



The Hon Mark Dreyfus QC MP
Attorney-General
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Email: Mark.Dreyfus.MP@aph.gov.au

Dear Hon Mark Dreyfus QC MP,

Subject: **Disability discrimination and Australia's legal system**

I write again about a previous Attorney-General's letter (posted 9th August 2011, ref. AG-MC11/07093, also available at <http://a4.org.au/a4/node/396>, see also <http://a4.org.au/a4/node/375>) in reply to our letter (18th June 2011).

Autism Aspergers Advocacy Australia (A4) wrote to your predecessor, The Hon. Nicola Roxon MP, on several occasions but got no reply. Despite having sent numerous copies of our letter¹, neither The Hon. Nicola Roxon MP nor anyone in her office acknowledged having received A4's letter and the concerns therein.

A4 is disappointed that previous Attorney-Generals did not address our concerns and issues.

First, please review A4's original letter (the letter sent on 18/6/2011) and try to respond to the actual issues it raises (and those issues raised in the unacknowledged letter to your predecessor). Note that, to our knowledge, the courts **never ever** made a final disability discrimination decision against a Government agency in the entire history of the *Disability Discrimination Act 1992*. This is an incredible outcome, given the state's prodigious responsibilities under international law for protecting all the rights of vulnerable people and ensuring their essential needs are met.

Second, the Government's draft Human Rights and Anti-Discrimination legislation, released since we raised issues, brings additional major concerns. The proposed legislation

- Continues to protect completely any and all discrimination that may be part of a government-funded disability service; and
- Downgrades protection from disability discrimination complaints from the requirement to prove "unjustifiable hardship" to "justifiable conduct" as a defence.

¹ On 4/1/2012, 5/1/2012, two copies on 13/12/2012 and another copy on 24/1/2013 ... as well as an email referring to the letter on 16/1/2012.

In other words, the law protects government-funded disability schemes that discriminate against some people with a disability, or people with selected types of disability. For example, current and proposed law protects government-funded schemes that limit access to essential disability services that are needed by many people with a disability. A specific example is that in most Australian states/territories people with complex needs or with challenging behaviour can only get essential services and support if they have an intellectual disability, or they may be denied essential disability services if they are diagnosed with an autism spectrum disorder.

Court officials, who have already shown their abysmal understanding of disability and the needs of people affected by disability, will judge what is “reasonable conduct”. This so-called “reasonable conduct” will be judged in court from the perspective of someone with no knowledge of, experience in, empathy with and little (or no) sympathy for applicants/complainants with a disability. Frankly, the proposed legislation and Australia’s legal system offer no discernible prospect for justice for Australians with a disability, especially the most vulnerable being those with severe and profound disability.

A4 looks forward to your prompt response. I am available to meet to discuss A4’s concerns. I can be reached by email (cnvnr@a4.org.au) or mobile

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Yours sincerely

Bob Buckley
A4 Convenor

14/2/2013

cc: Hon Jason Clare MP, Minister for Home Affairs and Justice;
Mr Graeme Innes AM, Disability Discrimination Commissioner;
David Fredericks, Attorney-General’s Department;
Greg Manning, Attorney-General’s Department.