The Tweak 17 Proposal

Advocacy Paper

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Subject: Request for legislative review to protect human rights and correct Victoria's public decency 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.*"

A first offence under section 17 (and under the conditions of subsection 1A) attracts a punishment of **10 penalty units** or **two months imprisonment**.

- **The Problem: Absolute liability without justification.** The current section is fundamentally flawed in **two ways**:

    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**.

    Reliance only on the **act of exposure** without consideration of intent or context means the section is effectively a **deeming provision** that employs **absolute liability**. It **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 absolute liability of Section 17(1A) provides **no clear protections** for harmless, non-sexual nudity anywhere visible from a public place outside of Victoria's three remaining 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 instances of harmless nudity 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: Establish the legal neutrality of the human body in Section 17(1A).** This proposal aims to build into the section the same principle already established in Section 19 for the more serious offence of **sexual exposure**. We propose replacing the current deeming structure of 17(1A) with a foundational truth: that exposure of the human body is legally neutral unless the person uses their nudity to cause harm to another person.

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

    *"For the purposes of subsection (1)(d)**, exposure (to any extent) of a person's anal or genital region is not of itself indecent, offensive or insulting behaviour, unless the person exposes this region with intent to:***

    (a) substantially limit a reasonable person's practical ability to disengage from the exposure; or

    (b) cause alarm, distress or humiliation to a person; or

    (c) disrupt a public gathering or event in which nudity plays no role.

Example

Forcing proximity, *mooning****,*** *or* ***disruptive*** *streaking."*

- **The Outcome:** Making the body legally neutral and explicitly classifying harmful behaviour through intent-based tests upholds human rights, and equips the law to properly discern between harmless behaviour like **naturism** and harmful behaviour like **mooning** or **streaking**. The three-limb structure provides extensibility for future updates without disturbing the neutrality principle. It modernises the law's handling of nuisance and builds on the intent-based approach in jurisdictions like the UK.

Introduction

This submission calls for a targeted amendment to Section 17(1A) of the *Victorian Summary Offences Act 1966* ("the Act"), to correct its overreach 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. Many Victorians 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 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* (Amendment Act). Section 19 of the *Summary Offences Act 1966* used to be a broad provision targeting wilful and obscene exposure. When the 2016 Act was introduced, Section 19 was narrowed to focus on the more serious offence of sexual exposure, while section 17(1A) was created as gap-filling provision to cover non-sexual exposures such as **mooning** or **streaking**. Section 17(1A) resides within the broader set of Section 17 offences for

obscene and indecent behaviour. It is a deeming provision that specifically includes exposure as indecent offensive or insulting behaviour and 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.*"

Absolute liability is a harsh legal doctrine that holds a person responsible regardless of intent or context. It is usually reserved as a blunt instrument when safety is paramount, such as the enforcement of strict safety standards. Section 17(1A) operates on this basis by deeming exposure *"to any extent"* of the genital or anal region to be indecent, offensive or insulting, without any consideration of **intent** or **context**. Under this provision, the act of exposing the human body is **of itself** the offence.

Section 17(1A) stands in **stark contrast** to the modern legislative standard set by S.19 from the same Act. While S.19 rightly includes multiple safeguards, such as a "sexual nature" test, a privacy defence, and a recognition that exposure of the genitals alone **is not inherently sexual**, S.17(1A) contains **no safeguards at all**. The penalty for sexual exposure under S.19 is up to **two years** imprisonment, while a first offence under S.17(1A) attracts a fine of 10 penalty units ($2035.10 for 2025-2026) or **two months** in prison.

An exposure law that employs absolute liability, has no safeguards, and carries a two-month prison sentence becomes a **dangerous legal weapon** that may be misapplied to people engaged in 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. Visibility from a neighbouring private property, such as a balcony or window, does not engage the provision. The result is a state of **profound legal risk and fear**, producing an unjustifiable limit on the fundamental human rights and personal freedoms of Victorians.

The provision's absolute liability extends to circumstances that most Victorians would find **self-evidently absurd**. A person who steps behind a bush to urinate or defecate in a remote location and without any intent to offend anyone, commits a summary offence under the current wording if they are visible from a public space. The Explanatory Memorandum for the 2016 Act expressly contemplated that conduct of this kind would fall outside S.19 but might be captured by S.17. The legislature therefore **deliberately left urgent physical necessity exposed to summary prosecution** under the very provision we ask Parliament to reconsider.

Legislative History and Charter Context

The Charter Compatibility Gap

When the Bill for the Crimes Amendment (Sexual Offences) Act 2016 was introduced, the Victorian Attorney-General at the time, Hon Martin Pakula MP, tabled a Statement of Compatibility under the Charter in the Legislative Assembly on 9 June 2016. An identical statement was tabled in the Legislative Council. Neither statement contained any analysis of the **human rights implications** of clauses 24 (introduced S.17(1A)) and 25 (revised S.19) and no debate arose during the second reading in either the legislative assembly or the legislative council. As a result the human rights implications of **S.17(1A)** and **S.19** for non-sexual social nudity **were not considered at any stage of the parliamentary process in either house**.

Section 28 of the Charter requires that a statement of compatibility address whether any part of a Bill is incompatible with human rights and, if so, the nature and extent of that incompatibility. That obligation was **clearly not discharged** in relation to S.17(1A). Section 29 of the Charter confirms that this failure does not affect the validity of the Act, but it does mean the incompatibility was never weighed against the Charter's proportionality framework. The correct legal consequence is that courts are already obliged under s.32 of the Charter to interpret S.17(1A) compatibly with human rights as far as possible. As we explain in the Human Rights section below, this **obligation is the foundation of the reform case**.

The Attorney-General's statement acknowledged the use of **absolute liability** throughout the Bill and advanced a **specific justification** for it, that limitations on rights introduced by absolute liability are balanced by the protective role it has for guarding vulnerable people from sexual abuse. This coalition unequivocally supports that protective purpose - for its intended target, and our proposed amendment does not disturb that purpose in any respect. The problem is one of **misapplication**. The justification advanced has **no application** to S.17(1A), which **by construction** does not apply to sexual offences. The application of absolute liability to S.17(1A) was therefore **never independently justified** against the proportionality framework in **S.7(2)** of the Charter. As demonstrated in the Proportionality analysis below, there are far less restrictive alternatives available than resorting to absolute liability for **S.17(1A)**.

The Legislature's Own Drafting Practices

Section 17AA of the Summary Offences Act 1966, a later provision, creates an offence of threatening or insulting conduct toward a customer-facing worker and expressly requires that the defendant act 'knowing or being reckless as to whether the person is an applicable customer-facing worker.' The legislature demonstrably builds intent requirements into Summary Offences Act provisions when it chooses to. The absence of any such requirement in S.17(1A) is **a correctable gap**, not a **drafting convention**.

The direction of recent legislative reform also supports the proposed amendment. The same 2016 Act that inserted S.17(1A) abolished the common law offence of wilful exposure (s.54C of the Crimes Act 1958). No. 35/2022 abolished the common law offence of outraging public decency (Crimes Act 1958, s.195J) and replaced it with the statutory offence of grossly offensive public conduct at s.195K, which requires proof of a knowledge or recklessness mental element. Parliament chose to replace a common law offence without an articulated mental element with a statutory offence that has one. The proposed amendment to s.17(1A) is consistent with that direction of travel.

The Nudity (Prescribed Areas) Act 1983

The Nudity (Prescribed Areas) Act 1983 has **never been substantively amended** since Royal Assent. Its Ministerial prescription power has been exercised **sparingly** since 1983 to establish **only four** clothing-optional beaches. The status of one of those beaches (Campbells Cove) has now been **revoked**.

The Act's structure creates a political risk: the government may argue that Parliament already considered the question of lawful nudity in 1983 and provided a mechanism for it, and that naturist organisations should apply to have further areas prescribed rather than seeking to amend the Summary Offences Act. This argument fails, as we explain in the Addressing Concerns section below. Its relevance here is that the Act's structure can also be used by a prosecutor to argue by negative implication that Parliament intended to confine lawful nudity to the three remaining designated beaches. The proposed amendment to S.17(1A) directly addresses this risk by establishing the legal neutrality of the human body at the level of the primary offence provision.

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.

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. Section 17(1A) as it is currently worded **fails to consider intent or context,** and places traditional practices at an **unacceptable risk** of being wrongly deemed unlawful. It effectively repeats 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 conducted without clothing **in accordance with halakhic requirements**. 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 event had 168 riders, more than 1,000 spectators, 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 applying Absolute Liability to a lesser offence

The absolute liability 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 **The Nomads Outdoors Group**, **Northside Country Club**, **Helios Naturist Club**, **CosieVic**, **Metro East Association**, **Corio Valley Nudist Club** and the **Christian Naturist Fellowship** all 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 absolute liability overreaches into everyday situations familiar to many Victorians. Activities such as changing out of wet bathers are commonplace and have occurred for as long as people have gone for a swim. Likewise, people relieving themselves in nature **must expose** their anal or genital region. Yet under Section 17(1A), even these harmless, incidental moments of nudity could result in being charged with a summary offence.

Skinny-dipping in remote rivers, lakes, and waterholes is a cherished part of Australian culture and outdoor recreation, particularly amongst bushwalking groups. The law's absolute liability 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.

In the modern environment, the risk of enforcement is **no longer limited by distance**. A person in a remote location **who reasonably believes they are unobserved** may still be captured on video by a passing walker, a drone, or a phone camera with optical zoom from a considerable distance. That footage can be uploaded and a formal complaint made to police within minutes, with video evidence attached. Under the current absolute liability structure of S.17(1A), **that footage alone** may be sufficient to establish the offence. The decision about whether the law is engaged is therefore effectively in the hands of whoever happens to point a phone, regardless of the remoteness of the location, the innocence of the conduct, or the absence of any person who was actually alarmed or distressed.

This dynamic **fundamentally changes the nature of the chilling effect**. Under the current law, a person might previously have felt safe exercising judgment about remoteness and context. In the modern environment, **no location is reliably private**, **no moment of solitude is guaranteed**, and **no reasonable assessment of one's surroundings can eliminate the risk** that footage will be taken and a complaint made. The chilling effect therefore extends to precisely the remote, peaceful, and victimless situations that the law was **never originally intended to reach**.

The chilling effect of the law's overreach expands on to **private property**. Anyone wishing to engage in clothing-optional recreation on private land**,** does so under the risk that their actions could be interpreted as **unlawful if they are visible** from a **public place** (not merely from a neighbouring property). In practice, this often renders large sections of a private land **unavailable for clothing-optional recreation**, even when neighbours or passers-by have no genuine objection. This is an unnecessary and onerous requirement that steps over the boundary fence and **directly interferes** with what people do on their own land and in their own homes.

Victoria has three clothing-optional beaches remaining; however these fail to accommodate the wide range of activities and cultural practices of Victorians. Restricting legality 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 Charter Already Requires Action

Section 32 of the Charter requires that all statutory provisions be interpreted, so far as is possible consistently with their purpose, in a way that is **compatible with human rights**. This obligation already applies to S.17(1A). Any court hearing a charge under the current provision is already obliged to ask whether the provision can be read as requiring proof of harmful intent rather than imposing absolute liability for mere exposure.

The honest answer is that it **cannot**. The deeming structure of S.17(1A) is **deliberately absolute**: exposure is deemed indecent, offensive or insulting **regardless** of the defendant's state of mind or the circumstances of the exposure. Reading an intent requirement into that structure would not be interpreting the provision compatibly with its purpose: it would be rewriting it. The S.32 obligation therefore demonstrates that the current law is placing on courts a burden that properly belongs to Parliament. **Legislative amendment** is the clean resolution the Charter framework contemplates.

Section 36 of the Charter also provides a mechanism for the Supreme Court to make a declaration of inconsistent interpretation where a provision cannot be read compatibly with human rights. The coalition has considered this pathway and is seeking legislative amendment as the preferred resolution, because it provides the clearest, most durable, and most proportionate remedy. A declaration under s.36 would require a willing defendant to be charged, convicted, and to pursue the matter through multiple courts over potentially years of costly litigation. That is an unfair burden to impose on any member of our community when a legislative remedy is available.

Limitation of human rights

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 13 — Right to Privacy.** Section 13 of the Charter protects a person's right not to have their privacy unlawfully or arbitrarily interfered with. The right to bodily autonomy and to make decisions about one's own body in contexts that pose no harm to others is **a core privacy interest**. As currently drafted, S.17(1A) overrides that interest. For

example, a person who swims naked in a secluded river, or gardens naked on their own property, is committing an offence if their nudity is visible from a public place. In both cases the provision is **effectively dictating what a person must wear** in circumstances where genuine privacy is expected. That is not a proportionate or justifiable interference with the right to privacy. Notably, in the Bill introducing S.17(1A) the charter compatibility statements invoked S.13 **repeatedly** in relation to protecting children and persons with cognitive impairment, but contained **no analysis** of how S.13 applied to the people being regulated by the exposure provisions themselves.

- **Section 14 – Freedom of Thought, Conscience, Religion, and Belief**
  The **absolute liability** of 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 absolute liability 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 absolute liability introduced by Section 17(1A) 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 absolute liability and the absence of any intent requirement create a significant barrier, limiting their freedom of association through the constant and unacceptable threat of law enforcement and legal action.

Proportionality Under Section 7(2)

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**. Section 7(2) of the Charter sets out the framework for assessing whether a limitation on human rights is justifiable. One of the five required factors is whether there are less restrictive means reasonably available to achieve the purpose of the limitation. This factor is **directly and conclusively engaged here**. The United Kingdom (Sexual Offences Act 2003, s.66) and Ireland (Criminal Law (Sexual Offences) Act 2017, s.45) address equivalent conduct through provisions requiring proof that the defendant intended to cause **alarm or distress**. New Zealand (Summary Offences Act 1981, s.27) requires **intentional and obscene exposure**, with a defence available where the defendant had reasonable grounds for believing they would not be observed. These are **not** theoretical alternatives. They are provisions that have operated in comparable jurisdictions for years, demonstrating that the **same protective purpose can be achieved** through means that are substantially less restrictive than absolute liability. Under S.7(2) of the Charter, this is direct evidence that less restrictive means are reasonably available. The current drafting of S.17(1A) fails the proportionality test on this ground alone.

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

The Summary Offence Context

The charter compatibility concern is sharpened by the procedural context in which S.17(1A) operates. Both S.17(1A) and S.19 are summary offences heard in the Magistrates' Court before a **single magistrate** sitting alone with **no jury**. The absence of a jury removes the natural protection that lay community judgment provides in an indictable trial. A single magistrate applying the current S.17(1A) has **no analytical framework** to look behind the deeming provision at the defendant's purpose, the context of the exposure, or whether any person was **actually harmed**. The deeming provision does all the work, and the right to be presumed innocent under s.25(1) of the Charter is more acutely engaged in this context, not less.

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 **a specific harmful intent.**

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

To protect human rights while addressing genuine public concerns, we propose replacing the current S.17(1A) with the following formulation. It **inverts the provision entirely**, establishing the **legal neutrality of the human body** as the starting point and then identifying three specific categories of harmful intent that attract liability. All changes from the current provision are in **bold**:

> *"For the purposes of subsection (1)(d)**, exposure (to any extent) of a person's anal or genital region is not of itself indecent, offensive or insulting behaviour, unless the person exposes this region with intent to:***
>
> ***(a) substantially limit a reasonable person's practical ability to disengage from the exposure; or***
>
> ***(b) cause alarm, distress or humiliation to a person; or***
>
> ***(c) disrupt a public gathering or event in which nudity plays no role.***
>
> ***Example***
>
> ***Forcing proximity,** mooning**,** or **disruptive** streaking."*

Limb (a) targets forcing proximity conduct: behaviour in which a person uses their nudity and physical presence to erode another person's practical freedom to occupy the shared space on their own terms. 'Disengage' is retrospective: it requires that an encounter is underway and the

affected person has made an observable attempt to leave. A person who is simply present in a space has not prevented anyone from disengaging.

Limb (b) captures exposure undertaken with intent to cause alarm, distress or humiliation, including **mooning**. It incorporates the same intent-to-alarm standard for both current and future versions of UK law, considering that Clause 85 of the UK's Crime and Policing Bill 2024-26 will soon add **humiliation** alongside alarm and distress in S.66 of their Sexual Offences Act 2003. The Victorian framework **goes further** by combining this standard with two additional limbs that address modes of harm the UK provision does not separately capture. Ireland's S.45 formulation uses 'fear, distress or alarm' and reaches the same ground through different wording.

Limb (c) captures disruptive **streaking** at events where nudity is not an integral element. The example illustrates each limb in order.

This amendment achieves four crucial objectives:

- **It protects human rights:** It establishes the neutrality principle already embodied in S.19(6), that the human body is not inherently sexual by virtue of its anatomy, and applies it consistently so the human body is not inherently indecent, offensive, or insulting either.
- **It preserves public order:** It maintains the clear ability of police to prosecute genuinely harmful conduct.
- **It is structurally consistent:** It aligns S.17(1A) with the principle Parliament already enacted in S.19(6) of the same Act in the same year, and with the intent-based approaches used in the United Kingdom (Sexual Offences Act 2003, s.66) and Ireland (Criminal Law (Sexual Offences) Act 2017, s.45).
- **It is extensible:** The three-limb structure allows Parliament to add further limbs in future to address new categories of harmful conduct without disturbing the existing framework or the neutrality principle.

This amendment ensures S.17(1A) continues to complement S.19. The two sections work in partnership, with the amended S.17(1A) targeting non-sexual exposure undertaken with harmful intent, and S.19 targeting predatory sexual exposure.

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 a law that ignores intent entirely: **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 cover for predatory behaviour** and does not weaken the laws that protect children. It is critical to note two points:

- **Firstly,** our proposal enables the law to properly discern between **harmless non-sexual exposures** like skinny dipping and naked gardening, and **harmful nuisance exposures** like mooning or streaking, which the current absolute liability structure cannot do. Any predatory or sexualised exposure **is a serious crime handled** under **Section 19** of the Act.

- 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 dangerous legal weapon in Section 17(1A). Exposure is not indecent, offensive or insulting only because the genitals (or anal region) are exposed.

The United Kingdom has operated an intent-based exposure offence (Sexual Offences Act 2003, s.66) for over two decades. Clause 85 of the current Crime and Policing Bill 2024-26 expands s.66 by adding **humiliation** alongside alarm and distress, and by capturing exposure for the purpose of sexual gratification where the defendant is reckless as to whether harm is caused. The UK's response to more than twenty years of operational data has been to **broaden** the intent-based framework, not to replace it with absolute liability.

Closer to home, in public changerooms across Victoria, children routinely encounter unclothed adults as part of daily life. This **does not result in harm**, because the adults are simply going

about their business. The nudity is incidental to a lawful purpose, the encounter is not directed at the child, intent to harm is absent, and the child's wellbeing is unaffected. This is **precisely the conduct** our proposed amendment is **designed to protect**: passive, non-directed nudity with no harmful intent, occurring in a context where others retain the practical ability to go about their business. Current law **does not criminalise** that peaceful conduct in changerooms, and our amendment ensures that peaceful conduct of this nature is not criminalised on a remote beach either. Our proposal ensures that non-sexual exposure is only criminalised when it is combined with intent to cause harm to others. Section 19 remains the law's necessary vehicle for protecting children and vulnerable people from predatory sexual conduct.

3. Regarding Public Encounters with Nudity: We acknowledge this concern directly. The proposed amendment does not create an **absolute right to be naked in public**. But it does mean that a person who is naked in a public setting and causing no harm cannot be prosecuted **simply for being there**. The honest consequence is that members of the public may, from time to time, encounter nudity in settings where they would prefer not to.

This concern deserves a direct response.

- **First**, the current law **does not prevent the public from encountering nudity**. Passive non-sexual nudity is already occurring in remote rivers, secluded beaches, and national parks throughout Victoria. The amendment does not create that reality: it removes arbitrary legal risk from people who are engaging in it harmlessly.

- **Second**, the law cannot and should not guarantee that no one ever sees something they find uncomfortable in a shared public space. The law's function is to **prevent harm, not to prevent discomfort**. A person who encounters a naturist at a remote beach and is momentarily surprised has not been harmed in **any legally cognisable sense**. A person who is followed, mooned at, or subjected to streaking at a public event **has been harmed**, and the proposed amendment preserves the **full force of the law** against each of those things.

- **Third**, Parliament already accepted this principle in 2016 when it enacted S.19(6) of the same Act, which states that genital exposure is not sexual merely because it is the genitals that are exposed. The proposed amendment asks Parliament to apply the same logic consistently to the lower offence: just as exposure is not automatically sexual, neither is it automatically indecent, offensive, or insulting.

- **Fourth**, community standards on this question are not static. The Melbourne World Naked Bike Ride attracted thousands of participants in 2025 and generated positive parliamentary comment. The community's actual response to non-sexual nudity in appropriate contexts is **indifference** rather than alarm. The law should reflect that reality.

- **Fifth**, social norms and other public nuisance laws **will continue** to guide behaviour as they do today in jurisdictions that use intent-based laws to regulate exposure. This proposed amendment would **not result** in nudity becoming commonplace in inappropriate settings like city centres or shopping malls. In such places the intent of an exhibitionist to cause alarm or distress **may easily be established**. What this proposal aims to provide, is legal certainty for a people simply enjoying a clothes-free recreation in nature, gardening naked on their own property, expressing their beliefs in a cultural or

religious practice, or even participating in an event like the World Naked Bike Ride or Spencer Tunick installation.

4. Regarding the Nudity (Prescribed Areas) Act 1983: It may be suggested that the Nudity (Prescribed Areas) Act 1983 already provides the mechanism the coalition is seeking, and that naturist organisations should apply to have additional areas prescribed rather than pursuing amendment of the Summary Offences Act.

This argument fails. The Nudity Act addresses location: it permits nudity in designated **places** at designated **times**. The proposed amendment to S.17(1A) addresses conduct: it protects passive non-directed nudity, provided no harmful intent is present. These instruments operate **on different axes** and one cannot substitute for the other.

The prescription mechanism is not a realistic alternative. There is **no application process**, **no criteria for assessment**, and **no obligation on the Minister to consider applications**. The power to create public clothing-optional spaces has been exercised only **four times** since 1983 to create four clothing-optional beaches. One of them, Campbells Cove, was **revoked in 2015**, and only three clothing-optional beaches remain in Victoria. The prescription mechanism has therefore not only been used sparingly, it has been used and then undone. Community groups and individuals seeking legal certainty for recreational swimming, religious rites, cultural ceremonies, and organised events across the whole of Victoria **cannot achieve that certainty by lobbying for individual beach prescriptions**.

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 replace Section 17(1A) of the Summary Offences Act. This will correct the section's overreach, 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.

4. **Insert s.17(1B) as a companion provision to the amended s.17(1A).** To ensure the amended provision is comprehensive, we recommend the insertion of the following subsection immediately after the amended s.17(1A):

   > ***"For the avoidance of doubt, exposure that does not satisfy the intent threshold in subsection (1A) does not, of itself, constitute a public nuisance at common law."***

   This provision addresses the residual risk that conduct falling outside the intent threshold in the amended s.17(1A) could nonetheless be prosecuted as common law public nuisance under S.320 of the Crimes Act 1958, which expressly preserves that offence with a level 6 imprisonment maximum of five years. Since this provision sits immediately after the amended s.17(1A) in the same section of the same Act, it does not introduce a new instrument into the reform package and is consistent with the coalition's preference for minimal amendments.

5. **Amend the Nudity (Prescribed Areas) Act 1983.** We recommend the addition of the following subsection to s.3 of the Nudity (Prescribed Areas) Act 1983:

   > *For the avoidance of doubt, the fact that an area is not a prescribed area does not, of itself, mean that a person being naked in that area commits an offence against a law in force in Victoria.*

   This clause is consistent with the Act's own long title, which describes it as 'An Act to permit nudity in certain public places,' and ensures the Act's structure cannot be used to argue that Parliament intended to confine lawful nudity to the three remaining designated beaches.

Conclusion

Victoria has an opportunity to modernise its public decency laws to reflect a mature, rights-respecting society. By establishing the legal neutrality of the human body in Section 17(1A) of the Act and identifying the specific harmful conduct that attracts liability, Parliament can correct the current law's overreach.

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.

Victoria now has the opportunity to do far more than correct a drafting error. The proposed amendment does not merely bring Victorian law into parity with the United Kingdom and Ireland. It goes further: by establishing the legal neutrality of the human body as a foundational principle and providing a structured, extensible framework for identifying genuinely harmful conduct, it creates a model that no comparable jurisdiction we are aware of has yet adopted. That is not a radical proposition. It is the logical conclusion of a principle Parliament itself accepted in 2016, applied consistently and with clarity. We respectfully invite Parliament to take that step.

References

Sturma, M. (1998). Dressing, undressing, and early European contact in Australia and Tahiti. Pacific Studies, 21(3), 87–104.

West, K. Naked and Unashamed: Investigations and Applications of the Effects of Naturist Activities on Body Image, Self-Esteem, and Life Satisfaction. J Happiness Stud 19, 677–697 (2018). https://doi.org/10.1007/s10902-017-9846-1

Crime and Policing Bill 2024-26 (UK), HL Bill 111 (Corrected), Clause 85, amending Sexual Offences Act 2003 (UK), s.66. At time of writing the Bill has passed both houses on this clause and is in final Lords-Commons consideration.

Supporters of this submission

- Christian Naturist Fellowship (Australia)
- 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