



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND YOUTH AFFAIRS
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Submission Cover Sheet

Inquiry into the management and minimisation of bullying
and violence in ACT schools

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Chair
Standing Committee on Education, Employment and Youth Affairs
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Inquiry into the management and minimisation of bullying and violence in government and non-government schools

Thank you for the opportunity to provide information to the Standing Committee on Education, Employment and Youth Affairs on the complaints and other feedback the ACT Human Rights Commission (HRC) receives in relation to bullying or occupational violence within ACT schools.

I understand the Public Advocate and Children and Young People Commissioner has also provided some information and assistance to the Committee regarding some best practices on the prevention of bullying and occupational violence.

ACT Human Rights Commission

The HRC is an independent agency established by the *Human Rights Commission Act 2005* (ACT). The HRC includes the President and Human Rights Commissioner, the Public Advocate and Children and Young People Commissioner, the Disability and Community Services Commissioner, the Discrimination Commissioner, the Health Services Commissioner, and the Victims of Crime Commissioner.

Complaints made to the HRC

In my role as the Disability and Community Services Commissioner and the Discrimination Commissioner I can accept complaints about the provision of a service for children and young people (which includes the provision of education) and I can accept complaints of unlawful discrimination in the area of education on a range of protected attribute grounds including race, religion, disability, , sexual orientation, gender identity, immigrant status and sex. The Act also provides that we can accept a complaint where a person has aided or abetted an unlawful act to occur. This may include an omission such as not taking adequate steps when bullying has occurred because of a person's protected attribute.

Complaints can be made to the HRC about a service provided to children and young people where the service is not being provided appropriately, the provider of the service has acted

inconsistently with the generally accepted standard of service delivery, or the service is not being provided.

Complaints can also be made to the HRC about unlawful discrimination in the area of education, and the *Discrimination Act 1991* provides that it is unlawful for an educational authority to discriminate against a person by failing to accept a person's application for admission as a student, or in the terms and conditions on which it is prepared to admit the person as a student. It is also unlawful for an educational authority to discriminate against a student by denying them access or limiting their access to any benefit provided by the educational authority, or by expelling the student, or by subjecting them to any other detriment. There are some exceptions for educational institutions conducted for religious purposes.

The HRC has received a small number of complaints which raise issues of bullying in a school context, in addition to other related issues such as discrimination on the grounds of disability, physical features, and race. Complaints about bullying can also raise other related issues such as not being provided appropriate or adequate reasonable adjustments for a disability and other elements of alleged unfair treatment of students.

The HRC is able to assist in resolving complaints in the most appropriate way relevant to any particular complaint. Conciliation is the primary mechanism used to resolve complaints, particularly where there is the likelihood of ongoing relationships in areas like employment, education, or accessing local services. Conciliation is an informal, accessible, confidential process where we assist the parties to resolve a complaint.

The kinds of actions that can be agreed upon to resolve a complaint depends on what the parties are open to, and what the complaint is about, but some examples of actions which may lead to resolution include: an apology; an agreement to introduce changes to practices or policies; a commitment to train relevant staff; improved communication pathways; re-instatement of a service, or change to how it is provided, or by whom; and financial compensation for monetary loss or injury to feelings, or in recognition of a service leading to a poor outcome.

The HRC can also on its own initiative consider matters related to the Commission's functions, as well as acts or services that could be complained about to the HRC where it may not be possible for an individual to make a complaint.

Case examples

A woman made a complaint to the HRC about a school's response to reports that her son was being bullied by other students for a period of 9-10 months. The woman reported that the school had asked the students involved to sign agreements about standards of behaviour, but that the school did not impose consequences on them as per the agreement when they continued to bully her son. The woman's concerns related to ongoing bullying of her son and to her request that a transfer be expedited to enable him to reengage with school. The matter was resolved through conciliation.

A woman made a complaint on behalf of her daughter about a school's failure to make reasonable adjustments for her daughter's disability, and she also complained about race discrimination, vilification and bullying of her daughter on the basis of race and disability. The parent was dissatisfied with how the matter had been handled by the school. The matter was resolved through conciliation.

A man made a complaint on behalf of his primary-school aged son who was being bullied at school. He stated that the family had tried to work with the school but the matter remained unresolved, and he reported that his son had become suicidal and now required regular counselling. The matter was resolved through conciliation.

A man made a complaint about his son's school not adequately handling incidents of bullying occurring against his son because of his disability. Then man stated that the children who had been bullying his son were temporarily suspended for two weeks and then the cycle of bullying started again. The matter was resolved through conciliation.

In our experience parents generally raise concerns through the HRC complaint processes where they are dissatisfied with the nature of the response provided by the school to the alleged bullying. Parents' dissatisfaction can be due to a range of factors – the slow speed of action by the school; a transactional approach to a particular incident of bullying rather than considering a pattern of behaviour or investigating and dealing with the cause of the behaviour or conflict; insufficient weight given to the impact of bullying on a child due to factors such as race, colour, sexual orientation or disability that are attributes protected by discrimination law, and because of the particular barriers those characteristics create to achieving equality of treatment.

In a number of cases we have dealt with it is unclear what steps have been taken by the school to address the particular harm students experience when exposed to bullying, and in particular, bullying because of characteristics fundamental to a person's identity such as their race, disability, sexual orientation or colour. Complaints made to us by members of the Aboriginal and Torres Strait Islander community raise concerns that the management of complaints about bullying on the grounds of race are not treated with the necessary gravity and students are required to shake hands and 'make up' which does not address the source of the behaviour, and can lend itself to repeated bullying at school and frustration on the part of the parents and family.

I note that complaints regarding education can be very difficult for a child or family to bring to the HRC. Often a student will have a long relationship with an education provider given the necessity of attending school and there can be fear of repercussions for bringing a complaint given children are without parental oversight when attending school.

While we encourage all education providers to try and resolve complaints lodged with us through our conciliation process we find that a process-focussed approach requiring a lengthy written response, and where there are often delays in providing those responses to

us, adds to the frustration of the complainant by exacerbating an already difficult situation. A delay of a few weeks can mean a student is attending a school for a large percentage of a term without resolution of the complaint.

Access to education and learning is a key indicator for future social and economic wellbeing and delays in handling complaints lodged with the HRC have the effect of limiting a young person's equal access to education. Where a complaint about bullying, or concerns about the provision of reasonable adjustments or other issues affecting a student's access to education is made to an education provider, or to the HRC, I would encourage those providers to expedite the handling of those matters to optimise the student's educational experience, and to implement strategies that attempt to deal with underlying issues giving rise to bullying behaviours.

Our experience is that while schools may have a well developed anti-bullying policy or strategy they do not necessarily highlight the specific issues that can arise for students who may experience bullying or like behaviours due to race, colour, disability, sexual orientation, gender identity and characteristics particularly protected by the ACT Discrimination Act. A generic response may not be the most appropriate strategy to address ongoing behaviours of this nature. We note also that in complaints we have received students may be disciplined for responding to bullying or vilification on the basis of these personal characteristics while the initial behaviour is not acknowledged or is given equal weight which can be a significant concern for students and families.

I look forward to the progression of the Committee's inquiry into the management and minimisation of bullying and violence in government and non-government schools.

Please let me know if I can be of any further assistance.

A handwritten signature in black ink, appearing to read 'Karen Toohey', with a stylized, cursive script.

Karen Toohey
Discrimination, Disability and Community Services Commissioner