



Vilification

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.

Public threats of violence and incitement to violence

It is a crime to publicly threaten or incite violence on the grounds of race, religion, sexual orientation, gender identity, intersex or HIV/AIDS status. Complaints about public threats of violence or incitement to violence should be directed to NSW Police.

Contact:

- Police Assistance Line: 131 444
- All emergencies NSW Police - 000

The new offence of publicly threatening or inciting violence section 93Z, Crimes Act 1900 replaced the “serious vilification” offences in NSW anti-discrimination law on 13 August 2018.

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. See Local Court registries: http://www.localcourt.justice.nsw.gov.au/Pages/about_us/registries.aspx
- the police – You can ask to speak to an Aboriginal Community Liaison Officer, a LGBTIQ Liaison Officer (known as GLLO) or an officer of your own ethnic or ethno-religious background.

If you need further help in dealing with the police, you can contact the Police Customer Assist. Unit, 1800 622 571

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
- 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: <https://www.humanservices.gov.au/>; Housing NSW: <https://www.facs.nsw.gov.au/housing> or a Community Justice Centre (CJC): <http://www.cjc.justice.nsw.gov.au/> may be able to help you. CJC can also mediate problems between neighbours.

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 on.

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 on the balcony of the unit and 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.

The Anti-Discrimination Board of NSW

Enquiries

Phone (02) 9268 5544
Toll free number 1800 670 812
(if you are calling from outside Sydney)
Email: adbcontact@justice.nsw.gov.au

Complaints

Phone (02) 9268 5544
Toll free number 1800 670 812
(if you are calling from outside Sydney)
Email: complaintsadb@justice.nsw.gov.au

Telephone interpreter service

Phone 13 14 50

Website

www.antidiscrimination.justice.nsw.gov.au

Parramatta

Level 7, 10 Valentine Avenue, Parramatta NSW 2150
PO Box W213, Parramatta Westfield NSW 2150
Phone (02) 9268 5555 Fax (02) 9268 5500

Wollongong

84 Crown Street, Wollongong NSW 2500
PO Box 67, Wollongong NSW 2520
Phone (02) 4267 6200 Fax (02) 4267 6261

Newcastle

Suite 5, Level 5, 400 Hunter Street,
Newcastle NSW 2300
PO Box 1077, Newcastle NSW 2300
Phone (02) 4903 5300 Fax (02) 49297952

For more detailed information on making a complaint and the complaint process refer to our website and select 'Making a complaint', or ask for our factsheet on *Complaining to the Anti-Discrimination Board*.