

## NOTICE OF FILING

### Details of Filing

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### Important Information

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## CONCISE STATEMENT



No. of 2025

Federal Court of Australia  
District Registry: Victoria  
Division: Administrative and Constitutional Law and Human Rights

**Tarneen Onus Browne**

First Applicant

**Benjamin Zable**

Second Applicant

**Assistant Commissioner of Police, North West Metro Region**

First Respondent

**State of Victoria**

Second Respondent

### A INTRODUCTION

1 On or around 25 November 2025, under s 10D(1) of the *Control of Weapons Act 1990* (Vic) (**Control Act**), the First Respondent declared an area of Melbourne to be a “designated area” (**Designated Area Declaration**). The relevant “designated area” is identified in the Gazette Notice at **Annexure A** (Gazette No S 646) and includes what is generally known as the “Melbourne CBD” (**Designated Area**). The Designated Area Declaration commenced operation at 12:00am on Sunday 30 November 2025 and is to remain in effect until 11:59pm on Friday 29 May 2026. During that period, the effect of the Declaration is to enable police officers and protective services officers to exercise powers, not otherwise available to them, in the Designated Area. Those powers include:

- 1.1 the power, without a warrant (and without the need for any reasonable suspicion<sup>1</sup>), to stop and search a person, and search any thing in the possession of or under the control of the person for weapons, if the person and, if applicable, the thing are in a public place that is within the Designated Area (ss 10G and 10GA; see also Schedule 1);

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<sup>1</sup> Cf *Control Act*, s 10; *Drugs, Poisons and Controlled Substances Act 1981* (Vic), s 82; *Firearms Act 1996* (Vic), s 149; *Graffiti Prevention Act 2007* (Vic), s 13.

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Filed on behalf of Tarneen Onus Browne, First Applicant and Benjamin Zable, Second Applicant

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- 1.2 the power, without a warrant, to stop and search a vehicle, and anything in or on the vehicle, for weapons if the vehicle is in a public place that is within the Designated Area; and there is a person in or on the vehicle (s 10H); and
- 1.3 the power to direct a person wearing a face covering to leave the Designated Area if: (a) the police officer reasonably believes the person is using the face covering primarily to conceal the person's identity; or to protect the person from the effects of crowd-controlling substances; and (b) the person refuses to remove the face covering when requested by the police officer to do so (s 10KA(1)).<sup>2</sup>
- 2 In general terms, the relief sought in the Originating Application is directed to the invalidity and unlawfulness of the Designated Area Declaration (prayers 1 and 2; and **Part C** below) and the constitutional validity of s 10KA(1) of the Control Act (prayers 3 and 4; and **Part D** below).
- 3 Because of that constitutional issue, the matter arises under the Constitution or involves its interpretation. The Federal Court therefore has jurisdiction in this matter under s 39B(1A)(b) of the *Judiciary Act 1903* (Cth). The Court has the power, under ss 21, 22 and 23 of the *Federal Court of Australia Act 1976* (Cth), to grant the relief sought.
- 4 The Applicants seek that the matter be expedited, to be finally heard and determined before 26 January 2026, for the reasons explained below in connection with the First Applicant.

## **B THE APPLICANTS**

- 5 *First Applicant:* Tarneen Onus Browne (they/them) is a Gunditjmara, Yorta Yorta person through their mother and a Bindal and Meriam person through their father. Among other roles, they are a community organiser for Warriors of Aboriginal Resistance and one of the organisers of the Invasion Day Rally held yearly on 26 January. They are currently organising the 2026 Invasion Day Rally, to be held on 26 January 2026. It is proposed that the Invasion Day Rally is to be held in the Melbourne CBD, within the Designated Area.
- 6 *Second Applicant:* Benjamin (Benny) Zable is an 80-year-old performance artist, visual artist and political activist. Over decades he has combined art, costume performance, protest and installation work around themes of nuclear disarmament, environmental protection, anti-war, peace and social justice. Mr Zable has been wearing the "Greedozer" costume for 45 years (since 1980) at protests in Australia and globally. Mr Zable often wears this costume, which includes a face mask, as a form of political expression in the Melbourne CBD, including at protests. Mr Zable has in the past been directed to remove the mask, including recently at a Palestine protest when he was in front of St Paul's Cathedral and near the Melbourne Convention and Exhibition Centre. Mr Zable is intending to wear the Greedozer costume at the forthcoming Invasion Day Rally.

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<sup>2</sup> It is an offence to obstruct or hinder a police officer or protective services officer in the exercise of a power under ss 10G, 10GA and 10H to stop and search a person or vehicle or to seize and detain a thing (s 10L(1), (3)). It is also an offence to fail to comply with a direction given by a police officer to leave a designated area under s 10KA (s 10L(2)).

## C THE DESIGNATED AREA DECLARATION

7 The stated period of operation of the Designated Area Declaration (nearly 6 months) reveals that the First Respondent must have made the declaration under s 10D(1)(b) of the Control Act.<sup>3</sup> Accordingly, it was necessary for the First Respondent to have been satisfied: *first*, that “more than one incident of violence or disorder [had] occurred in [the Designated Area] in the previous 12 months that involved the use of weapons” (s 10D(1)(b)(i)); and, *second*, that it was “necessary to designate the [Designated Area] for the purpose of enabling police officers or protective services officers to exercise search powers to prevent or deter the occurrence of any violence or disorder that the [First Respondent] [was] satisfied is likely to occur” (s 10D(1)(b)(ii)).

8 Based on the material currently available to the Applicants, the Applicants proceed on the basis the First Respondent lawfully formed the state of satisfaction required by s 10D(1)(b)(i). However, the Applicants contend:

- 8.1 the First Respondent could not have reasonably formed the state of satisfaction required by s 10D(1)(b)(ii);
- 8.2 if the First Respondent had a proper understanding of the law, the First Respondent could not have formed the state of satisfaction required by s 10D(1)(b)(ii);
- 8.3 the Designated Area Declaration was otherwise unreasonable;
- 8.4 the Designated Area Declaration is incompatible with human rights (for example, those rights in ss 8, 12, 13, 15, 16, 17, 19 and/or 21), and therefore unlawful under s 38(1) of the *Charter of Human Rights and Responsibilities 2006* (Vic) (**Charter**);

in circumstances where the Designated Area Declaration is to operate for a period of nearly 6 months over an area that encompasses the Melbourne CBD (and more), despite the following requirements:

- 8.5 the First Respondent was required to be satisfied that some identified occurrence (or occurrences) of violence or disorder, involving the use of weapons, was likely to occur within the Designated Area (the **Identified Threat**);
- 8.6 the First Respondent was required to be satisfied that it was “necessary” (meaning essential or indispensable, in contrast to “reasonably necessary”<sup>4</sup> as used elsewhere in s 10D) to make the Designated Area Declaration “for the purpose of enabling police officers or protective services officers to exercise search powers to prevent or deter” the Identified Threat, the search powers referred to being the particular search powers to search without a warrant or any reasonable suspicion;

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<sup>3</sup> The length of a declaration is otherwise limited to a specific event (ss 10D(1)(c) and (d)) or 24 hours (s 10D(1)(a)); see s 10D(3)(b)(i).

<sup>4</sup> Cf *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181 at [39]-[40] (Gleeson CJ).

- 8.7 objectively assessed, the Designated Area “must not be larger than is reasonably necessary to enable police officers or protective services officers to effectively respond” to the Identified Threat (s 10D(2)); and
- 8.8 objectively assessed, the period of the Designated Area Declaration “must be not longer than is reasonably necessary to enable police officers or protective services officers to effectively respond” the Identified Threat (s 10D(3)(a)).
- 9 The Applicants propose to provide further particulars upon receiving production of the documents that were before the First Respondent at the time he made the Designated Area Declaration, and any other documents upon which the First Respondent relied. To enable the matter to be resolved on an expedited basis, the Applicants have sought interlocutory relief that the First Respondent produce those documents urgently.

**D SECTION 10KA(1) OF THE CONTROL OF WEAPONS ACT**

- 10 Section 10KA(1) confers a statutory power on police officers. That discretionary power is conferred in “broad and general” terms.<sup>5</sup> Those terms are insufficient to ensure that an exercise of the power will necessarily be exercised in a manner consistent with the implied freedom — some exercises of the power may comply with that limit; while other exercises may not comply with that limit.<sup>6</sup>
- 11 In particular, and without being exhaustive, the terms of s 10KA(1) would permit police officers:
- 11.1 to request a person (including a person participating in a protest) who is:
- (a) wearing a face covering as a form of political communication; or
  - (b) wearing a face covering for the purpose of concealing their identity while engaging in political communication; or
  - (c) wearing a face covering for the purpose of protecting their health (or the health of other protestors) while engaging in political communication;
- to remove that face covering based on the police officer’s reasonable (but potentially mistaken) subjective belief about the purpose for which the person is wearing the face covering; and
- 11.2 if the person refuses to remove the face covering, direct that person to leave the Designated Area.
- 12 Those examples are not far-fetched or hypothetical. The Second Applicant has been wearing his Greedozer costume and mask for 45 years at protests in Melbourne CBD, other places in Australia and globally, including at environmental rallies, Palestine rallies and other anti-war rallies. Further, on previous occasions when he has been wearing his costume and mask at protests in a designated area, police have requested that he remove his mask. Similarly, in the past, participants at the

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<sup>5</sup> *Palmer v Western Australia* (2021) 272 CLR 505 at [68] (Kiefel CJ and Keane J), see also at [122] (Gageler J), [208] (Gordon J).

<sup>6</sup> See *Cotterill v Romanes* (2023) 413 ALR 360 at [85] (Emerton P, McLeish and Kennedy JJA).

Invasion Day rallies organised by the First Applicant have been encouraged to wear face masks to protect attendees from spreadable illnesses such as COVID-19, especially disabled people and Elders.

- 13 If the power were exercised in any of the ways identified in paragraph 11 above, the exercise of the power would impose a burden on political communication. That burden would be direct, substantial and potentially discriminatory.<sup>7</sup> Any such burden could not be explained by the pursuit of a legitimate purpose: the power may be exercised in the circumstances identified above for a purpose that has no connection with any potential violence or disorder.<sup>8</sup> Alternatively, any such burden could not be justified: any exercise of the power would not be reasonably appropriate and adapted to advance any identified legitimate purpose.<sup>9</sup> There is nothing in the terms of s 10KA(1) that ensure any degree of proportionality between means and any identified legitimate end.
- 14 Accordingly, for s 10KA(1) to be valid, it must be “read down” (or, perhaps more precisely, properly construed or partially disapplied) to permit only those exercises of power that are consistent with the implied freedom.<sup>10</sup> In the particular context of s 10KA(1), that can be achieved by construing the provision so that it does not authorise a police officer to request a person wearing a face covering to remove the face covering, or direct them to leave a designated area, if the person is wearing the face covering and engaged in political communication. That construction is reinforced by s 32(1) of the Charter: construing the provision in that confined way would ensure that any direction given would be compatible with the human rights identified in ss 15(2) (freedom of expression) and 16(1) of the Charter (peaceful assembly).
- 15 Alternatively, if s 10KA(1) is not construed in that confined way, the provision would purport to authorise exercises of power that would infringe the implied freedom of political communication. It would therefore be invalid.

This Concise Statement was prepared by Thomas Wood and Margie Brown of counsel.

#### **Certificate of lawyer**

I, Sarah Schwartz, certify to the Court that, in relation to the Concise Statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 8 December 2025



Signed by Sarah Schwartz  
Lawyer for the Applicants

<sup>7</sup> See *Brown v Tasmania* (2017) 261 CLR 328 at [199] (Gageler J); *Clubb v Edwards* (2019) 267 CLR 171 at [164], [170] (Gageler J).

<sup>8</sup> See *McCloy v New South Wales* (2015) 257 CLR 178 at [126]-[132] (Gageler J).

<sup>9</sup> See *Farmer v Minister for Home Affairs* (2025) 99 ALJR 1408 at [39], [57] (Gageler CJ, Gordon and Beech-Jones JJ), [243] (Jagot J).

<sup>10</sup> *Palmer* (2021) 272 CLR 505 at [122] (Gageler J), [227]-[228] (Edelman J). See also *Wainohu v New South Wales* (2011) 243 CLR 181 at [113] (Gummow, Hayne, Crennan and Bell JJ); *Ravbar v Commonwealth* (2025) 99 ALJR 1000 at [104] (Gordon J). See also *Interpretation of Legislation Act 1984* (Vic), s 6.