



## Vilification

### What is vilification?

Vilification is generally any act:

- that happens publicly as opposed to privately; and
- that could incite (encourage, urge or stir up) others to hate, have serious contempt for, or have severe ridicule of you or a group of people, because of 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 you are thought to be lesbian, gay or transgender, or to have HIV or AIDS.

Vilification is against the law in NSW. The aim of this law is to ensure that people can live a dignified and peaceful existence free from vilification because of their race or homosexuality, transgender status or HIV or AIDS status.

This means that the following might be against the law:

- graffiti that vilifies people because of their race, homosexuality, transgender status or HIV or AIDS status;
- speeches or statements made in public that vilify people because of their race, homosexuality, transgender status or HIV or AIDS status;
- abuse that occurs in public and vilifies people because of their race, homosexuality, transgender status or HIV or AIDS status;
- statements or remarks in a newspaper, journal or other publication, or on the radio or television, that vilify people because of their race, homosexuality, transgender status or HIV or AIDS status;
- people wearing in public symbols such as badges or clothing with racist slogans that vilify people because of their race, homosexuality, transgender identity or HIV or AIDS status;
- gestures made in public that vilify people because of their race, homosexuality, transgender status or HIV or AIDS status;
- posters or stickers in a public space that vilify people because of their race, homosexuality, transgender status or HIV or AIDS status.

### How can I work out if something is vilification?

The actions listed above won't necessarily be vilification. If you want to work out whether a particular act is likely to be vilification, there are three important things to check:

#### 1. Did it happen publicly?

In other words, was it possible for any member of the public other than those directly involved to see it, hear it or read it? If the act or action happened in private it is not vilification.

#### 2. Could it have incited (encouraged or stirred up) hatred, serious contempt or severe ridicule?

In other words, how serious was it? Was it serious enough to have 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 law says that the following things are not vilification:

- A fair report by the media (newspaper, journal, TV, radio) 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" – for example, works of literature, scientific and academic works or reasonable academic discussions may not be vilification.
- Material that is privileged, such as statements made in parliament.

### What can I do about vilification?

If you can, talk with the person or organisation causing the problem. Use whatever help you can. There are a range of community organisations that may be able to help you.

**Racial vilification** — any group that represents people of your racial, ethnic or ethno-religious background; a migrant resource centre (see the phone book for listings), the Aboriginal Legal Service on (02) 9318 2122, or any other Aboriginal community organisation.

**Homosexual vilification** — any group that represents gays and lesbians, such as the Gay and Lesbian Counselling Service on (02) 8594 9596 or 1800 184 527 (4 pm – midnight), or the Gay and Lesbian Rights Lobby on (02) 9360 6650.

**Transgender vilification** — any group that assists transgender people, such as the Gender Centre on (02) 9569 2366, 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** — any group that represents people who are HIV positive or have AIDS, such as the AIDS Council of NSW on (02) 9206 2000 or 1800 063 060, or People Living with HIV and AIDS on (02) 9361 6011.

## Violence and threatened violence

If you have been threatened with or are the subject of a violent attack, you can contact:

- **the Gay and Lesbian Anti-violence Project on (02) 9206 2066 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 white pages of the phone book or refer to the Attorney General’s Department website at [www.lawlink.nsw.gov.au/lc](http://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, either phone the Sydney Police Headquarters and ask them 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, transgender or 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 to you, 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, between 8am and 10pm Monday to Friday, or between 8am and 6pm on weekends. They should be able to refer you to someone who can help.

## Media complaints

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

- the Australian Communications and Media Authority on 1800 226 667 or (02) 9334 7700;
- the Advertising Standards Bureau on (02) 6262 9822; or
- the Australian Press Council on (02) 9261 1930.

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 Housing or a Community Justice Centre may be able to help you, as they mediate problems between neighbours.

Phone the Community Justice Centre head office (02) 9790 0656 or 1800 671 964 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](http://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

Read through this factsheet to check that what’s happened seems to be against the law. If you aren’t sure if it’s against the law, phone us to check on your rights.

If what's happened seems to be against the law, and the relevant organisation/person listed above can't sort out the problem (or you don't want to complain to or use them), you may decide to make a complaint to the Anti-Discrimination Board. It won't cost you any money to lodge a complaint, and you don't need a lawyer.

You can only lodge a complaint of vilification if you are, or believe you are, of the group that you think has been vilified. For example, gay, lesbian or transgender, having HIV or AIDS, or of a particular race.

If you want to make a complaint, it must be in writing and it is best if it is signed by you. You can either send us a completed discrimination complaints form, or write a letter to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been vilified.

You can write to us in any language, or in Braille. If you need assistance to make a written complaint, phone the Board and we can help you or refer you to an organisation that can help you.

If anybody else believes that they were also vilified at the same time as you, you can include them in the complaint. However, the complaint should make it clear that they agree to being named in the complaint.

We also accept complaint on your behalf from your lawyer, or from an organisation representing a group of people. In this case the complaint must make it clear that you agree with the complaint being made and you must be named in the complaint. In some circumstances you may also be required 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 you think has occurred.

If you want to make a complaint on behalf of a child or a person with a disability, contact the Board for more information.

For us to be able to accept a complaint, the events involving vilification must have occurred in the twelve months before the complaint is received by the Board. If you make a complaint about events that occurred more than twelve months before you lodge your complaint, the Board may refuse to investigate your complaint.

### **For more detailed information on making a complaint**

refer to our website at [www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb) or ask for our factsheet on *Complaining to the Anti-Discrimination Board*.

## **What happens after you make a complaint?**

We have the legal power to investigate your complaint, and if it's against the law but does not appear to involve threats of physical harm, to try to conciliate it. This means that we will try to help you and the person or organisation you are complaining about reach a private settlement that you both agree on. The Board is impartial in this process and does not take sides.

Any settlement will depend on the circumstances of your case, and on what you and the other parties are willing to offer and accept. It could be a published apology, a promise that the behaviour won't happen again, financial compensation, an agreement to run education programs to try to stop the same thing happening again, 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 need to 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 will need to inform the organisation or person you are complaining about of the 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 it's possible to ask the Tribunal to keep your details confidential.

## **Protection from discrimination**

Anti-discrimination laws also protect you from unfair treatment or harassment because of your race, colour, ethnic

or ethno-religious or national origin, nationality or descent, age, sex, marital status, disability, homosexuality, carers' responsibilities, HIV or AIDS status or transgender status.

You are generally protected by anti-discrimination laws if you are discriminated against (treated unfairly) or harassed because you belong to one of these groups, in the following situations:

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

For more information please contact us at the Anti-Discrimination Board. Our addresses are listed below.

## The Anti-Discrimination Board of NSW

(open weekdays 9am-4.30pm)

### 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 St, Wollongong NSW 2500  
PO Box 67, Wollongong NSW 2520  
Phone (02)4224 9960; Fax (02) 4224 9961  
TTY (02) 4224 9967

### Newcastle

Level 1, 414 Hunter St, Newcastle West 2302  
Phone (02) 4926 4300; Fax (02) 4926 1376  
TTY (02) 4929 1489

### Enquiries

(02) 9268 5544

### Employers Advisory Service

(02) 9268 5544

### Toll free number

1800 670 812  
(if you are calling from rural or regional NSW)

### Website

[www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb)

## Examples of vilification complaints we have handled

A homosexual man complained that he was being harassed and threatened by neighbours because of his homosexuality and HIV/AIDS status. As the complaint was not resolved, it was referred to the Administrative Decisions Tribunal for hearing. The Tribunal found the neighbours liable for vilification, and they were ordered to pay compensation to the man.

An African-American man complained that a real estate agent had vilified him during an argument about viewing a unit, in which both parties were abusive and used offensive language. The complaint was not resolved so it was referred to the Administrative Decisions Tribunal.

The Tribunal found that the estate agent's abuse constituted a public act because it had occurred on the balcony of a unit and was audible to others residents in the block. It awarded the complainant \$2,000 compensation, saying the award was less than it otherwise would have been because of the provocative behaviour of the complainant.

A homosexual man complained that the content of a website vilified homosexuals. The complaint was not resolved through conciliation, so it was referred to the Administrative Decisions Tribunal.

The Tribunal found that the material on the website did constitute homosexual vilification, and that the respondent was liable for the content of the site, despite his allegation that someone else had hacked into it and added the material in question. It ordered that the respondent publish a retraction on the website, desist from putting any similar material on the site, and pay the complainant's quite substantial legal costs.