Royal Commission
Legal Assistance Service

Fact Sheet
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Hate speech: What you can do about it

This fact sheet provides general guidance about hate speech and the law in New South Wales (NSW). It should not be relied upon as legal advice.

What is hate speech?

Hate speech means words, images or acts that show or encourage hate, unfair treatment or violence against people because of who they are.

The legal term for hate speech in some Australian laws is 'vilification'. It means public acts that encourage others to hate, mock or disrespect a person or group because of personal attributes which the law protects. These can include who they are, how they look or where they come from.

Many hate speech laws only apply to behaviour that happens in public, not in private. Hate speech can happen in person, online or through other ways of communicating with the public. It can also include conduct that can be seen in public, including actions, showing recorded material at an event, gestures, wearing or displaying clothing, signs, flags or symbols.

What do hate speech laws protect?

Commonwealth law protects people from some forms of racial vilification. The law is the *Racial Discrimination Act 1975* (Cth).

Public acts may be against the law if they are reasonably likely to offend, insult, humiliate or intimidate a person or group because of their race, colour, descent, national or ethnic origin. Commonwealth laws also protect people from unfair treatment based on sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or breastfeeding, family responsibilities, disability or age.

NSW has laws that protect people from vilification because of their race, religious belief or faith, sex or gender, disability, Sexual orientation, gender identity or intersex status, political opinion, homelessness age, HIV/AID status, and association with someone who has one of these attributes. These protections are in the *Anti-Discrimination Act 1977* (NSW).

What is not covered by hate speech laws?

- Private conversations
- Academic or public-interest discussions
- Artistic and scientific works
- Fair journalism or reporting
- Other conduct covered by an exception under the law.

When is hate speech discrimination?

Hate speech and discrimination are different, but they can overlap. Hate speech may be unlawful discrimination if it targets people because of personal attributes, causes harm, exclusion, disadvantage or unfair treatment and happens in an area of life such as education, work or a service.

For example, hate speech based on a person's race may make a place hostile or unsafe. This may stop the person from taking part equally at work, participating in school or community life, or accessing housing or other services.

When is hate speech a crime?

Serious cases of hate speech and hateful behaviour can be a crime. In some States or Territories in Australia criminal laws protect a wider range of groups than civil vilification laws. For more information about hate crimes, see our Hate Crimes Fact Sheet.

What to do if you see hate speech

Stay safe

Safety comes first. If you or someone is in danger, move to a safe place and call Triple Zero (000) for emergency services.

Record what happened

As soon as you can, record or write down:

- what someone said or did
- when and where it happened, including whether it was in public, online or in private
- who was involved.

This record may help if you later decide to report what happened or make a complaint.

Keep a record of anything that may show what happened, like:

- screenshots
- photos, videos or audio recordings
- copies of messages or posts online
- the names and contact details of witnesses.

These records can help police or other bodies understand what happened and to consider next steps. The records may also be helpful as evidence in a legal case.

Think about the outcome you want

Before you decide what to do, think about the result you want. For example, you may want:

- the behaviour to stop
- an apology
- someone to look into what happened
- changes to workplace or organisational policies
- money for the harm
- police action in a serious case.

What you want to happen can help you decide what to do next.

Report what happened

If you think what happened may be a crime, you can tell the police. They may ask you to describe what happened and what records you have. They will decide if they should investigate and if there is enough evidence to charge someone.

You can report the hate speech to the organisation where it happened if it is safe to do so. This may be an employer, school, university, sports club, venue, service, social media website or community group.

You can also report what happened to a government body or a community group that records hate events. Community groups may use reports to find trends, raise awareness and call for change.

If it happened online see our Online Hate Factsheet.

Make a complaint

If you think what you saw or heard could be unlawful you may be able to make a complaint. You can complain to the Australian Human Rights Commission (AHRC) or to Anti-Discrimination NSW. These bodies may look into the complaint and help both sides reach an agreement. If they cannot help you resolve it, you may be able to take legal action.

Time limits

You should complain to the AHRC within **24 months** of the event or the Anti-Discrimination NSW within **12 months** of the event.

Both the AHRC and Anti-Discrimination NSW may decide to not accept a late complaint. Act quickly so you do not lose your right to make a complaint. It's a good idea to get legal advice before you make a complaint.

Get legal advice early

Early legal advice can help you understand:

- your options
- any risks or costs
- the time limits that apply
- the outcomes you want and whether they are reasonable.

Contact LawAccess NSW on 1300 888 529 for legal information and referrals.

Get support

Experiencing or witnessing hate speech can be distressing. You may want help from someone you trust, a community group, a counsellor or another support service.

- Lifeline for 24-hour crisis support and suicide prevention on 13 11 44
- Suicide Call Back Service on 1300 659 467
- eSafety counselling and support services if you have experienced online harm.
- Kids Helpline counselling, support and resources on issues affecting young people.
- 13 YARN offers crisis support for Indigenous people
- Blueknot has support for people affected by complex trauma.

Information about your rights and making a discrimination complaint:
Australian Human Rights Commission and Anti-Discrimination NSW.

Disclaimer: This information is intended as a general information guide only. It should not be relied upon as legal advice. We recommend that you speak with a lawyer about your individual situation.
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