

# The Law Reform Longlist 2023:

## 77 Suggestions from the Community

### The Law Reform Longlist 2023:

*77 Suggestions from the Community*

GPO Box 4637  
Melbourne  
Victoria 3001  
Australia

Level 3  
333 Queen Street  
Melbourne  
Victoria 3000  
Australia

**Telephone**  
+61 3 8608 7800

**Freecall**  
1300 666 555  
(within Victoria)

**Fax**  
+61 3 8608 7888

**Email**  
[law.reform@lawreform.vic.gov.au](mailto:law.reform@lawreform.vic.gov.au)

[lawreform.vic.gov.au](http://lawreform.vic.gov.au)

Printed on 100% recycled paper



**Published by the Victorian Law Reform Commission**

The Victorian Law Reform Commission was established under the *Victorian Law Reform Commission Act 2000* (Vic) as a central agency for developing law reform in Victoria.

© Victorian Law Reform Commission 2023

This report reflects the law at 1 July 2023.

**The Law Reform Longlist 2023:  
77 Suggestions from the Community**

ISBN: 978-0-6452812-8-6

**Chair**

The Hon. Anthony North KC

**Commissioners**

Liana Buchanan

The Hon. Jennifer Coate AO

Kathleen Foley SC

Bruce Gardner PSM

Professor Bernadette McSherry

Dan Nicholson

Gemma Varley PSM

Dr Vivian Waller

**Chief executive officer**

Merrin Mason PSM

*Team leader*

Emma Cashen

*Senior research and policy officer*

Phoebe Irving Lindner

# Contents

<b>Introduction.....</b>	<b>6</b>
<b>First Nations Peoples .....</b>	<b>8</b>
1. A child protection notification and referral system.....	8
2. A residential diversion program for Aboriginal and Torres Strait Islander women.....	8
3. More time for Family Reunification Orders .....	8
4. Reforming the Sentencing Act .....	8
5. Police training about disability in Aboriginal and Torres Strait Islander communities.....	9
6. Bail reform for Aboriginal and Torres Strait Islander women .....	9
7. Serving outstanding warrants.....	9
8. Family violence-related debt issues .....	9
9. Reforming parole laws .....	10
10. Cautions and diversions .....	10
11. Independent review of deaths in custody.....	11
12. Registered Aboriginal Parties under the Aboriginal Heritage Act .....	11
13. Discretionary police powers .....	11
14. Bail reforms .....	11
15. Transitional supports for First Nations prisoners .....	12
16. Under-representation of First Nations Peoples in civil abuse claims .....	12
<b>Children and young people .....</b>	<b>12</b>
17. Consent by children to hormone treatment .....	12
18. Extending the Independent Person Program .....	12
19. Reforming child pornography laws .....	12
20. Surgical interventions on intersex babies .....	13
21. Reforming the Family Violence Protection Act .....	13
22. Repealing the serious youth offender regime .....	13
23. Raising the age of criminal responsibility .....	13
24. Reforming bail laws for children .....	14
25. Court-based diversions .....	14

<b>Crime</b> .....	<b>14</b>
26. A health-based response to drug crime .....	14
27. Prohibiting strip searching and solitary confinement .....	14
28. Drink spiking .....	15
29. Driving and medicinal cannabis .....	15
30. Disclosure of an STI before sex .....	16
31. Filming private acts without the consent of the parties .....	16
32. Personal Safety Intervention Orders .....	17
<b>Family violence</b> .....	<b>17</b>
33. Gaps in tenancy protections for family violence victim survivors.....	17
34. Misidentifying family violence victims as perpetrators .....	17
<b>Coronial investigations</b> .....	<b>18</b>
35. Sharing information between mental health providers .....	18
36. Coronial investigations of suicides by LGBTIQ+ people.....	18
37. Reporting obligations for relevant suicide deaths to WorkSafe .....	18
<b>Forensic examinations</b> .....	<b>19</b>
38. Forensic medical examinations of unconscious patients .....	19
39. Organ and tissue donation .....	19
<b>Elder abuse</b> .....	<b>20</b>
40. Reform to prevent and prosecute elder abuse .....	20
41. Powers of Attorney Register .....	20
42. Assets-for-care cases.....	21
43. Severing joint tenancy in elder abuse cases .....	21
44. Witnessing requirements .....	22
<b>Homelessness</b> .....	<b>22</b>
45. Abolishing offences that criminalise homelessness.....	22
46. Local government response to homelessness .....	22
<b>Disability</b> .....	<b>23</b>
47. Supervised Treatment Orders .....	23
<b>Discrimination</b> .....	<b>23</b>
48. Donating blood.....	23
<b>Housing</b> .....	<b>23</b>
49. Owners corporation regulation .....	23
50. Oversight of the community housing sector .....	24
<b>Consumer action</b> .....	<b>24</b>
51. Domestic building contracts .....	24
52. Collecting historical fines .....	25
53. Pawnbroking .....	25
54. Unfair trading laws .....	25
55. Recovering money lost to scams .....	26
56. Problem gambling .....	26

<b>Environment</b> .....	<b>26</b>
57. Creating a specialist land and environment court for Victoria .....	26
58. The Climate Change Act .....	27
59. The Flora and Fauna Guarantee Act .....	27
60. Fencing disputes .....	27
61. Regeneration of logged forests .....	28
<b>Health and safety</b> .....	<b>28</b>
62. 'Technology-neutral' driver distraction road rules .....	28
63. Regulating the use of e-scooters .....	28
64. Collisions involving pedestrians and cyclists .....	29
<b>Workers</b> .....	<b>30</b>
65. WorkSafe inspections .....	30
66. Workplace injuries and 'gig economy' workers .....	30
<b>Justice system improvements</b> .....	<b>31</b>
67. Independent review of complaints of police misconduct .....	31
68. Eliminating systemic racism .....	31
69. Building a justice system response to disasters .....	32
70. Government apologies .....	32
71. Government complaint handling .....	33
72. Artificial Intelligence and the justice system.....	33
73. Technology-enabled legal and court services .....	34
74. Access to departmental records in abuse cases .....	34
75. Tobacco healthcare costs recovery .....	34
76. Whistle-blower protection .....	35
<b>Human rights</b> .....	<b>36</b>
77. Reviewing the Charter of Human Rights.....	36

# Introduction

## About the Victorian Law Reform Commission (VLRC)

Under the *Victorian Law Reform Commission Act 2000*, the VLRC examines, reports, and makes recommendations on law reform matters.

Most of the VLRC's inquiries are referred to us by the Attorney-General of Victoria. The Commission also initiates its own inquiries into legal issues of general community concern, provided they are limited in size and scope. We call these inquiries 'community law reform projects'. We seek suggestions for community law reform projects from individual community members, organisations, and agencies. Our most recent community law reform project examined access to jury service for people who are deaf, hard of hearing, blind or have low vision.

Some suggestions in this paper may form the basis of future law reform projects.

## Law reform priorities identified by community and justice organisations

One of the key criteria for choosing community law reform projects is that the project will address problems that affect a significant proportion of the population or are faced by significantly disadvantaged members of the community.

At the conclusion of our latest project the VLRC consulted community organisations, practitioners and justice organisations, asking for proposals for future projects.

From December 2022 to the end of March 2023 we conducted 20 consultations with agencies that have hands-on experience of how Victoria's laws apply to the community. We spoke to organisations representing First Nations Peoples, seniors, young people and others, and bodies advocating for the environment, as well as the Law Institute of Victoria, the Victorian Human Rights and Equal Opportunity Commissioner, the Victorian Commissioner for LGBTIQ+ Communities, community legal centres, law firms, the State Ombudsman and the State Coroner. We discussed the issues that arise in their everyday work.

We thank all these people for their time and ideas. It is heartening to see the energy that is being applied to law reform projects in many areas. We heard many good proposals for future reform.

## The Law Reform Longlist 2023

We are now pleased to publish a list of these ideas, the **Law Reform Longlist 2023**. The list comprises selected suggestions from the groups we consulted and from members of the community.

The ideas that we heard related to a range of topics (see Contents). Some of these proposals, though important, are unsuitable as community law reform projects. Some of them are too large and might be suitable projects for the Attorney-General to refer to us. Some have been the subject of recent legal reviews and some are already being considered or actioned by Government.

We have left out suggestions that were clearly unsuitable for either a community law reform project or an Attorney-General inquiry because, for example, they were not legal problems or not within Victorian jurisdiction. We have done only preliminary research on the topics included, and further work will reveal which topics are suitable projects. However, we are including on this list all the suggestions which might be suitable, to reflect their importance to the community and to give visibility to the breadth of issues raised.

We will bring the list to the attention of the Victorian Attorney General and the Department of Justice and Community Safety.

## Disclaimer

These ideas were proposed by members of the community and various organisations whose names appear in the list. The presence of an idea in this list does not mean the proposed reform is endorsed by the Victorian Law Reform Commission, merely that the suggestion has been put to us. We have not yet fully assessed the merits of the suggestions. But we hope that this list will stimulate further discussion in the community and encourage government to examine some of the ideas more closely.

## Next steps

This list, together with other ideas suggested by the community, will assist the VLRC to select future community law reform projects.

Any community law reform project we choose must conform to our community law reform criteria, which include:

- Scope—the project is limited in size and scope and considers a small legal issue of general community concern. It should not involve significant Commission resources.
- Duplication—another body is not already reviewing this law. If the law has recently been considered by Parliament or is currently being reviewed, or likely to be reviewed by government, the Commission will not undertake the project.
- Victorian law—the Commission can only make recommendations about Victorian state laws.
- Community consensus—the project would not involve controversial subject matter generating significant public debate. A project like this would be better suited to a government-initiated reference or inquiry.
- The Commission is interested in projects:
  - that will fix problems with the law that affect a significant proportion of the population, or
  - that will address problems faced by significantly disadvantaged members of the community.

More information about our community law reform criteria is here: [www.lawreform.vic.gov.au/engage-in-law-reform/suggest-a-reform/criteria-for-projects/](http://www.lawreform.vic.gov.au/engage-in-law-reform/suggest-a-reform/criteria-for-projects/).

The Commission receives many law reform suggestions. We can only undertake a very small number of these projects and hence must prioritise suggestions. To do so the Commission will consider our community law reform criteria as well as other factors, including the other work we are undertaking or have completed, staff expertise and timing.

Information about our community law reform projects can be found on our website.

# First Nations Peoples

## 1. A child protection notification and referral system

Introducing a mandatory child protection notification and referral system for Aboriginal and Torres Strait Islander women and children.

- When a child protection notification occurs an appropriate Aboriginal Community Controlled legal service (for example, Djirra) should be immediately notified.
- The primary parent is referred to that service and provided with independent legal advice.
- Early access to legal advice and representation for mothers escaping family violence is critical to preventing child removal and to keeping Aboriginal and Torres Strait Islander children with their mums.

*Suggested by Djirra*

## 2. A residential diversion program for Aboriginal and Torres Strait Islander women

Creating a community-based residential diversion program for Aboriginal and Torres Strait Islander women similar to Wulgunggo Ngalu Learning Place for First Nations men.

- The aim is to maintain connection with family, community, Country and culture through rehabilitation and transitional support.
- The service would assist Aboriginal and Torres Strait Islander women leaving prison or at risk of contact with the prison system.

*Suggested by Djirra*

## 3. More time for Family Reunification Orders

Amending the *Children, Youth and Families Act 2005* (Vic) to allow the court to extend Family Reunification Orders beyond the current time limits of 12-24 months.

- Deep-seated intergenerational trauma cannot be resolved within 12-24 months. These time limits can punish Aboriginal and Torres Strait Islander women for delays outside their control.
- The provisions are harsh for mothers who are healing from family violence or incarceration-related trauma, substance abuse or mental illness.

*Suggested by Djirra*

## 4. Reforming the Sentencing Act

Reforming the *Sentencing Act 1991* (Vic) to better consider and meet the needs of Aboriginal and Torres Strait Islander women.

- An Aboriginal and Torres Strait Islander-specific sentencing principle requiring judges and magistrates to take into account Aboriginality during sentencing.
- The reintroduction of suspended sentences and a range of sentencing options, with prison as a last resort.
- Aboriginal and Torres Strait Islander women who have children in their care should not be sent to prison for low-level offences.

*Suggested by Djirra*



## **5. Police training about disability in Aboriginal and Torres Strait Islander communities**

Improving training to enable Victoria Police to better identify and respond to disability amongst Aboriginal and Torres Strait Islander people.

- Aboriginal and Torres Strait Islander women are more likely to be impacted by both disability and family violence, and this increases their vulnerability to contact with the justice system and criminalisation.

*Suggested by Djirra*

## **6. Bail reform for Aboriginal and Torres Strait Islander women**

Changing bail laws to create a presumption that Aboriginal and Torres Strait Islander women with children in their care will get bail. Denying bail to mothers harms their families and communities and extends the intergenerational trauma.

- A presumption in favour of bail should be reinstated, unless there is a specific and immediate risk to the safety of another person.
- Reform should be gender and culturally appropriate.
- Specific considerations in the bail decision-making principles of the unique circumstances for Aboriginal women, including:
  - If she is a mother and has a child/children or other caring responsibilities.
  - If she has experienced, or is at risk of experiencing, family violence.
  - If she lives with a disability, particularly acquired brain injury.
  - An acknowledgement that prison is an inherently unsafe place for Aboriginal women.

*Suggested by Djirra*

## **7. Serving outstanding warrants**

Preventing Aboriginal and Torres Strait Islander women being served with outstanding warrants when they report family violence to police or attend a family violence or child protection hearing.

*Suggested by Djirra*

## **8. Family violence-related debt issues**

Addressing debt issues for Aboriginal and Torres Strait Islander women if they leave a family violence situation. For example: mobile phone debt, damage to a rental property or contracts entered into because of coercive control.

*Suggested by Djirra*

## 9. Reforming parole laws

Reforming parole laws to address the disproportionate impact that the changes made in 2015 have had on First Nations Peoples. First Nations Peoples are less likely than the general prison population to apply for parole and less likely to be released on parole.

- Reform to establish a fair, transparent and equitable parole system which is culturally appropriate and committed to the rehabilitation and reintegration of incarcerated people.
- Creating a legislative presumption that an application for parole will be made at the earliest date.
- Incorporating procedural fairness rights into parole processes, including the right to be advised and represented by a lawyer.
- Requiring parole boards to consider the unique background and circumstances of First Nations Peoples (similar to consideration of the person's Aboriginality in section 3A of the *Bail Act 1977* (Vic)).
- Allowing time spent on parole to contribute to the head sentence, even if parole is cancelled.

*Suggested by the Victorian Aboriginal Legal Service*

## 10. Cautions and diversions

Greater use of cautions and diversions for First Nations Peoples in both the criminal and youth justice systems, including:

- Requiring Victoria Police and the courts to consider the unique background and circumstances of First Nations Peoples in relation to all decisions regarding cautioning and court-ordered diversion, and demonstrating the steps taken to discharge this obligation.
- Introducing legislated cautioning schemes that maximise opportunities for cautions, including a legislative presumption in favour of alternative pre-charge measures.
- No limit on the number of cautions a child can receive; children with a criminal history should not be excluded and access not to be conditional on a child or young person admitting an offence.
- Amending the statutory diversion schemes in the *Children, Youth, and Families Act 2005* (Vic), the new youth justice act and the *Criminal Procedure Act 2009* (Vic) to maximise opportunities for diversion, including a legislative presumption in favour of diversion at all stages of the legal process.
- Funding Aboriginal Community Controlled organisations to develop and implement culturally safe cautioning and diversion programs for First Nations children, young people and adults; expanding Balit Ngulu, a specialised youth program within the Victorian Aboriginal Legal Service (VALS) dedicated to providing legal assistance and representation to Aboriginal and Torres Strait Islander young people.
- Employing Koori Diversion Coordinators at the Children's Court Youth Diversion service and the Criminal Justice Diversion Program.
- Expanding the jurisdiction of the Koori Court to include court-ordered diversion.

*Suggested by the Victorian Aboriginal Legal Service*

## **11. Independent review of deaths in custody**

Ensuring an independent (non-police) investigation into deaths in custody and a legislated obligation of candour to provide all family members with information about the death.

*Suggested by the Victorian Aboriginal Legal Service*

Appropriate support for families participating in coronial inquests possibly including an advocate.

*Suggested by Arnold Bloch Leibler Public Interest Law Partner*

## **12. Registered Aboriginal Parties under the Aboriginal Heritage Act**

Examining the operation and effectiveness of section 153 of the *Aboriginal Heritage Act 2006* (Vic) which allows for more than one body to be a Registered Aboriginal Party (RAP) for a particular area.

*Suggested by Arnold Bloch Leibler Public Interest Law Partner*

## **13. Discretionary police powers**

Reviewing the use of discretionary police powers, which may have a discriminatory impact on Aboriginal and Torres Strait Islander people. Addressing misidentification of Aboriginal and Torres Strait Islander women as family violence perpetrators is a priority.

*Suggested by Djirra*

## **14. Bail reforms**

Urgently reforming the 2018 changes to the *Bail Act 1977* (Vic) that made it harder for people to get bail. These changes have disproportionately harmed Aboriginal and Torres Strait Islander people, in particular women and their families. Various reforms have been suggested:

- Repealing the reverse onus provisions in the Act, particularly the 'show compelling reason' and 'exceptional circumstances' provisions.
- Creating a presumption in favour of bail with the onus on the prosecution to demonstrate that bail should not be granted.
- Limiting the circumstances in which bail is not granted.
- Prohibiting detention if a custodial sentence is unlikely.
- Abolishing the offences of committing an indictable offence while on bail, breaching bail and failure to answer bail.
- Requiring bail decision makers to explain what information they have taken into account to understand why and how someone's Aboriginality is relevant, and provide the reasons for any refusal to grant an application for bail made by an Aboriginal and Torres Strait Islander person.
- Requiring bail decision makers to make enquiries about Aboriginality in self-represented cases.
- Requiring bail decision makers to consider the best interests of any dependent children in bail decisions.

*Suggested by the Human Rights Law Centre, Djirra and the Victorian Aboriginal Legal Service*

## 15. Transitional supports for First Nations prisoners

Improving and expanding culturally safe transitional support for First Nations Peoples leaving custody.

*Suggested by the Victorian Aboriginal Legal Service*

## 16. Under-representation of First Nations Peoples in civil abuse claims

Considering the barriers that may prevent First Nations Peoples who are victim survivors of childhood sexual abuse from pursuing civil claims in Victoria and making recommendations to improve access to justice for this underrepresented group.

This would complement federal bodies looking at engagement with the National Redress Scheme.

*Suggested by Maurice Blackburn Lawyers*

# Children and young people

## 17. Consent by children to hormone treatment

Creating a statutory right for *Gillick* competent young people to consent to hormone treatment for gender-affirming medical intervention. The aim is to clarify the common law so that medical practitioners and patients know what is expected of them.

*Suggested by the Victorian Equal Opportunity and Human Rights Commission and the Victorian Commissioner for LGBTIQ+ Communities*

## 18. Extending the Independent Person Program

Extending the operation of the Youth Referral and Independent Person Program (YRIPP) to 18-25-year-olds (currently only available to under-18s) and requiring that an Independent Person is available as an option for a child (under-18) even where a parent or guardian is present.

- YRIPP is a statewide network of staff and volunteers whose primary aim is to safeguard the rights of young people in police custody while offering referral and other follow-up support to divert them away from the criminal justice system.
- Reform would assist people from communities overrepresented in the justice system, including Aboriginal, refugee and migrant youth and young people in out-of-home care.

*Suggested by the Centre for Multicultural Youth*

## 19. Reforming child pornography laws

Removing the discrepancy between consensual sex laws and child pornography laws.

- Young people aged 16-18 can legally have consensual sex. But if a young person aged 18 produces, possesses, sends or receives, or accesses sexual images (even with consent) of their partner aged 16 or 17 (even if non-explicit, and in the context of a consensual relationship), they can be charged with possessing child pornography pursuant to the *Crimes Act 1958* (Vic) (see for example s51C, D, G, H).
- There is a defence in section 51N where both parties are children and the sexual act is not a criminal offence.

*Suggested by Youthlaw*

## 20. Surgical interventions on intersex babies

Providing greater regulation of surgical interventions on intersex babies in Victoria.

- Consideration of the recent *Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023* in the ACT.

*Suggested by the Victorian Equal Opportunity and Human Rights Commission and the Victorian Commissioner for LGBTIQ+ Communities*

## 21. Reforming the Family Violence Protection Act

Reforms to the *Family Violence Protection Act 2008* (Vic) to improve legislative interventions involving children.

- Implementation of recommendations made by 'The PIPA Project: Positive Interventions for Perpetrators of Adolescent Violence in the Home' including:
  - Amendments to ensure that the court is satisfied of the capacity of a young person to understand a Family Violence Intervention Order (FVIO) before the court makes the order.
  - Sections 53 and 74 of the Act could be amended to replicate sections 35(4)(a) and (b) and 61(2)(a) and (b) of the *Personal Safety Intervention Orders Act 2010* (Vic).
  - A final FVIO should not be made in the absence of a child unless that child is legally represented.
- Amending section 45 of the Act to enable a child aged 10 and over to apply for a FVIO against another family member with the leave of the court. Currently the law says a 14-year-old can do this.

*Suggested by Youthlaw*

## 22. Repealing the serious youth offender regime

Repealing the serious youth offender regime introduced by the *Youth Justice Reform Act 2017* (Vic), which limits access to youth justice facilities for young people convicted of serious offences.

- Uplift provisions from the Children's Court to a superior court to be repealed as well as mandatory minimum sentences.
- A need for specialised rehabilitative responses from the Children's Court to be recognised.

*Suggested by Youthlaw*

## 23. Raising the age of criminal responsibility

Immediately raising the age of criminal responsibility from 10 to at least 14 years old.

The Victorian Government has recently committed to raising the age to 12 with a change to 14 by 2027.

*Suggested by the Human Rights Law Centre, the Victorian Aboriginal Legal Service and Djirra*

## 24. Reforming bail laws for children

Reforming the *Bail Act 1977* (Vic) to reduce the number of children unsentenced and on remand in youth detention.

- Ensuring that young people always have a presumption of bail.

*Suggested by Youthlaw, the Human Rights Law Centre, Justice Connect, and Launch Housing*

## 25. Court-based diversions

Removing the requirement to obtain prosecutorial consent for a court-based diversion from section 59(2)(c) of the *Criminal Procedure Act 2009* (Vic) and sections 356D(3) and 356F of the *Children, Youth and Families Act 2005* (Vic).

- The decision about court-based diversion to be made by the court.
- In reaching its decision the court could consider the recommendation of the prosecution along with other considerations.

*Suggested by Youthlaw*

# Crime

## 26. A health-based response to drug crime

Adopting a health-based response to drug use focussed on harm reduction rather than criminalisation.

- Shifting the focus from punishment and intrusive policing to supporting people.
- Existing drug laws are enforced against First Nations Peoples at disproportionate rates.
- A new model would eliminate criminal sanctions for drug possession.

*Suggested by the Victorian Aboriginal Legal Service*

## 27. Prohibiting strip searching and solitary confinement

Amending the *Corrections Act 1986* (Vic) to prohibit routine use of strip searching and solitary confinement.

- A strip search should only be permitted as a last resort after all other less intrusive search alternatives have been exhausted if there is reasonable intelligence that the person is carrying dangerous contraband.
- Prohibit the use of solitary confinement in prisons, except in clearly defined exceptional circumstances in which a person may be lawfully separated from other people in prison.
- Reform needs to be consistent with domestic and international human rights standards.

*Suggested by the Human Rights Law Centre*

## 28. Drink spiking

Media reports suggest that drink spiking is increasing in both metropolitan Melbourne and regional Victoria.

Drink spiking is an offence under section 41H of the *Summary Offences Act 1966* (Vic) carrying a maximum imprisonment term of two years. However, it is rarely prosecuted, perhaps because:

- Victims may not report drink spiking because they fear they will be prosecuted for underage drinking or drug-taking, or they are embarrassed.
- Victims may have taken drugs or consumed alcohol themselves, which makes it difficult to distinguish what might be the spiking component.
- Gathering evidence from eye-witnesses or CCTV is difficult. Physical evidence may have dissipated from the person by the time they report the incident.
- The interpretation of any drink spiking analysis and reporting must be coordinated with the relevant forensic experts of specialist police involved in such investigations.

A review should consider recent developments elsewhere in Australia and in the UK, for example:

- Western Australia has launched a rapid drug test for drink spiking. Tests are available at any 24-hour police station in the metropolitan area. People are encouraged to report within 48 hours.
- La Trobe Regional Health School is partnering with the Centre Against Sexual Assault Central Victoria, Bendigo Community Health Services, and the Greater Bendigo Coalition for Gender Equity to gather information about existing interventions and victim survivor stories and develop targeted educational information for the public, industry, and government.
- The United Kingdom House of Commons, Home Affairs Committee produced a report, *Spiking*, in 2021 that made recommendations to improve responses to drink spiking.

*Raised in media articles and discussed with the Victorian Institute of Forensic Medicine*

## 29. Driving and medicinal cannabis

Reviewing the operation of section 49 of the *Road Safety Act 1986* (Vic) (RSA) that prohibits driving after the use of medicinal cannabis; and investigating testing options to measure impairment caused by the use of medicinal cannabis.

Section 49 of the RSA states that a person is guilty of an offence if they drive a motor vehicle while under the influence of drugs or alcohol to such an extent as to be incapable of having proper control of the motor vehicle.

Various medicinal cannabis products are available containing different combinations of active ingredients. Cannabis has two main chemical components. THC has psychoactive properties. Cannabidiol, or CBD, is not psychoactive. Both compounds are used in different levels as treatments for various conditions, including pain relief, anxiety and neurological disorders.

THC may decrease a patient's ability to perform some tasks due to its impairing effects on mental alertness and physical coordination. While the use of medicinal cannabis is legal in Victoria it is a criminal offence in Victoria to drive with THC present in your saliva, blood or urine.

*Suggested by community members, raised in media articles and discussed with the Victorian Institute of Forensic Medicine*

### 30. Disclosure of an STI before sex

Considering penalties for people who do not disclose to a sexual partner that they have a sexually transmittable disease before sex. An inquiry could consider:

- The operation of the *Public Health and Wellbeing Act 2008* (Vic).
- *Crimes Act 1958* (Vic) provisions that may apply to a person who has spread an STD/STI by failing to disclose their health status and failing to take precautions to prevent the spread of the disease, including intentionally causing serious injury (section 16), conduct endangering life (section 22) and conduct endangering persons (section 23), causing serious injury recklessly (section 17), causing injury intentionally or recklessly (section 18) or negligently causing serious injury (section 24).
- Since 2017, in New South Wales a person with an STD is no longer required by law to tell sexual partners they are infected (section 79 (1) *Public Health Act 2010* (NSW)). Rather, a person can be fined or jailed for failing to take 'reasonable precautions' against spreading an STD.

*Suggested by a community member*

### 31. Filming private acts without the consent of the parties

Strengthening the law to prohibit recording of private acts including sexual acts without the consent of all participants.

Under the *Surveillance Devices Act 1999* (Vic) (SDA) it is not illegal to secretly record or film another person without their permission if you are a part of the conversation or activity yourself.

Laws prohibit the publication and distribution of recorded material.

- The SDA contains prohibitions on the publication or dissemination of recordings to others without the permission of each person involved in the conversation or activity.
- It is an offence under the *Summary Offences Act 1966* (Vic) to distribute an intimate image where the distribution is contrary to community standards of acceptable conduct.

In Western Australia and South Australia it is unlawful to record a private conversation or film a private act without consent, unless it is in the public interest or to protect the lawful interests of one party.

The Victorian Government has recently introduced the *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* to address image-based sexual abuse, which includes taking intimate videos of someone without their consent and distributing, or threatening to distribute, intimate images including deepfake porn (sections 53R and S). Existing image-based sexual offences in the Summary Offences Act will be relocated to the *Crimes Act 1958* (Vic) and expanded when the new provisions come into force.

*Suggested by a community member*



## 32. Personal Safety Intervention Orders

Reviewing the operation of the Personal Safety Intervention Order (PSIO) scheme and in particular whether it is appropriate to use PSIOs in neighbourhood disputes and disputes between farm owners. There are concerns that the use of PSIOs has increased in recent years and questions about their effectiveness.

A PSIO is a court order to protect a person from physical or mental harm caused by someone who is not a family member. Often a PSIO will prevent a person from going near someone's work or place of residence. PSIOs can be applied for directly by an individual or by a police officer on their behalf. Police can make applications without the consent of the applicant.

While a PSIO is a civil order and does not result in a criminal record, breaches of conditions constitute an offence that can be reported to the police and result in criminal charges. Police have a range of enforcement powers associated with PSIOs, including entry and search of premises without a warrant. Costs are associated with contesting orders and Legal Aid is not available for adults in relation to a PSIO.

*Suggested by community members*

## Family violence

### 33. Gaps in tenancy protections for family violence victim survivors

Section 91V of the *Residential Tenancies Act 1997* (Vic) provides a family violence victim survivor with the right to apply to the Victorian Civil and Administrative Authority (VCAT) to terminate a rental agreement where they have experienced family violence 'by another party to the rental agreement'. VCAT also has the power to determine the parties' liability under the terminated agreement. Where the perpetrator is not a party to the rental agreement section 91U provides some but fewer protections than 91V for a victim survivor of family violence. Reform is needed to address these gaps in the law and make renting safer.

*Suggested by Justice Connect*

### 34. Misidentifying family violence victims as perpetrators

Examining the misidentification of victim survivors of family violence as perpetrators.

- Misidentification has serious and long-term repercussions for women and their children, particularly for First Nations families: it can influence other legal proceedings such as child protection matters and can limit access to support services.
- Misidentification may also compound isolation and distrust in police, and increase the risk of violence.

*Suggested by the Federation of Community Legal Centres*

## Coronial investigations

### 35. Sharing information between mental health providers

Addressing barriers to sharing information about mental health treatment between health providers. Existing barriers create difficulties for the Coroner when investigating a death.

The new *Health Legislation Amendment (Information Sharing) Act 2023* (Vic) is aimed at improving information sharing between medical health providers. These recent changes may not however extend to mental health providers.

*Suggested by the Victorian State Coroner*

### 36. Coronial investigations of suicides by LGBTIQ+ people

Knowledge of LGBTIQ+ status is important for a comprehensive coronial investigation to be undertaken as it may be a factor relevant to suicide.

The Victorian Police Report of Death Form 83 that must be completed following a suicide does not ask for information about gender or sexuality.

If the 'senior next of kin' (defined in section 3 of the *Coroners Act 2008* (Vic)) does not disclose this information, it will likely remain unknown to the Coroner.

In addition, because LGBTIQ+ people are at higher risk of suicidal behaviours than the general population in Australia, having data about LGBTIQ+ suicide rates would facilitate advocacy and policy making to prevent suicides.

*Suggested by the Victorian Equal Opportunity and Human Rights Commission and the Victorian Commissioner for LGBTIQ+ Communities*

### 37. Reporting obligations for relevant suicide deaths to WorkSafe

Reviewing the law to examine the way suicide deaths are notified to WorkSafe by employers and the Coroner, and to ensure that WorkSafe investigations for breaches of the *Occupational Health and Safety Act 2004* (Vic) occur in a timely manner.

Time limits in OH&S laws mean WorkSafe investigations need to be commenced quickly. Waiting for a coronial inquest before a matter is referred to WorkSafe may be too late.

*Suggested by a community member*

# Forensic examinations

## 38. Forensic medical examinations of unconscious patients

Addressing the legal decision-making gap for forensic medical examinations of adult victims of suspected physical or sexual assault who are unconscious or do not otherwise have decision-making capacity to consent to an examination.

- A forensic medical examination of a patient may not fall within the substitute decision-making regime for medical treatment decisions under section 3 of the *Medical Treatment and Planning and Decisions Act 2016* (Vic). The gap in legal substitute decision-making needs to be addressed.
- Family members should not be able to be substitute decision-makers where family violence is involved or suspected.

*Suggested by the Victorian Institute of Forensic Medicine*

## 39. Organ and tissue donation

Considering an opt-out scheme for organ and tissue donation for Victoria.

- In England the *Organ Donation (Deemed Consent) Act 2019* establishes that all adults are considered to have agreed to be an organ donor when they die unless they have recorded a decision not to donate or are in an excluded group.
- Scotland also has an opt-out system through the *Human Tissue (Authorisation) (Scotland) Act 2019*.

On 28 March 2023, the Victorian Legislative Assembly's Legal and Social Issues Committee announced an Inquiry into increasing the number of registered organ and tissue donors.

*Suggested by the Victorian Institute of Forensic Medicine*

## Elder abuse

### 40. Reform to prevent and prosecute elder abuse

Examining reforms to discourage and prosecute elder abuse, a significant problem in our community. Increased life expectancy and a 'baby boomer' cohort which is generally wealthier than previous generations will create a larger population of older people with significant assets. Suggestions for reform include:

- Consideration of whether specific laws are needed to criminalise elder abuse, similar to those in the ACT (*Crimes (Offences Against Vulnerable People) Legislation Amendment Act 2020* (ACT)).
- Consideration of the effectiveness of existing criminal laws to combat elder abuse and whether any reform is needed to lower evidentiary thresholds to make it easier to prosecute elder abuse.
- Clarifying the right to seek relief from the obligation to pay stamp duty for the transfer of property back to the older person on property transferred because of elder abuse. Existing *ex gratia* relief could be legislated.

*Suggested by the Law Institute of Victoria Elder Law Committee and Seniors Rights Victoria*

### 41. Powers of Attorney Register

Introducing an online register for enduring powers of attorney (POA) and guardianship orders. Misuse of fraudulent, invalid, conditional and revoked enduring documents can be a problem with serious financial and other consequences for older people, which could be reduced by a register.

POAs must be registered in England and Wales and Scotland, and a national registration scheme was recommended by the Australian Law Reform Commission in its report *Elder Abuse* in 2017. Other state and territory bodies have also recommended a register. An inquiry could consider the benefits of registration in Victoria, which may include:

- Ensuring that only one relevant Enduring POA document can be registered at any one time, and that when an Enduring POA is revoked it cannot continue to be used.
- Providing a clear record of the precise roles and powers of the attorney, the conditions that apply to the power of attorney, when and whether it has come into effect and the wishes of the older person.
- Providing clarity for family members and others close to the older person about who has what rights and responsibilities, potentially reducing family disputes.
- Making it easier for banks, hospitals, health providers, organisations and service providers to check the authenticity of documents and whether a person has appointed a substitute decision maker.
- Training or information could be provided to attorneys through the registration process to assist them to better understand their role and responsibilities.

Any register should be online, user-friendly and low-cost.

A review could consider the advantages of a national online register for Enduring Powers of Attorney.

*Suggested by the Law Institute of Victoria Elder Law Committee, Seniors Rights Victoria, Justice Connect*

## 42. Assets-for-care cases

An increasingly common family arrangement that can leave an older person vulnerable to elder abuse is an 'assets-for-care' arrangement. An older person may transfer the title in their home or the sale proceeds to their family member in exchange for the promise of long-term care. This might be done so that the older person can continue to receive the age pension or to address current or future housing and support needs.

Sometimes the transfer is used to repay a mortgage, with the older person living in the same house as their family, or to build a 'granny flat'. Money might also be used to make modifications to the home, for example ramps. Often these arrangements are made informally, and this can make it difficult for the older person's interest in the transfer to be recognised in law if there is a dispute with a family member.

There are concerns that because VCAT was not specifically given jurisdiction to consider asset-for-care cases, older people face difficulties resolving them under the existing co-owned land or goods list at VCAT. An inquiry could consider how to make it easier for these cases to be resolved, including by:

- Reviewing the evidentiary requirements for VCAT applications. Older people may not have adequate documentation to support an application to VCAT and may not have obtained independent legal or financial advice.
- Limiting the application of common law principles applying to the partition of property under the *Property Law Act* which work against an older person and may perpetuate abuse. For example, the presumption that a contribution between parents and children is a gift. VCAT could instead consider financial contributions regardless of the nature of the relationship between the parties.
- Taking into account the broad range of non-financial contributions made by parties in asset-for-care arrangements, for example, care for grandchildren or stopping work to care for older parents.
- Providing accessible legal options for older people who may have forgone an interest in title thereby preventing them from initiating a claim in VCAT under the co-owned land or goods list. For example, an older person may own a granny flat but have no interest in the land on which the granny flat sits. To assert contract or equitable rights these matters have to be pursued in the courts, where costs may be prohibitive, and court action takes time.

*Suggested by Seniors Rights Victoria*

## 43. Severing joint tenancy in elder abuse cases

Reforming the law to make it easier to sever a joint tenancy where elder abuse has occurred.

If property is owned jointly, the law of survivorship applies. Upon the death of one joint owner, the property as a whole will automatically pass to the survivor(s). Where the parties agree, a joint tenancy can be severed by registering the change in title. Where the parties don't agree, an older person may be able to sever a joint tenancy unilaterally in equity, but this needs to be confirmed by an order of a court or VCAT. There are concerns that parties intentionally delay these proceedings which makes it hard for older people to get out of abusive arrangements.

If an older person is the victim of elder abuse and dies before a joint tenancy can be formally severed, the abuser will keep the property unless the estate applies to have the title severed. This can be a complicated process.

Reform could also clarify the right to seek relief from the obligation to pay stamp duty for severing joint tenancy or for the redistribution of property ownership on Title in the context of elder abuse. Existing ex gratia relief could be legislated.

*Suggested by Seniors Rights Victoria*

## 44. Witnessing requirements

Considering ways to simplify and broaden the remote execution of important community documents.

- Enabling remote witnessing of the appointment of a medical treatment decision maker and an advance care directive.
- Note that changes have been made recently to enable remote witnessing for Powers of Attorney through the *Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021* (Vic).

Examining the possibility of removing the requirement in section 17 of the *Medical Treatment Planning and Decisions Act 2016* (Vic) that at least one of the two witnesses of an Advanced Care Directive must be a medical practitioner.

Tightening the witnessing requirements for the execution of a will in the *Wills Act 1997* (Vic). Currently, beneficiaries of a will are allowed to witness the execution of a will. This could be brought into line with section 35 of the *Powers of Attorney Act 2014* (Vic) which prohibits relatives and care workers from witnessing.

*Suggested by the Law Institute of Victoria Elder Law Committee*

# Homelessness

## 45. Abolishing offences that criminalise homelessness

Removing various public order offences that have the effect of criminalising homelessness from the *Summary Offences Act 1966* (Vic), local laws and other Acts, such as:

- begging
- threatening language in public
- loitering
- sleeping in cars
- conduct on public transport.

In addition to being more likely to incur fines for this conduct and being less likely to be able to navigate the complex review process, people experiencing homelessness and related vulnerabilities are disproportionately affected by the monetary penalty imposed by fines. In turn, people experiencing homelessness are more vulnerable to the possibility of imprisonment, which is only ordered where there is an inability to pay.

Fines and charges for conduct in public spaces act as a barrier to people having stable housing, community connections and health. A health and support-based response to this type of conduct would complement the Government's recent decision to implement a health-based response to public intoxication.

*Suggested by Justice Connect and Launch Housing*

## 46. Local government response to homelessness

Reforming the *Local Government Act 2020* (Vic) or other appropriate legislation to ensure a health-based response to homelessness. Increases in homelessness in suburban parks and gardens and beachfronts pose challenges for local government, as does camping in cars and semi-permanent camps. There is a need for a localised and collaborative approach to homelessness. A new principle akin to a 'duty to assist' in the Local Government Act could help to ensure that the first response of councils to homelessness is health-based rather than compliance-based.

*Suggested by Launch Housing*

# Disability

## 47. Supervised Treatment Orders

Reviewing the operation of Supervised Treatment Orders (STO) under the *Disability Act 2006* (Vic).

A supervised treatment order is a civil order made by the Victorian Civil and Administrative Tribunal (VCAT) in relation to a person with an intellectual disability who is receiving residential services, to prevent the risk of significant harm to others.

In 2003 the VLRC published a report, *People With Intellectual Disabilities At Risk*, which looked at how people with an intellectual disability who are a risk to themselves and others are treated in compulsory care. The STO provisions commenced with the *Disability Act* in 2007. It is time to review the use and impact of restrictive practices on people with disability in the context of the National Disability Insurance Scheme, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the United Nations *Convention on the Rights of Persons with Disabilities*.

*Suggested by the Federation of Community Legal Centres*

# Discrimination

## 48. Donating blood

Changing the law to enable men who have sex with men to donate blood. The current position is that men who have sex with men must have abstained from sex for three months before giving blood. The Therapeutic Goods Administration has recently approved the lifting of restrictions on plasma donations but restrictions for blood donations continue.

Instead, an individual assessment approach could be considered, as in the UK. Potential donors are asked questions about their sexual behaviour to assess the risk that they might be infected with a transmissible disease such as HIV or hepatitis. Questions are asked without regard to sexual orientation or gender identity.

*Suggested by the Victorian Equal Opportunity and Human Rights Commission and the Victorian Commissioner for LGBTIQ+ Communities*

# Housing

## 49. Owners corporation regulation

Changing owners corporation regulations to:

- require owners corporations to make provision for financial hardship and reasonable payment of outstanding strata title fees (used for the repair, maintenance and management of the common property)
- require legal action for debt collection to be used only as a last resort.

*Suggested by the Consumer Action Law Centre Victoria*

## 50. Oversight of the community housing sector

Changing the *Charter of Human Rights and Responsibilities Act 2006* (Vic) to ensure that community housing providers are recognised as 'public authorities' for the purposes of the Charter and clarifying in legislation that the Ombudsman has oversight.

Victoria is increasingly investing in community housing run by not-for-profit organisations with financial support from government. This differs from public housing which is owned by the state. Because the wording of the Charter is ambiguous, community housing tenants may not have the same rights and protections as public housing tenants.

The Ombudsman has clear legislative oversight of public housing as well as its complaint handling; however, the Ombudsman's oversight of community housing is not always clear due to ambiguity in the *Ombudsman Act 1973* (Vic). Amending Schedule 1 to include community housing organisations as 'specified entities' would ensure clarity.

It follows that those in the public housing and those in publicly funded community and other social housing organisations have inconsistent accountability standards, and tenants do not have the same rights and protections.

*Suggested by the Victorian Ombudsman*

## Consumer action

### 51. Domestic building contracts

Considering the checks and balances that are needed to ensure that builders comply with relevant standards under the *Domestic Building Contract Act 1995* (Vic) (DBC Act). There are two key issues that reform could consider:

- There are implied warranty protections in the DBC Act and other protections for home-owners regarding building work (sections 8, 9, 31, 33). However, some of the usual remedies for a breach of the implied warranties do not apply when the builder fails to provide the home-owner with a proper written contract for major domestic building works, which is any work over \$10,000.
- Reform should consider how to better protect home-owners from builders who do not properly comply with their legal obligations under the DBC Act.
- Currently the DBC Act says that a building cost escalation clause can only be included in a contract that is valued at \$500,000 or more (section 15). This is a clause that enables a builder to increase the contract price to account for increased costs of labour and materials or delay in carrying out the work. The costs of building works are rapidly rising, and more families are finding that their building works are exceeding \$500,000 and they are caught by these clauses. Families may be required to pay significant additional amounts that they did not budget for. Financial institutions may be wary about approving loans that contain these clauses. Reform could review the monetary trigger for a cost escalation clause.
- Additionally, some home-owners are finding that even if their contract does not contain a cost escalation clause, builders are seeking to pass on the burden of increased costs, usually through the issuing of unlawful variations.

*Suggested by Justice Connect*



## 52. Collecting historical fines

Examining ways to make the collection of historical fines fairer.

- Once a fine is registered with Fines Victoria it does not expire and can be enforced at any time. Historical fines accrue interest and standard fees.
- Fines Victoria may forgo a fine where it deems that enforcement is not appropriate. Fines Victoria may reduce or waive fees where it is appropriate in all the circumstances to do so.
- There is also scope for Fines Victoria to forgive a fine during a review process for reasons including mental illness, serious addiction to drugs, homelessness and family violence; or where there were exceptional circumstances, for example a medical emergency or vehicle breakdown; but not for financial hardship.
- There is no option for court review.

*Suggested by the Victorian Ombudsman*

## 53. Pawnbroking

Reviewing the operation of the *Second-Hand Dealers and Pawnbrokers Act 1989* (Vic).

A pawnbroker is someone who can lend you money according to the value of the goods pawned. Pawned goods become security for the loan repayment. You can get your goods back within the redemption period by paying off the loan and interest. There are reports that some customers may end up paying more in interest than the value of the item and may lose the item if they miss a payment or cannot pay the loan back in full.

- Introducing protections in Victorian laws for pawnbroker customers against interest rate escalations, and examining whether pawnbrokers could become subject to the oversight of the Australian Financial Complaints Authority.
- Unlike payday lending, pawnbroking is not regulated by responsible lending legislation (*National Consumer Credit Protection Act 2009* (Cth)). Pawnbrokers determine their own fees and charges.

*Suggested by the Consumer Action Law Centre Victoria*

## 54. Unfair trading laws

Amending Victoria's fair trading laws to strengthen consumer protections and prohibit unfair trading.

- The *Competition and Consumer Act 2010* (Cth) is a national law that regulates fair trading in Australia. It is applied in Victoria through the *Australian Consumer Law and Fair-Trading Act 2012* (Vic). The Australian Competition and Consumer Commission (ACCC) administers and enforces the Act along with state and territory regulators including Consumer Affairs Victoria.
- Legislative change would counter the narrow interpretation of 'unconscionable conduct' by the courts and strengthen consumer protections in Victoria.
- States can provide protections beyond those contained in Commonwealth laws. For example, the *Fair Trading Act 1987* (NSW) requires businesses to take reasonable steps to disclose terms that may 'substantially prejudice' the interests of consumers and to disclose whether a business has an arrangement with a third-party supplier for a financial incentive. Victoria could also move beyond Commonwealth protections by instigating change through its legislation.

*Suggested by the Consumer Action Law Centre Victoria*

## 55. Recovering money lost to scams

Improving consumer laws to enable customers to recover money lost to scams. Scams are widespread and consumers are taking on more risks in their everyday interactions with business as they purchase online.

Customers can lodge a complaint with the Australian Financial Complaints Authority but are not always successful. Requiring mandatory reimbursement by banks and other financial institutions, in appropriate circumstances, would provide an incentive to take meaningful preventative action as they do with credit card fraud.

*Suggested by the Consumer Action Law Centre Victoria*

## 56. Problem gambling

Examining the relationship between problem gambling and participation in the Victorian justice system and what needs to be done to break this cycle. In Victoria the most disadvantaged council areas often have the highest gambling losses.

*Suggested by the Federation of Community Legal Centres*

# Environment

## 57. Creating a specialist land and environment court for Victoria

A Land and Environment Court (LEC) could hear a range of matters including environmental, development, building and planning disputes, as happens in New South Wales, becoming an accessible one-stop shop for environmental matters.

The environmental legal landscape is evolving quickly and Victoria has new, cutting-edge legislation. The general environmental duty is central to the *Environment Protection Act 2017* and applies to all Victorians and Victorian businesses. Community members are increasingly pursuing environmental matters in the courts.

Benefits of an LEC could include:

- Addressing concerns about inconsistency and uncertainty in environmental decision making and sanctions. Uncertainty arises because different jurisdictions hear environmental matters, resulting in a lack of a coherent body of environmental case law.
- An LEC would recognise the growing importance of the environment to the community and ensure the development of specialist jurisprudence.
- There are long delays in environmental cases in the superior courts. An LEC would ensure that there is an easily accessible, one-stop jurisdiction in Victoria to test important environmental cases.
- Environmental planning matters removed from VCAT and heard in an LEC would lighten the load on VCAT and reduce delays.
- An LEC could provide greater potential for restorative justice in environmental matters, as has been occurring in New South Wales.

*Suggested by Environmental Justice Australia*

## 58. The Climate Change Act

Providing greater legislative guidance about the operation of section 17(2) of the *Climate Change Act 2017* (Vic), which requires decision makers to have regard to climate change. The climate change considerations in section 17(2) could also apply more broadly than currently specified in Schedule 1 of the Act.

- Section 17(2)(a) considerations ('the potential impacts of climate change relevant to the decision or action') are conflated with those in section 17(2)(b) ('the potential contribution to the State's greenhouse gas emissions of the decision or action').
- Decision makers may not be properly considering both factors. They may not be paying enough attention to factor (a) the climate change context in which decisions are being made. For example, an environment where air quality is decreasing due to pollution from bushfires, storms and dust events driven by climate change. Those considerations and others are still relevant and require consideration even if the project only contributes in a negligible way to greenhouse gases (factor b).
- The operation of section 17 could be clarified by including a note or an example in the Act.
- Guidelines can be issued to guide the interpretation of this provision (by the Minister under section 18), but none have been made yet.

*Suggested by Environmental Justice Australia*

## 59. The Flora and Fauna Guarantee Act

Enhancing the operation of the *Flora and Fauna Guarantee Act 1988* (Vic) (FFG Act) to better protect listed species and communities. The FFG Act is the key legislation for the conservation of threatened species and communities and for the management of potentially threatening processes in Victoria.

There are concerns that once a species or community is listed, there is no effective obligation to protect it because many of the tools in the FFG Act are discretionary.

For example, section 19 of the FFG Act creates an obligation to prepare an action statement as soon as a species or community is listed. Action statements aim to help secure populations and enable the long-term persistence of a species. The action statement sets out what has been done to protect the species or community but is discretionary regarding future conduct— it *must* include 'what has been done to conserve and manage ... and what is intended to be done' and *may* include 'what needs to be done'.

Not all listed species have approved action statements and there is no legislative requirement to implement, monitor or report against them.

*Suggested by Environmental Justice Australia*

## 60. Fencing disputes

Examining whether the Victorian Civil and Administrative Tribunal (VCAT) should hear fencing disputes rather than the Magistrates' Court. The Magistrates' Court process can be onerous for applicants. VCAT could provide a simplified and accessible dispute resolution process for these disputes.

*Suggested by the Federation of Community Legal Centres*

## 61. Regeneration of logged forests

Reviewing the operation of existing laws to ensure that logged forests can only be returned to Government after they have been successfully revegetated, and requiring the Office of the Conservation Regulator (OCR) to be satisfied that this has occurred.

We note that the Government has recently announced that it will be ending native logging earlier than planned, by 1 January 2024.

*Suggested by the Victorian Ombudsman*

# Health and safety

## 62. 'Technology-neutral' driver distraction road rules

Examining what changes are needed in Victoria to adopt technology-neutral road rules, including potential amendments to the *Road Safety Act 1986* (Vic) or other relevant legislation.

Current road rules for driver distraction focus on the use of specific technology devices. As new devices enter the market, these rules quickly become outdated, creating ambiguity for the public and enforcement agencies and reducing their safety benefits.

An inquiry could consider the recommendations of the National Transport Commission's project 'Developing Technology-Neutral Road Rules for Driver Distraction' which aims to futureproof the road rules by putting the onus on drivers to avoid distractions, not just from technology but all sources.

Those recommendations amend the road rules to adopt a hybrid policy approach (using both prescriptive and performance-based rules) to clarify what the public can and cannot do safely when interacting with technology while driving.

*Suggested by Maurice Blackburn Lawyers*

## 63. Regulating the use of e-scooters

Improving the response of Victorian laws to the increasing use of e-scooters on our roads and footpaths.

E-scooter trials are underway in a number of council areas in Victoria, under the oversight of Vic Roads. There has been a spate of serious injuries caused by riders of e-scooters in Victoria.

An inquiry could consider the steps that need to be taken to ensure that members of the public are not left without the ability to recoup compensation against an e-scooter rider because an e-scooter owner does not have adequate insurance or because of numerous insurance policy exclusions that relate to e-scooters.

Current exclusions under the insurance policies may include situations where the rider:

- is under 16, or 75 or older
- fails to wear a helmet while riding
- rides the e-scooter for commercial use
- rides an e-scooter not under their own account
- breaches a law or by-law in the area they are riding
- is under the influence of alcohol or other drug
- rides with a passenger
- is carrying more than 10kg in total
- is not wearing covered footwear
- is carrying items that are considered to impede their ability to safely operate the e-scooter
- is using headphones, earphones, earbuds, a headset or other listening device while riding; or is riding in adverse weather conditions.

An inquiry could also consider regulatory models in other jurisdictions and findings of the oversight panel established by the Minister for Roads and Road Safety to provide guidance and make recommendations at the conclusion of the trial.

*Suggested by Australian Lawyers Alliance*

## **64. Collisions involving pedestrians and cyclists**

Amending the *Transport Accident Act 1986* (Vic) (TAA) to extend Transport Accident Commission coverage to pedestrians injured in collisions with cyclists and consideration of compulsory third party insurance for cyclists.

Section 3 of the TAA defines a 'transport accident' as an incident directly caused by the driving of a motor car or motor vehicle, a railway train or tram. Section 35 of the TAA provides that a person who is injured as a result of a 'transport accident' is entitled to compensation. These provisions do not extend to protect pedestrians injured by cyclists.

An inquiry could consider:

- Dangerous driving laws in the *Road Safety Act 1986* (Vic) and a cyclist's duty to 'render assistance' after an accident.
- Insurance requirements—unlike motor vehicles, cyclists are not required to hold insurance. In all states and territories, motorists are required to have compulsory third party insurance, which is included as part of the registration fee in VIC, SA and NT. Cyclists may take out insurance of their own accord, and some cycling bodies provide insurance to members as part of their membership fee.
- The duty of care owed by all road users including cyclists to other road users and options for redress against cyclists through the courts.

*Suggested by a community member*

## Workers

### 65. WorkSafe inspections

Reviewing WorkSafe's role in identifying and addressing non-physical risks in the workplace, including tolerance of activities that may lead to mental health issues, sexual harassment, bullying, gender-based discrimination and gender-based inequity. This could involve:

- Amending the *Occupational Health and Safety Act 2004* (Vic) and other relevant legislation to improve WorkSafe Victoria's ability to identify and address these issues.
- Reviewing the current role and training of WorkSafe inspectors to identify gaps in their capabilities and ways to close them.
- Consideration of whether existing physical safety processes could be adapted to ensure psychological safety and to reduce the risk of gendered violence.

*Suggested by Maurice Blackburn Lawyers*

### 66. Workplace injuries and 'gig economy' workers

Examining the challenges faced by gig workers who are injured at work in Victoria and reviewing the adequacy of their legal protections.

The 'gig economy' refers to the growing phenomenon of workers who provide services on demand through digital platforms. Platforms such as Uber, Mable and Airtasker offer flexibility and convenience for workers and consumers. However, because many gig workers are classified as independent contractors and not employees, they are not covered by workers' compensation insurance. They often have limited safety protections and no paid sick leave.

An inquiry would involve:

- assessing the insurance coverage provided by gig platforms and exploring options for extending existing forms of assistance for injured gig workers or creating new ones.
- considering changes to the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) or other relevant legislation to address these concerns.

*Suggested by Maurice Blackburn Lawyers*

# Justice system improvements

## 67. Independent review of complaints of police misconduct

Ensuring an independent (non-police) investigation into complaints of police misconduct.

The practice of Victoria Police investigating complaints against itself is widely criticised, particularly by First Nations Peoples, for lacking effectiveness and independence and undermining public confidence.

Although the Independent Broad-based Anti-Corruption Commission (IBAC) has the power to deal with serious police misconduct matters, it can currently refer complaints back to the Chief Commissioner of Police.

*Suggested by Arnold Bloch Leibler Public Interest Law Partner*

## 68. Eliminating systemic racism

Introducing legislation to regulate the collection, use and disclosure of information for the purposes of identifying and eliminating systemic racism and advancing racial equity.

Victorian Aboriginal Legal Service clients are particularly impacted by systemic racism in the criminal justice, youth justice and child protection systems, as well as in access to housing, employment, health care, mental health care and consumer law. Data can lead to positive change because it makes visible systemic inequalities in our society.

Data in Australia is collected in nationwide surveys conducted by the Australian Bureau of Statistics and by human rights institutions, among others. But the collection of data in Australia is not codified by law.

In some jurisdictions, the collection of data is codified. For example, in British Columbia (BC), Canada, the *Anti-Racism Data Act* [SBC 2022] Chapter 18 supports the collection, use and disclosure of demographic information within BC for the purposes of identifying and dismantling systemic racism and advancing racial equity, particularly in policing, health care, and education.

The Act was co-developed with Indigenous peoples and communities experiencing racism.

- Under the Act public bodies can be required to collect and disclose data for the purpose of identifying and eliminating systemic racism.
- The scheme requires continued collaboration with Indigenous Peoples.
- Government is required to release data on an annual basis and periodically review the Act and to identify research priorities in consultation with Indigenous peoples.
- The Act sets up an anti-racism data committee to collaborate with government on how data is collected and used. Government is required to seek consent from Indigenous communities to use the data.
- Any data collected is stored safely, personally identifying information is removed and there are limits on its use and disclosure that are consistent with Canadian privacy legislation.

*Suggested by the Victorian Aboriginal Legal Service*

## 69. Building a justice system response to disasters

Improving the preparedness and resilience of a range of Victorian laws to disasters.

Due to climate change, so called 'natural' disasters (eg fire, flood or disease), are occurring more frequently. When they do, existing legal problems get worse and new legal needs emerge. Often these legal problems impact the most disadvantaged people in our community, as well as uncovering newly at-risk cohorts and communities. Unexpected legal problems can affect people's health, financial stability and relationships. In times of crisis, people need to be able to access legal help as quickly and seamlessly as possible. An inquiry could:

- Examine the laws applying to disaster relief, how well they anticipate disaster and how people experience them.
- Consider the creation of a pre-planned disaster response framework for the legal assistance sector that includes the division of responsibility for the legal response (eg by demographic, issue, or area) and coordination of pro bono resources.
- Consider quarantining government funding for legal sector disaster response services to be made quickly available when disasters occur.
- Clarify the definition of 'disaster' so that frameworks and funding can be quickly applied.
- Consider how to establish a collaborative infrastructure across the legal assistance sector.
- Examine how to support the sector to speed up digital transformation to facilitate scaled-up disaster responses and resilient services.
- Examine the provision of more legal support for not-for-profits to deliver more effective disaster preparedness planning and responses to disasters.

*Suggested by Justice Connect*

## 70. Government apologies

Amending Part IIC of the *Wrongs Act 1958* (Vic) to enable apologies to be made by Government authorities and statutory agencies without being used as an admission of liability or evidence in all types of civil proceedings. The definition of apology could also be expanded to include apologies that involve an acknowledgement of responsibility or fault rather than just expressions of regret or sympathy.

Legal and insurance barriers discouraging authorities from apologising for mistakes could be tackled by amending the *Wrongs Act*.

An apology is important because it validates a person's grievance. Conversely, lack of an apology invalidates their experience. Apologising is a mark of integrity for public authorities. It shows that the authority is transparent and accountable and treats members of the public with courtesy and respect. An apology can also help to resolve disputes sooner.

*Suggested by the Victorian Ombudsman*



## 71. Government complaint handling

Reviewing existing complaint-handling processes in the Victorian Public Service.

A large proportion of complaints received by the Ombudsman relate to the way that the public service handles complaints. People find it difficult to navigate the complaints system and as a result behaviour escalates. Further, at common law, reasons do not have to be provided for a decision.

Handling complaints by government agencies and organisations that receive public funding and deliver a service to the public should necessarily be regarded as 'core business'.

Having complaint handling policies and procedures, and recording and reporting on complaints, assists organisations understand how well they are operating and where there are areas for improvement. It is also an important accountability mechanism.

State public organisations are not required to have in place complaint-handling policies or procedures, and not required to report complaints they receive, unlike the situation for local government councils. See section 107 of the *Local Government Act 2020* (Vic).

In New South Wales there is a strong emphasis on complaint handling within government.

Government bodies and publicly funded organisations should be required to:

- have a complaints policy
- have a system for internal review of complaints
- publish complaint numbers in their annual report.

*Suggested by the Victorian Ombudsman*

## 72. Artificial Intelligence and the justice system

Examining the risks and opportunities created by Artificial Intelligence (AI) and developing a strategy to prepare the Victorian justice system for inevitable change.

Platforms like ChatGPT and other large language models provide potential to improve the administration and accessibility of the justice system.

The possible uses and benefits of AI should be identified. They include the potential for greater efficiencies in the courts and the more efficient delivery of information and advice from government agencies: for example, automating court reporting or resolving disputes through automated online dispute resolution.

The risks posed by AI should also be considered, including identifying what legal processes are not adaptable to AI, and what decision making needs to remain the job of humans.

Change should be driven and planned for by the legal profession, not by technology vendors.

*Suggested by Maurice Blackburn Lawyers*

### 73. Technology-enabled legal and court services

Expanding the use of technology-enabled legal and court services to ensure a more accessible, efficient, and modern legal system for all Victorians, regardless of their geographic location.

The COVID-19 pandemic demonstrated the potential of technology to make legal and court services more accessible to Victorians, especially those living outside Melbourne. Several emergency measures introduced in response to the pandemic, including the electronic signing of legal documents, remote witnessing of legal documents by audio-visual link, and the creation of deeds and mortgages in electronic form, have since become permanent. Reform could focus on:

- Examining current legal and court services to identify the opportunities for greater use of e-systems, and identifying what they could deliver in terms of inclusion, security, privacy, efficiency, quality and consistency.
- Identifying barriers to technology implementation.
- Identifying changes to legislation that would be required to bring about change.

*Suggested by Maurice Blackburn Lawyers*

### 74. Access to departmental records in abuse cases

Reviewing rules and regulations affecting Government departments' ability to source and share information quickly and identifying reform to speed up this process.

Delays in accessing records from Victorian Government departments can prolong civil abuse cases. These compound the delaying tactics of defendant lawyers to 'wear down' the claimant.

*Suggested by Maurice Blackburn Lawyers*

### 75. Tobacco healthcare costs recovery

Creating a right for the government to recover/be compensated for health care expenditure associated with tobacco diseases.

The Victorian Government has limited options to recover the substantial costs incurred for mass harm to the community by tobacco companies. These bills are paid for by Victorian taxpayers.

Several Canadian provinces have passed legislation providing the government with a direct and distinct action against a manufacturer to recover the cost of health care benefits caused or contributed to by a tobacco-related wrong. For example, the British Columbia *Tobacco Damages and Health Care Costs Recovery Act* [SBC 2000] Chapter 30.

Recommendations may become a guide for schemes in other areas, for example cladding, hacking and victim redress. Law reform may also guide the development of a more generic right for government to seek to be compensated in the future.

*Suggested by Maurice Blackburn Lawyers*

## 76. Whistle-blower protection

Examining the merits of reform to allow lawyers to overcome non-disclosure agreements or implied confidentiality obligations on witnesses or whistle-blowers.

Confidentiality clauses can thwart justice by preventing whistle-blowers from disclosing unlawful behaviour. While the Australian Government has extended some protections for public servants, strong, specific statutory barriers continue to stand in the way of private sector whistle-blowers disclosing civil wrongs to lawyers, and to lawyers acting on that information:

- The ability to report anonymously is not guaranteed.
- Alleged wrongdoers can sue whistle-blowers or their lawyers in circumstances where the whistle-blower has provided incriminating confidential information to lawyers.

Reform is underway in relation to non-disclosure agreements regarding sexual harassment claims. Similar issues arise in class actions.

An inquiry could consider:

- The challenges faced by whistle-blowers and their lawyers in Victoria, and suggest ways to reduce barriers and increase incentives to expose corporate misbehaviour.
- Expressly legislating the unenforceability of confidentiality obligations where the whistle-blower believes there has been a breach of criminal law or the commission of a serious civil wrong.
- Providing for payments to whistle-blowers whose actions lead to the recovery of monies by the State (whether as penalties or otherwise).
- Whether 'shield laws' for journalists and their lawyers introduced through amendments to the *Evidence Act 2008* (Vic) could be a model. Shield laws provide journalists either an absolute or qualified privilege to refuse to disclose sources used or information obtained in the course of news gathering.
- What safeguards may be needed, for example preserving business secrecy and limiting publication of information.

*Suggested by Maurice Blackburn Lawyers*

# Human rights

## 77. Reviewing the Charter of Human Rights

Reviewing the operation of the Victorian Charter of Human Rights and examining whether the Charter should be expanded to include additional rights, for example:

- economic and social rights
- self-determination for Aboriginal Victorians
- the right to a healthy environment
- housing
- education.

Expressly recognising economic and social rights in the Charter would strengthen and clarify these protections. It would fill the gaps in existing Victorian legislation and put human rights in one place, making them easier for the community to identify and use. Including self-determination in the Charter would further enable Victoria's First Nations communities to meet their social, cultural and economic needs and participate in decisions that affect them.

There has not been a review of the operation of the Charter since 2015 and previous recommendations have not all been implemented.

A review could also consider work being done in this area in other Australian jurisdictions and by the Australian Human Rights Commission's 'Free and Equal Project: a National Conversation on Human Rights'.

*Suggested by the Human Rights Law Centre, the Victorian Ombudsman, the Victorian Equal Opportunity and Human Rights Commission and the Victorian Commissioner for LGBTIQ+ Communities*