

Queensland Human Rights Commission Review of Queensland's Anti-Discrimination Act: Discussion Paper

Submission

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Background

The QFCC welcomes the opportunity to provide a submission to the Queensland Human Rights Commission (QHRC) in response to the *Review of Queensland's Anti-Discrimination Act: Discussion Paper* (the Discussion Paper).

The Queensland Family and Child Commission (QFCC) is a statutory authority of the Queensland Government responsible for promoting the safety, wellbeing and best interests of children and young people.¹ This includes advocating for the voices of children to be heard and their views to be taken into consideration in all decisions affecting them.²

The Discussion Paper identifies the vulnerabilities of children and young people as a significant barrier to engaging in a complaints process and the disproportionate impact that discrimination and sexual harassment can have on children and First Nations people.³

The QFCC holds concerns that the adult-centric nature of the *Anti-Discrimination Act 1991* (the Act) may prevent or discourage the participation of children and young people to resolve their concerns through the complaints process.

The QFCC would welcome amendments to the Act which improve the protection of children and young people, and their families. These amendments should seek to increase children's capacity to recognise, and government's capacity to respond to, the different ways in which discrimination can be expressed.

¹ *Family and Child Commission Act 2014* (Qld), s.4.

² United Nations 1989, *Convention on the Rights of the Child*, Article 12 accessed 8 February 2022 <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

³ Queensland Human Rights Commission, *Review of Queensland's Anti-Discrimination Act Discussion Paper*, p. 22-23.

Children's rights

Under the United Nations *Convention on the Rights of the Child* (UNCRC), the Australian Government has responsibility to uphold the rights of children. While the Preamble of the Act references the UNCRC, the Act in its current form does not reflect the full scope of rights guaranteed to children.

Article 2 of the UNCRC requires children's rights to be respected and ensured without discrimination.⁴ This article also requires all appropriate measures to be taken to ensure a child is protected from all forms of discrimination.⁵

Article 3 of the UNCRC requires the best interests of children to be a primary consideration in all actions concerning children.⁶ The QFCC is of the view that the best interest consideration includes building trust with children and young people and valuing their views.

Articles 12 and 13 of the UNCRC outline a child's right to participate in all matters affecting them and their right to seek, receive and impart information.⁷ The QFCC believes that incorporation of these rights into the Act is crucial to promote and facilitate children and young people's participation.

Complaints processes

The QFCC's *Rights, Voices, Stories project report: Identifying what matters to children and young people involved with the Queensland child protection system* (the project report) used the voices of children and young people to advocate for system changes and considered Articles 3 and 12 of the UNCRC.⁸

The project report identified that children and young people need to be helped to understand what their rights are and what they can do when their rights are not being met. They also need to be provided with assistance to represent themselves.⁹

Equity and fairness were identified as issues of importance to children and young people.¹⁰ A practical example of what equity and fairness looks like to children and young people was receiving timely and appropriate responses to requests for support and timely actioning of those requests.¹¹

The National Office of Child Safety's *Complaint Handling Guide* provides a guideline for the practical application of the UNCRC in a complaint process.¹² While the guide was developed within the context of dealing with allegations of child sexual abuse, it is founded on the National Principles for Child Safe Organisations (National Principles) using a child rights framework and is therefore transferrable to other complaint mechanisms involving children.¹³

⁴ United Nations 1989, *Convention on the Rights of the Child*, Article 2 accessed 8 February 2022

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁵ Ibid.

⁶ Ibid, Article 3.

⁷ Ibid, Articles 12 and 13.

⁸ Queensland Family and Child Commission, *Rights, Voices, Stories project report: Identifying what matters to children and young people involved with the Queensland child protection system*, 2021, p.2 accessed 23 February 2022

<https://www.qfcc.qld.gov.au/sites/default/files/2021-12/RVSreport.PDF>

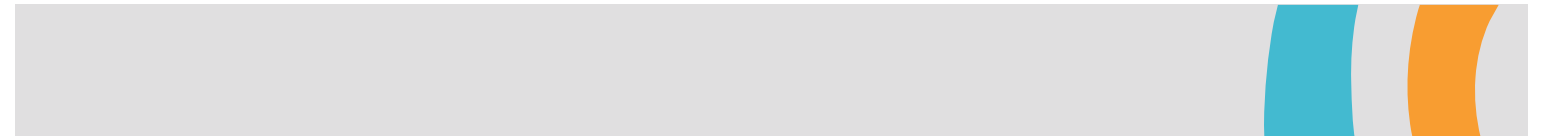
⁹ Ibid, p. 12.

¹⁰ Ibid, p. 11 and 17.

¹¹ Ibid, p.17.

¹² Australian Government, National Office for Child Safety, *Complaint Handling Guide Upholding the rights of children and young people*, 2019 accessed 9 February 2022 <https://childsafty.pmc.gov.au/sites/default/files/2020-09/nocs-complaint-handling-guide.pdf>

¹³ Ibid, p.i.



The National Principles prioritise children and young people’s informed participation in decisions affecting them and the need for ongoing education and training for staff working with children and young people to keep them safe.¹⁴

Guideline 1 of the *Complaint Handling Guide* outlines how to embed children’s rights, safety and wellbeing into a complaints process. It includes:

- making a clear commitment that no one will be penalised or suffer adverse consequences for making a complaint
- acknowledging children and young people have a right to know their rights
- ensuring children and young people know who to talk to if they are worried or feeling unsafe
- providing a culturally safe environment for Aboriginal and Torres Strait Islander children and young people and their families
- meeting the needs of children and young people from CALD backgrounds, those with disability and LGBTQIA+ children and young people
- removing barriers for children and young people to complain and making reasonable adjustments to meet their needs, including to accommodate their communication preference
- having a trauma informed complaints process and response
- asking children and young people about the type of support they need to participate in a complaints process
- providing timely feedback to children and young people and their families who raise complaints.¹⁵

The QHRC is encouraged to consider the project report, the National Principles and *Complaint Handling Guide* as a reference point for effective incorporation of children’s rights into the Act.

Active efforts

The QHRC should also consider the incorporation of ‘active efforts’ as a standard, to guide application of complaints processes. Active efforts originates from the Aboriginal and Torres Strait Islander Child Placement Principle and is a concept which is transferrable to the complaint mechanism under the Act.

Active efforts are purposeful, thorough and timely efforts, supported by legislation and policy, that enable the safety and wellbeing of children and young people, in relation to responding to complaints.¹⁶

Active efforts ensure a proactive approach is taken when engaging with children and young people, facilitating the provision of information, support, and a culturally safe, age and developmentally appropriate environment for complaints to be raised and resolved.

The views of children and young people

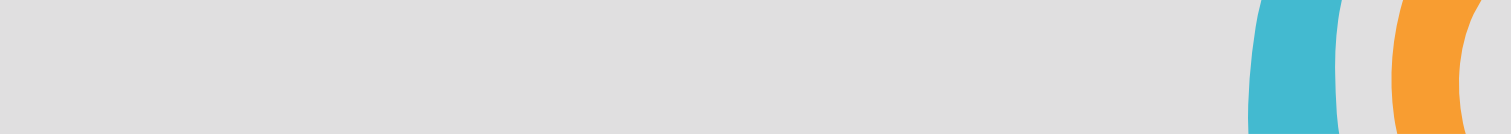
The QFCC has heard from children and young people that they may have difficulties identifying and articulating discrimination, particularly if the discrimination is indirect or is perpetrated by someone known to them.

¹⁴ Australian Human Rights Commission, *National Principles for Child Safe Organisations*, 2018, p.6 accessed 18 February 2022 https://childsafe.humanrights.gov.au/sites/default/files/2019-02/National_Principles_for_Child_Safe_Organisations2019.pdf

¹⁵ Ibid, p.1. accessed 23 February 2022.

¹⁶ Queensland Government, *Child Safety Practice Manual*, ‘Active Efforts’, accessed 18 February 2022

<https://cspm.csyw.qld.gov.au/practice-kits/safe-care-and-connection/child-placement-principle/responding/active-efforts>



In two roundtables with the QHRC children and young people explained education and resources in relation to what discrimination is, how to raise a complaint and what the process involves should be made available to children and young people.

In the QFCC's report, *Voices of Hope: Growing Up in Queensland 2020 (Growing Up in Queensland)*, children and young people described instances of experiencing discrimination without using that specific word.

LGBTQIA+ children and young people were more likely to tell the QFCC did not feel like they belonged in their community and were not listed to.¹⁷ These feelings of exclusion contributed to other stressors experienced by LGBTQIA+ children and young people, increasing the likelihood of self-harm and mental health disorders.¹⁸

Aboriginal, Torres Strait Islander and/or South Sea Islander children and young people told the QFCC they experienced unfair treatment from adults because of their race, and 52 per cent did not think adults in their community were friendly to young people.¹⁹

Disability and mental health

Mental health emerged as a concern for many children and young people who participated in *Growing Up in Queensland* and was most commonly mentioned in responses to a question about which issues required more attention from adults.²⁰

Children and young people with disability or long-term physical health condition told the QFCC they were less likely to feel a sense of community belonging compared with those who did not have a disability or health condition and were less likely to view their community positively.²¹ Only 42 per cent of young people with an emotional or mental health condition felt a sense of community belonging.²²

The QFCC is aware of the impact that discrimination on the basis of disability and mental health can have on children and young people and their families, including the indirect impact of living with a parent who has faced discrimination.

The QHRC could also consider including disability as an attribute, and clarifying impairment to include mental health conditions and psychosocial disability, as referenced in the Discussion Paper.²³

The QFCC continues to have an interest in the impacts of discrimination on the rights of children and young people. We will continue to raise awareness, advocate and seek accountability from government to make sure children are not impacted by discrimination, and have access to appropriate complaints mechanisms when discrimination occurs. We appreciate the opportunity to take part in this process and would be happy to provide more information.

¹⁷ Queensland Family and Child Commission, *Voices of Hope Growing Up in Queensland 2020*, p.17 accessed 9 February 2022 <https://www.qfcc.qld.gov.au/keeping-kids-more-safe/listening-children-young-people/growing-queensland>

¹⁸ Ibid.

¹⁹ Ibid, p.18.

²⁰ Ibid, p.42 accessed 24 February 2022.

²¹ Ibid, p.17 accessed 9 February 2022.

²² Ibid, p.17-18 accessed 22 February 2022.

²³ Queensland Human Rights Commission, *Review of Queensland's Anti-Discrimination Act Discussion Paper*, p. 94-96