



What does the law say about vilification?

In NSW it is generally against the law to vilify people because of their:

- race, colour, nationality, descent, ethnic, ethno-religious or national origin;
- homosexuality (lesbian or gay);
- HIV or AIDS status; or
- transgender status.

This includes vilification because someone is thought to be lesbian, gay or transgender even if they are not, or thought to have HIV or AIDS, even if they don't.

NSW anti-discrimination law defines vilification as a public act that could incite or encourage hatred, serious contempt or severe ridicule towards people because of the above characteristics.

The vilification law only covers acts that are in public. It does not cover acts that are not public, for example abuse over a back fence that no-one else can hear.

Public acts could include the following:

- remarks in a newspaper, journal or other publications;
- remarks on radio or television;
- material on the internet, including social networking sites such as Facebook and micro-blogging services such as Twitter;
- graffiti;
- putting up posters or stickers;
- verbal abuse;
- making speeches or statements;
- making gestures; or
- wearing badges or clothes with slogans on them.

How can I work out if something is covered by vilification law?

To work out whether a particular act is covered by the vilification law, there are three things to check:

1. Did it happen publicly?

Was it possible for any member of the public other than those directly involved to see it, hear it or read it?

2. Could it have incited or encouraged hatred, serious contempt or severe ridicule?

How serious was it? Would it have had an impact on other people?

3. Is it an acceptable type of free speech and therefore legal?

Freedom of speech is also important in our society, so the vilification law makes allowances for this. The following are not against the law:

- A fair report by the media of someone else's act of vilification. The media will only be acting against the law if they add extra vilifying material or commentary to their report.
- Acts that are done "reasonably and in good faith" for academic, artistic, scientific, research or other purposes in the "public interest".
- Material that is privileged, such as statements made in parliament.

If you are not sure about whether the act you are concerned about is against the law, phone our Enquiry Service for more information.

What can I do about vilification?

You can try talking to the person or organisation that is causing the problem. Use whatever help you can. There are a range of community organisations that may be able to help you, for example:

Racial vilification — an ethnic community organisation, a migrant resource centre (see the phone book for listings), the Aboriginal Legal Service on (02) 8303 6600, or any other Aboriginal community organisation.

Homosexual vilification — the Gay and Lesbian Counselling Service on (02) 8594 9596 or 1800 184 527, or the Gay and Lesbian Rights Lobby on (02) 9571 5501.

Transgender vilification — the Gender Centre on (02) 9569 2366 or 1800 069 115, the AIDS Council of NSW on (02) 9206 2000 or 1800 063 060, or the Sex Workers Outreach Project on (02) 9319 4866 or 1800 622 902.

HIV/AIDS vilification — the AIDS Council of NSW on (02) 9206 2000 or 1800 063 060, or the National Association of People Living with HIV and AIDS on (02) 8568 0300 or 1800 259 666.

Violence and threatened violence

If you have been threatened with violence or you are physically attacked, you can contact:

- the Gay and Lesbian Anti-Violence Project on (02) 9206 2116 or 1800 063 060;
- a chamber magistrate to discuss the possibility of getting an “apprehended personal violence order”, that is, an order to prevent any further violence. To find out the address of your nearest magistrate, look under Local Courts in the phone book or refer to the Attorney General’s Department website at www.lawlink.nsw.gov.au/lc.
- the police — if you want to talk with an Aboriginal Community Liaison Officer, or a police officer of your own ethnic or ethno-religious background, you can phone the Sydney Police Headquarters and ask if there is a police officer of your race or background near you, or contact them through a local police station.

If you are homosexual or transgender, or you are HIV positive or have AIDS, you may find that a Gay and Lesbian Police Liaison Officer will be the easiest to approach. Phone (02) 9281 0000 to find out the

contact details of the nearest Gay and Lesbian Police Liaison Officer, or contact them through a local police station.

If you have any difficulties when dealing with your local police station, contact the Police Customer Assistance Unit on 1800 622 571. They should be able to refer you to someone who can help.

Media complaints

Depending what type of media is involved, you may be able to complain to:

- the Australian Communications and Media Authority on (02) 9334 7700 or 1800 226 667;
- the Advertising Standards Bureau on (02) 6173 1500; or
- the Australian Press Council on (02) 9261 1930 or 1800 025 712.

Of course, you can also complain to the editor or manager of the media organisation causing the problem.

Neighbour problems

If you are having a problem with your neighbour, the Department of Human Services, Housing NSW or a Community Justice Centre may be able to help you, as they mediate problems between neighbours.

Phone the Community Justice Centre head office on 1800 990 777 to find out where your nearest centre is, or consult the white pages of the phone book. You can also refer to their website at www.lawlink.nsw.gov.au/cjc.

Victimisation is also against the law

It is against the law for anyone to hassle or victimise you or treat you unfairly because:

- you have complained about to an employer or another person about vilification;
- you have complained to the Anti-Discrimination Board; or
- you have supported someone with a vilification complaint, or acted as a witness in a vilification case.

You can lodge a separate complaint of victimisation with the Anti-Discrimination Board if you have been victimised because of a complaint relating to vilification.

Making a complaint

First you need to work out if what has happened seems to be against the law. If you are not sure after reading this factsheet, phone our Enquiry Service for more information.

If what's happened does seem to be against the law, you can try talking to the relevant person or organisation listed on page 2. If you don't want to do this, or you talk to them but it doesn't solve the problem, you can make a complaint to the Anti-Discrimination Board. It won't cost you any money to make a complaint, and you don't need a lawyer.

You can only lodge a complaint of vilification if you have the characteristic or are from the group that you think has been vilified. For example, you are gay, lesbian or transgender, you have HIV or AIDS, or you are from the racial background in question.

Making a complaint

Your complaint must be in writing. You can make a complaint by completing our discrimination complaint form, which is available on our website or from our Enquiry Service. Another option is to write to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been vilified. Our addresses and phone numbers are at the end of this factsheet.

You can write to us in any language, or in Braille, and we will have your complaint translated free of charge. If you need assistance to write your complaint down, phone us and we will help you or refer you somewhere else for help.

If there are other people who also believe that they were vilified by the public act you are complaining about, you can include them in the complaint. However, the complaint should make it clear that they agree to being named in it.

We also accept complaints made on your behalf by representative community groups (for example an ethnic community association). In this case you must be named in the complaint and it must be clear in the complaint that you agree with it being made. You may also be asked to show that you consent to the complaint being made on your behalf.

A group complaint can be a very effective means of resolving a problem, as it emphasises the public nature of the vilification that you think has occurred.

If you want to make a complaint on behalf of a child or a person with a disability who cannot make their own complaint, contact us for more information.

The Board can only accept a complaint if the vilification occurred in the twelve months before we receive the complaint. If you make a complaint about vilification that occurred more than twelve months before we receive it, we may not investigate the complaint.

What happens after you make a complaint?

We will generally investigate your complaint to make sure that the act you are complaining about is against the law. If this is the case, and it does not involve threats of physical harm, we will try to conciliate your complaint. This means we will try to help you and the person or organisation you are complaining about to reach a private settlement that you both agree on. The Board is impartial in this process and does not take sides.

The settlement will depend on the circumstances of your case, on what the other parties are willing to offer and what you are willing to accept. It could be a published apology, a promise that the behaviour won't happen again, financial compensation, an agreement to run education programs on discrimination and vilification, and so on.

If your complaint involves a threat of physical harm or inciting others to threaten physical harm, the President of the Board may refer the complaint to the Attorney General. The matter will then be considered by the Director of Public Prosecutions (DPP), and the DPP will decide if it should be prosecuted as a crime.

We treat all complaints confidentially, but we have to inform the person or organisation you are complaining about of the complaint. This is so we can give them a fair chance to respond to your complaint. We will not release information about your complaint to anyone else except with your permission or if we are required to by law.

Most complaints are conciliated, but our experience is that this is less likely in the case of vilification complaints. If your complaint is not conciliated, you may be able to go to the Equal Opportunity Division of the Administrative Decisions Tribunal, which is like a court. It provides a legal judgment that must be followed. In some circumstances you can ask the Tribunal to keep your details confidential.

Protection from discrimination

Anti-discrimination laws in NSW also protect you from unfair treatment or harassment because of your race, age, sex, marital or domestic status, disability, homosexuality, carer's responsibilities, HIV or AIDS status or transgender status.

The anti-discrimination law generally protects you against these types of unfair treatment and harassment in the following areas:

- when getting a job or during your employment;
- when obtaining goods and services
- when renting accommodation;
- in State education; and
- in joining or getting service from a registered club.

For more information please refer to our website or phone our Enquiry Service.

The Anti-Discrimination Board of NSW

Enquiries

Phone (02) 9268 5544; TTY (02) 9268 5522
Toll free number 1800 670 812
Email: adbcontact@agd.nsw.gov.au

Complaints

Phone (02) 9268 5544; TTY (02) 9268 5522
Toll free number 1800 670 812
Email: complaintsadb@agd.nsw.gov.au

Website

www.lawlink.nsw.gov.au/adb

Sydney

Level 4, 175 Castlereagh Street, Sydney NSW 2000
PO Box A2122, Sydney South NSW 1235
Phone (02) 9268 5555; Fax (02) 9268 5500
TTY (02) 9268 5522

Wollongong

84 Crown Street, Wollongong NSW 2500
PO Box 67, Wollongong NSW 2520
Phone (02) 4224 9960; Fax (02) 4224 9961
TTY (02) 4224 9967

Newcastle

Level 3, 97 Scott Street, Newcastle NSW 2300
PO Box 1077, Newcastle NSW 2300
Phone (02) 4926 4300; Fax (02) 4926 1376
TTY (02) 4929 1489

Examples of vilification complaints we have handled

A homosexual man complained that he was being harassed and threatened by neighbours because of he was gay and had HIV. The complaint was not resolved so it was referred to the Administrative Decisions Tribunal. The Tribunal found the neighbours liable for vilification, and they were ordered to pay compensation to the man.

A Jewish man complained that a public official vilified Jewish people at a public meeting, and again during a radio interview about the first incident. The complaint was resolved at a conciliation conference when the public official agreed to make a public apology which would be distributed in a joint media release.

An African-American man complained that a real estate agent vilified him during an argument about viewing a unit, in which both parties were abusive. The complaint was not resolved so it was referred to the Administrative Decisions Tribunal. The Tribunal found that the estate agent's abuse was a public act because he was the balcony of the unit other residents could hear him. It awarded the complainant \$2,000 compensation, but said the amount was reduced because of his provocative behaviour.

A homosexual man complained that the content of a website vilified homosexuals. The complaint was not resolved so it was referred to the Administrative Decisions Tribunal. The Tribunal found that the website content did constitute vilification, and that the respondent was responsible for it, even though he said someone else had hacked into the website and put the material there. The Tribunal ordered the respondent to publish a retraction on the website, desist from putting any similar material on the site, and pay the complainant's quite substantial legal costs.