



FACT SHEET:

Vilification

Vilification on the basis of race, religion, sexuality or gender identity is prohibited by the *Anti-Discrimination Act 1991*.

**Warning: this page includes real life examples with language or content that may offend.*

What is vilification?

There are two types of vilification under the Act: unlawful vilification, which is a civil matter, and serious vilification, which is a criminal offence.

Unlawful vilification

Unlawful vilification is a public act that incites hatred towards, severe ridicule of, or serious contempt for a person or group because of their race, religion, gender identity or sexuality. For an act to be unlawful vilification under the Act it has to be all of the following:

- a public act;
- capable of inciting;
- hatred towards, serious contempt for, or severe ridicule of;
- a person, or a group of people;
- because of their race, religion, sexuality or gender identity.

Complaints about unlawful vilification are handled by us at the Commission through our complaints process.

Serious vilification

If the unlawful vilification includes a threat of harm to a person or their property, or inciting others to threaten physical harm to a person or their property, it is a **criminal offence**. This is called **serious vilification** and is a police matter.

A person convicted of serious vilification can face a possible jail sentence of six months or a fine of 70 penalty units (over \$9,000). The fine for a company is up to 350 penalty units (over \$46,000).

Examples of unlawful vilification

Race:

A person who used CB radio said over the radio that another CB user was a “wog” and “a dago slut” who should “go back to where she came from”, and told other listeners to “give her as much shit as you like”.

Religion:

A building’s outside wall was painted with a swastika and the words “No Jews”.

Sexuality:

Residents called out “faggots” to their neighbours in front of the landlord and where other neighbours could hear; and when a tradesperson went to the neighbour’s place the other residents said “Make sure those poofs pay you. Faggots are notorious for not paying.”

Gender identity:

When a debt collector went to the home of a transgender person in a unit block and the person refused to answer the door, the debt collector yelled out “fxxxing freak in there. Keep the kids away from the freak in that unit.”

When and where is vilification unlawful?

Unlike discrimination that is only unlawful if it happens in a specified area of activity, vilification is unlawful wherever it happens in Queensland, if it is a public act.

A public act includes any form of communication to the public, such as speaking, writing, printing, and displaying notices or messages, either online, in person, or in the media. It also includes any conduct which the public is able to observe, such as actions, gestures, and wearing or displaying clothing, flags, emblems or insignia.

If vilification happens in a work environment, an employer may be legally responsible for vilification by their employees, unless reasonable steps are taken to prevent it from happening.

Employers need to take reasonable steps to ensure they protect their staff from vilification and other types of discrimination and harassment, and make sure their workplaces are free of this type of behaviour.

This may include writing policy about vilification and making sure all employees, especially managers and supervisors, are trained in how to reduce or prevent incidents from happening. Employers should also introduce an effective process for dealing with complaints.

Employers or organisations can’t avoid their legal responsibility by saying they were not aware of vilification in their workplace.

This means that the employer, as well as the person or persons who engaged in the vilification, can be liable to pay compensation for loss or damage suffered by a person as the result of vilification.

Exceptions

The Act aims to balance the right to freedom of speech with the right to be free from discrimination, harassment and harm. Because of this, there are exceptions for some types of public acts.

These are:

- a public act done reasonably and in good faith: for purposes in the public interest, including discussion and debate; or for academic, artistic, scientific, or research purposes;
- a fair report of a public act;
- information about a person in proceedings for defamation;
- statements made in Parliament, or during the course of proceedings of a parliamentary body (also called parliamentary privilege).

For a public act to be considered reasonable and in good faith, and in the public interest, it must be motivated by the honest belief it was necessary to achieve a public discussion of matters in the public interest.

For example, a local councillor made a report to council which included comments about “sodomists” “preying on the children of normal human beings” and claiming statistics on infection and paedophilia were “proof” of the threat gay people posed to the community. The councillor’s defence was that it was in good faith and the public interest, but this was rejected by the Queensland Civil and Administrative Tribunal. The QCAT ruling stated his comments were “not reasonable” and “ill-informed and ignorant”.

A fair report of a public act refers to media coverage of vilification or alleged vilification.

For example, a factual newspaper report about an act of vilification which included a photograph or direct quote of the vilification, would not be considered vilification itself.

Statements made as part of parliamentary proceedings, are ‘privileged’ in that they cannot be actioned, even if they are prejudiced or might be reportable if they had occurred somewhere where their speaker wasn’t protected.

For example, a Member of Parliament saying in a parliamentary speech that Australia should ban Muslim migration because Muslims are dangerous, is exempt from vilification laws because it was said as part of the proceedings of Parliament.

Who can make a complaint about vilification?

If the vilification targets a specific person, that person can make a complaint to us at the Commission.

If it is a group who is being vilified (for example, people who are gay), any person exposed to the public act may make a complaint to the Commission.

A complaint about vilification may also be made by an organisation instead of an individual person. The organisation must primarily exist to promote the interests or welfare of people of a particular race, religion, sexuality or gender identity. The organisation needs to satisfy the Commission that:

- the complaint is made in good faith;
- the alleged vilification is likely to affect people whose interests the organisation represents;
- and
- it is in the interests of justice to accept the complaint.

Complaints about serious vilification can be made to the police, or to us at the Commission, or both. A person may still make a civil claim for vilification even if the matter is pursued by the police or if they decide not to complain to the police.