

Victoria Police Manual

The Victoria Police Manual is issued under the authority of the Chief Commissioner of Police in s.60, Victoria Police Act 2013. Non-compliance with or a departure from the Victoria Police Manual may be subject to management or disciplinary action. Employees must use VPM Professional and ethical standards to inform the decisions they make to support compliance.

Prejudice motivated crime

Context

Crimes motivated by hatred or prejudice cause serious, significant and far-reaching harm.

Prejudice means to have a preconceived belief, opinion or judgement towards a person or group of people with common characteristics. In accordance with the sentencing guidelines at s.5(2)(daaa), *Sentencing Act 1991*, when imposing a sentence, a court must have regard to whether an offence is motivated (wholly or partly) by hatred for or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victim was associated. The court must also consider the impact of the offence on a victim.

This policy includes:

- roles and responsibilities when responding to reports of suspected prejudice motivated crime
- serious vilification offences detailed in the *Crimes Act*
- offences relating to the display of Nazi symbols or the performance of Nazi gestures detailed in the *Summary Offences Act*
- offences relating to changing or suppressing the sexual orientation or gender identity of a person detailed in the *Change or Suppression (Conversion) Practices Prohibition Act*
- additional summary offences to consider that may be motivated by prejudice
- civil options and referrals between Victoria Police and the Victorian Equal Opportunity and Human Rights Commission (VEOHRC).

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Definitions

Attribute – as listed at s.6, *Equal Opportunity Act 2010* include, amongst other things, age, gender identity, disability, marital status, physical features, race, etc.

Discrimination - under the *Equal Opportunity Act* includes direct or indirect discrimination on the basis of an attribute (refer to s.4(1) of that Act for a broad list of attributes and their definitions).

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

Protected attribute - under the *Crimes Act* means any of the following attributes:

- a) disability
- b) gender identity
- c) race
- d) religious belief or activity
- e) sex
- f) sex characteristics
- g) sexual orientation, or
- h) personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

Sexual orientation - under the *Equal Opportunity Act* means a person's emotional, affectional and sexual attraction to, or intimate or sexual relations with, persons of a different gender or more than one gender.

Scope and application

This policy applies to all employees involved in the investigation and prosecution of prejudice motivated crime.

Responding to prejudice motivated crime

1. Reporting prejudice motivated crime

- Members receiving a report of crime where prejudice may be a motivating factor must:
 - comply with **VPM Crime attendance – initial action**
 - with sensitivity, gather information relevant to why the victim believes they were victimised due to prejudice or hatred

- identify and mitigate any risks to the victim, such as continued threats or secondary/repeat victimisation (where a victim has a negative experience when reporting a crime to police)
- comply with **VPM Victim support**.

Note: evidence of prejudice will generally be apparent in the words used by the offender before, during and/or after the offence.

- Any person associated with an offence can identify that prejudice may be a motivating factor (e.g., victim, witness, police).

1.2 Secondary Victimisation

- Secondary victimisation may occur where a victim has a negative experience when reporting a crime to police. It is important for members to be aware their behaviour can significantly affect trust and confidence of individuals and communities in police.

2 Confidentiality

- Barriers to reporting prejudice motivated crime may exist for a number of reasons. For example, victims who may already be vulnerable may need additional support around privacy and security. Members must try to build trust and confidence with the victim, so they are comfortable fully disclosing the details of the offending. **Refer to VPM Victim support** for further guidance.
- Outing members of the community (such as LGBTIQ+, people with a disability or religious or cultural affiliation) can be a significant barrier to reporting and can have a significant impact on their relationships, their mental health, and in some cases their safety. Members should not alert family, friends or associates, including where a crime or incident has occurred, without the person's express consent, unless exceptional circumstances warrant the disclosure. Maintaining confidentiality will encourage reporting and positive interactions may lead to greater trust in police from priority communities.
- Information sharing must always be justified through legislation or a genuine policing requirement and must occur through approved and/or legal avenues to ensure disclosure is appropriate and legitimate, refer to **VPM Information sharing**.

3 Recording prejudice motivated crime

3.1 Investigating member responsibilities

Where it is believed that prejudice is a motivating factor in the commission of a criminal offence, the investigating member must do both of the following:

- enter relevant crime reports on LEDR Mk2 in accordance with **VPM Crime and event reporting and recording**, and
- ensure that the category of Prejudice Motivated Crime in the Modus Operandi tab is recorded correctly (with reference to the victim, not the offender) and that the Case Progress Narrative includes why the offence appears to be motivated by prejudice.

Note: where an investigating member becomes aware of prejudice motivation after a LEDR Mk2 report has been submitted, supplementary LEAP Forms L1A and L2A or B must be submitted.

3.2 Supervisor responsibilities

- Supervisors must ensure that:
 - the LEDR Mk2 report indicates prejudice motivation
 - the Case Progress Narrative contains an explanation as to why the offence appears to be motivated by prejudice
 - prejudice motivated crime is recorded on the L1 and L2A or L2B as applicable.
- As stated in **VPM Operational duties and responsibilities**, in all complaints relating to racial, political or ideological circumstances, an Incident Fact Sheet must be compiled as soon as possible.
- Where the incident may attract media attention, supervisors should notify the Media and Corporate Communications Division, Media, Communications and Engagement Department.

4 Briefs of evidence

4.1 Investigating member responsibilities

Members must comply with **VPMP Briefs of evidence** and must ensure evidence of prejudice motivation is brought to the attention of the prosecutor by detailing it in the summary of evidence. This should include any of the following:

- admissions regarding motivation made by the accused
- words spoken during the commission of the offence and
- any other evidence as to why a victim was targeted.

4.2 Supervisor responsibilities

Supervisors must ensure evidence of prejudice motivation is highlighted on the Statement of alleged facts within the preliminary brief for the attention of prosecutors.

4.3 Prosecutor responsibilities

Following a finding of guilt, prosecutors must consider whether a sentencing submission is appropriate in all the circumstances.

Serious vilification

5 Overview

The *Crimes Act* includes serious vilification offences in recognition that all Victorians have the right to be free from vilification. Vilification diminishes a person's dignity, sense of self-worth and belonging to community and can cause profound physical and psychological harm.

6 Offences

6.1 Incitement on the ground of a protected attribute

- Section 195N, *Crimes Act* provides the offence of incitement on the grounds of a protected attribute. A person commits an offence if both:

- they engage in conduct on the ground of a protected attribute that is likely to incite hatred against, serious contempt for, revulsion towards or severe ridicule of another person or a group of persons, and
- the person either intends their conduct to incite or believes their conduct will probably incite the other person or the group (recklessness).

Note: the conduct may be made up by a single occasion or a number of occasions over a period of time.

- This offence is intended to capture extreme speech and conduct that urges or promotes the strongest forms of dislike towards a person or group of people. This can be abusive, derogatory, intimidating or violent behaviour. The offence is not intended to include contempt, distaste or ridicule, for example.
- This offence also provides for the extra territorial operation of the offence where the conduct is engaged in from within Victoria. It does not matter if the person or group against whom the offence is alleged to have been committed was outside Victoria at that time.
- Prosecution for an offence against s.195N, *Crimes Act* must only be commenced by or with the consent of the Director of Public Prosecutions (DPP).
- See the **Prejudice Motivated Crime Practice Guide** for further information.

6.2 *Threaten physical harm or property damage on the ground of a protected attribute*

- Section 195O, *Crimes Act* provides the offence of threaten harm or property damage on the ground of a protected attribute. A person commits an offence if all of the following apply:
 - they threaten physical harm towards another person or to damage property of, or otherwise related to, another person or a group of people,
 - the threat is on the ground of a protected attribute of the other person or group, and
 - the person either intends the other person or group to believe the threat will be carried out or believes that the other person or group will probably believe the threat will be carried out (recklessness).

Note: if the threat is made from outside Victoria, then the person or group threatened must be in Victoria, or in the case of a threat to property damage, the property must be in Victoria.

- Prosecution for an offence against s.195O must only be commenced by or with the consent of the Director of Public Prosecutions (DPP).
- See **Prejudice Motivated Crime Practice Guide** for further information.

Display or gesture of a Nazi symbol

7 Overview

The *Summary Offences Act* includes offences relating to the display of Nazi symbols or the performance of Nazi gestures associated with the Nazi Party. Displaying Nazi symbols and performing Nazi gestures is not a protected form of expression under the *Charter of Human Rights and Responsibilities Act 2006* (the Charter).

Nazi symbols and gestures, such as the Hakenkreuz (commonly known as the swastika) and Nazi salute is a symbol of antisemitism and can be used to intimidate and cause harm to a wide

range of groups within the Victorian community.

8 Offences

8.1 Publicly display Nazi symbol or gesture

- Section 41K(1), *Summary Offences Act*, outlines the offence relating to the public display of Nazi symbols or Nazi gestures. In addition to prohibiting the display of Nazi symbols, this offence is intended to prohibit the various methods of communicating a Nazi gesture, such as publicly displaying a poster, picture, other type of illustration of a person performing the Nazi salute.
- Section 41K(1) states that a person must not intentionally display a Nazi symbol or gesture if both of the following occur:
 - the person knows, or ought reasonably to know, that the symbol or gesture is a Nazi symbol or Nazi gesture, and
 - the display occurs in a public place, a non-Government school or a post-secondary education institution; or occurs in sight of a person who is in a public place, a non-Government school or a post-secondary education institution.

Note: s.41M, *Summary Offences Act* (issue of search warrant by a magistrate) outlines that s.465, *Crimes Act* applies regarding an offence against s.41K(1) as if it were an indictable offence. This provides for a magistrate to issue a search warrant related to the public display or performance of Nazi symbols or gestures. The warrant allows police to search for and seize evidence related to the offence of public display or performance of Nazi symbols or gestures.

- The *Bail Act 1966* includes the performance of a Nazi gesture as an exception to the prohibition of refusing bail, therefore, an accused person may be refused bail if charged with an offence against s.41K(1).
- Members must obtain written consent from the DPP before commencing a prosecution of a child for this offence.
- See **Prejudice Motivated Crime Practice Guide** for further information including examples of prohibited Nazi symbols and gestures.

8.2 Direction to remove a Nazi symbol or gesture from public display

- In accordance with s.41L, *Summary Offences Act*, members may give a direction to a person to remove a Nazi symbol or Nazi gesture from display if they reasonably believe that the person is committing an offence against s.41K.
- A direction to remove a Nazi symbol or Nazi gesture from display may be given orally or in writing and must include the period within which it must be complied with.
- If a direction is unable to be given in person, a written direction may be either:
 - left at the property where the Nazi symbol or Nazi gesture is being displayed, or
 - affixed or placed on a vehicle in a conspicuous manner if the display is on a vehicle.
- See **Prejudice motivated crime Practice Guide** for an example of a written direction.

Change or suppression (conversion) practices

9 Overview

- Change or suppression is a practice or conduct directed towards a person, whether with or without the person's consent on the basis of the person's sexual orientation or gender identity and for the purpose of either:
 - changing or suppressing the sexual orientation or gender identity of the person or,
 - inducing the person to change or suppress their sexual orientation or gender identity (s.5, *Change or Suppression (Conversion) Practices Prohibition Act*).

Note: charges under the *Change or Suppression (Conversion) Practices Prohibition Act* can only be laid where the offence occurred on or after 17 February 2022. For any reports of an alleged offence occurring prior to this date, investigating members should consider other possible offences, including assault, sexual offences, child abuse and family violence.
- Victoria Police and VEOHRC work together to support the objectives of the *Change or Suppression (Conversion) Practices Prohibition Act* and provide referral of enquiries from the public and share information in accordance with the Memorandum of Understanding between Victorian Equal Opportunity and Human Rights Commission and Victoria Police.

10 Offences

10.1 *Intentionally carrying out a change or suppression practice where that conduct causes serious injury to another person*

- Section 10, *Change or Suppression (Conversion) Practices Prohibition Act* provides the offence of intentionally carrying out a change or suppression practice where that conduct causes serious injury to another person. A person commits an offence if all of the following apply:
 - they intentionally engage in a change or suppression practice directed towards another person
 - the change or suppression practice (or any or all of the practices, considered as a group) causes serious injury, and
 - they are negligent as to whether engaging in the change or suppression practice will cause serious injury.
- Investigating members must also consider other offences including assault, sex offences, child abuse and family violence.
- See **Prejudice Motivated Crime Practice Guide** for further information.

10.2 *Intentionally carrying out a change or suppression practice where that conduct causes injury to another person*

- Section 11, *Change or Suppression (Conversion) Practices Prohibition Act* provides the offence of intentionally carrying out a change or suppression practice where that conduct causes injury to another person. A person commits an offence if all of the following apply:
 - they intentionally engage in a change or suppression practice directed towards another person

- the change or suppression practice (or any or all of the practices, considered as a group) causes injury, and
- they are negligent as to whether engaging in the change or suppression practice will cause injury.
- Investigating members must also consider other offences including assault, sex offences, child abuse and family violence.
- See **Prejudice Motivated Crime Practice Guide** for further information.

10.3 *Taking a person from Victoria for the purposes of that person being subject to a change or suppression practice, where that practice causes injury*

- Section 12, *Change or Suppression (Conversion) Practices Prohibition Act* provides the offence of taking a person from Victoria for the purposes of that person being subject to a change or suppression practice, where that practice causes injury. A person commits an offence if all of the following apply:
 - they take another person from Victoria, or arrange for another person to be taken from Victoria
 - they intend that a change or suppression practice directed towards another person will be engaged in outside Victoria (whether by them or another person)
 - a change or suppression practice directed towards another person is engaged in outside Victoria
 - the change or suppression practice (or any or all of the practices, considered as a group) causes injury, and
 - they are negligent as to whether the change or suppression practice will cause injury.
- Investigating members must also consider other offences including assault, sex offences, child abuse and family violence.

10.4 *Advertising a change or suppression practice*

- Section 13, *Change or Suppression (Conversion) Practices Prohibition Act* provides the offence of advertising a change or suppression practice. A person commits an offence if both of the following apply:
 - they publish or display, or authorise the publication or display of, an advertisement or other notice, and
 - the advertisement or other notice indicates, or could reasonably be understood as indicating, that the person or any other person intends to engage in one or more change or suppression practices, other than for the purposes of warning of the harm caused by such practices.

Summary offences - general

11 Overview

Any crime could be motivated by prejudice. As stated, evidence of prejudice will generally be apparent in the words used by the offender before, during and/or after the offence. Some relevant offences to consider are detailed in section 11 of this policy.

12 Offences

- Section 17, *Summary Offences Act*, outlines the offence relating to obscene, indecent, threatening language and behaviour in public. Section 17(1) states any person who in or near a public place or within the view or hearing of any person being or passing therein or thereon, commits an offence if any of the following apply:
 - sings an obscene song or ballad
 - writes, draws exhibits or displays an indecent or obscene word, figure or representation
 - uses profane indecent or obscene language or threatening abusive or insulting words, or
 - behaves in a riotous, indecent or offensive or insulting manner.
- Section 21, *Summary Offences Act*, outlines the offence relating to disturbing religious worship. Section 21(1) states any person who wilfully and without lawful justification or excuse, disquiets or disturbs any meeting of people lawfully assembled for religious worship or assaults any person lawfully officiating at any such meeting or any of the people assembled there commits an offence.
- Members should also consider offences such as assault/aggravated assault and wilful damage.

Civil options

13 Overview

- A prejudice motivated incident occurs where no criminal offence is detected, however, the incident is perceived by the victim, or any other person, to be motivated by prejudice based on the victim's actual or perceived characteristics.
- Where a prejudice motivated incident is reported to police, an Information Report (IR) must be submitted and contain all of the following:
 - prejudice motivated incident in the subject line
 - relevant information, e.g., incident time, location, offender description, language used, vehicles involved etc.
 - the reason why prejudice is believed to have motivated the act
 - the appropriate classification of motivation used to indicate the type of prejudice reported, e.g., political, sexual, religious, racial etc.
- Members should advise the reporting person that the matter has been reported, however, in the absence of a criminal offence there will be no further police action and they may contact VEOHRC for advice on civil options.
- Members should consider a Victoria Police eReferral where appropriate.
- Members must comply with **VPM Responses to non family violence disputes** if either of the following may be required:
 - a referral to mediation, or
 - a Personal Safety Intervention Order.
- In some circumstances, an Incident Fact Sheet may also be required.

14 Victorian Equal Opportunity and Human Rights Commission

14.1 *The role of the Victorian Equal Opportunity and Human Rights Commission*

- VEOHRC is an independent statutory body that both:
 - assists people to resolve complaints of discrimination, sexual harassment and victimisation, and
 - administers the civil provisions of the *Equal Opportunity Act* and the Charter.
- The Manager, Investigation and Conciliation at VEOHRC is available to assist members with general information regarding the *Equal Opportunity Act* and the threshold requirements for the civil complaint of vilification via phone: 1300 891 848.
- Members should advise victims to contact VEOHRC via the enquiry line: 1300 292 153 or complaints@veohrc.vic.gov.au.

14.2 *Notifying the Victorian Equal Opportunity and Human Rights Commission of serious vilification matters*

- Where an investigation commences into serious vilification offences, the investigating member should advise the complainant that, in addition to criminal proceedings, they may approach VEOHRC to make a complaint.

14.3 *Notifying the Victorian Equal Opportunity and Human Rights Commission of change or suppression practices*

- Part 3 of the *Change or Suppression (Conversion) Practices Prohibition Act* establishes a civil response scheme for which VEOHRC is responsible. Note: Section 53, *Change or Suppression (Conversion) Practices Prohibition Act* provides that VEOHRC must not perform their functions or duties or exercise their powers in a manner that would prejudice any criminal proceedings or investigations and as such they cannot contact members directly.
- Investigating members must advise a victim that, in addition to criminal proceedings, with their consent, a referral will be made to VEOHRC relating to possible civil action (see section 5 of this policy).
- Investigating members must also provide the victim with referral advice to VEOHRC for support and civil options, including historical offences where no offence is detected.

Related documents

VPM Operational duties and responsibilities

VPM Victim support

VPM Breach of the peace and move on powers

VPMP Briefs of evidence

VPMG Brief preparation and management

Prejudice Motivated Crime Practice Guide

Crimes Act 1958

Equal Opportunity Act 2010

Summary Offences Act 1966

Sentencing Act 1991

Charter of Human Rights and responsibilities Act 2006

Change or Suppression (Conversion) Practices Prohibition Act 2021

Further advice and information

For further advice and assistance regarding this policy, contact:

- a supervisor
- STAFFOFF-LEGSRVDE@police.vic.gov.au and LEGAL-VILIFICATION-ADVICE-MGR@police.vic.gov.au
- the relevant Prosecutions Frontline Support Unit or
- Priority and Safer Communities Division via OFFICE-OF-CMDR-PSCD-MGR.

Update history

DATE UPDATED	SUMMARY OF CHANGE	FORCE FILE NUMBER
20/09/25	Updated into VPM format and to reflect new serious vilification offences included in the <i>Crimes Act 1958</i> . Incorporates content from VPM Change or suppression (conversion) practices and Prohibition on the display of Nazi symbols or display or performance of Nazi gestures Practice Guide.	FF-268926