What this fact sheet is about
This fact sheet explains the law on vilification in Queensland under the Anti-Discrimination Act 1991.

What the law says
The Queensland Anti-Discrimination Act 1991 contains prohibitions that are designed to protect people from vilification because of their race, religion, sexuality or gender identity. The legislation seeks to balance the right to freedom of speech with the right to be free from discrimination, harassment and harm.

It is unlawful to incite hatred towards, serious contempt for, or severe ridicule of a person because of their race, religion, sexuality or gender identity, by a public act. We refer to this as unlawful vilification.

A person subjected to unlawful vilification can make a complaint to the Anti-Discrimination Commission Queensland seeking compensation or other remedies. This is a type of ‘civil’ claim.

It is a criminal offence if the unlawful vilification includes a threat of harm to a person or their property. This is called serious vilification and is a police matter.

Meaning of vilification
Unlawful vilification is:
- a public act;
- capable of inciting;
- hatred towards, serious contempt for, or severe ridicule of;
- a person or group of persons;
- on the ground of the race, religion, sexuality or gender identity of the person or group.

See the definitions section for more detail about these elements.

Examples of unlawful vilification

Warning: This fact sheet includes real life examples with language or content which may offend.

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 said ‘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 ‘F***ing freak in there. Keep the kids away from the freak in that unit’.

Exceptions
There are exceptions which ensure the right of freedom of speech is not unduly restricted. 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; or
- where publication of material would be subject to the defence of absolute privilege in proceedings for defamation.
Example of the public interest exception
In *Deen v Lamb* [2001] QADT 20 (8 November 2001) the exception for an act done reasonably, in good faith, and for a purpose in the public interest, applied in this case.

Summary: A candidate in a federal election distributed a pamphlet which included his opinions about the content of the Koran and about people who believe in its teachings.

The pamphlet claimed that believers of the teachings of the Koran are prone to disobey the laws of Australia when they conflict with the teachings of the Koran, to the extent of being prepared to commit murder. The tribunal found that this incited serious contempt for Muslims as a whole.

The tribunal also said that the express identification of a reputed murderer (Osama bin Laden) with others who profess the same faith incited hatred towards Muslims.

Defence: The candidate had produced and distributed the pamphlets in good faith in order to persuade electors that he deserved their vote.

The tribunal said that ‘the public has an interest in knowing the opinions of candidates, even when those opinions are unreasonable, unsupported, one-sided or even plainly wrong’. The pamphlet was concise and had been written in moderate language, and there was no suggestion that it had been published or disseminated other than in the electorate.

Serious vilification – criminal offence
Serious vilification is a criminal offence under the *Anti-Discrimination Act 1991*. It is vilification which includes a threat of physical harm to a person or their property.

Serious vilification occurs where there is:
- a public act;
- knowingly or recklessly;
- inciting;
- hatred towards, serious contempt for, or severe ridicule of;
- a person or group of persons;
- on the ground of the race, religion, sexuality or gender identity of the person or group;
- in a way that includes:
  - threat of physical harm to property or person; OR
  - inciting others to threaten physical harm to property or person.

Serious vilification is dealt with by the police.

An individual convicted of serious vilification can be imprisoned for up to 6 months or fined up to $9,138. If the serious vilification is done by a company the fine is up to $45,692.

Serious vilification – no exceptions
The exceptions available as a defence to unlawful vilification (a fair report, an act done in the public interest etc.) do not apply to the criminal offence of serious vilification.

Example of serious vilification
A group of people went to the home of a transgender woman and yelled abuse and obscenities about her gender identity. One of the group then pulled wooden palings from the woman’s fence and called out to the others ‘Has anyone got a box of matches so we can burn this fxxxing fag’s place down?’

Making a complaint about vilification
A person who believes they have been subjected to unlawful vilification can make a complaint to the Anti-Discrimination Commission Queensland. The Commission will conduct a conciliation conference with all the parties to try to resolve the matter. If the complaint is not resolved it can be referred to the Queensland Industrial Relations Commission for work-related complaints, or the Queensland Civil and Administrative Tribunal for all other complaints for a public hearing and decision based on evidence.

If the vilification includes harm to property or a person, or inciting others to harm property or a person, it can be reported to the police. Contact Policelink on 131 444.

A person who is subjected to serious vilification may also make a complaint to the Commission to deal with it as a civil claim of the less serious unlawful vilification.
Definitions and meanings

Public act
Includes:
- any form of communication to the public, such as speaking, writing, printing, displaying notices and messages on the internet and social media.
- any conduct observable by the public, including actions, gestures, wearing or display of clothing, signs, flags, emblems, or insignia.

Incite
- means to urge on, stimulate or prompt to action.
- It is sufficient that the public act has the potential to incite.

Hatred, serious contempt, or severe ridicule
- Hatred is an extreme emotion. It is intense dislike or detestation.
- Contempt is the attitude that something or someone is worthless or of little account. It is the mental process of looking down upon or treating as inferior.
- Ridicule is to make fun of, deride or laugh at.
- Serious means important; and severe means harsh or extreme. These intensifying adjectives demonstrate the balancing of the prohibition with the freedom of expression.

Race
Includes:
- colour;
- descent or ancestry;
- ethnicity or ethnic origin;
- nationality or national origin.

Religion
Includes:
- a religious belief system;
- the absence of a religious belief system.

Sexuality
Means:
- heterosexuality;
- homosexuality; or
- bisexuality.

Gender identity
Means that the person:
- identifies, or has identified, as a member of the opposite sex by living or seeking to live as a member of that sex; or
- is of indeterminate sex and seeks to live as a member of a particular sex.

Absolute privilege
- Is a defence in proceedings for defamation.
- Includes statements made:
  - during a hearing of an Australian court or tribunal;
  - during the course of proceedings of a parliamentary body;
  - where absolute privilege would apply to the publication in another Australian jurisdiction.

Related links

For more information contact the Anti-Discrimination Commission Queensland

Phone: 1300 130 670
Email: info@adcq.qld.gov.au
Web: www.adcq.qld.gov.au

To contact Policelink Call 131 444

Version: 1 July 2018