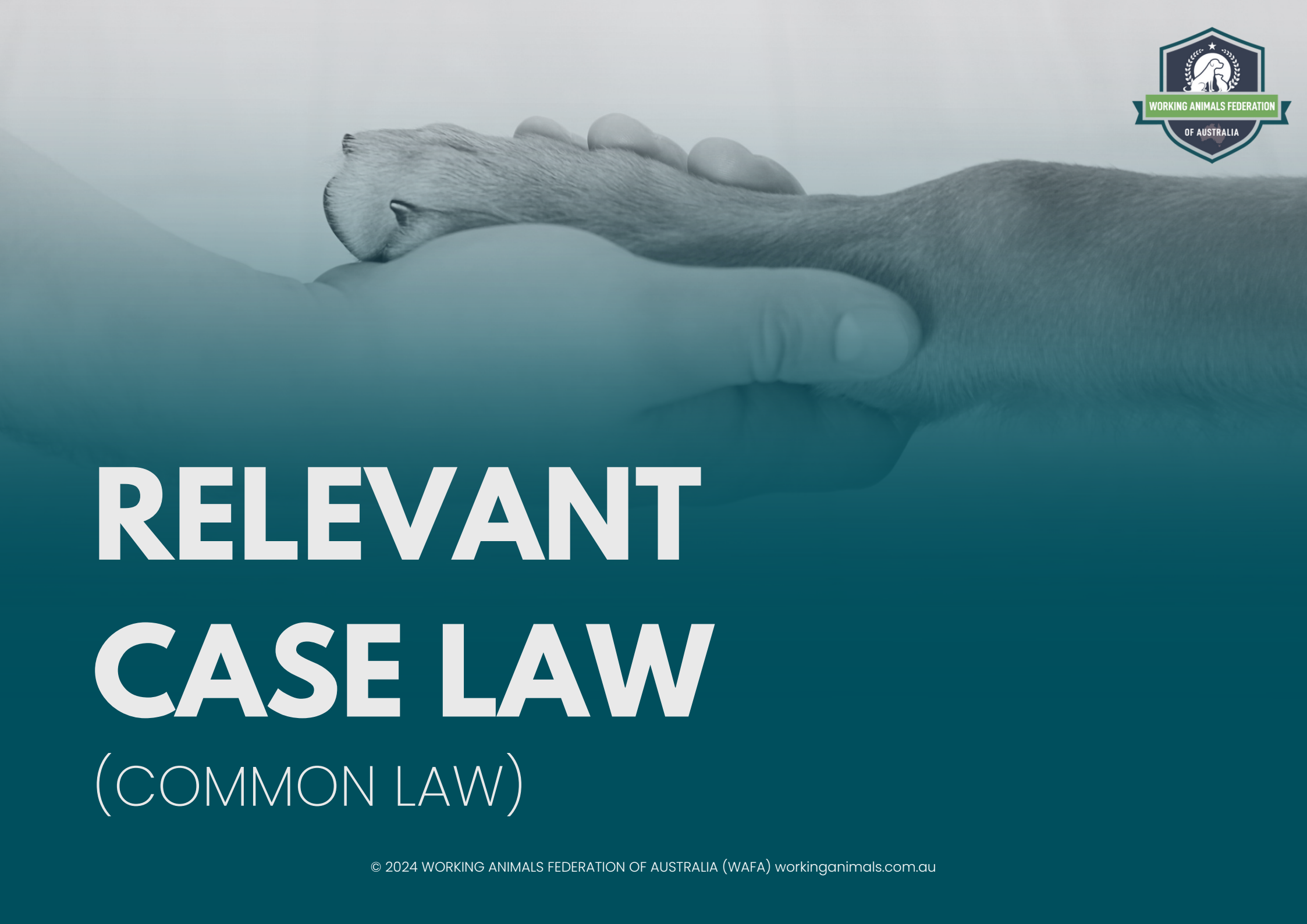


The background of the slide is a photograph of a human hand gently holding a dog's paw. The image is overlaid with a semi-transparent teal gradient. The text is white and positioned on the left side of the slide.

RELEVANT CASE LAW

(COMMON LAW)



The lack of clarity surrounding **s 9(2)(c)** has resulted in ongoing confusion around what constitutes an assistance animal. Most recently, in **Mulligan v Virgin Australia Airlines Pty Ltd [2015] FCAFC 130** the full court of the Federal Court determined that an assistance dog that was not necessarily accredited by a disability training organisation was classified as an Assistance Animal for the purposes of **Section 9**. One of the main issues considered in this case was the interaction between the **DDA** and other Federal laws and regulations, particularly the **Civil Aviation Safety Authority (CASA) Regulations**. Mulligan had a diagnosis of cerebral palsy, vision- and hearing-loss who requested to take his Assistance Dog on her Virgin Australia flight. The dog was not a registered Guide Dog, however. The **CASA Regulations** list a set of circumstances when an animal is recognised as an Assistance Animal, including that the animal be a Guide Dog or trained by an approved organisation. Mulligan's dog was trained but not by an organisation recognised under the **DDA** or the **CASA Regulations**.

Thus, Virgin Australia refused carriage of the dog as it would contravene the **CASA Regulations**. Mulligan lodged a claim, first with the **Australian Human Rights Commission (AHRC)**, followed by the **Federal Circuit Court of Australia**. In the first instance, the **CASA Regulations** were deemed to be a prescribed law under the **DDA** that allowed for departure from **Section 9** of the **DDA**, however, an appeal found that the Regulations were not a Prescribed Law and, therefore, Mulligan's dog was found to be an Assistance Dog under **Section 9** of the **DDA** as the dog was trained to alleviate Mulligan's disability. This case highlights the difficulties when it comes to interactions between various Laws and Regulations.

MULLIGAN V VIRGIN AUSTRALIA AIRLINES PTY LTD [2015]



In the case of ***Brown v Birss Nominees Pty Ltd [1997] HREOCA 54***, the ***Human Rights and Equal Opportunity Commission (HREOC)*** considered whether there had been a breach of the ***Disability Discrimination Act 1992 (Cth) (DDA)*** by failing to accommodate Brown's Assistance Dog in a caravan park which did not allow pets. Birss refused entry to Brown's Assistance Dog who mitigated his hearing loss. Brown provided proof that the animal was an Assistance Dog and tried to explain the legal requirements for public access. However, Birss refused partly based on her allegation that Brown was aggressive. It was found that refusal to provide accommodation was a breach of the ***DDA***. Brown was awarded \$1,000 in damages. Given that Brown was treated unfavourably due to his disability with Birss refusing to provide accommodation in part due to his disability, this was a violation of ***Sections 5(1) and 9*** of the ***DDA***.

This occurred in breach of ***Sections 23(1)*** of the ***DDA*** which means it is illegal to refuse public access as well as ***Section 24(2)*** which makes it illegal to refuse to provide goods or services based on disability. Although there is an exception to this under ***Section 24(2)*** of the ***DDA*** which allows for refusal if it created unjustifiable hardship, ***HREOC*** found that this was not likely based on the training of the animal. This decision was based on an anthropocentric approach where the focus was on the animals utility to its human handler. However, what our legislation fails to address is the interests of the animal. This is something the ***WAFA*** is campaigning to change.

BROWN V BIRSS NOMINEES PTY LTD [1997]



In the case of ***Sheehan v Tin Can Bay Country Club [2002] FMCA 95***, Sheehan had trained a dog to help him to relieve social anxiety which made it difficult for him to meet new people and interact with them. Sheehan attended the Tin Can Bay Country Club with his dog and allowed her to be off-leash, including outside alone. The Club initially required the dog to be on a leash, before banning her entirely. Sheehan alleged that the ban constituted discrimination on the grounds of his disability and complained to the **HREOC**. **HREOC** found that the broad definition of an Assistance Animal under the **DDA** was unsustainable because anyone who used a dog for companionship could claim that it alleviated disability. The Federal Magistrate's Court was then called to determine whether Sheehan's dog could be considered an Assistance Dog under the **DDA**. The Court noted that when the dog was outside away from Sheehan, she was not being used to alleviate disability. However, the Judge found that when the dog was in the immediate vicinity of Sheehan, she was acting as an Assistance Dog.

In regards to discrimination, it was found that the Club's conduct in requiring the dog to be tethered whilst under Sheehan's direct control did not pass the reasonable test. Hence, the Club was found to have breached the Act by requiring that Sheehan comply with this requirement which the majority of people without a disability are easily able to comply with. However, this was not a reasonable demand given the circumstances of the case. The Sheehan case determined that Assistance Dogs may include those who provide companionship to people with Psychological Conditions. However, this finding was heavily criticised by upholding the wide definition of Assistance Animals as found in the **DDA**. This was followed by a 2003 publication by the **Disability Discrimination Commissioner** surrounding **Section 9 of the DDA**, which is discussed below.

SHEEHAN V TIN CAN BAY COUNTRY CLUB [2002]



Ultimately, this finding can be contrasted against the finding in the case of ***Ondrich v Kookaburra Park Eco Village [2009] FMCA 260***. Ondrich lived with her dog in an eco-village whose title by-laws prohibited residents from keeping dogs and cats on private and common property. Ondrich was diagnosed with anxiety, depression and autism and the dog was recommended by her medical professional to alleviate her symptoms. Tendered evidence showed that Ondrich felt better in the company of the dog, but that the dog did not have any specific disability-related training. When the Park attempted to enforce its by-laws, mediation was attempted but failed.

This, an appeal was made to the federal Magistrate's Court arguing that removal of the dog was discrimination under the ***DDA***. The Court found that Ondrich had failed to establish that the dog was classified as an assistance animal as it did not have specific training to alleviate her disability. It was found that companionship was the cause of Ondrich's better psychological state of mind, but the evidence did not demonstrate that training was required to develop that companionship. Thus, unlawful discrimination was not proven.

ONDRICH V KOOKABURRA PARK ECO VILLAGE [2009]



Similarly, in the case of ***Matthews v Commissioner Queensland Police Service [2005] QSC 122***, a student alleged discrimination when his University called police to enforce their ruling that Matthews could not bring his 2 dogs into the campus library. Matthews argument stated that contrary to ***Sections 23 and 24*** of the ***DDA*** he had suffered discrimination by police who enforced illegal discrimination. The Court found that discrimination under ***Section 9*** did not occur because Mathew's dogs were not trained to mitigate his disability. Or in other words, the dogs did not have specific training to mitigate his disability.

This case also found that the case should have been heard by the ***HREOC*** rather than the Supreme Court, and that relief should have been sought against the University, rather than the police who were only the enforcing agent. Overall, this case showed that the animal must have specific training to alleviate disability to be considered an Assistance Animal under ***Section 9*** of the ***DDA. The Disability Discrimination and Other Human Rights Legislation Amendment Act 2009 (Cth)*** subsequently altered the scope of protections for those with disabilities using Assistance Animals to what we see today in ***Section 9*** of the ***DDA***.

MATTHEWS V COMMISSIONER QUEENSLAND POLICE SERVICE [2005]



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