



Joint submission | Legislative Council Legal and Social Issues Committee**Response to the Inquiry into anti-LGBTQIA+ Hate Crimes in Victoria****8 May 2026**

Thank you for the opportunity to submit to this inquiry. Contained in this document is the joint submission of Pride in Law and Liberty Victoria, bringing a diversity of experience and expertise in preparing this response to the 'Inquiry into anti-LGBTQIA+ hate crimes in Victoria' ('the inquiry').

The Contributing Organisations

Pride in Law is a National non-political LGBTQIA+ Law Association, aimed at connecting lesbian, gay, bisexual, transgender, intersex, queer, and questioning (LGBTQIA+) members of the legal community and their allies. Pride in Law is Australia's first and only National LGBTQIA+ Law Association, which is 'Law Focused, Pride Inspired'.

Since July 2017, Pride in Law has worked to provide visibility, education, and advocacy around LGBTQIA+ issues in the legal profession. We represent and promote legal professionals, increase community understanding of the law, particularly as it affects LGBTQIA+ individuals, help protect the rights of individuals and advise the community about the benefits legal professionals can provide.

Liberty Victoria has worked to defend and extend human rights and freedoms in Victoria for more than eighty years. Since 1936 we have sought to influence public debate and government policy on a range of human rights issues. Liberty Victoria is a peak civil liberties organisation in Australia and advocates for human rights and civil liberties. Liberty Victoria is actively involved in the development and revision of Australia's laws and systems of government. More information on our organisation and activities can be found at: www.libertyvictoria.org.au.

A Executive Summary

This submission is focused on the challenges and limitations to existing legal frameworks and mechanisms available to respond to anti- LGBTQIA+ hate crimes. This submission seeks to highlight the gaps in current systems and make recommendations to better respond to anti- LGBTQIA+ hate crimes.

Under Victoria's legal framework, there are multiple compensation pathways for victim-survivors of anti-LGBTQIA + hate crimes, yet structural barriers prevent many victim-survivors from accessing meaningful redress. These mechanisms are fragmented, difficult to access, and do not adequately respond to the specific challenges of LGBTQIA+ hate-based offending.

Use of the positive duty under the *Equal Opportunity Act 2010* (Vic) offers a potential avenue to prevent LGBTQIA+ hate crimes being committed by ensuring social media and digital platforms which facilitate such abusive behaviours proactively take reasonable and proportionate steps to eliminate discrimination on their services. The Act would benefit from clarifying the application of the positive duty to social media and digital platform providers.

Additionally, the Victorian Equal Opportunity and Human Rights Commission should be tasked with conducting an investigation into compliance with this positive duty. It should be properly funded to do so and provided with stronger powers to deal with non-compliant entities. Finally, the wrong message sent by automatic religious exceptions should be remedied by removing them from the Act.

Legal enforcement for LGBTQIA+ hate crimes remains a challenge despite legislative and institutional developments. There remains a disconnect between the prevalence of anti-LBGTQIA+ hate crimes and comparatively low rates of reporting. The effectiveness of protections against these hate crimes continues to be challenged by inconsistent recognition and enforcement by law enforcement agencies at every stage of the criminal justice process.

Recommendations

1. Legislative reform

Common Law System

- a. Legislating a duty of care on social media companies within Australia.
- b. Enacting a statutory tort to hold social media companies accountable where they fail to take reasonable steps to remove or restrict serious hate content.

Equal Opportunity Act 2010 (Vic) ('EOA Act')

- a. Clarify the definition of “services” under section 4(1) of the Equal Opportunity Act 2010 (Vic) to include social media and digital platform services, and Part 3 of that Act should be amended to extend the positive duty to eliminate discrimination to social media and digital platform service providers whose services are used to commit discrimination.
- b. Repeal the automatic religious exceptions under the EOA.

Sentencing Act 1991 (Vic)

- a. Expand the 12-month limitation period under the Sentencing Act to provide hate crime victim-survivors more time to commence proceedings.
- b. Establish a state-backed guarantee fund to offer compensation to victim-survivors of hate crimes.

Victims of Crime Assistance Act 1996 (Vic) ('VOC Act')

- a. Amend the VOC Act to extend protections to conduct based on sexual orientation and gender identity and expressly provide eligibility to the Financial Assistance Scheme for injury as a result of anti-LGBTQIA+ vilification.
- b. Introduce an alternative third-party reporting pathway for LGBTQIA+ victim-survivors of hate crimes.

2. Broadening the responsibility of statutory authorities

- a. VEOHRC be directed to conduct investigations under part 9 of the EOA into whether social media and digital platform providers are complying with their obligations under s 15 to eliminate discrimination, sexual harassment and victimisation against LGBTQIA+ people by users of their services.

- b. Improve VEOHRC's powers to enforce the positive duty under the EOA, including by reintroducing the ability to issue compliance notices, particularly in cases where the VEOHRC determines a person has not complied with their positive duty to prevent LGBTQIA+ hate crimes.
- c. We support restoration of VEOHRC's powers to issue compliance notices and enter into enforceable undertaking for contraventions of the positive duty under s 15 of the EOA.

3. Mandatory training on hate crime

- a. Implement statewide mandatory training on hate crimes for all employees. We note that this led to a marked increase in the recognition and appropriate classification of anti-LGBTQIA+ hate crimes in NSW,¹ and so implore Victoria Police to take similar measures that extend beyond its mandatory LGBTQIA+ awareness course for all employees in 2026.²
- b. Mandatory police training in hate crime legislation as research shows that this is 'associated with increased true compliance, relative to ceremonious compliance and non-compliance, suggesting policy implications for improving reporting'.³

¹ New South Wales Police Force, LGBTQIA+ Consultative Committee Communique (Communique 3, April 2025)
<https://www.police.nsw.gov.au/data/assets/pdf_file/0003/903180/LGBTQIA_Communique_April_2025.pdf>.

² See Victoria Police, 'Victoria Police and LGBTIQ+ Community News'
<<https://www.police.vic.gov.au/victoria-police-and-lgbtiga-community-news>>.

³ Matthew Vanden Bosch and Brendan Lantz, 'Differential Compliance with the Reporting of Hate Crime Statistics as a Function of State Laws' (2025) 98 *Journal of Criminal Justice* 102415.

B Submission

An overview of the compensation available to Victim-Survivors of LGBTQIA+ Hate Crimes, and suggested reforms

1. A comprehensive compensation framework specifically for victim-survivors of LGBTQIA+ hate crimes is not available. Under Victoria's current laws, any compensation available to victim-survivors through the following channels might include:

- a. The Victims of Crime Financial Assistance Scheme;
- b. the *Sentencing Act 1991* (Vic) ('Sentencing Act'); and
- c. application to intentional torts against the individual under common law.

(a) The Victims of Crime Financial Assistance Scheme (FAS)

2. The FAS provides victim-survivors with up to \$60,000 in financial assistance.⁴ The FAS classifies victim-survivors into one of three categories:

- a. primary victims, who are those who directly experience a violent crime, children who witnessed, heard or were exposed to a violent crime, or a person who sustained injuries in the course of stopping, arresting or rescuing someone from a violent crime;
- b. secondary victims, who are those who witness a violent crime, or the parent or guardian of a child who was a victim-survivor; and
- c. related victims, who are close family members, dependants or people who were in an intimate personal relationship with a person who died as a result of a violent crime.

3. A violent crime is defined in the *Victims of Crime Assistance Act 1996* ('VOC Act') as follows:

"a criminal act or a series of related criminal acts, committed by one or more persons, and that has:

- (a) occurred in Victoria; and*

⁴ *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic) ('VOC Act') s 10(1).

(b) directly resulted in injury to or the death of one or more persons, no matter where injury or death occurred”⁵

4. The FAS allows victim-survivors to claim for a range of expenses, such as:
 - a. counselling and mental health support;
 - b. medical expenses for physical injuries;
 - c. reimbursement is loss of wages as a result of the crime;
 - d. safety related expenses, including costs associated with enhancing personal safety;
 - e. funeral expenses; and
 - f. other reasonable expenses.⁶
5. To access assistance, all victim-survivors registered in the FAS must report the offence to Victoria Police.⁷ Once the offence has been reported the victim-survivor must submit a FAS application form along with all necessary supporting documents, including police reports, medical certificates and receipts for expenses. The FAS then assesses the application against its eligibility criteria and determines whether financial assistance is appropriate.⁸
6. Though the FAS does offer financial help for recovery, LGBTQIA+ victim-survivors of hate-based crimes suffer as a result of various weaknesses within the scheme.
7. Firstly, there are significant reporting barriers that members of the LGBTQIA+ community face when reporting a hate crime to Victoria Police. LGBTQIA+ individuals carry a historical mistrust of, or fear of discrimination from, law enforcement, which makes this mandatory step a substantial obstacle. LGBTQIA+ people are the least likely demographic to report offences to police, with more than half indicating they would not report a hate crime for fear of a homophobic or transphobic response.⁹ Research conducted by the Victoria Pride Lobby further found that LGBTQIA+ Victorians did not trust the Police.¹⁰

⁵ Ibid s 3.

⁶ Financial Assistance and Compensation for Victims of Crime, 11 February 2026 <<https://www.victimsofcrime.vic.gov.au/financial-assistance-and-compensation-victims-crime>>.

⁷ Ibid.

⁸ Ibid.

⁹ Bianca Fileborn et al, 'Inquiry into LGBTIQ Hate Crime Could Improve How Police and Communities Respond', *The Conversation* (19 December 2018) <<https://theconversation.com/inquiry-into-lgbtq-hate-crime-could-improve-how-police-and-communities-respond-108493>>.

¹⁰ Eden Gillespie, "I Feel Unsafe": Most LGBTIQ+ Victorians Don't Trust Police, New Report Finds', *SBS News* (16 November 2021) <<https://www.sbs.com.au/news/article/i-feel-unsafe-most-lgbtq-victorians-dont-trust-police-new-report-finds/y9vo0p70m>>.

8. Secondly, while Victoria now has criminal laws against vilification based on sexual orientation and gender identity,¹¹ the VOC Act is unclear on whether victim-survivors who have experienced vilification would satisfy the 'violent crime' definition. For example, on the victims of crime website run by the Victorian government the following is listed as examples of relevant ¹²

Relevant offences

The scheme covers the following types of offences:

- homicide
- assault
- rape
- threats to kill
- robbery
- recklessly causing injury
- culpable driving
- sexual offences
- image-based sexual offences
- stalking
- kidnapping
- home invasion.

9. There is no specific reference to vilification, intimidation, or harassment based on sexual orientation or gender identity. This ambiguity creates uncertainty for LGBTQIA+ victim-survivors seeking to access the scheme following hate-motivated incidents that do not neatly constitute physical violence.
10. Thirdly, financial assistance under the FAS is limited to out-of-pocket expenses only. While a victim-survivor may receive reimbursement for medical expenses or lost wages, the scheme does not explicitly permit claims for pain and suffering.¹³ This means that a victim-survivor receives nothing for the loss of enjoyment or loss of amenity to their life, which is a significant gap.
11. Finally, there is a broader lack of public awareness regarding the availability of compensation through the FAS. While the Victims of Crime website has a page dedicated to the LGBTQIA+ community,¹⁴ it does not mention anything about targeted hate crimes and

¹¹ *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025* (Vic).

¹² *Victims of Crime*, 'Can I Apply for Financial Assistance?' (30 June 2025) <<https://www.victimsofcrime.vic.gov.au/can-i-apply-for-financial-assistance>>.

¹³ It does, however, allow for an additional payment, named 'Special Financial Assistance' for 'grief, distress or trauma': VOC Act, s 11(2)(a).

¹⁴ *Victims of Crime*, 'Supporting LGBTIQ+ People' <<https://www.victimsofcrime.vic.gov.au/supporting-lgbtqa-people>>.

the availability of financial assistance for them. There needs to be specific, targeted communication about victim support services that may assist them following a hate crime. Without tailored outreach, many victim-survivors remain unaware of their entitlements and miss out on assistance entirely.

(b) The Sentencing Act 1991

12. Under section 85B of the Sentencing Act, a victim-survivor may be eligible to claim compensation from a perpetrator who has been found guilty of an offence. Unlike the FAS, this is an adversarial, offender-funded mechanism that the victim-survivor initiates in the same court that convicted the perpetrator. These applications are intended to be quick, cheap and built upon the criminal proceeding.¹⁵
13. Following the criminal hearing, the victim may file an application in the same Court that found the offender guilty. The parties will then proceed to a hearing. At the hearing, the Court may order the offender to pay for:
 - a. The pain and suffering experienced by the victim-survivor; and
 - b. some or all of the expenses actually or reasonably likely to be incurred by the victim-survivor as a direct result of the offence.¹⁶
14. While this avenue may yield some compensation for LGBTQIA+ victim-survivors of hate crimes, they still face a number of barriers in accessing it.
15. Firstly, the court process under the Sentencing Act requires the victim-survivor to participate in a hearing, either online or in a courtroom, following the conclusion of the criminal proceeding. This is inherently traumatic. Sourcing and paying for legal representation, attending court, being subjected to cross-examination,¹⁷ potentially seeing the offender, listening to the offender's evidence, and having to justify the extent of one's pain and suffering to a court can each present serious barriers for the victim-survivor. For LGBTQIA+ hate crime victim-survivors, these difficulties are compounded by the identity-based nature of the offending.
16. Secondly, a major practical barrier is that compensation under the Sentencing Act depends on the offender having sufficient assets. If the offender lacks the means to pay, the victim-

¹⁵ *Moresco & Ors v Budimir* [2015] VSC 51, [18].

¹⁶ *Sentencing Act 1991* (Vic) ('Sentencing Act') s 85B(2).

¹⁷ *Ibid* s 85G(b).

survivor may not receive compensation.¹⁸ In fact, the Sentencing Act directs the presiding judge to “take into account, as far as practicable, the financial circumstances of the offender and the nature of the burden that its payment will impose.”¹⁹ As the Sentencing Council of Victoria has observed, offenders often have limited financial means to pay orders for restitution or compensation, rendering them “judgement proof”.²⁰ Unfortunately, this means that for LGBTQIA+ hate crime victim-survivors they may not receive any award their pocket following proceedings.

17. Thirdly, where a victim-survivor has already accessed compensation through the FAS, the court retains a discretion to reduce any amount awarded under the Sentencing Act by the amount received under the FAS.²¹ This interaction can significantly diminish the compensation available to victim-survivors who have utilised both avenues.
18. Fourthly, an application under the Sentencing Act must be made within 12 months of the offender's conviction.²² While extensions of time are possible,²³ the success of that extension depends on the offender's evidence²⁴ and ‘in the interests of justice’²⁵ making the application to extend time difficult and not straightforward. Twelve months is an inadequate timeframe for a person who may be unaware of their entitlement to compensation and who may still be experiencing significant trauma arising from the crime. For LGBTQIA+ victim-survivors, who may have delayed or avoided reporting, this period may expire before they have had any meaningful opportunity to seek legal advice.
19. Finally, compensation under the Sentencing Act is only available where the perpetrator has been found guilty or is convicted of a criminal offence.²⁶ Given the significant underreporting of LGBTQIA+ hate crimes to Victoria Police²⁷ and the evidentiary challenges involved in

¹⁸ It should be noted that s 85B(4) of the Sentencing Act allows the Court to make an order that ‘the compensation be paid by instalments and that in default of payment of any one instalment the whole of the compensation remaining unpaid shall become due and payable’.

¹⁹ Ibid s 85H(1).

²⁰ Sentencing Advisory Council, *Restitution and Compensation Orders Reference: Consultation Materials* (August 2018) <https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Restitution_and_Compensation_Orders_Fact_Sheet_1.pdf>.

²¹ Sentencing Act s 85I.

²² Ibid s 85C(1)(a).

²³ Ibid, s 85D.

²⁴ Ibid, s 85D(3).

²⁵ Ibid, s 85D(1).

²⁶ Ibid s 85B(1).

²⁷ William Leonard and Bianca Fileborn, *Policing for Same Sex Attracted and Sex and Gender Diverse (SSASGD) Young Victorians* (2018) 4 <<http://rainbowhealthaustralia.org.au/media/pages/research-resources/policing-for-same-sex-attracted-and-sex-and-gender-diverse-ssasgd-young-victorians/945288268-1709686057/policing-for-ssasgd-young-people.pdf>>.

prosecuting hate-motivated offending; many perpetrators are never charged or convicted. This means that a large proportion of LGBTQIA+ victim-survivors are categorically excluded from this avenue before it can be considered.

(c) Common Law Applications

20. Those who have been subject to LGBTQIA+ hate crimes may also seek compensation through a common law application for trespass against the person or other intentional tort claims. The torts most likely to be relevant are:

- a. Threats;
- b. Assault;
- c. Battery;
- d. Intentional infliction of emotional distress;
- e. False imprisonment; and
- f. Defamation.

21. Each intentional tort has its own elements that a plaintiff must establish on the balance of probabilities. We do not propose to address each cause of action in detail.

22. If a plaintiff successfully establishes each element, the court may award the following categories of damages:

- a. special damages, being out-of-pocket expenses, both past and future;
- b. general damages, being compensation for pain and suffering;
- c. aggravated damages, being compensation for distress, humiliation and injured feelings caused by the defendant's conduct; and
- d. punitive damages, being damages aimed at punishing the defendant and deterring similar conduct.

23. In most common law applications in Victoria, a plaintiff must establish that they have suffered a "significant injury" before seeking damages for non-economic loss.²⁸ However, the *Wrongs Act 1958* (Vic) provides an exemption where the claim relates to:

²⁸ *Wrongs Act 1958* (Vic) s 28LE.

*"an intentional act that is done with intent to cause death or injury or that is sexual assault or other sexual misconduct."*²⁹

24. Accordingly, a plaintiff subjected to an LGBTQIA+ hate crime may, in principle, pursue a common law claim without needing to satisfy the significant injury threshold. However, such claims are rarely litigated in Victoria, and our research suggests this avenue has not been pursued in Victorian courts in the context of LGBTQIA+ hate crimes to date. The following are some of the reasons why this may be the case.
25. Firstly, common law claims are not for the faint-hearted. Common law proceedings typically last between one and three years, sometimes longer where matters are complex or require adjournment. The prospect of committing a significant portion of one's life to litigation, in addition to the financial cost of legal representation, is a substantial barrier before even considering whether the plaintiff has reasonable prospects of establishing the elements of the relevant tort. Victim-survivors are also likely to face re-traumatisation throughout the process.
26. Secondly, as with claims under the Sentencing Act, if the defendant lacks the assets to satisfy a judgment, the plaintiff's success may be nominal only. If the LGBTQIA+ hate crime is linked to an insured institution, for example, if the LGBTQIA+ hate crime occurs in the context of a workplace,³⁰ then the plaintiff might be paid compensation.
27. Many intentional torts require the plaintiff to establish specific mental elements on the part of the defendant, including intent to cause harm. In the context of hate crimes, where offending is motivated by prejudice against sexual orientation or gender identity, establishing the precise mental elements required by each tort may be challenging, particularly where the evidence available is limited or where the incident was not reported to police and no criminal investigation took place. This evidentiary burden will likely deter many victim-survivors from commencing proceedings.

(d) Suggestions for Reform

28. Given the above structural deficiencies that disproportionately burden LGBTQIA+ victim-survivors of hate crimes when seeking compensation, the following are suggested reforms to address the most pressing of those deficiencies.

²⁹ Ibid s 28LC(2)(a).

³⁰ Noting, however, that the element of causation might be difficult to show.

(i) *Suggested Reforms to the FAS*

29. As noted above, The FAS requires a victim-survivor to have suffered injury as a result of a 'violent crime' within the meaning of *the VOC Act*. The current definition creates ambiguity for LGBTQIA+ victim-survivors who have experienced hate-motivated vilification, harassment, intimidation or threatening conduct that does not involve direct physical violence. While Victoria's new criminal vilification offences under the *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025* (Vic) extend protections to conduct based on sexual orientation and gender identity, the VOC Act has not been correspondingly amended.
30. We recommend that the VOC Act be amended to expressly provide that a person who suffers injury as a direct result of a serious vilification offence under Division 2D of the *Crimes Act 1958* (Vic) based on sexual orientation, gender identity, sex or sex characteristics is eligible to access the FAS. This reform would align the FAS with the recent expansion of Victoria's anti-vilification framework and ensure that LGBTQIA+ victim-survivors who experience the most acute forms of hate-based conduct are not excluded from state-funded financial assistance on a technicality of definition.
31. Secondly, the police reporting requirement functions as a gatekeeper to FAS assistance that disproportionately excludes LGBTQIA+ victim-survivors. The current scheme acknowledges 'special circumstances' exceptions to the reporting requirement, but these are not clearly defined.
32. We recommend an amendment to the VOC Act to introduce an alternative third-party reporting pathway specifically for LGBTQIA+ victim-survivors of hate crimes. Under this model, a formal report to a registered LGBTQIA+ community organisation, a community health centre, or a legal service would satisfy the reporting requirement in lieu of a police report. This approach mirrors the special circumstances exception already contemplated by the Act but provides a structured, predictable alternative rather than a discretionary carve-out. The FAS itself has already taken steps toward inclusivity for Aboriginal and Torres Strait Islander people through the Marra Yattakunar Pathway.³¹

³¹ *Victims of Crime*, 'Marra Yattakunar Pathway' (updated 6 January 2026) <<https://www.victimsofcrime.vic.gov.au/marra-yattakunar-pathway>>.

(ii) Suggested Reforms to the Sentencing Act

33. The 12-month limitation period under Sentencing Act³² is too short a turn around time for many victim-survivors. Many hate crime victim-survivors do not report because they think that reporting is pointless and a waste of time.³³ This suggests that victim-survivors take considerably longer than 12 months to come to terms with their experience, obtain legal advice and understand their entitlements. On this basis we believe that twelve months from the date of conviction is, in many cases, an unrealistic timeframe for commencing proceedings.
34. The FAS has already acknowledged the inadequacy of short time limits by extending its own application period.³⁴ The same logic applies with even greater force to compensation applications under the Sentencing Act, where the victim-survivor must participate in court proceedings and where the emotional stakes are higher. We recommend that the limitation period under s 85C be extended to at least three years from the date of conviction. This would align the Sentencing Act with the extended timeframes already adopted within the FAS framework.
35. As discussed, a significant barrier to a victim-survivor being awarded compensation under the Sentencing Act is that the mechanism is offender funded. This problem is particularly acute in hate crime contexts, where perpetrators are often young, unemployed or have committed other offences before.³⁵
36. We recommend the establishment of a state-backed guarantee fund, similar to the FAS, that satisfies compensation orders made under s 85B and Common Law Applications. The state-backed guarantee fund would then be able to seek recovery of costs from the offender, if the offender is financially able to satisfy the order. This would ensure that victim-survivors of hate crimes would be able to receive the compensation, regardless of the offender's personal financial position.

³² 1991 (Vic), s 85(C)(1)(a).

³³ Carolina Navarro, 'Hate Crime Reporting Barriers: Why are victims reluctant to report?' <<https://tacklinghate.org/trainingmodule/hate-crime-reporting-barriers-why-victims-of-hate-related-incidents-are-reluctant-to-report2/>>.

³⁴ *New Financial Scheme To Make It Easier For Victims Of Crime* (17 October 2024) <<https://www.premier.vic.gov.au/new-financial-scheme-make-it-easier-victims-crime>>.

³⁵ Dr Colin Roberts et al, *Understanding Who Commits the Crime and Why They Do It* (2013) 19 to 25 <<https://orca.cardiff.ac.uk/id/eprint/58880/1/understanding-who-commits-hate-crime-and-why-they-do-it-en.pdf>>.

(iii) Suggested Reforms to the Common Law System

37. Hate crimes do not occur in a vacuum. Anti-LGBTQIA+ violence is enabled or amplified by the on social media platforms.³⁶ Social media companies that knowingly permit, amplify, or fail to remove extremist anti-LGBTQIA+ hate content on their platforms play a material role in creating the environment in which hate crimes are committed. However, there is no legislated duty of care on social media companies within Australia.
38. The Australian Government had announced its intention to introduce a duty of care through amendments to the *Online Safety Act 2021* (Cth), which would require digital platforms to take reasonable steps to prevent foreseeable harm to users, with significant financial penalties for systemic failures.³⁷
39. We recommend that, in addition to this regulatory model, the Victorian Parliament enact a statutory tort giving hate-crime survivors a direct right of action against a social media company where that company has failed to take reasonable steps to remove or restrict serious hate content. This statutory tort would operate alongside the existing common law framework, providing an additional avenue for victim-survivors of hate crimes.

The Role of Equal Opportunity Act 2010 (Vic) in Proactively Combatting LGBTQIA+ Hate

(a) Technology-Facilitated LGBTQIA + Hate Crimes

40. Repeated studies have demonstrated that LGBTQIA+ people experience a significant level of vilification in their daily lives. In 2006, the Private Lives survey found that 59.3% of participants who identified as LGBTQIA+ experienced personal insults or verbal abuse and 13.7% experienced physical attacks or other kinds of violence.³⁸ In 2015, a report by the

³⁶ Aoife Gallagher and Steven Rai, 'A Quantitative Analysis of Anti-LGBTQ+ Hate after Tumbler Ridge Shooting' (13 March 2026) <<https://www.isdglobal.org/digital-dispatch/quantitative-analysis-anti-lgbtq-hate-tumbler-ridge-shooting/>>.

³⁷ Elizabeth Avery and Andrew Low, 'Government Ramps Up Digital Platforms Online Safety Agenda by Proposing Duty of Care Obligations for Social Media Platforms' (20 November 2024) <<https://www.gtlaw.com.au/insights/government-ramps-up-digital-platforms-online-safety-agenda-by-proposing-duty-of-care-obligations-for-social-media-platforms>>.

³⁸ Marian Pitts, Anthony Smith, Anne Mitchell and Sunil Patel, *Private Lives: A Report on the Health and Wellbeing of GLBT Australians* (Report No 57, Gay and Lesbian Health Victoria and Australian Research Centre in Sex, Health and Society, March 2006) 51 <<https://apo.org.au/sites/default/files/resource-files/2006-02/apo-nid4050.pdf>>.

Australian Human Rights Commission found that more than 70% of LGBTQIA+ people have been attacked, bullied or harassed.³⁹ In 2022, a survey of Australian adults found that nearly three in four respondents who identified as LGBTQIA+ reported experiencing technology-facilitated abuse.⁴⁰

41. Previously, Liberty Victoria and the LGBTIQ Legal Service have, in submissions to other inquiries, provided anecdotes of examples of hate directed toward members of the LGBTQIA+ community.⁴¹
42. An alarming new trend arising in recent years has been the use of fake or deceptive profiles on various social media and digital platforms, such as online dating apps, to lure gay men, bisexual men or men who have sex with other men to meet before those people are assaulted.⁴² In Victoria, at least 42 people — many of whom are teenagers⁴³ — have been arrested in relation to these incidents since October 2024.⁴⁴ Religious extremism and/or far-right political ideology have been identified as causes for these homophobic attacks.⁴⁵
43. While Victoria Police has reported that no new reports of similar incidents have been made since October 2025, there may be several potential explanations for this, including: the arrests of individuals accused of committing these offences; the increased alertness by the

³⁹ Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation, Gender Identity and Intersex Rights* (National Consultation Report, 2015) 16
<https://www.humanrights.gov.au/sites/default/files/document/publication/SOGII%20Rights%20Report%202015_Web_Version.pdf>.

⁴⁰ Anastasia Powell, Asher Flynn and Sophie Hindes, *Technology-facilitated Abuse: National Survey of Australian Adults' Experiences* (Research Report No 12, Australia's National Research Organisation for Women's Safety, July 2022) 23.

⁴¹ Liberty Victoria and LGBTIQ Legal Service, Submission 39 to the Victorian Legislative Assembly Legal and Social Issues Committee, *Inquiry into Anti-Vilification Protections* (17 January 2020), 4–5.

⁴² Kath Albury, 'Dating Apps Are Facilitating LGBTQ+ Hate Crimes. How Can Users Stay Safe?' *The Conversation* (25 February 2026) <<https://theconversation.com/dating-apps-are-facilitating-lgbtq-hate-crimes-how-can-users-stay-safe-276862>>.

⁴³ Josh Taylor, 'Victoria Police Arrest 13 People over Separate Alleged Attacks on Gay Men Involving Dating Apps', *The Guardian* (17 October 2024) <<https://www.theguardian.com/australia-news/2024/oct/17/victoria-gay-men-grindr-dating-app-attacks-police-arrests-ntwnfb>>.

⁴⁴ Navarro (n 33).

⁴⁵ Sean Rubinsztein-Dunlop, 'Gay and Bisexual Sydney Teenagers Lured and Bashed on Camera in IS-Inspired Attacks', ABC News, ABC Investigations (25 February 2026) <<https://www.abc.net.au/news/2026-02-25/lgbtq-sydney-teenagers-bashed-on-camera-in-is-inspired-attacks/106381614>>; Benita Kolovos, 'Role of Far-Right Manosphere in Homophobic Attacks on Men to Be Investigated in Victoria', *The Guardian* (18 February 2026) <<https://www.theguardian.com/australia-news/2026/feb/18/far-right-influencers-homophobic-attacks-dating-apps-investigation-ntwnfb>>.

LGBTQIA+ community of this potential threat;⁴⁶ and/or underreporting by victims for a variety of reasons.⁴⁷

44. It is, however, undoubtedly clear that social media and digital platforms are used as tools to facilitate the perpetration of hate crimes against members of the LGTBIQA+ community.

45. We consider providers of social media and digital platforms have a responsibility to ensure appropriate steps are taken by them to ensure their services are not used to discriminate against or vilify members of the LGBTQIA+ community.

(b) Potential for the Equal Opportunity Act 2010 (Vic) to Supplement Other Preventative Measures

46. Presently, the *Online Safety Act 2021* (Cth), overseen by the eSafety Commissioner, goes some way to ensure social media and digital platform service providers address online risks and promote safer and more positive online experiences to consumers through the setting of basic online safety expectations in relation to, among other things, cyberbullying, adult cyber abuse, non-consensual intimate images, and harmful content.

47. We believe the *Equal Opportunity Act 2010* (Vic) (**EOA**), and the Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**) as the primary body responsible for promoting and advancing its objectives, can supplement that framework, principally through the positive duty to eliminate discrimination under section 15 of the EOA.

(c) Limits of Negative Duties under the Equal Opportunity Act 2010 (Vic)

48. The EOA largely focuses on the right to non-discrimination (as opposed to the right to equality) by imposing negative duties. Principally, the EOA operates by proscribing certain conduct, including direct discrimination (treating a person unfavourably because of a protected attribute)⁴⁸ and indirect discrimination (unreasonably imposing or proposing to impose a requirement, condition or practice which has, or is likely to have, the effect of disadvantaging a person has a protected attribute),⁴⁹ based on or in connection with a “protected attribute” (including gender identity, sex, sex characteristics and sexual orientation)⁵⁰ within specifically defined areas of public activity, subject to any applicable

⁴⁶ Thorne Harbour, ‘10 Tips for Keeping Safe on Hookup Apps’ (25 February 2026) <<https://thorneharbour.org/news-events/news/10-tips-for-keeping-safe-on-hookup-apps/>>.

⁴⁷ Navarro (n 33).

⁴⁸ *Equal Opportunity Act 2010* (‘EOA’) ss 6(d), (o), (oa), (p).

⁴⁹ *Ibid* ss 8, 9.

⁵⁰ *Ibid* s 6.

exemption or reasonably justifiable exception. Other proscribed conduct includes sexual harassment (under Part 6), unlawful vilification through “public conduct”⁵¹ (under Part 6A) and victimisation (under Part 7).

49. Relevantly, division 4 of part 4 of the EOA provides that a person must not discriminate against another person in the provision of goods or services. The EOA provides a non-exhaustive list of “services” to which the EOA applies.⁵² Otherwise, the term “services” is interpreted broadly to give effect to the objectives of the Act to eliminate discrimination and promote and protect all persons’ rights to equality.⁵³
50. A provider of goods or services will only unlawfully discriminate against another person, based on that person’s protected attributes: by refusing to provide goods or services to the other person; in the terms on which goods or services are provided to the other person; or by subjecting the other person to any other detriment in connection with the provision of goods or services to them.⁵⁴
51. Putting to one side examples of unlawful vilification, the EOA does not apply to the discriminatory *use* of goods or services, even if those goods or services are used in a public manner – such as communicating with others online.
- (d) Positive Duty to Eliminate Discrimination*
52. Unlike most other Australian jurisdictions, the EOA imposes a “positive duty” on persons to whom the Act applies to take ‘positive’ or proactive steps to prevent discrimination.
53. Under part 3 of the EOA, persons to whom Parts, 4, 6 or 7 apply are required those persons or entities to take reasonable and proportionate measures to eliminate discrimination that is unlawful under the Act.⁵⁵ The purpose of this positive duty is to target systemic discrimination. This acknowledges that a complaints-based system alone is inadequate at addressing the root causes of such discrimination.⁵⁶ Thus, the duty is designed to be proactive in preventing the occurrence of discrimination and, in doing so, promoting equality.
54. As services which are designed to be used, consumed, engaged with or controlled by members of the public through the internet, social media and digital platform services are

⁵¹ Ibid s 102C

⁵² Ibid s 4(1) (definition of ‘services’).

⁵³ Ibid s 3(a), (b). See *IW v City of Perth* (1997) 191 CLR 1, 11 to 12 (Brennan CJ and McHugh J).

⁵⁴ EOA (n 48) s 44(1).

⁵⁵ Ibid s 15.

⁵⁶ Julian Gardner, ‘An equality Act for a Fairer Victoria’ (Report, Department of Justice, 2008), [1.93], [1.97].

arguably “services” within the meaning of the EOA.⁵⁷ Accordingly, providers of these platforms are required to comply with the positive duty.

55. However, the scope of the positive duty as it applies to providers of goods or services is unclear.

56. On one view, a provider of goods or services is required to take any reasonable and proportionate step which can eliminate discrimination within its sphere of influence. The duty under subsection 15(2) of the EOA requires steps to be taken “as far as [is] possible”. The purpose of the duty provisions specifically, and EOA more generally, is to “to eliminate discrimination, sexual harassment and victimisation.” Therefore, while the negative duty imposed on a social media or digital platform service provider under division 4 of part 4 relates only to the manner and terms in which their services are provided, the positive duty arguably extends further and requires those entities to take all reasonable and proportionate steps to ensure its services are not misused or abused by consumers to cause discrimination to, or sexual harassment or victimisation of, others based on a protected attribute, such as their identification as LGBTQIA+.

57. We consider this is the preferable construction of section 15 of the EOA.

58. Under this construction, social media and digital platform providers would be obliged to ensure their services are not used to perpetrate hate crimes (or any other kind of discrimination) against LGBTQIA+ people. However, unlike the basic online expectations set by the *Online Safety Act 2021* (Cth), the grounding of the EOA’s positive duty in human rights would not only seek only to protect the safety of LGBTQIA+ people, but it would also seek to advance tolerance and their rights to equality within society.

59. It is, however, also acknowledged that the words “a person who has a duty under Part 4, 6 or 7” within section 15 may be construed to mean that the reach of the positive duty does not extend further than the scope of the relevant negative duty against unlawful discrimination. In other words, a provider of goods or services is only required to comply with the positive duty under section 15 only in relation to how and in what circumstances goods and services are provided.

60. We consider this interpretation of section 15 would be perverse. Indeed, it would mean that a social media or digital platform service provider would only be obliged to take steps to

⁵⁷ Australian Human Rights Commission, ‘Guidelines on Equal Access to Digital Goods and Services’ (Guidelines, April 2025) 20.

eliminate discrimination in how they provide those services to consumers — but is exempted from taking any steps to ensure those same services are not used by consumers to engage in discriminatory, harassing or victimising conduct. This would not be in the spirit of or advance the beneficial objectives of the EOA to the farthest extent possible.

61. To avoid doubt, we recommend the EOA be amended to clarify that providers of social media and digital platforms services, including dating apps, are covered by the definition of “services”. More importantly, we recommend the EOA be amended to ensure that the providers of goods and services have a positive duty to ensure the provided goods or services are not misused to discriminate, sexually harass or victimise against another person based on a protected attribute.

(e) Engaging VEOHRC’s investigatory Powers

62. Many social media and digital platform providers have policies or terms of use which stipulate discriminatory and similar conduct is unacceptable. In some cases, hate speech is specifically prohibited.⁵⁸

63. Whether these policies are adequate or satisfactorily discharge the positive duty under section 15 of the EOA remains unclear (which, as explained above, we consider applies).

64. Presently, the EOA does not provide individuals with the ability to seek a remedy if there has been a suspected contravention of the positive duty under the EOA.⁵⁹ Further, whether a breach of the positive duty would enliven a private cause of action for breach of statutory duty has not been tested.⁶⁰

65. Rather, the VEOHRC is the principal regulator for monitoring compliance with the positive duty. When it is suspected a contravention may have occurred, the VEOHRC may undertake an investigation under Part 9. At the conclusion of an investigation, the VEOHRC may enter an enforceable agreement with the person or entity subject of the investigation about action to be taken or refer a contravening party to the Victorian Civil and Administrative Tribunal (**VCAT**) for an inquiry, and the VCAT, if satisfied the person has

⁵⁸ *Instagram*, ‘Instagram Community Guidelines FAQs’

<<https://about.instagram.com/blog/announcements/instagram-community-guidelines-faqs>>.

⁵⁹ EOA (n 48) ss 113(1), 122; *Collins v Smith* [2015] VCAT 1029, [46] (Judge Jenkins VP).

⁶⁰ But see *Gama v Qantas Airways Ltd* (2006) 195 FLR 475, 478-9 [6] (Raphael FM); *Lanigan v Circus Oz (Human Rights)* [2020] VCAT 1318, [91], [97] (Member Campana).

contravened the positive duty, may order the person refrain from acting in contravention of the duty and/or do any specific action with the view of eliminating future contraventions.⁶¹

66. Based on our research, there are no known reported examples of the VEOHRC conducting any investigation or the VCAT conducting any inquiry into a (suspected or actual) contravention of the positive duty under the EOA.⁶²

67. We consider an investigation would evaluate whether social media and digital platform service providers are taking steps to comply with their positive duty under section 15 and, if so, the effectiveness of those steps to eliminate discrimination, sexual harassment and victimisation.

68. Accordingly, we recommend the VEOHRC be directed and properly funded to conduct an investigation into whether social media and digital platform providers are adequately discharging their duties under section 15 of the EOA to prevent their services being used to commit LGBTQIA+ hate crimes.

(f) Improving VEOHRC's Powers as a Regulator to Address LGBTQIA+ Hate Crimes

69. While it is important that individuals have access to an effective remedy to address discrimination when it occurs,⁶³ relying solely on individuals – including LGBTQIA+ people subject to hate crimes – to drive enforcement is unfair and arguably ineffective due to barriers such as potential psychological vulnerability, re-traumatisation and expense.

70. Within this setting, the VEOHRC has an important role to play in protecting LGBTQIA+ people from discrimination and promoting their rights to equality. However, as noted above, the ability to enforce of section 15 is limited.

71. Despite being the principal body responsible for the regulation and enforcement of anti-discrimination laws in Victoria, the VEOHRC has few available tools to encourage compliance with the EOA. This can be contrasted with other areas of public life where regulators are provided with a hierarchy of tools ranging from 'carrots', designed to encourage voluntary compliance (like education and outreach activities), to 'sticks' (such as

⁶¹ EOA (n 48) ss 139, 141.

⁶² See also Dominique Allen, 'Thou Shalt Not Discriminate: Moving from a Negative Prohibition to a Positive Obligation on Business to Tackle Discrimination' (2010) 26(1) *Australian Journal of Human Rights* 110, 120.

⁶³ See *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 2(3).

infringement notices, civil penalties and criminal sanctions). Persuasion alone is not an effective way to secure compliance; compliance is better achieved when persuasion is complemented with penalties.⁶⁴

72. By way of analogy, we note that a review into *Online Safety Act 2021* (Cth) has recommended that Act be strengthened by improving enforcement mechanisms and complementing informal efforts or remedial directions with options like infringement notices, court injunctions and civil penalties to secure the compliance of social media or digital platform providers with safety expectations to mitigate against online harm.⁶⁵

73. In this context, we observe that the VEOHRC historically had the power to issue a compliance notice in the event of non-compliance.⁶⁶ The options to enforce compliance with positive duties under the EOA can extend beyond a compliance notice. However, the mere existence of this ‘stick’ has the potential to increase adherence with anti-discrimination laws. With such a power, the VEOHRC can take steps to enforce the law in circumstances where social media or digital platform service providers may not be doing enough to prevent their services being used to prevent LGBTQIA+ hate crimes.

(g) Automatic Religious Exception Emboldens LGBTQIA+-phobia

74. In 2022, the EOA was amended to strengthen protections for LGTBQIA+ persons, among others, by limiting the availability of religious exceptions in public areas. However, religious bodies are still permitted to discriminate against persons, including LGBTQIA+ persons, in certain areas of public life.

75. Fundamentally, the existence of an automatic exceptions based on religious grounds sends the wrong message. These exceptions give license to religious bodies to determine – for themselves and without any scrutiny – whether their own freedom of religion has greater relative importance than the right to equality. In turn, they have the potential of signalling to the broader community that the law countenances exclusionary views and practices. This

⁶⁴ Michael Legg and Stephen Speirs, ‘Why Not Litigate? The Royal Commission, ASIC and the Future of the Enforcement Pyramid’ (2019) 47 *Australian Business Law Review* 244, 244–6 citing Ian Ayers and John Braithwaite, *Responsive Regulation* (Oxford University Press, 1992).

⁶⁵ Delia Rickard PSM, *Report of the Statutory Review of the Online Safety Act 2021* (Report, October 2024), 136 to 9.

⁶⁶ EOA (n 48) pt 9 (Version 001 as of 28 April 2010).

has the potential to fuel disinformation and/or intolerance against LGBTQIA+ persons, and can hinder initiatives aimed at promoting equality.⁶⁷

76. Noting the link between religious extremism and LGBTQIA+ hate crimes, we consider the preferable mechanism to balance competing rights in different areas of public life is for religious bodies to apply to the VCAT for an exemption under section 89 of the EOA. This process increases transparency and ensures departures from anti-discrimination laws are properly justified. It also shifts the burden from individuals to show discrimination has occurred to religious bodies to show a prima facie discriminatory policy is justifiable.

3. Misidentification of LGBTQIA+ Hate Crimes Undermines Legal Enforcement

77. We acknowledge that there is ample scope for both law enforcement organisations and legislation to combat anti-LGBTQIA+ hate crimes.

(a) Law enforcement organisations

78. For instance, Victoria Police have a dedicated website page for reporting a crime against the LGBTQIA+ community,⁶⁸ including a separate page for reporting a change in suppression (conversion) practice.⁶⁹ And, LGBTQIA+ Liaison Officers provide a contact point for LGBTQIA+ community members, as well as recommendations on the policing needs of LGBTQIA+ people.⁷⁰

79. Additionally, LGBTQIA+ hate crimes can be punished across many statutory provisions.

(b) Legislation

(i) Pre-emptive hate crime offences`

80. Federal and Victorian legislation hate-based, pre-emptive hate crime offences that provide the following penalties:

⁶⁷ Victor Madrigal-Borloz, *Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, UN Doc A/HRC/53/37 (28 June 2023) [44].

⁶⁸ Victoria Police, 'Report a Crime against the LGBTQIA+ Community' (updated 30 January 2026) <<https://www.police.vic.gov.au/report-crime-against-LGBTIQA-community>>.

⁶⁹ Victoria Police, 'Report a Change or Suppression (Conversion) Practice' (updated 31 January 2025) <<https://www.police.vic.gov.au/report-change-or-suppression-conversion-practice>>.

⁷⁰ Victoria Police, 'LGBTIQA+ Liaison Officers' (updated 9 April 2026) <<https://www.police.vic.gov.au/LGBTIQA-liaison-officers>>.

Statute	Offence	Provision	Penalty
<i>Criminal Code Act 1995</i> (Cth) ('Criminal Code Act')	Advocating or threatening violence	ss 80.2A, 80.2B, 80.2BA, 80.2BB, and 80.2BE.	Maximum five years imprisonment
	Advocating or threatening to damage to property	ss 80.2BC and 80.2BD	
	Advocating terrorism	s 80.2C	
	Displaying prohibited symbols or the Nazi salute	ss 80.2H and 80.2HA	
	Using a carriage service to menace or harass	s 474.17	
<i>Crimes Act 1958</i> (Vic) ('Crimes Act')	Incitement on ground of protected attribute	s 195N	Maximum three years imprisonment
	Threaten physical harm or property damage on ground of protected attribute	s 195O	Maximum five years imprisonment
	Threats to destroy or damage property	s 198	
	Possessing anything with intent to destroy or damage property	s 199	
	Threats to inflict serious injury	S 21	

	Conduct endangering persons	S 23	
	Threats to kill	S 20	Maximum 10 years' imprisonment
	Conduct endangering life	S 22	

81. We welcome the new criminal vilification offences under section 195N-O of the Crimes Act as they specifically include gender identity, sex, sex characteristics, and sexual orientation, and personal association with a person who is identified with reference to the former attributes.⁷¹ Although there are no records of these offences being applied yet, we understand this may be due to the novelty of the offences and anticipate that they will effectively protect against LGBTQIA+ hate crimes in the future.

82. We also consider that the Criminal Code Act's exclusion for a good-faith defence reinforces protection for the LGBTQIA+ community against hate crimes.

(ii) Reactive Hate Crime Offences

83. Victorian legislation bridges the gap by providing punishment for both minor and serious reactive hate crime offences in the *Summary Offences Act 1966* (Vic) ('Summary Offences Act'), and Crimes Act or *Suppression (Conversion) Practices Prohibition Act 2021* (Vic) ('Conversion Prohibition Act'), respectively. Please note that the following are not exhaustive:

Statute	Offence	Provision	Penalty
<i>Summary Offences Act 1966</i> (Vic)	Common assault	s 23	5 penalty units or three months imprisonment
	Obscene, indecent, threatening language and behaviour etc. in public	s 17	first offence – 10 penalty units or two months imprisonment

⁷¹ *Crimes Act 1958* (Vic) ss 195M(b), (e), (f), (g), (h).

			second offence – 15 penalty units or three months imprisonment
			third offence – 25 penalty units or six months imprisonment
	Public display or performance of Nazi symbols or gestures	s 41K	120 penalty units or 12 months imprisonment, or both
	Aggravated assault when in company with another person who assaults another person	s 24	12 months imprisonment
	Aggravated assault where kicking or weapon involved		two years imprisonment
<i>Change or Suppression (Conversion) Practices Prohibition Act 2021 (Vic)</i>	Offence of engaging in one or more change or suppression practices that cause serious injury	s 10	Natural person: maximum 10 years' imprisonment or 1200 penalty units, or both Body corporate: maximum 6000 penalty units

	Offence of engaging in one or more change or suppression practices that cause injury	S 11	Natural person: maximum 5 years' imprisonment or 600 penalty units, or both Body corporate: maximum 3000 penalty units
	Offence of taking a person from Victoria for a change or suppression practice	S 12	Natural person: maximum 2 years' imprisonment or 240 penalty units, or both Body corporate: maximum 1200 penalty units
	Offence of advertising a change or suppression practice	S 13	Natural person: maximum 60 penalty units Body corporate: maximum 300 penalty units

<i>Crimes Act 1958</i> (Vic)	Causing injury recklessly	s 18	Maximum 5 years imprisonment
	Conduct endangering persons	S 23	
	Causing injury intentionally	s 18	Maximum 10 years imprisonment
	Stalking	s 21A	
	Causing serious injury recklessly	S 17	Maximum 15 years' imprisonment
	Destroying or damaging property	S 197	
	Causing serious injury intentionally	S 16	Maximum 20 years imprisonment
	Rape	S 38	Maximum 25 years' imprisonment
	Rape by compelling sexual penetration	S 39	
	Arson causing death	S 197A	

84. We note that the court can consider sex, gender and sexuality characteristics as a part of the above Victorian provisions under paragraph 5(2)(da) of the Sentencing Act and subparagraphs 47H(a)(v)--(vi) of the *Jury Directions Act 2015* (Vic) in relation to the jury's determination of non-consensual sexual acts for rape.

85. We support these provisions as a mechanism to reinforce the application of general criminal offences to LGBTQIA+ hate crime offences.

86. However, we also acknowledge the benefit that general criminal offences provide for sanctioning LGBTQIA+ hate crimes as they can be made out without needing to prove LGBTQIA+ hate.

87. We also welcome the appropriate inclusion of change or suppression practices as LGBTQIA+ hate crimes under the recent implementation of the Conversion Practices Prohibition Act in 2021.

(c) Misalignment Between Law Enforcement Responses and Legislative Objectives

88. However, we consider that first responders (namely Victoria Police members) and prosecuting agencies could be better educated to identify hate-crimes under the relevant provisions when conducting investigations. Naturally, this would benefit both the LGBTQIA+ community and other minority groups.

89. We take this position as there is a stark contrast between the key discrimination statistics for LGBTQIA+ Victorians, and reported hate crimes.

90. In 2023:⁷²

- a. 32.7% of LGBTQIA+ Victorians faced verbal abuse;
- b. 22.6% faced harassment such as being spat at or offensive gestures;
- c. 10.3 per cent experienced sexual assault; and
- d. 3.4 per cent suffered a physical attack or assault with a weapon.

91. This level of discrimination and harassment has the capability of being sanctioned under the above-mentioned criminal offences, yet only 148 hate crimes based on sexual orientation were reported in Victoria 2020.⁷³

(i) Limitations

92. We note the limitation in comparing data that is across different:

- a. time periods (2020 versus 2023); and
- b. data samples (sexual orientation versus the LGBTQIA+ community in general).

⁷² *Pride in our future: Victoria's LGBTQIA+ Strategy 2022 to 2032*, 'Current Outcomes for LGBTQIA+ Victorians' (updated 13 November 2023) <<https://www.vic.gov.au/pride-our-future-victorias-lgbtqi-strategy-2022-32/current-outcomes-lgbtqi-victorians>>.

⁷³ *Victoria Records Spike in Gay-Hate Crimes in 2020*, *Star Observer* (29 March 2021) <<https://www.starobserver.com.au/news/victoria-records-spike-in-gay-hate-crimes-in-2020/201820>>.

93. However, we make this comparison in the absence of more relevant, fulsome data, which Victoria Police are not mandated to record.⁷⁴

94. We also concede that first responder misidentification is not the only factor leading to the underreporting of LGBTQIA+ hate crimes, with LGBTQIA+ being less likely to report LGBTQIA+ hate crimes due to a distrust of police, limited awareness of offences, difficulty identifying perpetrators, fear that reporting will worsen harm, and psychological trauma with ongoing mental health impacts.⁷⁵

(d) Conclusion

95. We nevertheless contend that, on balance, first responder misidentification contributes to the large discrepancy between experienced and reported LGBTQIA+ hate crimes.

96. Factors that weigh in favour of this contention are that:

- a. the Victorian Government supported a recommendation for Victoria Police to mandate prejudice-motivated crime in 2021;⁷⁶
- b. neighbouring states' first responders, like NSW police, admitting to wrongly categorising a 'significant' number of hate crimes as antisemitic;⁷⁷ and
- c. vilification laws akin to those under sections 195N-O of the Crimes Act (like the *Crimes Act 1900* (NSW) s 93Z) have never been finalised in court, despite being in force since 2018.⁷⁸

97. For this reason, we recommend that law enforcement organisations provide better education to first responders to assist in the identification of hate crimes within the current legislative framework.

⁷⁴ *The Guardian*, 'Everyone Says They Are Worried about Hate Crimes. But Australia's Laws to Combat Them Are All over the Place' (1 November 2025) <<https://www.theguardian.com/society/2025/nov/01/hate-crimes-australia-laws-police>>.

⁷⁵ Human Rights Law Centre, *End the Hate Report 15* <<https://www.hrlc.org.au/app/uploads/2025/04/1809-End-The-Hate-Report.pdf>>.

⁷⁶ *The Guardian* (n 74).

⁷⁷ *The Guardian*, 'NSW Police Wrongly Categorise Significant Number of Incidents as Antisemitic' (11 October 2025) <<https://www.theguardian.com/australia-news/2025/oct/11/nsw-police-wrongly-categorise-significant-number-of-incidents-as-antisemitic-ntwnfb>>.

⁷⁸ ABC News, 'NSW LGBTI Hate Data Released Ahead of Mardi Gras' (27 February 2026) <<https://www.abc.net.au/news/2026-02-27/nsw-lgbt-hate-data-released-ahead-of-mardi-gras/106394004>>.

Thank you for the opportunity to make this submission and we welcome any further questions or discussion, which can be directed to Zoran Petric at president.vic@prideinlaw.org or Gregory Buchhorn at gregory.buchhorn@vicbar.com.au.

BIBLIOGRAPHY

A Articles/Books/Reports

ABC News, 'NSW LGBTI Hate Data Released Ahead of Mardi Gras' (online, 27 February 2026) <<https://www.abc.net.au/news/2026-02-27/nsw-lgbt-hate-data-released-ahead-of-mardi-gras/106394004>>

Albury, Kath, 'Dating Apps Are Facilitating LGBTQ+ Hate Crimes. How Can Users Stay Safe?' *The Conversation* (online, 25 February 2026) <<https://theconversation.com/dating-apps-are-facilitating-lgbtq-hate-crimes-how-can-users-stay-safe-276862>>

Allen, Dominique, 'Thou Shalt Not Discriminate: Moving from a Negative Prohibition to a Positive Obligation on Business to Tackle Discrimination' (2010) 26(1) *Australian Journal of Human Rights* 110.

Avery, Elizabeth and Andrew Low, 'Government Ramps Up Digital Platforms Online Safety Agenda by Proposing Duty of Care Obligations for Social Media Platforms' (20 November 2024) <<https://www.gtlaw.com.au/insights/government-ramps-up-digital-platforms-online-safety-agenda-by-proposing-duty-of-care-obligations-for-social-media-platforms>>

Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation, Gender Identity and Intersex Rights* (National Consultation Report, 2015).

Fileborn, Bianca et al, 'Inquiry into LGBTIQ Hate Crime Could Improve How Police and Communities Respond', *The Conversation* (online, 19 December 2018) <<https://theconversation.com/inquiry-into-lgbtq-hate-crime-could-improve-how-police-and-communities-respond-108965>>

Gallagher, Aoife and Steven Rai, 'A Quantitative Analysis of Anti-LGBTQ+ Hate after Tumbler Ridge Shooting' (13 March 2026) <<https://www.isdglobal.org/digital-dispatch/quantitative-analysis-anti-lgbtq-hate-tumbler-ridge-shooting/>>

Gardner, Julian, *An Equality Act for a Fairer Victoria* (Report, Department of Justice, 2008).

Gillespie, Eden, "'I Feel Unsafe": Most LGBTIQ+ Victorians Don't Trust Police, New Report Finds', *SBS News* (online, 16 November 2021) <<https://www.sbs.com.au/news/article/i-feel-unsafe-most-lgbtq-victorians-dont-trust-police-new-report-finds/y9vo0p70m>>

Human Rights Law Centre, *End the Hate Report* <<https://www.hrlc.org.au/app/uploads/2025/04/1809-End-The-Hate-Report.pdf>>

Kolovos, Benita, 'Role of Far-Right Manosphere in Homophobic Attacks on Men to Be Investigated in Victoria', *The Guardian* (online, 18 February 2026) <<https://www.theguardian.com/australia-news/2026/feb/18/far-right-influencers-homophobic-attacks-dating-apps-investigation-ntwnfb>>

Legg, Michael and Stephen Speirs, 'Why Not Litigate? The Royal Commission, ASIC and the Future of the Enforcement Pyramid' (2019) 47 *Australian Business Law Review* 244

Madrigal-Borloz, Victor, *Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, UN Doc A/HRC/53/37 (28 June 2023)

Pitts, Marian et al, *Private Lives: A Report on the Health and Wellbeing of GLBT Australians* (Report No 57, Gay and Lesbian Health Victoria and Australian Research Centre in Sex, Health and Society, March 2006) <<https://apo.org.au/sites/default/files/resource-files/2006-02/apo-nid4050.pdf>>

Powell, Anastasia, Asher Flynn and Sophie Hindes, *Technology-facilitated Abuse: National Survey of Australian Adults' Experiences* (Research Report No 12, Australia's National Research Organisation for Women's Safety, July 2022)

Rickard, Delia PSM, *Report of the Statutory Review of the Online Safety Act 2012* (Report, October 2024)

Rubinsztein-Dunlop, Sean, 'Gay and Bisexual Sydney Teenagers Lured and Bashed on Camera in IS-Inspired Attacks', ABC News, ABC Investigations (online, 25 February 2026) <<https://www.abc.net.au/news/2026-02-25/lgbtq-sydney-teenagers-bashed-on-camera-in-is-inspired-attacks/106381614>>

Taylor, Josh, 'Victoria Police Arrest 13 People over Separate Alleged Attacks on Gay Men Involving Dating Apps', *The Guardian* (online, 17 October 2024) <<https://www.theguardian.com/australia-news/2024/oct/17/victoria-gay-men-grindr-dating-app-attacks-police-arrests-ntwnfb>>

The Guardian, 'Everyone Says They Are Worried about Hate Crimes. But Australia's Laws to Combat Them Are All over the Place' (online, 1 November 2025) <<https://www.theguardian.com/society/2025/nov/01/hate-crimes-australia-laws-police>>

The Guardian, 'NSW Police Wrongly Categorise Significant Number of Incidents as Antisemitic' (online, 11 October 2025) <<https://www.theguardian.com/australia-news/2025/oct/11/nsw-police-wrongly-categorise-significant-number-of-incidents-as-antisemitic-ntwnfb>>

Star Observer, 'Victoria Records Spike in Gay-Hate Crimes in 2020' (online, 29 March 2021) <<https://www.starobserver.com.au/news/victoria-records-spike-in-gay-hate-crimes-in-2020/201820>>

Vanden Bosch, Matthew and Brendan Lantz, 'Differential Compliance with the Reporting of Hate Crime Statistics as a Function of State Laws' (2025) 98 *Journal of Criminal Justice* 102415

B Cases

Collins v Smith [2015] VCAT 1029

Gama v Qantas Airways Ltd (2006) 195 FLR 475

IW v City of Perth (1997) 191 CLR 1

Lanigan v Circus Oz (Human Rights) [2020] VCAT 1318

Moresco & Ors v Budimir [2015] VSC 51

C Legislation

Crimes Act 1958 (Vic)

Criminal Code Act 1995 (Cth)

Change or Suppression (Conversion) Practices Prohibition Act 2021 (Vic)

Equal Opportunity Act 2010 (Vic)

Jury Directions Act 2015 (Vic)

Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025 (Vic)

Online Safety Act 2021 (Cth)

Sentencing Act 1991 (Vic)

Summary Offences Act 1966 (Vic)

Victims of Crime (Financial Assistance Scheme) Act 2022 (Vic)

Wrongs Act 1958 (Vic)

D Treaties

International Covenant on Civil and Political Rights, opened for signature 19 December 1966,
999 UNTS 171 (entered into force 23 March 1976)

E Other

Australian Human Rights Commission, *Guidelines on Equal Access to Digital Goods and Services* (Guidelines, April 2025)

Leonard, William and Bianca Fileborn, *Policing for Same Sex Attracted and Sex and Gender Diverse (SSASGD) Young Victorians* (2018)

<<http://rainbowhealthaustralia.org.au/media/pages/research-resources/policing-for-same-sex-attracted-and-sex-and-gender-diverse-ssasgd-young-victorians/945288268-1709686057/policing-for-ssasgd-young-people.pdf>>

Liberty Victoria and LGBTIQ Legal Service, Submission 39 to the Victorian Legislative Assembly Legal and Social Issues Committee, *Inquiry into Anti-Vilification Protections* (17 January 2020)

Navarro, Carolina, 'Hate Crime Reporting Barriers: Why Are Victims Reluctant to Report?'

<<https://tacklinghate.org/trainingmodule/hate-crime-reporting-barriers-why-victims-of-hate-related-incidents-are-reluctant-to-report2/>>

Roberts, Colin et al, *Understanding Who Commits the Crime and Why They Do It* (2013)

<<https://orca.cardiff.ac.uk/id/eprint/58880/1/understanding-who-commits-hate-crime-and-why-they-do-it-en.pdf>>

Sentencing Advisory Council, *Restitution and Compensation Orders Reference: Consultation Materials* (August 2018) <https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Restitution_and_Compensation_Orders_Fact_Sheet_1.pdf>

Instagram, 'Instagram Community Guidelines FAQs'

<<https://about.instagram.com/blog/announcements/instagram-community-guidelines-faqs>>

New South Wales Police Force, *LGBTQIA+ Consultative Committee Communique* (Communique 3, April 2025)

<https://www.police.nsw.gov.au/_data/assets/pdf_file/0003/903180/LGBTQIA_Communique_April_2025.pdf>

Thorne Harbour, '10 Tips for Keeping Safe on Hookup Apps' (online, 25 February 2026)

<<https://thorneharbour.org/news-events/news/10-tips-for-keeping-safe-on-hookup-apps/>>

Victoria Police, 'LGBTQIA+ Liaison Officers' <<https://www.police.vic.gov.au/LGBTQIA-liaison-officers>>

Victoria Police, 'Report a Change or Suppression (Conversion) Practice'

<<https://www.police.vic.gov.au/report-change-or-suppression-conversion-practice>>

Victoria Police, 'Report a Crime against the LGBTIQ+ Community'

<<https://www.police.vic.gov.au/report-crime-against-LGBTIQ-community>>

Victoria Police, 'Victoria Police and LGBTIQ+ Community News'

<<https://www.police.vic.gov.au/victoria-police-and-lgbtqa-community-news>>

Victims of Crime, 'Can I Apply for Financial Assistance?'

<<https://www.victimsofcrime.vic.gov.au/can-i-apply-for-financial-assistance>>

Victims of Crime, 'Financial Assistance and Compensation for Victims of Crime'

<<https://www.victimsofcrime.vic.gov.au/financial-assistance-and-compensation-victims-crime>>

Victims of Crime, 'Marra Yattakunar Pathway' <<https://www.victimsofcrime.vic.gov.au/marra-yattakunar-pathway>>

Victims of Crime, 'Supporting LGBTIQ+ People'

<<https://www.victimsofcrime.vic.gov.au/supporting-lgbtqa-people>>