

## **Burns v Dye ([2002] NSWADT 32)**

### **1) Reference Details**

Jurisdiction: Equal Opportunities Division of the New South Wales Administrative Decisions Tribunal, Australia

Date of Decision: 12 March 2002

Link to full case:

<http://www.austlii.edu.au/au/cases/nsw/NSWADT/2002/32.html>

### **2) Facts**

Mr Burns, the complainant, began living at Housing Commission units located in Woolloomooloo, Sydney (the Woolloomooloo units) on or about 30 August 1999. His unit was one of six units located on the ground floor of a block of 24. The respondent, Mr Dye, lived in Unit 11, directly above Mr Burns' unit. Mr Burns alleged that since moving to the Woolloomooloo units he has been continually harassed by Mr Dye and submitted a complaint to the Anti-Discrimination Board. On 29 November 1999 the President of the Anti-Discrimination Board referred Mr Burns' complaint to the Administrative Decisions Tribunal under s 91(2) of the Act.

### **3) Law**

- Section 49 ZT of the Anti-Discrimination Act 1977

### **4) Legal Arguments**

#### *The Complainant*

The complainant alleged that he had been vilified on the basis of his open homosexuality by his neighbour, claiming that he had been subjected to various forms of abuse and harassment contrary to s 49 ZT of the Anti-Discrimination Act 1977.

The applicant alleged that the discriminatory behaviour had included numerous incidents of verbal abuse, graffitiing of his front door, and the smearing of faeces and urine on and around his front door.

#### *The Respondent*

The respondent acknowledged that he did, on occasion, call Mr Burns offensive names, such as "faggot" or "poofter", but submitted that the words "poofter" and "faggot" are now part of the popular vernacular and are understood within the community to connote general terms of insult. He therefore maintained that it can no longer be said that these words have a meaning exclusively related to homosexuality, likening these terms to the word "bastard", at one time a term of abuse used to describe a person born outside marriage, but are now understood to hold a more general meaning. The respondent denied all other allegations.

### **5) Decision**

The Tribunal found the respondent had breached the homosexual vilification provisions of the Anti-Discrimination Act which made it unlawful for any person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of a person or a group of persons on the ground of homosexuality. He was ordered to pay the complainant the sum of \$1,000. In reaching its decision, the Tribunal opined that it does not follow automatically that verbal abuse directed at a homosexual person or persons that includes words understood to be insulting of homosexuals, is capable of inciting the requisite ill-feeling required to establish a complaint of homosexual vilification, it opined that the circumstances in which the abuse occurred must be critical. The Tribunal considered that the verbal abuse, conducted from the hallway of the Woolloomooloo units, an area open to residents and guests, constituted a form of communication to the public, even though only a small section of the public. The abuse was overheard by Mr Collins and therefore was capable of being overheard by other neighbours and their guests, and on this basis could constitute homosexual vilification.