

Submission to the NSW Law Reform Commission's Review of the *Anti-Discrimination Act 1977* (NSW)

The Office of the Advocate for Children and Young People (ACYP)

October 2023

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About the Advocate for Children and Young People (ACYP)

The Advocate for Children and Young People (ACYP) is an independent statutory appointment overseen by the Parliamentary Joint Committee on Children and Young People. ACYP advocates for and promotes the safety, welfare, well-being and voice of all children and young people aged 0-24 years, with a focus on the needs of those who are vulnerable and/or disadvantaged.

Under the *Advocate for Children and Young People Act 2014*, the functions of ACYP include:

- making recommendations to Parliament, and government and non-government agencies on legislation, policies, practices and services that affect children and young people;
- promoting children and young people's participation in activities and decision-making about issues that affect their lives;
- conducting research into children's issues and monitoring children's well-being;
- holding inquiries into important issues relating to children and young people;
- providing information to help children and young people; and
- preparing, in consultation with the Minister responsible for youth, a three-year, whole-of-government Strategic Plan for Children and Young People (the Plan).

Further information about ACYP's work can be found at: www.acyp.nsw.gov.au

Introduction

ACYP welcomes the opportunity to provide a submission to the NSW Law Reform Commission's (NSWLRC) preliminary review of the *Anti-Discrimination Act 1977* for New South Wales.

Ensuring that children and young people feel respected, accepted and included in society - including that they are free from discrimination, racism, abuse and violence, and are part of a community that supports them to be proud of their culture, diversity and individual identity – is a key focus areas of the *NSW Strategic Plan for Children and Young People 2022-2024* (Strategic Plan).

Throughout ACYP's engagement and consultation activities with children and young people across NSW, discrimination and bullying are consistently highlighted as key issues of concern. In ACYP's 2023 Strategic Plan research most young people (75%) felt they were accepted and respected at work and in post-school education. However, a smaller number of young people reported a lower level of respect and acceptance, for instance 25% of young people said they felt a low level of respect and acceptance at work, whilst 33% said they felt a low level of respect and acceptance at school. The young people who experience more discrimination are those who are young parents, have a disability, identify as LGBTQIA+ or identify as a First Nations person. The same research found young females were more likely to experience discrimination at work.

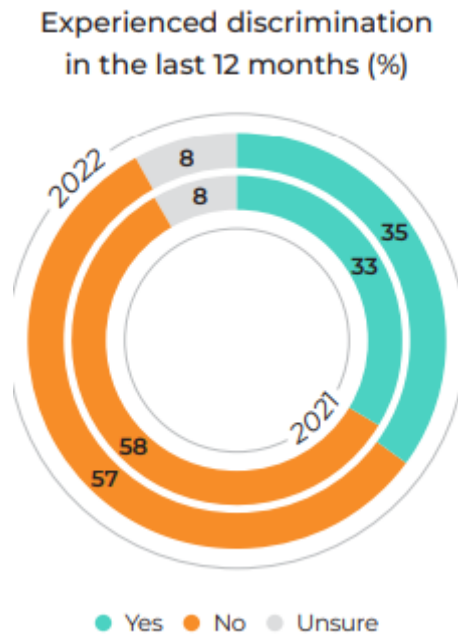
With one in three people advising they had experienced discrimination over the past year, this can also impact other areas of their wellbeing, such as their mental health.

In ACYP's most recent 2023 Youth Week Survey, discrimination and hate speech remained a key issue.

Children and young people’s experience of discrimination

A high proportion of children and young people report being discriminated against in ACYP’s surveys.

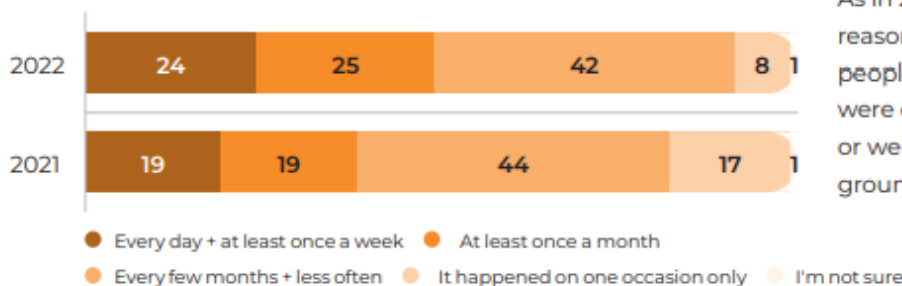
For instance, in ACYP’s 2022 Strategic Plan Tracking Survey, more than one in three children and young people in NSW reported experiencing discrimination in the past year, with cohorts such as those with a disability, or mental health conditions experiencing this significantly more frequently.



ACYP Strategic Plan Tracking Survey 2022 & 2021 – Q. Discrimination is when a person is treated differently (not in a good way) because of some aspect of their identity. In the last 12 months, do you feel that you have experienced discrimination or have been treated unfairly by others?
 Base: All participants who consented to answer questions on discrimination 2022 (n=816) 2021 (n=673)

Concerningly, a quarter of those who have been discriminated against in the last 12 months experience this at least weekly. This was higher among those who had an interaction with the justice system (34%), as well as those aged under 18 years (30%).

Frequency of discrimination (%)

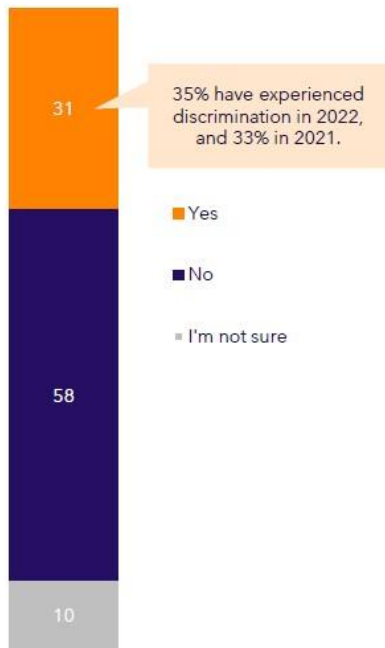


As in 2021, in 2022 the top reasons children and young people reported for discrimination were on the basis of: appearance or weight; ethnic / cultural background or skin colour; and gender.

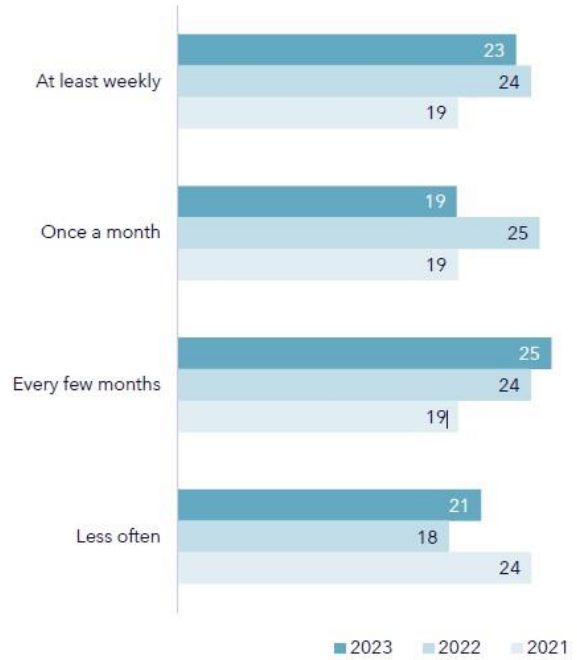
ACYP Strategic Plan Tracking Survey 2022 & 2021 – Q. How often have you experienced discrimination or been treated unfairly in the last 12 months? Base: those who have experienced discrimination, 2022 (n=282); 2021 (n=232).

Whilst the prevalence of discrimination remained relatively stable across 2021 and 2022, there was an increase in the frequency of discrimination, with nearly a quarter (24%) of those who have been discriminated against in 2022 reporting experiencing this at least weekly, up from one in five (19%) in 2021. Overall, young people and children reported increasing incidents of discrimination from 2021 to 2023 for all time periods, except for those experiencing discrimination on a monthly basis, as the following graph shows.

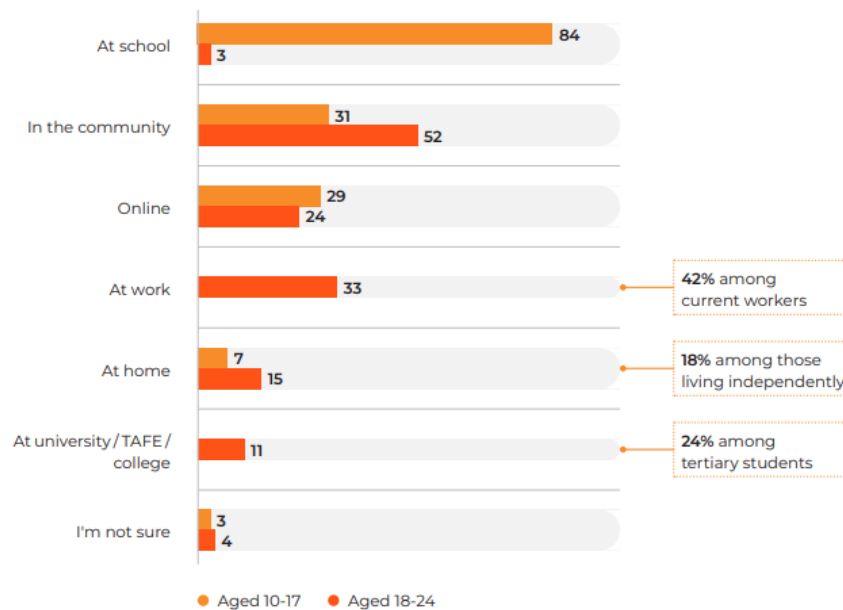
Experienced discrimination in last 12 months (%)



Prevalence of discrimination, amongst those who have experienced discrimination in the last 12 months...



Where discrimination occurred

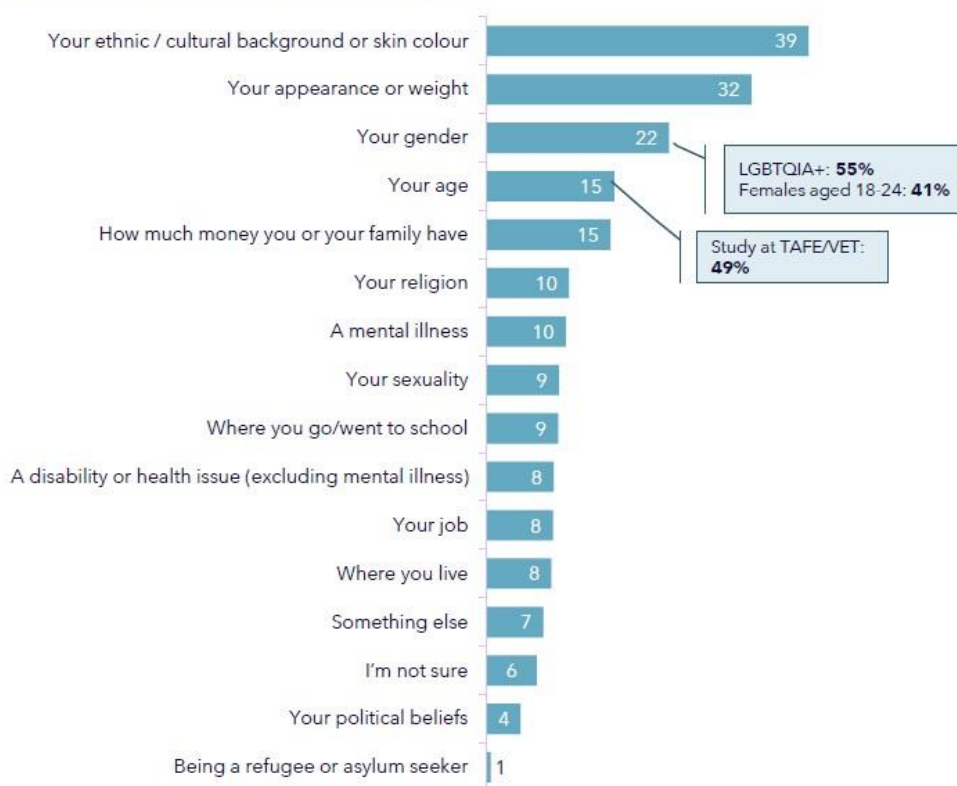


ACYP Strategic Plan Tracking Survey 2022 – Q. In the past 12 months, in which places or situations have you experienced discrimination or have been treated unfairly? Base: Those who have experienced discrimination 2022 (n=282)

As the previous graph shows, a high proportion of school aged children who experienced discrimination reported experiencing discrimination at school (84%), in the community (31%), or online (29%). For young people aged 18-24, just over half experienced discrimination in the community (52%), and one third experienced it at work (33%).

Young people were more likely to experience discrimination due to their appearance, if they identified as LGBTQIA+, had a mental illness, or came from a culturally diverse background. Of those who identified skin colour or ethnic background-based discrimination, almost 6 in ten identified as culturally or linguistically diverse. Four in ten of the young people identifying gender as a reason for discrimination were female (41%), whilst over half (55%) identified as LGBTQIA+.

What the discrimination was related to (%)



ACYP Strategic Plan Tracking Survey 2023 – Q. Thinking about the discrimination you have experienced in the past 12 months, do you think it was because of any of the following? (n =240)

In the 2023 Youth Week Survey, we asked children and young people a series of questions about their experiences of hate speech. Most young people told us they regularly saw hate speech online, with two thirds (66%) saying that the hate speech was directed at a group of people due to their race, gender, disability, religion or sexuality. Three in five young people said they have seen hate speech

either directed at them or directed at a group of people they identify with regularly or occasionally.¹ Young people were more likely to have hate speech directed at them personally or have seen hate speech directed at a group of people they identified with if they were LGBTQIA+ (89%), have a mental health condition (75%), have a mental and or another disability (70%), have some financial difficulties (69%) in the workforce (67%) or were concerned about the cost of living (67%).

¹ ACYP Youth Week Poll 2023

Experiences of LGBTQIA+ children and young people

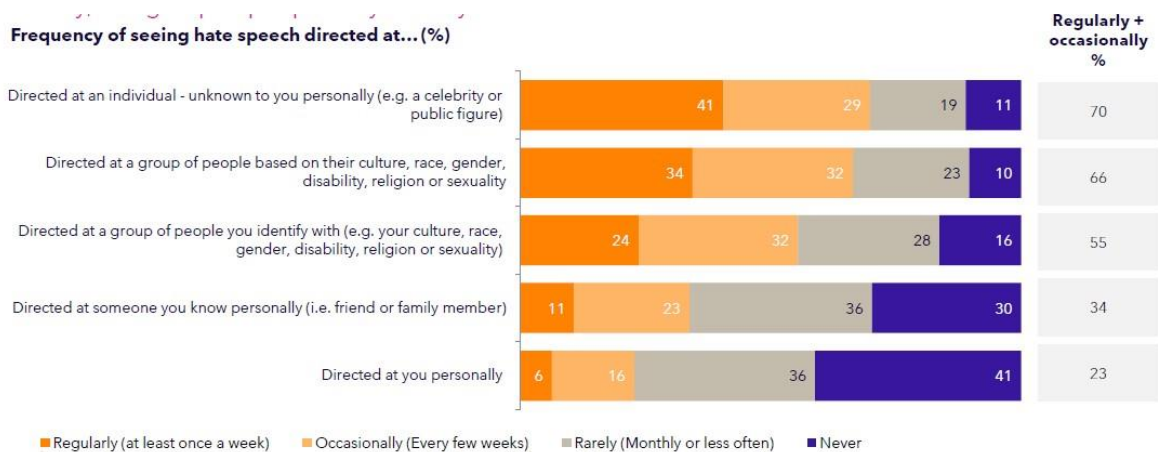
Whilst the majority of young people consulted by ACYP reporting feeling safe at school (69%) in ACYP’s quantitative study, many young people reported that bullying, homophobia, transphobia and harassment were prevalent across schools, causing some LGBTQIA+ young people to feel unsafe.² It was not uncommon for young people to report having changed school as a result.

In over 1 in 4 group discussions, young people reported having experienced physical violence at school. They also reported that teachers and school staff are often reluctant to intervene, and that this form of harassment is often not taken seriously.³ This frustration applied to the whole spectrum of harassment outlined from general homophobic comments that were not directed at anyone, through to ongoing bullying and violence. The majority of students across the consultations reported that most teachers did little to address homophobic and transphobic bullying in their school.

For example, some students spoke about teachers taking racism or swearing seriously and addressing it when it occurred but ignoring homophobic comments or slurs. Other students spoke about teachers suspending students for violations related to phone use, but that ongoing bullying and harassment did not result in a similar consequence.

“You go to those teachers who have that hate, they don’t do anything about it, they don’t see it as a problem, and it just continues constantly.”

In ACYP’s consultations, LGBTQIA+ young people have raised concerns about their safety and not feeling accepted and respected in a range of settings.⁴ For instance, students who attended, or had previously attended religious schools spoke about the difficulty being in classes where LGBTQIA+ concepts were discussed or taught as being sinful. At times this was taught by religious leaders in the school, but at other times by regular teachers. One young person recounted their experience of having their Geography teacher lecture them about why same sex marriage should not be legalised.



ACYP youth Poll 2023 Q: How often, if at all, have you seen hate speech online (i.e websites, social media, videos, images or comment threads) that was:

2 ACYP Voices of LBGTQI+ Young People and Children 2022 pp 11
 3 ACYP Voices of LBGTQI+ Young People and Children 2022 pp 11
 4 ACYP Voices of LBGTQI+ Young People and Children 2022 pp 9-10

Students pointed to these experiences as evidence of “*internal hate*” among the teaching staff. It was common for students at religious schools to raise concerns about their teachers’ views of homosexuality. A few also raised fear about being expelled if their school found out about their gender identity or sexual orientation, and one noted this had happened to them in their first year of high school.

“I went to a Catholic school for not even half a term and one of the kids found out that I had a girlfriend and then went and told the principal, and they actually expelled me from the school.”

Experiences of children and young people with a disability

Many children and young people in ACYP’s consultations talked about the positive experiences and acceptance they experience in educational facilities.⁵ They valued and recognised their schools, teachers and an environment that was dedicated to addressing challenges associated with learning with a disability, and that offered personal care and one-on-one support when necessary. They also valued the opportunity to access mainstream schools and classes (Support Units in mainstream schools), and schools that encouraged acceptance of diversity within the student group.

Some students living with a disability felt their education had been negatively impacted by discrimination, and their school’s lack of inclusivity and adaptability to their needs. Students spoke about their needs not being met and that schools needed to be better supported to in turn, support students with disabilities. They specifically mentioned that school buildings and classrooms needed to be adjusted to allow for easier access for children and young people with a physical disability and that more School Learning Support Officers (SLSOs) were needed in the classroom, particularly in circumstances where multiple children required intensive support at once.

Students spoke about the lack of direct consultation with them when decisions were being made about their education, emphasising the importance of speaking to them directly, and not solely to their parents or carers.

Children and young people with a disability talked about experiencing discrimination in many aspects of their lives including when seeking to access education, training, employment, accessing services and navigating systems, and when trying to participate in events and general community activities.⁶

⁵ ACYP the Voices of Children and Young People with Disability 2020 pp 17

⁶ ACYP the Voices of Children and Young People with Disability 2020

Current gaps in the Anti-Discrimination Act & recommended changes

ACYP has closely reviewed proposals from the Public Interest Advocacy Centre (PIAC) and Equality Australia, both of which recommended comprehensive reform rather than piecemeal change. Both PIAC and Equality Australia suggest that the Act cannot be brought up to date with current community standards through piecemeal change eg, in relation to the sections on complaint-handling and protection against religious discrimination. As PIAC points out the “*Anti-Discrimination Act 1977* (NSW) needs comprehensive reform so that it effectively protects people against discrimination on the basis of who they are, and promotes equality of opportunity and participation in our society for all people.”⁷

ACYP’s submission supports many of the recommendations made in both PIAC and Equality Australia’s submissions, whilst modifying some of these suggestions based on suggestions from children and young people conducted through ACYP’s consultations.

Modernising the definition of discrimination

We agree with the proposal in the submission from the Public Interest Advocacy Centre (PIAC) to modernise the definition of discrimination, and that the current comparator test for direct discrimination is too onerous, confusing and is often difficult to prove. PIAC suggests many people don’t understand the different types of discrimination and incorrectly identify the type of discrimination. Whilst the existing test for discrimination requires the complainant to use a comparator example, for instance to “establish whether conduct is discriminatory to a woman, it must be assessed against how a man was, or would be treated in the same situation.”⁸

To reflect modern understandings of discrimination and to be more inclusive as per PIAC’s submission, the definition for discrimination should include the following:

- combine direct and non-direct discrimination into a single definition
- focus on unfavourable treatment and removing the comparator test for direct discrimination
- recognise that discrimination may take place due to multiple protected attributes
- include intended future conduct within the definition of discrimination

Recommendations:

7. Public Interest Advocacy Centre. June 2023 Leader to Laggards the Case for Modernising the NSW Anti-Discrimination Act. <https://piac.asn.au/2023/06/28/no-time-for-tinkering-piac-calls-for-rewrite-of-nsw-discrimination-law-as-law-reform-commission-review-announced/>

8. Public Interest Advocacy Centre. June 2023 Leader to Laggards the Case for Modernising the NSW Anti-Discrimination Act. <https://piac.asn.au/2023/06/28/no-time-for-tinkering-piac-calls-for-rewrite-of-nsw-discrimination-law-as-law-reform-commission-review-announced/>

- update the definition of discrimination to combine direct and non-direct discrimination into a single definition, and include intended future conduct, removing the requirement for discrimination to have occurred before a complaint is lodged;
- remove the comparator test for direct discrimination, and replace it with a focus on unfavourable treatment

Expand protection for areas of public life

ACYP agrees with the submission from the Public Interest Advocacy Centre (PIAC) which suggests that the current Anti-Discrimination Act narrowly limits public life to work, education, the provision of goods and services, accommodation, and registered clubs. This means that under the Act there may be either no protection, or incomplete protection for many areas of public life.

ACYP recommends that the Act be updated to apply to discrimination in all areas of public life, while providing an exception for “private conduct”. Other legislation such as the *Racial Discrimination Act 1975* (Cth) has discrimination provisions of which can be applied to all areas of public life, as well as racial vilification provisions that apply to acts done ‘otherwise than in private’.

Recommendation

Apply discrimination to all areas of public life, whilst providing an exception for ‘private conduct.’

Expand who is provided protection under the Anti-Discrimination Act

The current Act provides protection for a range of personal attributes and situations, but compared to other states and territories the attributes and situations are limited, and do not conform with current community expectations. Currently the Act provides protection on the basis of:

- race
- sex – include pregnancy and breastfeeding
- transgender status
- marital or domestic status
- disability
- responsibilities as a carer
- homosexuality
- age.

We agree with PIAC’s submission that the Act needs to be updated, and expanded upon to provide protection to include:

- religious belief and activity. (Protected in all Australian jurisdictions except NSW, South Australia and the Commonwealth);
- intersex people (people with innate variations of sex);
- non-binary people are not protected under the term ‘transgender status’, which could be replaced with the term gender identity; and
- bisexual people and heterosexual people are not protected from discrimination through the use of the outdated term ‘homosexuality’.

Recommendations

- Provide protection for the expression of religious belief and religious activities;
- Provide protection for bisexual and heterosexual people, by replacing the term 'homosexual' with 'sexual orientation';
- Provide protection for intersex people by adding 'sex characteristics under the section on protected attributes'; and
- Provide protection for people with non-binary identities by replacing the term 'transgender status' with the term 'gender identity', and provide an updated, inclusive definition of gender identity.

We also agree with PIAC's proposal to consider expanding protection for the following groups or people in the following situations, in line with legislation in other states:

- subsection to domestic or family violence
- employment activity and status
- immigration status
- irrelevant criminal record
- political conviction/opinion
- socio-economic status
- industrial activity/trade union activity
- profession, trade or occupation
- lawful sexual activity
- accommodation status
- physical features
- genetic information
- medical record.

People living with a disability and positive obligation to make reasonable adjustments

Throughout ACYP's consultations, children and young people have reported experiencing bullying and being discriminated against due to a disability and report being discriminated against in education and training facilities, workplaces and in accessing services.⁹

We agree with PIAC's analysis that a range of structural barriers - including physical, environmental, and attitudinal - are the cause of much discrimination against people with disability. Thus, ACYP supports the proposal for a revised Act to impose a positive obligation on employers, educators, providers of goods and services and others to make 'reasonable adjustments' to support the full and equal participation of people with disability in all areas of public life.

PIAC suggests using the Victorian Equal Opportunity Act 2010 as a model, but extending this requirement to other institutions. The Equal Opportunity Act 2010 requires that:

⁹ ACYP The Voices of Children and Young People with Disability 2020 pp 16 - 35

'The employer must make reasonable adjustments unless the person or employee could not or cannot adequately perform the genuine and reasonable requirements of the employment even after the adjustments are made.'

We also propose that the definition of disability be updated through consultation(s) with children and young people living with disability, recognising that the concept of disability has evolved since the Act was written, and which provides a definition based on a physical deficits model. For instance, the Australian Institute of Health and Welfare recognises that disability involves an interaction with social norms and physical and institutional environments that will facilitate or hinder their participation in public life, suggesting that a child or young person's disability is "a dynamic interaction between a person's health condition(s) and environmental and/or personal factors", and can exist in varying degrees and combinations. 10

Recommendations

- Impose a positive obligation on employers, educators, providers of goods and services and others to make 'reasonable adjustments' to support the full and equal participation of people with disability in all areas of public life;
- Conduct a comprehensive review of the Act to make reasonable adjustments for other groups – such as LGBTQIA+, for people living with a disability, for people with family responsibilities or in relation to pregnancy;
- Conduct widespread consultation with children and young people living with disability around the definition of disability or base the definition on Australian Institute of Health and Welfare's definition.

Protections against vilification

ACYP agrees with the proposal from PIAC to modernise and make the vilification component of the Act consistent with the provisions in the Crimes Act, and to allow complainants to use a civil remedy.

As PIAC points out, the Anti-Discrimination Act (the Act) and the Crimes Act 1990 are inconsistent. People of faith or no faith, bisexuals, non-binary people and people with variations of sex characteristics are protected by the criminal law against public threats of violence but have no access to a civil remedy under the Act.

The Act should be modernised to ensure that all attributes, particularly disability, are covered by criminal provisions prohibiting threats or incitement of violence are also covered by civil vilification provisions.

PIAC suggests using the Racial Discrimination test for racial vilification rather than the Act's test for racial vilification which is defined as: 'incite hatred towards, serious contempt for, or severe ridicule of', and questions if this is appropriate. *Racial Discrimination Act 1975 (Cth)*, with section 18C

10 People with disability in Australia', *Australian Institute of Health and Welfare*, Web Report, Cat. No. DIS 72, 3 September 2019, <<https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/about-this-report/defining-disability>>, referencing the World Health Organisation's International Classification of Functioning, Disability and Health tool.

prohibiting ‘an act, otherwise than in private, if the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate’.

Recommendations

- Provide a civil remedy for all groups and attributes covered under the vilification section of the Crimes Act – people of faith or no faith, bisexuals, non-binary people and people with variations of sex characteristics, people living with a disability;
- Revise the rest for racial vilification to prohibit ‘an act, otherwise than in private, if the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate’, which is in line with the Racial Discrimination Act.

Positive obligations to prevent harassment, discrimination and vilification

Australian workplaces still experience high rates of sexual harassment, with two in five women (41%), and one in four men (26%) aged 15 experiencing sexual harassment at work, according to a recent survey on harassment in the workplace.¹¹ Whilst the survey found rates of harassment for young people aged 15-17 were higher at 47%, the survey also found that for anyone aged 15 and over that discrimination was higher for LGBTQIA+ people at 46%, 70% for intersex people, almost one in two for people with a disability (48%) and 56% for people from a First Nations backgrounds.¹²

ACYP’s recent consultations found that young females are more likely to provide a lower rating for the respect and acceptance they experience at work, whilst young males are more likely to provide a high rating for the level of respect and acceptance they felt at work.¹³

The Respect@Work report that was issued as a result of the Sexual Harassment National Inquiry (2020), found that implicit in the sex Discrimination Act is a requirement by employers to take all reasonable steps to prevent their employees engaging in sexual harassment or sex discrimination. The Respect@Work review found that an employer is not liable for the unlawful conduct of their employees, such as incidents of sexual harassment, if they have ‘taken all reasonable steps’ to prevent their employees from engaging in the conduct. The Respect@Work review found that employers would need to be proactively preventing discrimination and harassment in order to manage their potential liability under the Sex Discrimination Act.

ACYP supports PIAC’s recommendation to include a positive obligation to prevent sexual harassment in the workplace.

Recommendations

¹¹ Australian Human Rights Commission. Fifth National Survey on Sexual Harassment at Work. Accessed at: <https://humanrights.gov.au/time-for-respect-2022>

¹² Australian Human Rights Commission. Fifth National Survey on Sexual Harassment at Work. Accessed at: <https://humanrights.gov.au/time-for-respect-2022>

¹³ ACYP Strategic Plan Research 2023

- Add requirements to the Act requiring employers to proactively prevent discrimination and harassment.

Modernise exemptions for private schools

ACYP supports PIAC's proposal to modernise exceptions for private schools, as the Act is the only legislation which will allow private educational authorities to discriminate.

We agree with PIAC's point that widely interprets the broad exemption for religious organisations to discriminate both against people accessing their services, and against people employed by those organisations, on the basis of the protected attributes in the Act, such as sexual orientation, disability, marital status, is not in line with community standards. We also agree with PIAC's point that this exemption provided to religious institutions is not in line with community standards where those organisations receive State or Commonwealth funding.

If the Act were reformed it would not prevent religious schools from preferring people from their own faith. For instance, in Tasmania and ACT's Anti-Discrimination legislation, religious institutions can discriminate on the basis of religious faith, but not on other grounds such as disability, marital status, sexual orientation or gender identity.

ACYP agrees with the submission from Equality Australia's recommending the removal of this exemption, and to update the Act to be in line with the legislation in other states. ACYP supports the following recommendations from Equality Australia:

- that there should be no religious exemptions applying to the attributes of sexual orientation, gender identity and sex characteristics in employment, education or the provision of goods, services, facilities or accommodation to the public;
- that there should be a limited exemption applying to religious bodies only in circumstances where religion is relevant to a role or the service in question, and the discrimination would be reasonable and proportionate in all the circumstances of the case;
- to allow targeted religious exemptions for religious leaders, the education of religious leaders, and for the purposes of participation in religious practice or observances (similar to those in most federal, state and territory laws), consistent with international human rights law.

ACYP also heard from students who reported that the sex-education they had received was insufficient, often with no more than a passing reference to LGBTQIA+ concepts, if at all. This was particularly frustrating when it came to education about contraception and safe sex, which students note is essential and is currently included for heterosexual couples.¹⁴

Recommendations

- All exemptions only available to private educational authorities should be removed from the Act and not included in any future NSW anti-discrimination law.
- The Act should be amended, and any future NSW anti-discrimination law should ensure that:
 - there are no exemptions that allow religious bodies to discriminate on the basis of

¹⁴ ACYP Voices of LBGTQI+ Young People and Children 2022

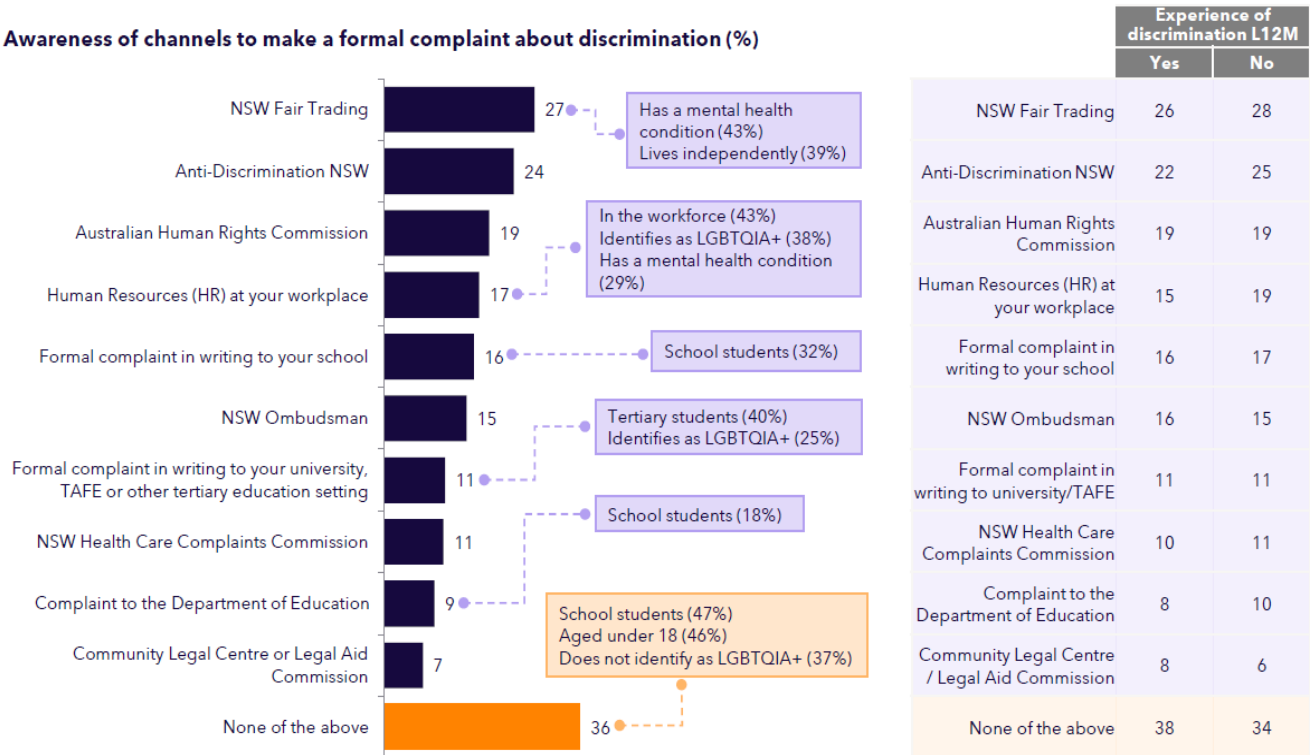
- sexual orientation, gender identity and variations in sex characteristics/sex, characteristics in employment, education or the provision of goods, services, facilities or accommodation to the public;
 - if religious belief or activity is added as a protected attribute, then any exemption applying to religious bodies should be limited to where religion is relevant to a role or the service in question, and where it would be reasonable and proportionate in the circumstances of the case;
 - targeted religious exemptions for religious leaders, the education of religious leaders, and for the purposes of participation in religious practice or observances are consistent with international human rights law.
- Religious schools should provide sex education as part of the PDHP curriculum which includes education about contraception and safe sex for LGBTQIA+ students, which is safe and respectful of sexual diversity and LGBTQIA+ rights.

The adequacy and accessibility of complaints procedures

Throughout ACYP's consultations, young people have told us they are much more likely to confide in a trusted friend or adult when they have concerns about their safety or wellbeing, rather than reaching out via a formal complaints' mechanism.

In ACYP's 2023 Youth Week poll we asked children and young people about their awareness of existing formal avenues to make complaints about discrimination. The results indicate that there are currently relatively low levels of awareness amongst children and young people, and there is significant room to improve young people's awareness of formal avenues they can use to report discrimination, particularly for those aged under 18 years.

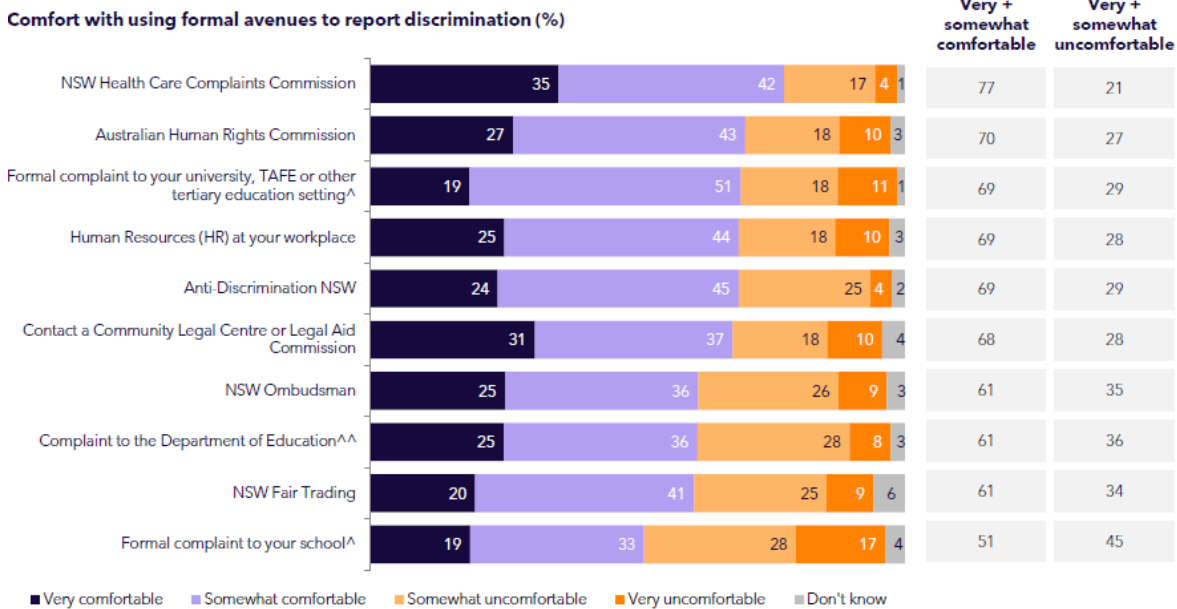
Awareness of channels to make a formal complaint about discrimination (%)



ACYP Youth Week Survey 2023 - Q44 Are you aware of the following places to make formal complaints about discrimination? Base: All participants who consented to answer questions on discrimination (n=630), those who have experienced discrimination in the last 12 months (n=250), those who did not experience discrimination in the last 12 months (n=380)

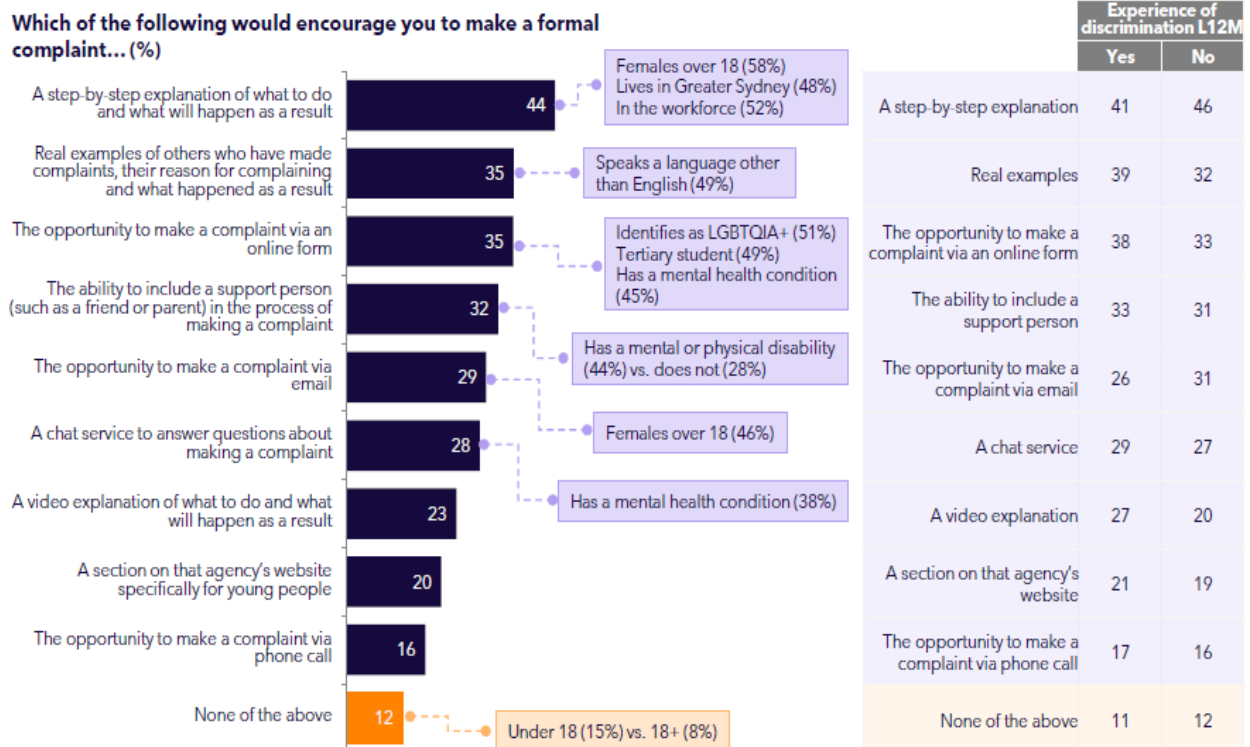
As a result, in addition to formal legislative changes or expansions to the scope of the Act, it is also important there is a focus on increased community awareness and education campaigns. This should include a focus on both ensuring that young people understand what discrimination is, and that there are supports available for young people who have experienced discrimination.

For those young people who were aware of existing complaints mechanisms, we also asked about their level of comfort with report discrimination. Of those who are aware of complaint mechanisms, over half reported they would be comfortable using them.



ACYP Youth Week Survey 2023 - Q45. How comfortable would you be to use the following formal avenues to report discrimination if this was something you were experiencing? Base: Participants who consented to questions on discrimination and aware of each avenue (n=45-176).
[^]Only asked of those who attend TAFE or University. ^{^^}Only asked of those who attend primary school or high school.

Young people told us that providing examples and information, specifically for young people, which explain the process and next steps are good ways to encourage them to make a complaint. They also valued opportunities to have a support person assist them to make a complaint, and to be able to make a complaint via an online form, email or chat service.



ACYP Youth Week Survey 2023 - Q46. Which of the following would encourage you to make a formal complaint if you had experienced discrimination? Base: Participants who consented to answer questions on discrimination (n=630)

ACYP's consultation with LGBTQIA+ children and young people also recommended that Anti-Discrimination NSW should receive funding to improve access for LGBTQIA+ young people to the complaints process, both in terms of awareness and the process itself. 15

As PIAC suggests, the existing Act is very difficult even for someone who is legally qualified to navigate without prior experience in the interpretation of the Act. The difficulty relates to the Act having separate parts for different kinds of discrimination such as racial, sex discrimination and discrimination based on transgender grounds, and each part describes where discrimination is prohibited, and the different exemptions. This complexity creates significant barriers for a young person to make a complaint without legal representation.

PIAC also proposes allowing a complainant, or a group of people, to nominate a representative to make a formal complaint under the Act.

We support PIAC's suggestion to consider modernising Anti-Discrimination NSW's ability to undertake inquiries and conduct research to identify and address systemic discrimination, as relying on individual complaints creates significant barriers for children and young people. ACYP's research also shows there are particular groups of children and young people – such as people with a disability, First Nations people, people from culturally diverse backgrounds, people with a mental health issue and LGBTQIA+ people who are at higher risk of bullying, harassment and discrimination. While section 119 of the Act provides some powers of this kind, it has evolved gradually and in an ad hoc manner, resulting in only some attributes being included in 119(1)(a): existing grounds such as race, sex, physical disability, homosexuality and transgender grounds are excluded.

Recommendations

- Develop accessible and easy-to-understand information targeted at young people with examples and case studies on how to make a complaint, the complaints process and what their rights are under the Act. This should include advertising campaigns to children and young people, especially those who are more likely to be discriminated against such as LGBTQIA+, young people with a disability, First Nations people and those from culturally diverse backgrounds;
- Modernise the complaint process allowing people to make a complaint via an online form, email or chat service, and include young people in the development of the process to ensure it is youth-friendly;
- Provide support people to assist young people, and young people with disabilities to make a complaint;
- Revise the complaints process to allow a representative to make a formal complaint under the Act;
- Expand Anti-Discrimination NSW's role to include the ability to undertake inquiries and conduct research to identify and address systemic discrimination.

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