



Legislative Council Legal and Social Issues Committee

Inquiry: Inquiry into anti-LGBTIQA+ hate crimes in Victoria

Hearing date: 24 June 2026

Question taken on notice

Directed to: Thorne Harbour Health

Received date: 7 July 2026

1. **Ryan BATCHELOR, page 10**

Question Asked:

Where does it apply and where doesn't it apply? So we can understand as a committee – we are trying to make recommendations, particularly on the post-and-boast element. How much of the current law covers these circumstances and how much of it does not?

Caleb HAWK: To get to the finer detail I would probably have to respond back in writing after the hearing ...

Ryan BATCHELOR: It would be helpful to the committee I think if you could provide to us, further to today's appearance, any analysis of that particular element, looking at the 2025 bill that was passed, those changes to the Crimes Act on post and boast in particular and whether you think the law as written and in effect today is sufficient to cover these sorts of circumstances or whether any further amendment may be required.

Response:

Purpose

This overview responds to the questions raised by Mr Batchelor concerning the applicability and sufficiency of **Victoria's performance crime legislation to anti-LGBTIQA+ hate crimes**, as well as **related options** for reform of the criminal law, and other measures to address these online harms. It summarises Thorne Harbour Health's position and supplements our submission to the Inquiry and responses provided at the hearing.

The analysis is framed by the conduct at issue. Since June 2024, Victoria Police, Thorne Harbour Health and the communities it serves have identified a pattern of app-facilitated attacks on gay and bisexual men, who are lured through hookup apps, ambushed by groups, **assaulted** often **robbed** and **extorted**, and subjected to **homophobic abuse** that is frequently **filmed and shared online**.

The Performance Crime Act and its limitations

The *Crimes Amendment (Performance Crime) Act 2025* creates a summary offence, carrying a maximum of two years' imprisonment, of publishing material that depicts a person's own commission of a "relevant offence" where the publication is intended to attract attention to that offence. It responds to the "post and boast" phenomenon. For anti-LGBTIQA+ attacks, the Act has four significant limitations.

- **The list of relevant offences does not capture the conduct.** The relevant offences are predominantly property and public-order offences — motor vehicle theft, robbery, burglary, home invasion, carjacking, affray and violent disorder. The offences most commonly committed in these attacks — causing injury and causing serious injury (Crimes Act 1958, ss 15A–18) and extortion, generally charged as blackmail (s 87) — are not included. The Act therefore applies to the filming and posting of such an attack only where it happens to involve a listed offence, such as a robbery, and not where the attack is "only" a serious assault.
- **It does not name hate.** The offence is content-neutral. Even where it applies, the resulting charge, conviction and record describe a publishing offence and say nothing about the victim's selection or the homophobic motivation. It does not advance the recognition of these crimes as hate crimes, nor the data that Victoria currently lacks.
- **It reaches only the offender's own publication.** The offence applies to material depicting an offence committed "by the person" who publishes it. A third party who re-shares the footage is not captured, even though onward circulation is how this material spreads and re-victimises.
- **It is parasitic and time-limited.** Liability requires a conviction for the underlying relevant offence, and the Act is scheduled to repeal on the first anniversary of its commencement.

In short, the Act is capable of applying to some of these attacks, but only incidentally, and it does not address their defining feature.

An aggravated offence scheme

A more direct reform is a scheme of hate-based aggravated offences, as recommended in Thorne Harbour Health's submission. Under such a scheme, a **defined list of base offences** — for example, assault, causing injury, sexual offences, robbery and image-based offences — is **elevated to a more serious form** where the offence is **committed because of hostility** towards a victim's **actual or perceived protected attribute**.

The aggravating circumstance can be established either by the **offender's motivation** or, importantly, by evidence that the offender **demonstrated or**

expressed hostility at the time of the offence, or immediately before or after it. This “demonstration” element is well suited to anti-LGBTIQ+ attacks, where offenders routinely leave clear, recorded evidence of their hostility: homophobic slurs during the attack, forced statements on camera, and footage shared online. Queensland’s Criminal Code (s 52B) provides an existing Australian precedent, and recent reforms in Tasmania and New South Wales adopt a comparable demonstration test.

Recognition, data and rehabilitation

The principal value of an aggravated offence scheme is not heavier punishment—particularly for minors—but accurate recognition, and the practical responses that recognition makes possible.

- **Recognition for victims and communities.** Naming the hate in the charge, conviction and record affirms to victims that the prejudice was central to what happened to them, rather than incidental. Where these attacks are processed as ordinary assaults or robberies, victims are told, in effect, that their experience was not fully recognised.
- **A clearer evidence base.** Because the hate element is recorded from the point of charge, these offences are captured as hate crimes in data. This closes a gap that currently prevents government, police and services from seeing the pattern clearly.
- **Tailored, non-carceral responses.** Where the nature of the offending is formally identified, rehabilitation, diversion and restorative justice can be directed to its specific driver—the homophobia, transphobia—rather than treating the conduct as generic violence. This matters because offenders are predominantly young, with the cohort in these attacks largely aged 13 to 24.

It is useful to separate **two functions**. The recording of **hate motivation**—recognition and data—can apply to **all offenders**, while the **disposition** can be calibrated to the circumstances: **rehabilitative and restorative** responses for children and young people, consistent with Victoria’s youth justice principles, and **proportionate accountability** for adults. This allows the hate to be named consistently without increasing carceral responses to minors.

Online content: what the eSafety Commissioner can and cannot do

It is our understanding that the Commonwealth eSafety Commissioner can require the removal of certain online material. In practice, its **reach over footage of violent attacks has limitations**.

- Footage of an assault generally **falls outside the image-based abuse scheme**, which addresses intimate images, and instead falls under the adult cyber abuse scheme. That scheme carries a deliberately high “serious harm” threshold and is used sparingly.
- The **mechanism is victim-initiated**, yet victims often do not know that footage exists, particularly where it circulates on closed or encrypted platforms.
- Enforcement against non-cooperative or offshore platforms is difficult and slow, and **removing one copy does not prevent re-uploading**.

The Commonwealth has committed to introducing a systemic “**digital duty of care**” on platforms, but has not yet legislated it.

What the Victorian Government can do

Regulation of online platforms is principally a Commonwealth responsibility. Victoria can nonetheless take meaningful action in relation to people and entities within its jurisdiction, and at the interface with the Commonwealth scheme.

- Provide for **court-ordered removal, no-reupload and non-publication orders** directed at offenders and other persons within the jurisdiction.
- Create **digital evidence-preservation powers**, and an offence for deleting or concealing material once an investigation has begun.
- Require **victim notification**, so that victims are told when footage is identified or used in evidence and can act on it.
- **Fund support and navigation**, enabling trusted services to assist victims to make and pursue eSafety reports on their behalf.
- Establish **referral protocols** between Victoria Police, the courts and the eSafety Commissioner for high-harm content.

On the **proposed duty of care**, Victoria can help progress the Commonwealth reform by advocating through **intergovernmental forums**, and in particular by ensuring that hate-based harm and footage of violent crimes are expressly included as recognised harms. Once the duty is enacted, Victoria can support its operation by **supplying systemic intelligence** to the eSafety Commissioner, **building victim pathways** into it, and maintaining complementary State measures in the areas the duty does not reach.

Conclusion

The performance crime legislation can apply to some anti-LGBTIQ+ attacks, but only where a listed offence is present, and it does not recognise the homophobic nature of the conduct. A scheme of hate-based

aggravated offences would address that gap directly, supporting recognition, better data and tailored rehabilitative responses, while allowing carceral responses to minors to be avoided. Measures within Victoria's jurisdiction can also improve protection for victims of online harms and complement the Commonwealth's proposed duty of care.