



Submission to Department of Justice and Community Safety

Protecting more Victorians from vilification: Implementing the legislative recommendations of the Victorian Inquiry into Anti-vilification Protections: Public Consultation Stage 1

8 September 2023

Thorne Harbour Health

Thorne Harbour Health (THH) is a LGBTIQ+ community-controlled organisation, governed by our members, and working for our sex, sexuality and gender diverse communities, as well as all people living with and affected by HIV. Founded in 1983, it is the largest and oldest LGBTIQ+ health service in Victoria. THH works primarily across Victoria and South Australia, but also leads on national projects.

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Executive Summary

Thorne Harbour Health (THH) welcomes the opportunity to provide a submission to the Department of Justice and Community Safety's (DJCS) initiative to implement the legislative recommendations of the Victorian inquiry into anti-vilification protections.

Since the Victorian Parliament's Legal and Social Issues Committee tabled its final report into anti-vilification protections in March, 2021, instances of vilification targeting a diverse array of groups have increased across the state, highlighting the need for expanded protections.

Vilification is an 'identity crime', targeting not just an individual, but directed toward a group, sending a message to the 'hated characteristic' of the victim. In recent years, LGBTIQ+ individuals and communities have come under attack from the far-right, often as a response to increased social and legal equality. Reform efforts such as the Safe Schools anti-bullying program, marriage equality, prohibition of conversion practices, and tightening of religious exceptions under anti-discrimination law have come at a cost: resurgent prejudice that attempts to roll back these rights and target our communities for daring to be equal.

Throughout community engagement implementing these reforms, it is important to recognise that not all stakeholders in the debate surrounding anti-vilification protections have the same level of value. Some are directly affected by vilification, while others are not – and indeed some are those that vilify vulnerable populations. When considering the diversity of responses in submission, it is essential to centre the voices of people who routinely face vilification in Victoria.

Terms of Reference

Pursuant to the Department of Justice and Community Safety's call for feedback on the expansion of protections from vilification, Thorne Harbour Health will respond to questions:

- 1a. Do you have any views on the current protections for race and religion?
- 1b. Government proposes to extend current protections beyond race and religion. What do you think this should look like?
2. Do you have any views on how the anti-vilification protections should apply to people with disability?
3. Do you have any views on how the anti-vilification protections should apply to people living with HIV/AIDS?
4. Do you have any views on how the anti-vilification protections should apply to LGBTIQ+ communities?
5. Do you have any views on how the anti-vilification protections should apply to protect people based on sex?
6. Do you have any views on how the anti-vilification protections should apply to protect people who are associated with targeted groups?
7. Do you have any views on clarifying the law to ensure individuals can make vilification complaints based on one or more attributes?

Summary of Recommendations

Race and Religion

1. Use the definition of race under the *Racial and Religious Tolerance Act 2001* (Vic) with the additional attributes of:
 - i. status of being, or having been an immigrant; and
 - ii. caste.
2. Extend anti-vilification protections beyond race and religion to cover:
 - i. disability;
 - ii. HIV or AIDS status;
 - iii. sexual orientation;
 - iv. gender identity;
 - v. gender expression;
 - vi. sex characteristics; and,
 - vii. association with a targeted group.

Disability

1. Extend protection from vilification to people living with a disability using the current definition of disability under section 4(1) of the *Equal Opportunity Act 2010* (Vic).

HIV & AIDS

1. Include HIV or AIDS status as a unique protected attribute distinct from disability.
2. Use 'HIV or AIDS status' rather than 'HIV/AIDS status'.
3. Define 'HIV or AIDS status' as: HIV or AIDS status means status as a person who has the Human Immunodeficiency Virus (HIV) or experiencing Acquired Immune Deficiency Syndrome (AIDS).

LGBTIQ+ communities

1. Include sexual orientation, gender identity, gender expression, and sex characteristics, as attributes protected from vilification.
2. Use current definitions of 'sexual orientation', 'gender identity' (which includes gender expression), and 'sex characteristics' as defined by the *Equal Opportunity Act 2010* (Vic).
3. Implement recommendation 29 of the Inquiry into anti-vilification protections: That the Victorian Government enable a representative complaint to be made to the Victorian Equal Opportunity and Human Rights Commission without the need to name an individual complainant.

Sex

1. Include 'gender' (as defined under the EOA) as a protected attribute rather than 'sex'.
2. Include 'sex characteristics' as a protected attribute rather than 'sex'.

Association with targeted groups

1. Extend protections from vilification to people associated with targeted groups (above).

Complaints based on more than one attribute

1. Amend anti-vilification laws to ensure people can make complaints on the basis of more than one attribute in a way that captures the qualitatively unique manifestations of intersectional vilification.

Response to questions

1a. Do you have any views on the current protections for race and religion?

Thorne Harbour Health supports the current protections from vilification on the basis of race and religion. However, the current definition of race under the *Racial and Religious Tolerance Act 2001* (Vic)¹ is too narrow, and should be expanded to provide protection from vilification on the basis of:

- i. migrant status: For example, the definition under Tasmania’s Anti-Discrimination Act includes “status of being, or having been, an immigrant”, within the definition of race.²
- ii. caste³: the Australian Human Rights Commission (AHRC) *National Anti-Racism Scoping Report* (2022) identifies casteism as a form of racism. According to the report, casteism affects all aspects of life – including the exercise of basic civil, political, social, economic, and cultural rights – and takes form in interpersonal, institutional, and ‘structurally invisibilised’ ways. Entrenching social and economic exclusion and inequalities, this includes impacts on housing access, denied or restricted access to services and education, as well as exclusion from community and religious activities. Occupations are also restricted under the caste system, thus affecting labour and employment.^{4,5}

THH supports the current definition of religion under the RRTA.⁶

1b. Government proposes to extend current protections beyond race and religion. What do you think this should look like?

Thorne Harbour Health supports the extension of protections beyond race and religion to cover disability, HIV or AIDS status, sexual orientation, gender identity, gender expression, sex characteristics, and association with a targeted group, as recommended by the Inquiry into anti-vilification protections.

Recommendations:

1. Use the definition of race under the *Racial and Religious Tolerance Act 2001* (Vic) with the additional attributes of:

¹ *Racial and Religious Tolerance Act 2001* (Vic).

s 3 of the RRTA currently defines race as including:

- a) colour;
- b) descent or ancestry;
- c) nationality or national origin;
- d) ethnicity or ethnic origin;
- e) if 2 or more distinct races are collectively referred to as a race-
 - i. each of those distinct races
 - ii. that collective race.

² *Anti-Discrimination Act 1998* (Tas).

³ Caste is a strictly codified, socio-religious hierarchical system made up of classes and sub-classes that are ranked based on underlying ideas of purity and pollution.

⁴ Australian Human Rights Commission. (2022). *National Anti-Racism Framework Scoping Report 2022*.

⁵ Luthria, K. (2023). ‘A disease’: Caste discrimination in Australia is on the rise – but some are fighting back. *The Guardian*. <https://www.theguardian.com/australia-news/2023/feb/18/a-disease-caste-discrimination-in-australia-is-on-the-rise-but-some-are-fighting-back>

⁶ *Racial and Religious Tolerance Act 2001* (Vic).

s 4 of the RRTA defines religious belief or activity as:

- a) holding or not holding a lawful religious belief or view;
- b) engaging in, not engaging in or refusing to engage in a lawful religious activity.

- i. status of being, or having been an immigrant; and
 - ii. caste.
- 2. Extend anti-vilification protections beyond race and religion to cover:
 - i. disability;
 - ii. HIV or AIDS status;
 - iii. sexual orientation;
 - iv. gender identity;
 - v. gender expression;
 - vi. sex characteristics; and,
 - vii. association with a targeted group.

2: Do you have any views on how the anti-vilification protections should apply to people with a disability?

Thorne Harbour Health supports the extension of anti-vilification protections to people living with a disability, utilising the existing definition of disability under section 4(1) of the *Equal Opportunity Act 2010* (Vic).⁷

Recommendations:

1. Extend protection from vilification to people living with a disability using the current definition of disability under section 4(1) of the *Equal Opportunity Act 2010* (Vic).

3. Do you have any views on how the anti-vilification protections should apply to people living with HIV/AIDS?

Thorne Harbour Health supports anti-vilification protections being applied to people living with HIV or AIDS based on their HIV or AIDS status. However, contrary to the *Protecting more Victorians from vilification* consultation paper,⁸ HIV or AIDS status should be listed as a distinct attribute for protection. Subsuming HIV or AIDS status under the broad category of 'disability' minimises the unique features and impact of HIV or AIDS-based vilification, and its intersectional manifestations with other protected attributes. The final report from the Inquiry into anti-vilification protections recommends the extension of anti-vilification provisions to cover both disability and HIV/AIDS status.⁹ Furthermore, existing anti-vilification laws in both New South Wales (NSW)¹⁰ and the

⁷ Under the EOA, disability means:

- a) total or partial loss of a bodily function; or
- b) the presence in the body of organisms that may cause disease; or
- c) total or partial loss of a part of the body; or
- d) malfunction of a part of the body, including-
 - i. a mental or psychological disease or disorder;
 - ii. a condition or disorder that results in a person learning more slowly than people who do not have that condition or disorder; or
- e) malformation or disfigurement of a part of the body- and includes a disability that may exist in the future (including because of a genetic predisposition to that disability) and, to avoid doubt, behaviour that is a symptom or manifestation of a disability.

⁸ Department of Justice and Community Safety. (2023). *Protecting more Victorians from vilification: Implementing the legislative recommendations of the Victorian Inquiry into Anti-vilification Protections*. p.8.

⁹ Legislative Assembly Legal and Social Issues Committee. (2021). *Inquiry into anti-vilification protections*.

¹⁰ *Crimes Act 1900* (NSW) s 93Z(1).

Australian Capital Territory (ACT)¹¹ specifically protect HIV/AIDS status as an attribute distinct from disability.

The attribute of ‘disability’ includes ‘the presence of organisms in the body that may cause disease’ and ‘a disability that may exist in the future’.¹² However, HIV or AIDS-based vilification is not simply motivated by perceptions of the virus as a cause of disease or disability. Rather, it is inextricably linked with homophobic, transphobic, and often racist and xenophobic vilification and discrimination, and occurs in the context of past HIV criminalisation and sexual orientation criminalisation. This contextualises HIV or AIDS-based vilification as unique to other disability-related vilification.

Transmission of HIV was criminalised in Victoria from 1993 under section 19A of *Crimes Act 1958* (Vic)¹³ until its repeal in 2015,¹⁴ which singled out HIV transmission with penalties of up to 25 years imprisonment, in contrast to the maximum penalty for manslaughter, which was 20 years. Homosexuality was also criminalised in Victoria, from 1958 until March 1981, as the crimes of buggery (anal sex) and gross indecency (oral sex or masturbation) under ss 58-59 of the *Crimes Act* with a maximum penalty of 20 years imprisonment.¹⁵ Previous to 1949, the crime of buggery carried the death penalty under the law.

HIV stigma, discrimination and vilification has evolved over the past forty years in the context of socially entrenched homophobia and transphobia. In its report on homophobic and transphobic killings in NSW from the 1970s to 2000, ACON reports that half of the 88 deaths took place between 1987 and 1993 – when AIDS was hitting its peak in terms of an irrational public “moral panic”.¹⁶ There were cases where AIDS was documented to have played a role in motivating the assailant, or even adversely impacted police investigations, such as washing down crime scenes to avoid infection thereby tampering with forensic evidence.¹⁷

When expanding protections from vilification, ‘HIV or AIDS status’ should be used rather than ‘HIV/AIDS’ or ‘HIV and AIDS’ status. Use of ‘/’ implies that HIV and AIDS are interchangeable, when they are not: HIV is a virus that attacks the body’s immune system; AIDS is a condition caused by HIV. ‘HIV and AIDS’ status implied that presence of one is necessary for the other. While a person experiencing AIDS necessarily has HIV, most people living with HIV (PLHIV) in Australia do not experience AIDS due to the quality and accessibility of antiretroviral (ARV) treatment. ‘HIV or AIDS status’ provides protection to people vilified for their HIV status and/or their AIDS status, if they are in fact experiencing AIDS. While the semantic nuance may seem insignificant, it does carry significant meaning to people living with HIV.

Recommendations:

1. Include HIV or AIDS status as a unique protected attribute distinct from disability.

¹¹ *Criminal Code 2002* (ACT) s 750(1)(c).

¹² *Equal Opportunity Act 2010* (Vic) s. 4(1).

¹³ *Crimes Act 1958* (Vic) s. 19A.

1. A person who, without lawful excuse, intentionally causes another person to be infected with a very serious disease is guilty of an indictable offence.

2. In subsection 1(), very serious disease means HIV within the meaning of section 3(1) of the Public Health and Wellbeing Act 2008 (HIV only).

¹⁴ *Crimes Amendment (Repeal of Section 19A) Act 2015* (Vic).

¹⁵ *Crimes Act 1958* (Vic) ss 58-59.

¹⁶ ACON. (2018). *In Pursuit of Truth and Justice: Documenting gay and transgender prejudice killings in NSW in the late 20th Century*. p.18. <https://www.acon.org.au/wp-content/uploads/2018/05/In-Pursuit-of-Truth-and-Justice-Report-FINAL-220518.pdf>

¹⁷ *Ibid.* p.18.

2. Use 'HIV or AIDS status' rather than 'HIV/AIDS status'.
3. Define 'HIV or AIDS status' as: HIV or AIDS status means status as a person who has the Human Immunodeficiency Virus (HIV) or experiencing Acquired Immune Deficiency Syndrome (AIDS).

4. Do you have any views on how the anti-vilification protections should apply to LGBTIQ+ communities?

Thorne Harbour Health supports the expansion of anti-vilification laws to provide protection on the basis of sexual orientation,¹⁸ gender identity,¹⁹ gender expression²⁰ and sex characteristics²¹.

It is important to include both 'gender identity' and 'gender expression' as protected attributes. These two attributes together are inclusive of cisgender, transgender, non-binary or gender-non-conforming identities, and do not utilise binary notions of gender. These definitions are inclusive of people who identify as a particular gender, and those who express gender but who may not necessarily identify with that particular gender, for example, "drag" performers. These definitions protect against gender-based vilification directed toward cisgender women and trans and gender diverse people alike.

'Sex characteristics' is inclusive of all sex characteristics, including – but not limited to – innate variations of sex characteristics. 'Sexual orientation', 'gender identity', 'gender expression', and 'sex characteristics', provide protection on the basis of particular attributes, which does not limit protections to particular identities. This is consistent with language used in international human rights documents such as the *Yogyakarta Principles* and *Yogyakarta Principles plus 10*.²²

Expansion of anti-vilification protections on these grounds is urgent. Vilification toward LGBTIQ+ communities has increased in recent years, despite – but often as a response to – improved legal equality. The implications here cannot be understated: progress toward equality foments social backlash or "resurgent prejudice" from those who oppose it.²³ Following reform efforts such as the

¹⁸ Under the EOA, 'sexual orientation' means:

a person's emotional, affectional and sexual attraction to, or intimate or sexual relations with, persons of a different gender or the same gender or more than one gender

¹⁹ Under the EOA, 'gender identity' means:

a person's gender-related identity, which may or may not correspond with their designated sex at birth, and includes the personal sense of the body (whether this involves medical intervention or not) and other expressions of gender, including dress, speech, mannerisms, names and personal references.

²⁰ 'Gender expression' is understood as:

each person's presentation of the person's gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names and personal references. Gender expression may or may not conform to a person's gender identity.

The definition of 'gender expression' is covered by the definition of gender identity under the EOA and, as such, all references to gender identity should be understood to be inclusive of gender expression as a ground for protection.

²¹ Under the EOA, 'sex characteristics' means:

a person's physical features relating to sex, including—

- a. genitalia and other sexual and reproductive parts of the person's anatomy; and
- b. the person's chromosomes, genes, hormones, and secondary physical features that emerge as a result of puberty.

²² *The Yogyakarta Principles plus 10: Additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta Principles*. (2017). <http://yogyakartaprinciples.org/principles-en/official-versions-pdf/>

²³ Betts, D., & Bennett, J. (2023). Resurgent prejudice: Responses to marriage equality in Australia. *Australian Journal of Social Issues*. <https://doi.org/10.1002/ajs4.279>

Safe Schools anti-bullying program, marriage equality²⁴, prohibition of conversion practices²⁵, and tightening of religious exceptions in anti-discrimination law²⁶, legislative backlash has followed such as the federal Religious Discrimination Bill²⁷ and a consistent rise in anti-LGBTIQ+, and in particular, anti-trans vilification and violence.

The Safe Schools Program was developed to give support to teachers and schools who had been seeking assistance in the creation of a more inclusive environment for LGBTIQ+ students and their families. Yet the program faced serious opposition from the Australian Christian Lobby (ACL) accusing it of 'sexualising children',²⁸ while conservative politicians referred to it as a 'gay lifestyle promotion program',²⁹ and linked it to 'bondage clubs and sex toys',³⁰ and claimed it indoctrinated kids'.³¹ Another compared the program to 'child grooming'.³²

In late 2017, the Australian Government announced a non-compulsory postal survey to be conducted by the Australian Bureau of Statistics (ABS) on whether the law should be changed to allow same-sex couples to marry. Similar to vilification resultant from Safe Schools, one anonymous pamphlet claimed that marriage equality would lead to trans people raping women in bathrooms.³³ Nazi groups campaigned,³⁴ circulating posters that linked marriage equality to paedophilia and child abuse.³⁵ During this period and the subsequent months, LGBTIQ+ Australians reported an increase in hate-speech and hate-conduct.³⁶ Specialist mental health services also reported a corresponding spike by up to 40% in people seeking counselling and support.³⁷

In February 2018, a Senate Committee released a report recommending that questions of human rights for minority groups should not be resolved by a public vote.³⁸ The Senate Committee received evidence from a large number of people about offensive and misleading behaviour and material. It

²⁴ *Marriage Amendment (Definition and Religious Freedoms) Bill 2017* (Cth).

²⁵ *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic).

²⁶ *Equal Opportunity (Religious Exceptions) Amendment Act 2021* (Vic).

²⁷ *Religious Discrimination Bill 2022* (Cth).

²⁸ Partridge, E. (2015). Australian Christian Lobby slams Safe Schools anti-bullying program. *The Sydney Morning Herald*. <https://www.smh.com.au/national/nsw/australian-christian-lobby-slams-safe-schools-antibullying-program-20151104-gkq6gr.html>

²⁹ 'Give the parents a say on sex program': Senator Bob Day. (2016). *The Australian*.

<https://www.theaustralian.com.au/nation/education/give-the-parents-a-say-on-sex-program-senator-bob-day/news-story/3772a70f5645fe7a702ea6530743fce2>

³⁰ Medhora, S. (2016a). Cory Bernardi email reportedly links Safe Schools to 'bondage clubs and adult sex toys'. *The Guardian*. <https://www.theguardian.com/australia-news/2016/mar/22/cory-bernardi-email-reportedly-links-safe-schools-to-bondage-clubs-and-adult-sex-toys>

³¹ Medhora, S. (2016b). Turnbull orders review of Safe Schools LGBTI program after pressure from Cory Bernardi. *The Guardian*. <https://www.theguardian.com/australia-news/2016/feb/23/turnbull-orders-review-safe-schools-lgbti-program-after-pressure-from-cory-bernardi>

³² Australian Associated Press. Safe Schools is like child grooming, says Nationals MP George Christensen. *The Guardian*. <https://www.theguardian.com/australia-news/2016/feb/25/safe-schools-is-like-child-grooming-says-nationals-mp-george-christensen>

³³ Karp, P. (2017). Homophobic anti-marriage equality material surfaces in postal survey campaign. *The Guardian*. <https://www.theguardian.com/australia-news/2017/aug/21/homophobic-anti-marriage-equality-material-surfaces-in-postal-survey-campaign>

³⁴ Labor calls on PM to condemn neo-Nazi hate campaign in same-sex marriage debate. (2017). *SBS*. <https://www.sbs.com.au/news/article/labor-calls-on-pm-to-condemn-neo-nazi-hate-campaign-in-same-sex-marriage-debate/lpdcqp88m>

³⁵ Tran, D. (2017). Antipodean Resistance Neo-Nazi group trying to sway Australia's same-sex marriage postal vote. *ABC News*. <https://www.abc.net.au/news/2017-09-05/neo-nazi-group-antipodean-resistance/8852682>

³⁶ Senate Finance and Public Administration References Committee. (2018). *Arrangements for the postal survey*. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/postalsurvey/Rreport/c04

³⁷ *Ibid.*

³⁸ *Ibid.*

acknowledged that the postal survey was “deeply distressing to the LGBTIQ community and highly divisive within the community more broadly”.³⁹

Several examples of “resurgent prejudice” following marriage equality have arisen, each increasing vilification towards LGBTIQ+ communities across Australia. The *Educational Legislation Amendment (Parental Rights) Bill 2020* (NSW), also described as the anti-trans kids bill – aimed to prohibit the teaching of content that addressed sexual and gender diversity and fluidity, essentially imposing an official silence on anything to do with transgender and gender diverse people in education settings.⁴⁰

One of the key examples of resurgent prejudice is the *Religious Discrimination Bill 2022* (Cth), seen as a response by the religious right, led by then Prime Minister Scott Morrison, to undermine the rights of LGBTIQ+ Australians. As was the case during and after the marriage equality postal vote, LGBTIQ+ rights were turned into a political football, again precipitating widespread vilification and causing significant distress.⁴¹

In 2023, LGBTIQ+ communities have come under further attack. Earlier this year, high-profile anti-trans agitator Kellie-Jay Keen-Minshull held a series of anti-trans rallies across Australia. In Melbourne, the rally coincided with a demonstration by neo-Nazis who held up a banner calling trans people ‘paedo freaks’ and performed the Nazi salute while Keen-Minshull spoke to the crowd.⁴² In recent years, and particularly in the months following Keen-Minshull’s tour, vilification and threats on the basis of sexuality and gender have increased, causing substantial harm and resulting in numerous cancellations of LGBTIQ+ community events such as Drag Storytimes following threats.⁴³

These social phenomena are reflected in quantitative data. Among the 2,100 respondents in the *Private Lives 3 (PL3)* study (2020) – Australia’s largest survey of LGBTIQ+ health and wellbeing - 34.6 per cent reported verbal abuse and 22.1 per cent reported written threats of abuse via email or social media in the previous 12 months.⁴⁴ This is an upward trend from previous reports – *Private Live 2* (2012) showed 25.5 per cent reported verbal abuse.⁴⁵ Similarly, the *Victorian Population Health Survey* (2017) found 34.2 per cent of LGBTIQ+ people reported discrimination in the previous 12 months.⁴⁶

Reports of all types of violence and harassment are consistently higher among trans and gender diverse people. For example, in *PL3*, a greater proportion of trans women (51.6 per cent), non-binary participants (49.4 per cent) and trans men (45 per cent) reported verbal abuse in the previous 12

³⁹ Ibid.

⁴⁰ Betts, D., & Bennett, J. (2023). Resurgent prejudice: Responses to marriage equality in Australia. *Australian Journal of Social Issues*. <https://doi.org/10.1002/ajs4.279>

⁴¹ Price, K., Parker, F., & Dalton, T. (2022). LGBTQIA+ advocates say religious discrimination bill coverage 'really dangerous'. *ABC Central Victoria*. <https://www.abc.net.au/news/2022-02-10/religious-discrimination-bill-lgbtqia-advocates/100819394>

⁴² Ore, A. (2023). Victoria to ban Nazi salute after ‘disgusting’ scenes at anti-trans protest. *The Guardian*. <https://www.theguardian.com/australia-news/2023/mar/20/victoria-to-ban-nazi-salute-after-anti-trans-protest-melbourne-australia>

⁴³ Tamer, R. (2023). Drag children's storytime event cancelled in Melbourne following violence threats. *SBS*. <https://www.sbs.com.au/news/article/drag-childrens-storytime-event-cancelled-in-melbourne-following-violence-threats/wvjcczmj4>

⁴⁴ Hill, A. O., Bourne, A., McNair, R., Carman, M., & Lyons, A. (2020). *Private Lives 3: The health and wellbeing of LGBTIQ people in Australia*. Australian Research Centre in Sex, Health and Society, La Trobe University.

⁴⁵ Leonard, W., Pitts, M., Mitchell, A., Lyons, A., Smith, A., Patel, S., Couch, M., & Barrett, A. (2012). *Private Lives 2: The second national survey of the health and wellbeing of gay, lesbian, bisexual and transgender (GLBT) Australians*. Australian Research Centre in Sex, Health and Society, La Trobe University.

⁴⁶ Victorian Agency for Health Information. (2020). *The health and wellbeing of the lesbian, gay, bisexual, transgender, intersex and queer population in Victoria: Findings from the Victorian Population Health Survey 2017*.

months due to their sexual orientation or gender identity compared to 28.7 per cent of cisgender women and 32.7 per cent of cisgender men⁴⁷. These results are similar to results from the *Fuelling Hate* survey (2023), which found that 49.2 per cent of trans people had experienced abuse, harassment or vilification online and 49.9 per cent in person in the previous 12 months.⁴⁸

However, despite the significant prevalence of anti-LGBTIQ+ harassment and abuse, people who experience prejudice motivated conduct face distinct barriers when it comes to reporting these incidents and crimes to police.

People from LGBTIQ+ communities are less likely to report violence, seek support or identify experiences of non-physical harassment and abuse as a prejudice motivated crime, partly because of a fear of being outed as well as actual or perceived discrimination.

Under-reporting of crime or incidents to police occurs for a variety of reasons, including a lack of trust in reporting to police, a lack of awareness about available offences, an inability to identify perpetrators, fears that reporting will exacerbate bullying, cause victimisation or escalate the behaviour, and barriers caused by the significant psychological trauma and ongoing mental health impacts of being a victim of crime.^{49,50}

Recommendations:

1. Include sexual orientation, gender identity, gender expression, and sex characteristics, as attributes protected from vilification.
2. Use current definitions of 'sexual orientation', 'gender identity' (which includes gender expression), and 'sex characteristics' as defined by the *Equal Opportunity Act 2010* (Vic).
3. Implement recommendation 29 of the Inquiry into anti-vilification protections: That the Victorian Government enable a representative complaint to be made to the Victorian Equal Opportunity and Human Rights Commission without the need to name an individual complainant.

5. Do you have any views on how the anti-vilification protections should apply to protect people based on sex?

Thorne Harbour Health supports the extension of protection on the basis of sex under the attributes 'gender' and 'sex characteristics'.

The terms sex and gender are interrelated and often used interchangeably, however they are two different concepts:

- Sex is understood in relation to sex characteristics observed at birth or infancy;
- Gender refers to social and cultural differences in identity, expression and experience. (See definition of gender under Question 4).

A person's sex is based upon their sex characteristics, such as chromosomes, hormones and reproductive organs. While typically based upon the sex characteristics observed and recorded at

⁴⁷ Hill, A. O., Bourne, A., McNair, R., Carman, M., & Lyons, A. (2020). *Private Lives 3: The health and wellbeing of LGBTIQ people in Australia*. Australian Research Centre in Sex, Health and Society, La Trobe University.

⁴⁸ Turner, J., Badge, H., Fabry-Jenkins, A., & Spirovska, N. (2023). *Fuelling Hate: Abuse, Harrassment, Vilification and Violence Against Trans People in Australia*.

⁴⁹ Vergani, M., & Navarro, C. (2020). *Barriers to Reporting Hate Crime and Hate Incidents in Victoria*.

⁵⁰ Leonard, W., Mitchell, A. P., S, & Fox, C. (2008). *Coming forward: The underreporting of heterosexist violence and same sex partner abuse in Victoria*.

birth or infancy, a person's reported sex can change over the course of their lifetime and may differ from their sex recorded at birth.

Tasmania's anti-vilification laws, for example, list gender as a protected attribute, rather than sex⁵¹. The definition of gender is included within those of 'gender identity'⁵² and 'gender expression'.⁵³ While sex refers more specifically to categories (male, female, intersex) divided on the basis of their reproductive function, gender more broadly encapsulates the socially and culturally prescribed norms, roles and expectations attributed on the basis of sex. It is these attributes – and often any deviation from strict gender norms – that often form the basis for vilification, rather than strictly sex. The majority of discrimination and vilification experienced by cisgender women, for example, is gender-based, rather than strictly sex-based vilification relating to sex characteristics.

Recommendations:

1. Include 'gender' (as defined by the EOA) as a protected attribute rather than 'sex'.
2. Include 'sex characteristics' (as defined by the EOA) as a protected attribute rather than 'sex'.

6. Do you have any views on how the anti-vilification protections should apply to protect people who are associated with targeted groups?

Thorne Harbour Health supports the expansion of protections to people associated with targeted groups. In many of the instances cited above under Question 4, allies to LGBTIQ+ communities have been similarly targeted by vilification. Recent examples include individuals that contributed to the design of the Safe Schools anti-bullying programs, supporters of marriage equality,⁵⁴ and opponents of the Religious Discrimination Bill.

This year, amidst increased transphobic and other anti-LGBTIQ+ vilification, employees of local governments scheduled to host Drag Story Time and IDAHOBIT events have been targeted with vilification for their support of LGBTIQ+ communities. Councillors from Monash City Council were called paedophiles when alt-right groups vilifying LGBTIQ+ communities attended a council meeting.⁵⁵ Vilification and threats of violence have been directed toward multiple local governments and institutions that have planned to host LGBTIQ+ events.⁵⁶ Protections are essential for people associated with targeted groups to ensure provision of events, services and supports to vilified groups across the whole of society.

⁵¹ *Anti-Discrimination Act 1998* (Tas).

⁵² Under Tasmania's anti-discrimination act, gender identity means:
the gender-related identity, appearance or mannerisms or other gender-related characteristics of an individual including gender expression (whether by way of medical intervention or not), with or without regard to the individual's designated sex at birth, and may include being transgender or transsexual.

⁵³ Under Tasmania's anti-discrimination act, gender expression means:
any personal physical expression, appearance (whether by way of medical intervention or not), speech, mannerisms, behavioural patterns, names and personal references that manifest or express gender or gender identity.

⁵⁴ Brown, A., & Carnie, L. (2018). *End the Hate: Responding to prejudice motivated speech and violence against the LGBTI community*.

⁵⁵ Aubrey, S. (2023). 'Paedophiles': Protesters opposed to drag queen event hurl abuse at councillors. *The Age*. <https://www.theage.com.au/national/victoria/protesters-descend-on-council-meeting-to-oppose-drag-queen-event-20230426-p5d3bo.html>

⁵⁶ Chou, M., Busbridge, R., & Moffitt, B. (2023). Why are far-right groups targeting local councils — and what can councils do to manage the threat? *ABC News*. <https://www.abc.net.au/religion/why-are-far-right-targeting-australian-local-councils/102388990>

Recommendations:

1. Extend protections from vilification to people associated with targeted groups.

7. Do you have any views on clarifying the law to ensure individuals can make vilification complaints based on one or more attributes?

Thorne Harbour Health supports Recommendation 2 of the Inquiry into anti-vilification protections that anti-vilification laws be amended to ensure people can make complaints on the basis of more than one attribute.

Vilification is often rooted in multiple systems of oppression. Sexuality-based and gender-based vilification, for example, are often intertwined, given the societal processes that conflate gender nonconformity with diverse sexualities. In addition, other forms of vilification intersect and compound these experiences of hate. LGBTIQ+ people of colour often experience forms of vilification and violence that their white counterparts do not – targeted because of their race *and* sexuality or gender identity. Similarly, LGBTIQ+ people of colour are more likely than White gay men to express uncertainty as to the cause of violent experiences, given the multiple attributes for which they may be targeted.⁵⁷ Intersectional vilification thus creates a qualitatively different form of vilification, distinct from ‘multiple vilification’, i.e., being targeted for more than one but separate attributes. However, intersectional vilification is rendered invisible by existing legal frameworks which assess grounds of vilification separately.

Recommendations:

2. Amend anti-vilification laws to ensure people can make complaints on the basis of more than one attribute in a way that captures the qualitatively unique manifestations of intersectional vilification.

⁵⁷ Meyer, D. (2008). Interpreting and Experiencing Anti-Queer Violence: Race, Class, and Gender Differences among LGBT Hate Crime Victims. In *Race, Gender & Class* (Vol. 15, pp. 262-282).

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