A Tweak to Section 17(1A) of the Victorian Summary Offences Act 1966

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Subject: Request for legislative review to protect human rights and modernise indecent exposure laws

Submitted on behalf of the participating organisations:

- Christian Naturist Fellowship (Australia)
- Australian Naturist Federation
- Ian Cesa - Bimbimbi River Camp
- World Naked Bike Ride Melbourne
- Corio Valley Nudist Club

An electronic copy of this proposal is available at https://bit.ly/tweak17vic-proposal

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Executive summary

This submission requests and proposes a minor amendment to Section 17(1A) of the Victorian *Summary Offences Act 1966* ("the Act") to align it with the Charter of Human Rights and Responsibilities Act 2006 ("the Charter") and modern legal standards.

Section 17(1A) of the Act currently states:

> "*For the purposes of subsection (1)(d), behaviour that is indecent offensive or insulting includes behaviour that involves a person exposing (to any extent) the person's anal or genital region.*
>
> ***Example***
>
> *Mooning or streaking.*"

- **The Problem: Problematic ambiguity.** The current section is problematically ambiguous due to **two fundamental flaws**:

    1. It focuses only on the **act** of exposure, without regard to **intent**.
    2. It treats exposure '**to any extent'** as sufficient for an offence, **without regard to context**.

    This failure to consider intent or context means the section **cannot properly discern** between harmless, non-sexual nudity and behaviour that constitutes a minor summary offence. There are no safeguards present, which means nothing prevents this section from being **misapplied to harmless exposure**.

- **The Impact: Chilling effect and Human Rights Breaches.** The legal uncertainty of **Section 17(1A)** provides **no clear protection** for harmless, non-sexual nudity anywhere in public view outside of Victoria's three designated beaches. This creates a significant **'chilling effect'**, forcing people to self-censor peaceful cultural, recreational, or even religious activities out of a reasonable fear of being charged.

    The threat of prosecution for innocuous behaviour places a **disproportionate** and **unjustifiable** limit on fundamental freedoms protected by the Charter, including **Freedom of Religion and Belief (s14)**, **Freedom of Expression (s15)**, and **Freedom of Association (s16)**.

- **The Solution: Add an intent safeguard to Section 17(1A).** This proposal has no effect on the separate, more serious offence of **sexual exposure** covered by Section 19 of the Act. We propose adding an **intent requirement** to **nuisance exposures** covered by Section 17(1A), so the offence applies **only** when a person exposes themselves with the ***intent to cause alarm or distress***.

    The **proposed amendment** reads as follows, modified text is in **bold**:

    "For the purposes of subsection (1)(d), behaviour that is indecent, offensive or insulting includes behaviour that involves a person exposing (to any extent) the person's anal or genital region ***where the person intends that another person will see the exposure and be caused alarm or distress****.*

    Example

    Mooning ***directed at another person,*** *or streaking* ***for the purpose of intruding upon an unrelated public gathering****."*

- **The Outcome:** Adding an intent-based test to Section 17(1A) provides the law with the ability to uphold human rights, and equips it to properly discern between harmless behaviour like **naturism** and harmful behaviour like **mooning** or **streaking**. It brings Victoria's exposure laws into parity with jurisdictions like the UK.

Introduction

This submission calls for a minor amendment to Section 17(1A) of the *Victorian Summary Offences Act 1966* (“the Act”), to resolve its ambiguity and align it with the *Victorian Charter of Human Rights and Responsibilities Act 2006* ("the Charter").

Innocent expressions of public nudity have a longstanding place in Australian culture. First Australians traditionally wore minimal or no clothing (Sturma 1998), and many of us come from cultures where social nudity is normal and non-sexual. Countless Aussies can recall the joy of an innocent skinny dip. Public activities such as the Melbourne World Naked Bike Ride use nudity as a symbol of vulnerability and honesty in protest. In 2025 the ride was conducted without complaint.

Section 17(1A) was introduced in 2016 as part of a significant overhaul to Victoria’s sexual offence laws. While it was intended to deter nuisance behaviour like mooning or streaking, its broad wording **without safeguards** means that it can be applied to **harmless nudity** as well. The legal risk and uncertainty this creates means the simple joy of an innocent skinny dip can suddenly become a **nightmare** involving a summary offence charge, a lengthy court battle and Disclosable Court Outcomes that appear in criminal history checks for 5-10 years. Do we really want to permit the law to be applied in this way? This submission proposes a minimal **intent-based amendment** to ensure our justice system is **only engaged** for behaviour that is genuinely harmful.

Current Law

Section 17(1A) of the Act was introduced as part of the *Victorian Crimes Amendment (Sexual Offences) Act 2016*. The section was intended to capture **nuisance exposures** such as **mooning** or **streaking** that may not fall under **Section 19** of the Act, which addresses the more serious offence of **sexual exposure**.

Section 17(1A) of the *Victorian Summary Offences Act (1966)* states:

> "*For the purposes of subsection (1)(d), behaviour that is indecent offensive or insulting includes behaviour that involves a person exposing (to any extent) the person's anal or genital region.*
>
> ***Example***
>
> *Mooning or streaking.*"

The legal framework of this section is fundamentally flawed, leading to consequences that extend far beyond its original intent. The section's central flaw is its exclusive focus on the **act** of exposure, without any requirement for police or courts to consider the person's **intent,** or the **context** in which the exposure takes place. Consequently, the section has no **safeguards to prevent its misapplication** to harmless nudity.

A lack of safeguards for Section 17(1A) stands in **stark contrast** to the modern legislative standard set by Section 19 from the same Act. While Section 19 rightly includes multiple safeguards, such as a "sexual nature" test and a privacy defence, Section 17(1A) contains **none**. This creates a **glaring legal inconsistency**, as the lesser offence is drafted more broadly and with fewer protections than the more serious one.

In practical terms, this means the law may be **subjectively** and **adversely misapplied** to a vast range of innocuous activities**,** from **skinny-dipping** and **naked gardening** to traditional **bathing** and **cultural** and **religious** expressions involving nudity.

Anyone participating in these activities in public view outside Victoria's three remaining clothing-optional beaches **risks** being charged with a summary offence. This can lead to a stressful and costly **court battle**, a potential **criminal record**, and even **imprisonment** just because the activity involved nudity. Crucially, the risk is not confined to public spaces. It extends to any activity on **private property** when visible from a public place. The result is a state of **profound legal uncertainty and fear**, producing an unjustifiable limit on the fundamental human rights and personal freedoms of Victorians.

Cultural and Religious Practices Involving Nudity

Nudity has historically been an accepted and sometimes sacred part of human culture, from Indigenous traditions to religious rites. However, the wording of Section 17(1A) places these **diverse** practices at an unacceptable legal risk. This section will explore some of the specific traditions affected by the lack of legal protection in Section 17(1A).

Examples include:

- **First Australians** – Traditional life often involved minimal or no clothing. Ceremonies, initiation rites, and daily activities reflected this norm (Sturma 1998). During colonisation, clothing was imposed on First Australians, a practice now widely recognised as harmful and destructive to culture. The **legal uncertainty** of Section 17(1A), which **fails to consider intent or context,** disregards this history and places traditional practices at an **unacceptable risk** of being wrongly deemed unlawful, threatening to repeat the same principle of **suppressing cultural diversity** in a modern form.

- **Judeo-Christian Traditions** - In both Judaism and Christianity, ritual use of the unclothed body has at times been part of sincere religious practice. In Jewish tradition, immersion in a *Mikveh* - a rite of purification and renewal - is **always** conducted without clothing. While most Mikvehs today are in purpose-built facilities, immersion in natural

water sources such as lakes, springs, rainwater, or melted snow has long been accepted and remains in use when no facility is available (Adler & Greenstone). In Christianity, the early Church often practised baptism without clothing, symbolising the renunciation of the works of the flesh and identification with the death and resurrection of Christ. This tradition continues today among some Christian communities, including Christian naturists, who regard nude baptism as an authentic expression of their faith.

Yet under the current wording of Section 17(1A), a person participating in either a Mikveh or nude baptism in a natural setting in Victoria could potentially be charged with a **summary offence,** leaving them vulnerable to criminalisation even when the rite is conducted privately, peacefully, and without harm. This represents **an unnecessary and disproportionate restriction** on the freedom of religion for Jewish and Christian Victorians.

- **Hinduism and Jainism** – Hindu *Nāga Sadhus* and Digambara Jain monks embrace nudity as an expression of spiritual renunciation.

- **Shinto (Japan)** - Purification rituals such as *Misogi* historically involved nude immersion in rivers and waterfalls.

- **Nordic and Central European Traditions –** Public saunas in countries such as Finland, Germany, Austria, Switzerland, and Slovenia are customarily used nude, often in mixed company. In these cultures, nudity is considered the norm for relaxation, hygiene, and social connection, rather than something indecent or offensive.

- **Art and culture -** Nudity has been a central theme in art, performance, and cultural expression across history. From classical sculpture and Renaissance painting to modern performance art, the unclothed body has been used to symbolise beauty, truth, vulnerability, and resistance to social convention. In contemporary Australia, artists, theatre practitioners, and protest movements continue to use nudity as a powerful form of cultural and political expression. The widespread public acceptance of and participation by thousands of naked people in public art installations by Spencer Tunick in Australia are testament to our cultural readiness to embrace ordinary nudity.

- **Naturist movement (global)** - Naturists believe the human body is neither indecent nor offensive and that non-sexual nudity promotes health, wellbeing, and body acceptance. This is supported by outcomes from research studies in social science (West 2018).

- The **Melbourne World Naked Bike Ride** uses optional nudity as a form of protest to draw attention to the vulnerability of cyclists to other road users, to environmental issues, and to encourage body positivity. Held annually, the 2025 ride attracted an estimated audience of more than 1,000 people and proceeded without a single complaint to police, suggesting that the public did not find the non-sexual nudity offensive. The 2025 ride was also referred to positively in the Victorian Parliament in the days following, with no indication that the naked riders caused offence.

The Chilling Effect: Practical Impacts of Legal Uncertainty

The legal uncertainty of Section 17(1A) is not merely a theoretical concern. The constant threat of prosecution that accompanies it creates a powerful '**chilling effect**' that **actively suppresses** law-abiding community organisations from conducting their activities.

Numerous Victorian groups such as **CosieVic**, **Metro East Association**, **The Nomads Outdoors Group**, **Northside Country Club**, **Helios Naturist Club**, and **Corio Valley Nudist Club** and the Australian branch of the **Christian Naturist Fellowship** incorporate peaceful, non-sexual nudity into their core activities, which include hiking, camping, swimming, and fellowship in natural settings. Currently, these groups are **severely restricted** by the ever-present **risk** that their activities could be misinterpreted and attract police action. Wholesome community activities are being suppressed, not because they cause harm, but because the law **fails to recognise their activities as harmless**.

This legal uncertainty also extends into everyday situations familiar to many Victorians. Activities such as changing out of wet bathers beside a car at the beach, or drying off after swimming or surfing, are commonplace and have occurred for as long as people have gone to the beach. Yet under Section 17(1A), even these harmless, incidental moments of nudity could result in being charged with a summary offence.

Similarly, skinny-dipping in remote rivers, lakes, and waterholes is cherished part of outdoor recreation. The law's uncertainty means that participants in such an activity, even if undertaken discreetly in a remote location with no intent to offend, are **placed at constant risk of being treated as though they had committed an offence**. This deters people from enjoying a harmless activity in nature and could lead to unnecessary police interventions.

The burden of legal uncertainty also falls on **private landowners**. Anyone wishing to engage in naturist activities, such as naked gardening **on their own land,** does so under the **risk that their actions could be interpreted as unlawful** if visible from a public place. In practice, this often renders large sections of private property **unavailable for clothing-optional recreation**, even when neighbours or passers-by have no genuine objection. This is an unnecessary and onerous requirement that stems directly from the section's failure to consider intent or context.

Victoria has three clothing-optional beaches, however these are geographically isolated and fail to accommodate the wide range of activities and cultural practices of Victorians. Restricting legal certainty to just **three small strips of sand** near Melbourne and Geelong is an inadequate and disproportionate limit on the rights of all Victorians.

Finally, the effective prohibition on the removal of all clothing can create risks during Victoria's hot summers. In national parks and outdoor recreation areas, people may face extreme heat, yet the law makes it a potential crime to remove all clothing for swimming or heat mitigation. In such circumstances, Section 17(1A) does not merely restrict liberty; it may actively **endanger public health.**

Human Rights Concerns

The **fear and legal risk** caused by **Section 17(1A)'s** failure to protect harmless nudity **directly infringes** on a number of fundamental human rights guaranteed by the Charter.

- **Section 14 – Freedom of Thought, Conscience, Religion, and Belief**
  The **legal uncertainty** surrounding Section 17(1A) places an unjustified burden on cultural and religious practices that incorporate nudity. These include First Nations ceremonies, Hindu and Jain monastic traditions, Shinto purification rituals, Jewish Mikvehs and historical Christian baptisms. Naturist communities, who hold sincere beliefs about body acceptance and harmony with nature, are also adversely affected. The section's ambiguity directly limits the ability of communities to practise their sincere beliefs in public spaces by placing them at **constant risk of prosecution** with **no legal protection**.

- **Section 15 – Freedom of Expression**
  Nudity is a legitimate form of personal expression in art, protest, and identity. For example, the Melbourne World Naked Bike Ride uses nudity to communicate vulnerability and protest fossil fuel dependency, while artists have historically used it to challenge conventions and promote body acceptance. The ambiguity of the law suppresses these freedoms by creating an unacceptable legal risk for what is often peaceful, symbolic expression. This restriction on free expression extends far beyond what is necessary in a free and democratic society.

- **Section 16 – Freedom of Association**
  The 'chilling effect' of **Section 17(1A)** actively suppresses community organisations like naturist groups from lawfully assembling in public spaces for non-sexual and harmless clothing-optional activities. The section's ambiguity and the risk of adverse interpretation create a significant barrier, limiting their freedom of association through the constant and unacceptable threat of law enforcement and legal action.

Under **Section 7(2)** of the Charter, rights may only be limited where **demonstrably justified**. Section 17(1A) fails this test because:

- It is **overly broad** and fails to consider intent or context while making **any exposure** of the anal or genital region a potential crime.

- It is **not rationally connected** to its purpose, as genuinely harmful behaviour is effectively dealt with by Section 19 accompanied by appropriate safeguards to ensure mere exposure is not automatically criminalised.

- **Less restrictive alternatives** exist, such as only penalising conduct intended to cause alarm, harassment, or distress.

- Public acceptance of social nudity suggests a broad restriction is **no longer necessary**.

As the Victorian Parliament has a duty to ensure **all legislation** is compatible with the Charter, reviewing and amending Section 17(1A) is a **necessary step** to uphold its **own commitment** to the human rights of all Victorians.

International Practice

International jurisdictions recognise that the human body is not inherently obscene or indecent, and only criminalise behaviours where there is both **exposure** and **intent to cause alarm or distress.**

United Kingdom - Sexual Offences Act 2003 - Section 66

1) A person commits an offence if—
    a) he intentionally **exposes** his genitals, and
    b) he **intends** that someone will see them and **be caused alarm or distress**.

Ireland - Criminal Law (Sexual Offences) Act 2017 - Section 45

1) A person who **exposes** his or her genitals **intending** to cause **fear, distress or alarm** to another person is guilty of an offence.

New Zealand - Summary Offences Act 1981 - Section 27

1) Every person is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding $2,000 who, in or within view of any public place, **intentionally and obscenely exposes any part of his or her genitals**.
2) It is a defence in a prosecution under this section if the defendant proves that he or she had reasonable grounds for believing that he or she would not be observed.

Victoria's law is **out of step** with these international standards, which balance public decency with freedom of expression.

Proposed Amendment with minimal changes

To protect human rights while addressing genuine public concerns, we propose revising Section 17(1A) of the Act with a minimal change as follows (amended words in **bold**):

> *"For the purposes of subsection (1)(d), behaviour that is indecent, offensive or insulting includes behaviour that involves a person exposing (to any extent) the person's anal or genital region* ***where the person intends that another person will see the exposure and be caused alarm or distress****.*
>
> ***Example***
>
> *Mooning* ***directed at another person****, or streaking* ***for the purpose of intruding upon an unrelated public gathering****."*

This amendment achieves three crucial objectives:

- **It protects Human Rights:** It ensures compliance with the Charter and international standards by making it **clear** that non-sexual nudity without intent to harm is **not a crime**.
- **It Preserves Public Order:** It maintains the clear ability of police to prosecute genuinely offensive acts not covered by Section 19, such as hostile mooning or disruptive streaking.
- **It Creates Legal Consistency:** It aligns Section 17(1A) with the principles of modern drafting already established in **Section 19** of the same Act. Our amendment simply adds the **crucial safeguard** of an **intent test**, a standard the legislature has already deemed necessary for the more serious offence.

Addressing potential concerns to ensure a balanced approach

1. Regarding Public Order and Police Discretion: The introduction of an **intent-based test** to Section 17(1A) does not weaken public order. Rather, it aligns this summary offence with a foundational principle of criminal law: distinguishing between harmful and innocent behaviour. Police officers are **already highly experienced in assessing intent** across a wide range of offences, from property damage to assault.

In practice, the current wording of the law has sometimes required police to waste resources enforcing **arbitrary or poorly defined boundaries**, rather than addressing genuine harm. At the clothing-optional Point Impossible Beach near Torquay, for example, it was discovered in 2023 that signs marking the clothing-optional area had been placed in the wrong location - an error that had persisted for at least 20 years. Local police advised that they intended to prosecute individuals who were technically outside the original boundary, despite those

individuals causing no distress to anyone. This kind of administrative tangle demonstrates the practical outcome of the law's ambiguity: **police are likely to adopt an adverse interpretation of Section 17(1A), where all public nudity is treated as illegal by default.** They are tasked with upholding a law that fails to consider intent, and must therefore **rely on exposure alone** to do their job.

By shifting the focus to intent, the proposed amendment would free police to concentrate on matters that both senior police and the community would regard as higher priority, while still enabling officers to deal with deliberately offensive behaviour.

2. Regarding the Protection of Children and Vulnerable People: This amendment provides **no protection whatsoever for predatory behaviour** and does not weaken the laws that protect children. It is critical to note two points:

- **Firstly,** our proposal only clarifies the minor summary offence of **nuisance exposures** like mooning or streaking as defined in **Section 17**. Any predatory or sexualised exposure **is a serious crime** handled under **Section 19** of the Act which we note is **entirely untouched** by our proposal.
- Secondly, our proposed amendment simply applies principles that Victorian law already **affirms**. **Section 19(6)** confirms that mere exposure does not **automatically constitute an offence**. It states:

  'A's exposure of A's genitals is not sexual only because it is the genitals that are exposed'

  We are only asking for this **same principle** to be applied consistently to the minor summary offence in Section 17(1A).

Real-world evidence from the UK, which has used an intent-based test for over 20 years, shows no increase in child safety incidents.

3. Differentiating Appropriate and Inappropriate Contexts: This proposed adjustment would **not result** in nudity becoming commonplace in inappropriate settings like city centres or shopping malls. In such places the intent to cause alarm or distress **may easily be established**. Rather, the amendment is designed to uphold the legality of harmless nudity in appropriate contexts, such as in remote natural settings or at organised gatherings away from the general public.

Social norms and other public nuisance laws will continue to guide behaviour. The intent here is to provide legal certainty for a group enjoying a clothes-free gathering in nature, or someone gardening naked on their own property, not to authorise exhibitionism in crowded public squares. In the United Kingdom, the Sexual Offences Act has been in effect since 2003, and Section 66 provides the necessary legal instrument to protect harmless activity while enabling police to prosecute genuine criminal behaviour. This proves that an intent-based law successfully balances personal freedom with public order.

Recommendations

We respectfully recommend that the Parliament of Victoria:

1. **Review Section 17(1A) for Charter Compatibility.** We call on Parliament to formally review Section 17(1A) of the *Victorian Summary Offences Act 1966* for its compatibility with the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

   This review should specifically assess whether the section's broad application meets the **proportionality test** required under Section 7(2) of the Charter, particularly in relation to harmless nudity.

2. **Adopt the Proposed Amendment.** We urge the adoption of our proposed minimal, intent-based amendment to Section 17(1A) of the Act. This will resolve the section's ambiguity, protect fundamental rights, and provide crucial legal clarity for both the public and police.

3. **Issue Interim Enforcement Guidance.** Pending legislative review, we recommend that the Attorney-General, in consultation with Victoria Police, issue guidance to officers. This guidance should clarify that enforcement priority should be given to behaviour intended to cause public alarm or distress, rather than to mere nudity, to prevent the unnecessary prosecution of peaceful Victorians.

Conclusion

Victoria has an opportunity to modernise its public decency laws to reflect a mature, rights-respecting society. By adding a minimal intent-based safeguard to Section 17(1A) of the Act, Parliament can resolve the current law's problematic ambiguity and strike a better balance.

This reform will provide crucial legal clarity, and restore the freedom of expression, freedom of belief and practice, and freedom of association to Victorians currently suppressed by the law. At the same time, it will unequivocally **retain the power** to prohibit and punish genuinely indecent or harassing conduct.

We respectfully call on Parliament to undertake this review as a matter of priority, to ensure Victorian law keeps pace with both community expectations and the principles of the Charter.

References

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Supporters of this submission

- Members of the Australian Naturists Facebook group
- Australian Naturist Federation
- World Naked Bike Ride Melbourne
- Ian Cesa - Bimbimbi River Camp
- CoseVic - Clothing Optional Socially Inclusive Events
- Corio Valley Nudist Club