

**Submission  
No 44**

## **EQUALITY LEGISLATION AMENDMENT (LGBTIQA+) BILL 2023**

**Organisation:** NSW Advocate for Children and Young People

**Date Received:** 14 April 2024

# Submission to the NSW Parliament Inquiry into the Equality Legislation Amendment (LGBTQIA+) Bill 2023

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The Advocate for Children and Young People (ACYP)

April 2024

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## About the Advocate for Children and Young People (ACYP)

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The Advocate for Children and Young People is an independent statutory appointment overseen by the Parliamentary Joint Committee on Children and Young People. The role of the Advocate is to advocate for and promote 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 disadvantaged.

### **Under the *Advocate for Children and Young People Act 2014*, the functions of the Advocate are as follows:**

- (a) to advocate for and promote the safety, welfare and well-being of children and young people
- (b) to promote the participation of children and young people in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their age and maturity,
- (c) to conduct special inquiries under Part 5 into issues affecting children and young people,
- (d) to make recommendations to government and non-government agencies on legislation, reports, policies, practices, procedures, and services affecting children and young people,
- (e) to conduct, promote and monitor research into issues affecting children and young people,
- (f) to promote the provision of information and advice to assist children and young people,
- (g) to prepare, in consultation with the Minister, a 3-year strategic plan for children and young people in the State,
- (h) such other functions as are conferred or imposed on the Advocate by or under this or any other Act.

### **In exercising functions under this Act the Advocate must do the following:**

- (a) focus on systemic issues affecting children and young people,
- (b) give priority to the interests and needs of vulnerable and disadvantaged children and young people,
- (c) consult with children and young people from a broad range of backgrounds and age groups throughout the State,
- (d) work co-operatively with other organisations that provide services to or represent the interests of children and young people,
- (e) work co-operatively with the Council.

Further information about ACYP's work can be found at: [www.acyp.nsw.gov.au](http://www.acyp.nsw.gov.au)

## Introduction

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The Advocate for Children and Young People welcomes the opportunity to provide a submission to the NSW Parliament Inquiry into the *Equality Legislation Amendment (LGBTQIA+) Bill 2023*. This submission is focussed on the third term of reference, “additional ways of improving the safety and wellbeing of the LGBTQIA+ community”.

The core functions of the Advocate are to promote and advocate for the “safety, welfare, well-being and voice of all children and young people aged 0-24 years”<sup>1</sup>, with a focus on the needs of those who are vulnerable and disadvantaged. That includes advocating to ensure 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. It also includes ensuring that children and young people are heard on matters that impact on their lives.

The Office of the Advocate for Children and Young People (ACYP) has conducted key work relevant to this Inquiry. Specifically:

1. *The Voices of Young LGBTQIA+ in NSW 2022 Report*
2. *The Strategic Plan for Children and Young People 2022-2024* including the annual tracking report(s)
3. Youth Week Polling 2021, 2022 and 2023.

Throughout ACYP’s engagement and consultation activities with children and young people across NSW, discrimination, bullying and feeling safe in their local communities are consistently highlighted as key issues of concern, particularly for young people who identify as LGBTQIA+. In 2022, ACYP undertook consultations with children and young people who identify as LGBTQIA+.

In all the work set out below, young people who identify as LGBTQIA+ consistently say that they experience discrimination, hate speech, violence and harassment in a range of settings. Some students even shared the need to move schools to escape the abuse and harassment they experienced.

ACYP’s 2023 Strategic Plan research found almost one in three (31%) 10- to 24-year-olds said they experienced some kind of discrimination within the last 12 months, 49% identified as LGBTQIA+<sup>2</sup>. In ACYP’s most recent 2023 Youth Week survey, discrimination and hate speech remained a key issue<sup>3</sup>. For young people who identify as LGBTQIA+, they were far more likely (89%) to have hate speech directed at them or others who are LGBTQIA+<sup>4</sup>.

Young people from the LGBTQIA+ community who participated in consultations with ACYP, shared that these experiences of discrimination also have significant impact on other areas of their wellbeing, such as their mental health.

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1 Advocate for Children and Young People Act 2014 NSW, Part 3 section 15  
2 The NSW Strategic Plan for Children and Young People Tracking Report 02  
3 ACYP Youth Week Poll 2023  
4 The NSW Strategic Plan for Children and Young People Tracking Report 02

Recommendation three of *The Voices of LGBTQIA+ Young People in NSW 2022 Report* states:

*All levels of government should ensure that legislative and policy changes include the rights and perspectives of young people who identify as LGBTQIA+.*

The Advocate supports the strengthening of legislation that improves the safety, welfare and wellbeing of young people who identify as LGBTQIA+ in NSW.

Including the voices of young people in the development of legislation that impacts them is an important step in ensuring that legislation is designed to meet their needs. In 2022, ACYP consulted with 233 young people aged between 12 and 24 years across a series of 37 small group discussions, across Sydney, Regional and Rural NSW.<sup>5</sup>

This report found that while many young people who identify as LGBTQIA+ were great supports to one another and sought out opportunities to celebrate their identity, they also faced difficulties in navigating communities that did not always accept them. While they have seen positive changes in recent years, young people who identify as LGBTQIA+ continue to face bullying, homophobia, and in some cases violence. Others spoke about lack of access to information and health care.

Throughout ACYP's ongoing consultations with young people in NSW and through regular, quantitative research, ACYP recognised that young people who identify as LGBTQIA+ experience particular vulnerabilities and poorer outcomes across a variety of measures. This report included findings from a large-scale qualitative consultation focused on the experiences of young people who identify as LGBTQIA+. It reflected their voices and their articulated needs.

Young people were asked a series of questions about their experiences in education and work and with health and mental health services; their 'coming out' experiences, whether they had experienced stigma, discrimination and violence and what advice they had for the NSW Government to improve the lives of young people who identify as LGBTQIA+.

In addition to the qualitative work, ACYP conducted a quantitative study that involved 1,005 young people aged 10-24 across NSW, which compared outcomes for young people who identify as LGBTQIA+ to their non-LGBTQIA+ peers. Of these, 185 identified as LGBTQIA+ and 820 did not. The study was conducted by SEC Newgate Research, which is a member of The Research Society and the Australian Polling Council.

While 69% of young people who identify as LGBTQIA+ in the quantitative study said they felt safe at school (rating 7 or more out of 10), 31% gave a lower rating and within that, 9% a very negative rating (4 or less).

In group discussions in the consultations, one in four of the young people who identify as LGBTQIA+ 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.<sup>6</sup> This frustration applied to the whole spectrum of harassment

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<sup>5</sup> ACYP Voices of LGBTQIA+ Young People in NSW 2022 Report

<sup>6</sup> ACYP Voices of LGBTQIA+ Young People in NSW 2022 Report

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, young people who identify as LGBTQIA+ have raised concerns about their safety and not feeling accepted and respected in a range of settings.<sup>7</sup> 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.

“I do recall at one of the private Anglican schools, I went for a year, there was an anti-trans lesson when it came to the religion class, because I remember them talking about ... teacher talking about transgender people, comparing them to people who said they identified as a different age or different race and like trying to say that it was crazy and unrealistic.”

Students pointed to these experiences as evidence of “*internal hate*”<sup>8</sup> 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.”

Young people recommended mandatory LGBTQIA+ inclusion education for teachers to create safe and welcoming school environments.

Experiences of homophobia and transphobia – both online and in person – were widespread among young people who participated in consultations, causing them to feel unsafe. In extreme cases, young people reported having been physically and sexually assaulted. Some young people spoke about the need to have a safety plan in place and recommended that young people should be able to access a safe space after hours in the event of crisis.

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7 ACYP Voices of LGBTQIA+ Young People in NSW 2022 Report

8 ACYP Voices of LGBTQIA+ Young People in NSW 2022 Report pp 70

Alarming, across many focus groups, young people shared incidents that had been reported and become police matters, for example, having been told to kill themselves by their peers; and in some extreme cases, young people had been physically and sexually assaulted. It is at this stage that young people interact with the justice system as either a result of their involvement in such matters, or as part of the incident reporting process.

Young people also reported experiences of harassment and abuse online, which impacted their mental health. In some cases, young people concealed their identities as a protective mechanism.

Furthermore, the issue of domestic violence in same sex couples was also raised within the 2022 LGBTQIA+ consultations. Young people expressed concern that this is an area that is not often spoken about or addressed. When asked to rate their feelings of safety and support as an LGBTQIA+ young person during the consultations, 24% said they felt somewhat or very safe and supported, while 45% said they did not.

One of the key recommendations from this report, was that NSW Government should provide safe spaces for young people who identify as LGBTQIA+ to access support after hours. As part of this recommendation, it was suggested that specialist LGBTQIA+ inclusion and support training, should also be provided to domestic violence and crisis support services, as well as to other frontline workers. Crisis services should consider hiring practices to promote gender and sexual diversity the report recommended. Police should be provided with similar training, which would include training around the appropriate referral pathways for LGBTQIA+ people experiencing domestic or family violence,

“Discrimination is everywhere. I think NSW Government really can’t have control over people who discriminate other but can make strict rules over whoever discriminates other. As the NSW Government is trying their best to make other community members feel respected and accepted in society.”

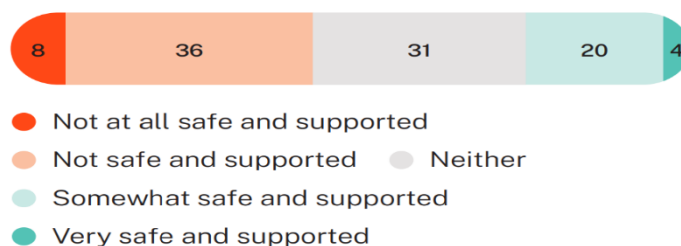
In the quantitative surveys we asked 185 young people who identify as LGBTQIA+ to rate their feelings of safety and support as an LGBTQIA+ person in the past 12 months<sup>9</sup>. We found that around one in four LGBTQIA+ young people, who participated in the survey, had experienced bullying or discrimination in the prior 12 months. Young people from diverse backgrounds reported facing additional challenges in both identifying as LGBTQIA+ and being from a culturally and linguistically diverse background, being Aboriginal, living in a rural or regional area or living with disability.

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<sup>9</sup> The quantitative research also included surveying 820 non-Young people who identify as LGBTQIA+ as a comparison.



### Feelings of safety and support as an LGBTQIA+ young person



ACYP LGBTQIA+ Report 2022: Consultation-based individual response question. Base: n=157 – some participants chose not to respond.

In the consultations with young people across NSW who identified as LGBTQIA+<sup>10</sup> we asked them about their experiences in the workplace. Young people reported a mixture of workplace experiences, with the theme of being pleasantly surprised by positive experiences being the most common, as they are often navigating spaces with a sense of uncertainty and caution. Additional qualitative data from this report indicated experiences of receiving dismissive comments from older workers or customers as well as experiences of overt harassment, either from co-workers or customers. Meanwhile, young people also spoke about being misgendered at work and the difficulty and discomfort they felt in being required to use their deadname in formal, legal documents. Several young people suggested that introducing all staff with pronouns particularly when new staff join an organisation, could be an easy way to make workplaces more inclusive. ACYP subsequently developed a guide on *How to support LGBTQIA+ Young People in your Workplace*<sup>11</sup> based on the feedback and recommendations of Young people who identify as LGBTQIA+.

*The Voices LGBTQIA+ Young People in NSW 2022 Report*<sup>12</sup> recommended that Anti-Discrimination NSW should receive funding from the NSW Government to improve access and awareness of the complaints process for young people who identify as LGBTQIA+ through targeted information and advertising campaigns. The report also recommended young people who identify as LGBTQIA+ should also be involved in reviewing the process of making a complaint to determine whether there are opportunities to make the process more accessible and youth friendly. This involvement will ensure the voices of young people who identify as LGBTQIA+ inform the systems that impact them.

10 ACYP Voices of LBGTQI+ Young People in NSW 2022 Report pp 84 – 90

11 ACYP Voices of LBGTQI+ Young People in NSW 2022 Report pp 90

12 ACYP Voices of LBGTQI+ Young People in NSW 2022 Report pp 90

## ACYP's Strategic Tracking Reports

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*The Strategic Plan for Children and Young People 2022-2024 (the Plan)* is the second whole-of-government plan for all children and young people in NSW, bringing together initiatives undertaken across government under six core commitment areas. The Plan plays a key role in bridging the gap between government policies and initiatives, and children and young people's voices and perspectives to create a future where all children and young people have the supports, they need to thrive.

ACYP has committed to undertaking and publishing results from an annual quantitative survey that tracks the experiences and perceptions of children and young people in NSW between the ages of 10-24, across these six key areas of the Plan. *The NSW Strategic Plan for Children and Young People Tracking Report 01* highlights the changes in children and young people's experiences since 2022, with the areas of focus; 'Health and Wellbeing' and 'Environments for Joy and Fun'.

*The NSW Strategic Plan for Children and Young People Tracking Report 02* highlights the changes in children and young people's experiences in the last 12 months and identifies recent trends, with the 2023 areas of focus on 'A Good Standard of Living' and 'Respect and Acceptance'.

In ACYP's 2023 *NSW Strategic Plan for Children and Young People: Tracking Report 02*, approximately one in three children and young people in NSW reported experiencing discrimination in the past year, with cohorts such as those who are LGBTQIA+ or living with a disability, experiencing this significantly more frequently.

Young people who identify as LGBTQIA+ were among the cohort that continue to report poorer outcomes than their counterparts on each of the following metrics: adequate meeting of basic living needs; positive experiences of relationships; ease of access to support and services, experiences of bullying and discrimination and feeling a lack of respect and acceptance in their daily lives.

Concerningly, a quarter of those who have been discriminated against in the last 12 months experience this at least weekly.

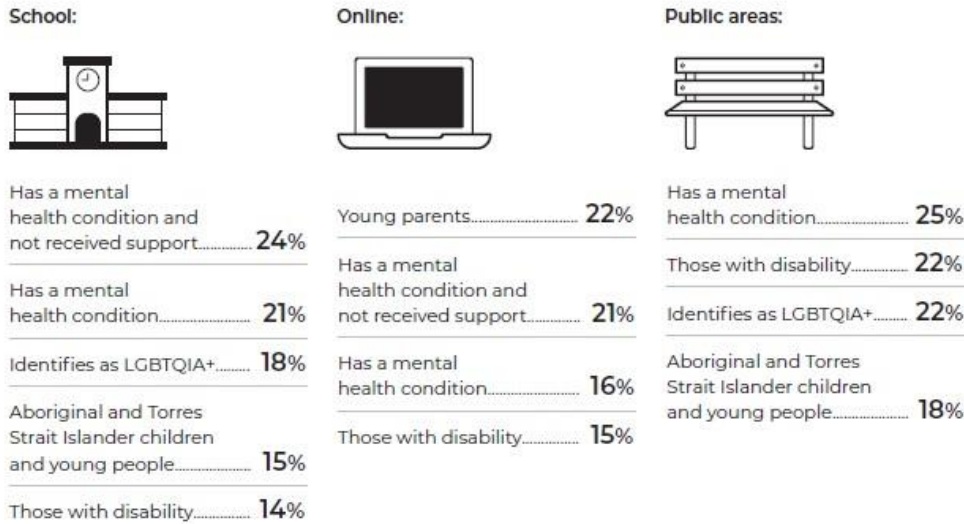
Whilst the prevalence of discrimination remained relatively stable across 2021 and 2022, there was an increase in the frequency of discrimination, with nearly a quarter (24%) of those who have been discriminated against in 2022 reporting experiencing this at least weekly, up from one in five (19%) in 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.

Furthermore, 22% of young people who identify as LGBTQIA+ were more likely to rate feeling unsafe in public areas, with a similar amount (18%) rating a higher likelihood of feeling unsafe at school, as identified by the 2023 NSW Strategic Plan Tracking Report data.

ACYP's tracking report found that young people were more likely to experience discrimination due to their appearance, if they identified as LGBTQIA+ or came from a culturally diverse background. Four in ten of the young people identifying gender as a reason for discrimination were female (41%), whilst over half (55%) identified as LGBTQIA+. This

same report indicates that four in ten of the young people who reported experiences of discrimination from 2022-2023 identified as LGBTQIA+ and 40% of this cohort told us they experienced this discrimination at work.

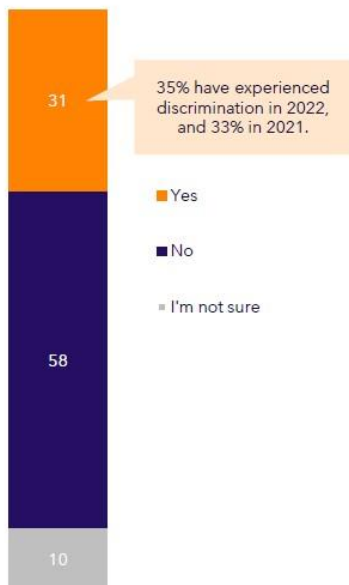
**Those more likely to report feeling unsafe in 2023 at (rating 0-4)**



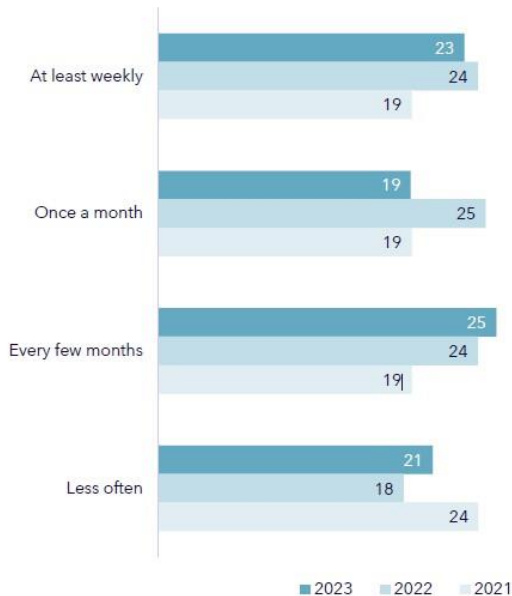
Q. To what extent do you feel safe when you are in these different situations?

**Prevalence of Discrimination 2021 – 2023**

**Experienced discrimination in last 12 months (%)**

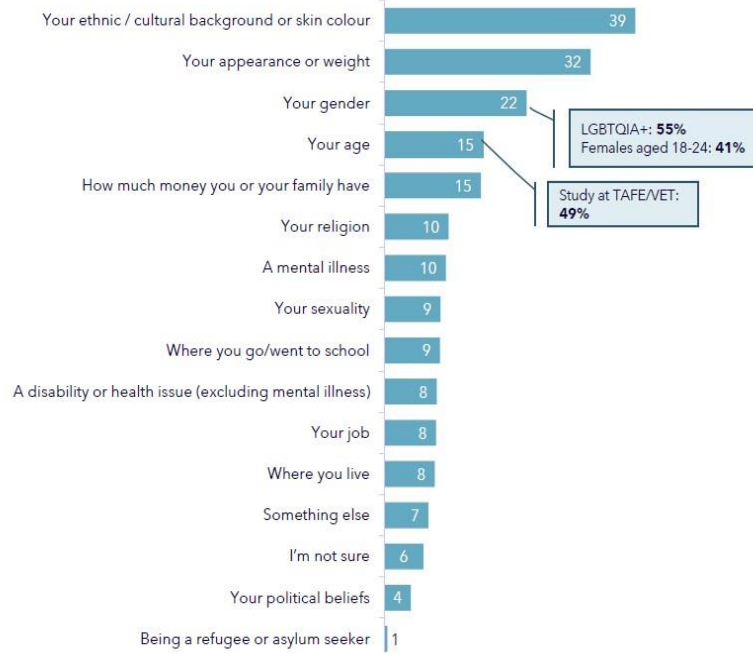


**Prevalence of discrimination, amongst those who have experienced discrimination in the last 12 months...**



Q16. 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? (2023: n=793, 2022: n=816, 2021: n=673) Q 18 In the past 12 months, in which places or situations have you personally experienced discrimination or have been treated unfairly? (2023: n=240, 2022: n=282, 2021: n=232)

**What the discrimination was related to (%)**



**Where discrimination has occurred...**



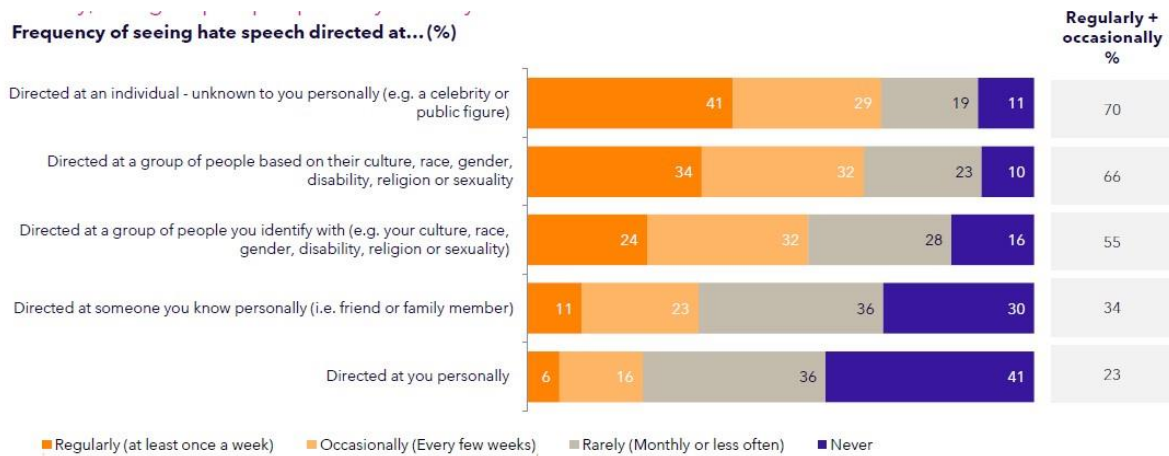
Q19. Thinking about the discrimination you have experienced in the past 12 months; do you think it was because of any of the following? Base: Those who have experienced discrimination (2023: n=240, 2022: n=282, 2021: n=145) Q17. In the past 12 months, in which places or situations have you experienced discrimination or have been treated unfairly?

## Youth Week Poll with Young People

Annually ahead of Youth Week, ACYP commissions a study, the Youth Week Poll, with SEC Newgate Research to explore the experiences, attitudes and behaviours of young people in a range of topics that are of strategic importance to ACYP and the NSW Government. ACYP have surveyed children and young people between the ages of 10 – 24 across NSW in this format on a yearly basis from 2021 – 2024.

In the 2023 Youth Week Poll, ACYP asked 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.<sup>13</sup> 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%).

ACYP also asked young people about their experiences of discrimination in our 2023 Youth Week Poll. Over half (53%) of the young people who took this survey were in the workforce, and 20% of this cohort told us they experienced discrimination in the workplace in the past 12 months.

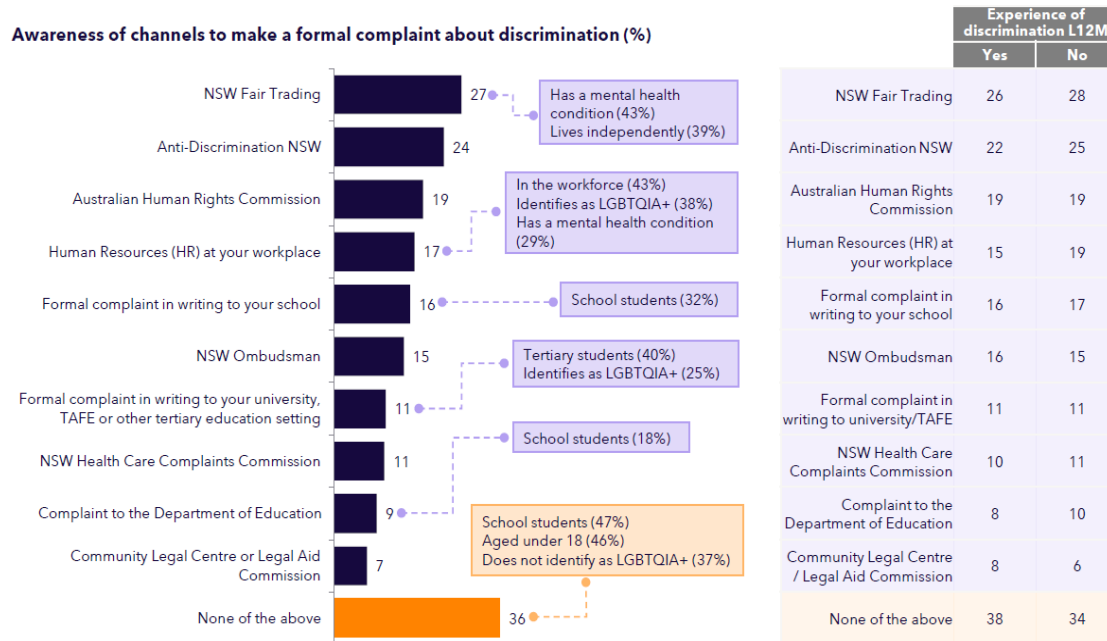


ACYP Youth Poll 2023 Q: How often, if at all, have you seen hate speech online (i.e., websites, social media, videos, images, or comment threads).

13 ACYP Youth Week Poll 2023

## Complaints Mechanisms

In ACYP’s 2023 Youth Week Poll we asked a total of 630 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.



ACYP Youth Week Poll 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)

Our polling shows many young people are not aware of existing mechanisms to make complaints. Only around one in four (24%) are aware of Anti-Discrimination NSW and one in five are aware of the Australian Human Rights Commission.<sup>14</sup>

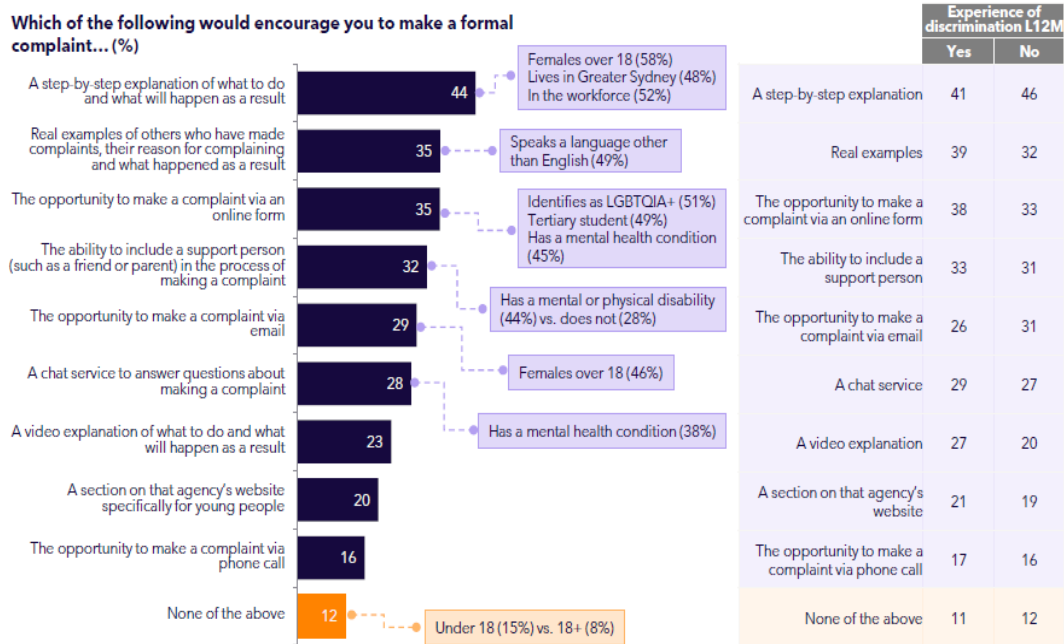
These findings show the need for increased community awareness and education campaigns, which ensure that young people understand what discrimination is, and that there are supports available for young people who have experienced discrimination.

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

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

14 ACYP Youth Week Poll 2023

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 Poll 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)

In ACYP’s submission to the *Review of the Anti-Discrimination Act* we suggested that, due to the difficulty in making complaints, that Anti-Discrimination NSW should be empowered 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.

“They should make sure that everyone is following the law and they should do the right research and actually listen to the children. If they say something’s up, then something’s up. They’re not just saying it to be attention seekers.”

## Recommendations

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In the work ACYP has conducted, young people who identify as LGBTQIA+ are more likely to experience discrimination, hate speech and harassment and as a result often feel unsafe at school, where they work or in the community. This results in poorer health, social and psychological outcomes for LGBTQIA+ young people. The Advocate is supportive of legislative changes and broader measures which recognise the rights of all young people who identify as LGBTQIA+, which will improve the safety and wellbeing of young people who identify as LGBTQIA+.

These consultations also highlight the need for providing youth friendly complaints mechanisms, as well as raising awareness amongst LGBTQIA+ youth, and all youth about their rights. As part of ACYP's submission to the Law Reform Commission's Review of the *Anti-Discrimination Act 1977* we made the following recommendations, which are also relevant to the third term of reference in this Inquiry - "additional ways of improving the safety and wellbeing of the LGBTQIA+ community":

- 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.

As part of the *Voices of LGBTQIA+ Young People in NSW 2022 Report*, the Advocate made a number of policy and legislative suggestions relevant to this Inquiry, which are:

- All levels of government should ensure that legislative and policy changes include the rights and perspectives of young people who identify as LGBTQIA+. ACYP also recommends that the NSW Government undertake legislative reform to:
  - Ensure that NSW legislation protects LGBTQIA+ students' rights regarding education and schooling; and
  - Remove the requirement for surgery to be a prerequisite to change a person's gender marker on their Birth Certificate in NSW, in line with other jurisdictions in Australia.
- NSW Department of Education to provide funding for teachers to complete LGBTQIA+ inclusion training to promote wellbeing and inclusion of LGBTQIA+ students.



- NSW Department of Education should develop a specific Anti-Homophobia, Biphobia and Transphobia policy to address mistreatment and bullying of LGBTQIA+ students. This policy should be accompanied by associated resources.
- NSW Education Standards Authority should include specific reference to diverse genders and sexualities in the PDHPE syllabus in instances of education about sexual behaviours.
- NSW Department of Education should ensure every school has an all-gendered bathroom option that all students, of all genders, are able to use, alongside a single-sex bathroom option.
- 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.
- The NSW Government should provide safe spaces for LGBTQIA+ young people to access support after hours, and should provide inclusion training to all frontline workers.
- Local councils across NSW should provide funding to promote the needs of LGBTQIA+ young people through events and training.
- NSW Ministry of Health should continue to fund and expand initiatives in the NSW LGBTIQ+ Health Strategy 2022-2027, keeping young people's needs and voices at the centre of decision-making and co-design opportunities.
- NSW Ministry of Health should develop an accreditation framework for LGBTQIA+ inclusive health services and link training delivered through the NSW LGBTIQ+ Health Strategy to this.
- NSW Ministry of Health should increase public-facing information on the NSW Ministry of Health webpage for 'LGBTIQ+ Health', including links to helpful resources.

## Conclusion

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ACYP thanks the Committee for considering these important issues and welcomes any follow-up questions from its members. If any further information is required, please contact ACYP on (02) 9248-0970 or at [acyp@acyp.nsw.gov.au](mailto:acyp@acyp.nsw.gov.au)