

## NOTICE OF FILING

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
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POLICE, NORTH WEST METRO REGION & ANOR  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

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The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59  
Rule 29.02(1)

### Affidavit

No. 1612 of 2025

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

#### TARNEEN ONUS BROWNE and BENJAMIN ZABLE

Applicants

#### ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

Affidavit of: **Sarah Schwartz**  
Address: [REDACTED]  
Occupation: Solicitor and Legal Director, the Human Rights Law Centre  
Date: 19 December 2025

#### Contents

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1	Affidavit of Sarah Schwartz affirmed on 19 December 2025	1	1-3
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3	Annexure "SS-2", being copy of the email to the respondents together with its attachments, being a cover letter and sealed copy of the Notice.	5	22-28

I Sarah Schwartz solicitor and Legal Director at the Human Rights Law Centre affirm:

Filed on behalf of (name & role of party) Tarneen Onus Browne, First Applicant and Benjamin Zable, Second Applicant

Prepared by (name of person/lawyer) Sarah Schwartz, Lawyer

Law firm (if applicable) Human Rights Law Centre

Tel + [REDACTED] Fax [REDACTED]

Email [REDACTED]

**Address for service** [REDACTED]  
(include state and postcode) [REDACTED] e [REDACTED]

1. The Human Rights Law Centre acts for the Applicants in relation to this proceeding and I am authorised to make this affidavit on the Applicants' behalf.
2. I make this affidavit in relation to the Notice of a Constitutional Matter under section 78B of the *Judiciary Act 1903* (Cth), filed on 10 December 2025, on behalf of the applicants in the proceedings (the **Notice**).
3. On 10 December 2025, I served a true copy of the Notice on the:
  - (a) Attorney-General of the Commonwealth, the Hon. Michelle Rowland MP;
  - (b) Attorney-General of Queensland, the Hon. Deborah Frecklington MP;
  - (c) Attorney-General of South Australia, the Hon. Kyam Maher MLC;
  - (d) Attorney-General of Western Australia, the Hon. Dr Tony Buti MLA;
  - (e) Attorney-General of the Northern Territory, the Hon. Marie-Clare Boothby MLA;
  - (f) Attorney-General of New South Wales, the Hon. Michael Daley MP;
  - (g) Attorney-General of Victoria, the Hon. Sonya Kilkenny MP;
  - (h) Attorney-General of Tasmania, the Hon. Guy Barnett MP; and
  - (i) Attorney-General of the Australian Capital Territory, the Hon. Tara Cheyne MLA.
4. I served the Notice by way of email to the Attorneys-General listed above. Annexed to this affidavit and marked "**Annexure SS-1**" is a copy of the email to the Attorneys-General, together with its attachments, being a cover letter, documents filed with the Federal Court relating to the proceeding, and a copy of the Notice.

#### **Service of Notice on the respondent**

5. On 10 December 2025, I served a copy of the Notice on the respondents by way of email. Annexed to this affidavit and marked "**Annexure SS-2**" is a copy of the email to the respondents together with its attachments, being a cover letter, copy of the Notice, and documents filed with the Supreme Court relating to the proceedings.

#### **Response to Notice**

6. At the time of affirming this affidavit, I have not received any correspondence indicating that any State, Territory or the Commonwealth intends to intervene in the proceedings.


 SS

Sworn / Affirmed by the deponent  
at Melbourne  
in Victoria  
on 19 December 2025  
Before me:

)  
)  
)  
)  
)



Signature of deponent



Signature of witness

Honor Kelly, Solicitor

In accordance with section 27(1A) of the Oaths and Affirmations Act 2018, this affidavit was signed and sworn or affirmed by the deponent by audio visual link and the authorised affidavit taker has used a scanned or electronic copy of the affidavit and not the original in completing the jurat requirements.

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

**TARNEEN ONUS BROWNE and BENJAMIN ZABLE**

Applicants

**ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others**

Respondents

Affidavit of: **Sarah Schwartz**

Address: [REDACTED]

Occupation: Solicitor and Legal Director, the Human Rights Law Centre

Date: 19 December 2025

**Certificate identifying Exhibit**

This is the Certificate identifying Exhibit 'SS-1' annexed to the Affidavit of Sarah Schwartz dated 19 December 2025.



Signature of witness  
Honor Kelly, Solicitor

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Filed on behalf of (name & role of party)	Tarneen Onus Browne, First Applicant and Benjamin Zable, Second Applicant	
Prepared by (name of person/lawyer)	Sarah Schwartz, Lawyer	
Law firm (if applicable)	Human Rights Law Centre	
Tel + [REDACTED]		Fax [REDACTED]
Email [REDACTED]		
<b>Address for service</b> (include state and postcode)	[REDACTED]	

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VID 1612/2025 Tarneen Onus Browne & Anor v Assistant Commissioner Victoria Police & Anor, 78B Notice

From Sarah Schwartz <[REDACTED]>

Date Wed 12/10/2025 12:15 PM

To Attorney Correspondence <[REDACTED]>; Rowland Michelle (MP) <[REDACTED]>;  
[REDACTED] <[REDACTED]>; Attorney General <[REDACTED]>;  
attorney general (DJ) <[REDACTED]>; AGD:Attorney-  
General <[REDACTED]>

Cc Honor Kell <[REDACTED]>; Sophie LEstrange <[REDACTED]>

4 attachments (2 MB)

2025.12.10 1612-2025 Cover Letter to Attorneys General, s78B Notice.pdf; 2025.12.10 1612-2025 s78B Notice [stamped].pdf; 2025.12.08 T Onus Browne B Zable Concise Statement [stamped].pdf; 2025.12.08 T Onus Browne & B Zable Originating Application [stamped].pdf;

Dear Attorneys General,

Please see attached a cover letter and, by way of service:

- A s 78B notice;
- Originating Application;
- Concise Statement;

In the abovementioned proceedings.

Sincerely,

**Sarah Schwartz**

Legal Director

[REDACTED]



W: [hrlc.org.au](http://hrlc.org.au)

[REDACTED]

Pronouns: she / her



*I acknowledge and pay my respects to the people of the Kulin Nation, the Eora Nation and the Larrakia Nation on whose unceded lands our offices operate. This email and attachments are confidential and may be privileged. If you received this email in error, please inform the sender immediately, delete it and do not use, copy or disclose it.*

The Hon. Michelle Rowland MP  
Attorney-General of the Commonwealth  
By email: [REDACTED]

The Hon. Michael Daley MP  
Attorney-General of New South Wales  
By [REDACTED]

The Hon. Deborah Frecklington MP  
Attorney-General of Queensland  
By email [REDACTED]

The Hon. Sonya Kilkenny MP  
Attorney-General of Victoria  
By email [REDACTED]

The Hon. Marie-Clare Boothby MLA  
Attorney-General of the Northern Territory  
By email: [REDACTED].it [REDACTED]

The Hon. Kyam Maher MLC Attorney-General of  
South Australia By email: [REDACTED]

The Hon. Guy Barnett MP  
Attorney-General of Tasmania  
By [REDACTED]

The Hon. Dr Tony Buti MLA  
Attorney-General of Western Australia  
By email [REDACTED]

The Hon. Tara Cheyne MLA  
Attorney-General of the Australian Capital  
Territory  
By email [REDACTED]

10 December 2025

Dear Attorneys-General,

***Re: Tarneen Onus Browne and Benjamin Zable v Assistant Commissioner of Victoria Police and State of Victoria (Proceedings No VID 1612/2025, Federal Court of Australia)***

We act for Tarneen Onus Browne and Benjamin Zable (the Applicants) in the above proceeding filed in the Federal Court.

**Notice under s 78B of the *Judiciary Act 1903* (Cth)**

As the above proceedings involve a matter arising under the Commonwealth Constitution or involving its interpretation, we **enclose** a notice, by way of service pursuant to section 78B of the *Judiciary Act 1903* (Cth) and rule 8.12 of the *Federal Court Rules 2011* (Cth).

By way of brief procedural background:

On 8 December 2025 our clients filed an Originating Application seeking the following relief:

1. An order in the nature of a writ of certiorari quashing the First Respondent's declaration made on or around 25 November 2025 of a designated area under s 10D of the *Control of Weapons Act 1990* (Vic) effective from 30 November 2025 to 29 May 2026 (the **Designated Area Declaration**).
2. A declaration that the Designated Area Declaration is:
  - o affected by jurisdictional error, and therefore invalid and unlawful; and
  - o incompatible with human rights within the meaning of s 38(1) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic), and therefore unlawful.

3. A declaration that s 10KA(1) of the *Control of Weapons Act 1990* (Vic) 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 is engaged in political communication.
4. In the alternative to paragraph 3, a declaration that s 10KA(1) of the *Control of Weapons Act 1990* (Vic) contravenes the implied constitutional freedom of political communication, and is therefore invalid.
5. Interlocutory relief:
  - An order that the hearing of the proceeding be expedited, with a final hearing no later than 25 January 2026.
  - An order that, by 4pm on 10 December 2025, the First Respondent produce to the Applicants all material that was before the First Respondent at the time the First Respondent made the Designated Area Declaration, or which was otherwise relied upon by the First Respondent in making the Designated Area Declaration.
  - An order that, pursuant to r 40.51 of the Federal Court Rules 2011 (Cth), the maximum costs that may be recovered in this proceeding as between the parties is \$7,000.

**Enclosures:**

- Originating Application dated 8 December 2025;
- Section 78B Notice dated 10 December 2025; and
- Concise Statement dated 8 December 2025.

We look forward to your reply.

Sincerely,



**Sarah Schwartz**  
Legal Director

## NOTICE OF FILING

### Details of Filing

Document Lodged: Notice of a Constitutional Matter under s78B Judiciary Act 1903 - Form 18 - Rule 8.11(2)  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 10/12/2025 11:26:20 AM AEDT  
Date Accepted for Filing: 10/12/2025 11:26:20 AM AEDT  
File Number: VID1612/2025  
File Title: TARNEEN ONUS BROWNE & ANOR v ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION & ANOR  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

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**Notice of a Constitutional matter  
under section 78B of the Judiciary Act 1903**

No. 1612 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**

First Respondent

The Applicants give notice that the proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903*.

**Nature of Constitutional matter**

1. The constitutional matter arising in this proceeding is:
  - a. whether s 10KA(1) of the *Control of Weapons Act 1990 (Vic)* 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 is engaged in political communication; and
  - b. if the answer to (a) is no, whether s 10KA(1) of the *Control of Weapons Act 1990 (Vic)* contravenes the implied constitutional freedom of political communication, and is therefore invalid.

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Filed on behalf of (name & role of party)	Tarneen Onus Browne, First Applicant, and Benjamin Zable, Second Applicant
Prepared by (name of person/lawyer)	Sarah Schwartz, Lawyer
Law firm (if applicable)	Human Rights Law Centre
Address for service (include state and postcode)	[REDACTED]

**Facts showing that section 78B Judiciary Act 1903 applies**

2. The facts showing that this proceeding involves a matter arising under the Constitution or involving its interpretation are those set out in the documents annexed to this notice (the originating application and the concise statement).

Date: 10 December 2025

A handwritten signature in blue ink, appearing to read 'S.S.' followed by a stylized flourish.

.....  
Signed by Sarah Schwartz  
Lawyer for the First and Second Applicants  
.....

## NOTICE OF FILING

### Details of Filing

Document Lodged:	Concise Statement
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	8/12/2025 6:19:37 AM AEDT
Date Accepted for Filing:	8/12/2025 11:28:53 AM AEDT
File Number:	VID1612/2025
File Title:	TARNEEN ONUS BROWNE & ANOR v ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

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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);

<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  
Prepared by Sarah Schwartz  
Law firm Human Rights Law Centre  
Tel [REDACTED] Fax [REDACTED]  
Email [REDACTED]  
Address for service [REDACTED]

- 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.

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged:	Originating Application for Judicial Review - Form 66 - Rule 31.01(1)
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	8/12/2025 6:19:37 AM AEDT
Date Accepted for Filing:	8/12/2025 11:28:50 AM AEDT
File Number:	VID1612/2025
File Title:	TARNEEN ONUS BROWNE & ANOR v ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



*Sia Lagos*

Registrar

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The date of the filing of the document is determined pursuant to the Court's Rules.



**Originating application for relief under section 39B Judiciary Act 1903**

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

To the Respondents

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:**

Filed on behalf of (name & role of party)	Tarneen Onus Browne, First Applicant and Benjamin Zable, Second Applicant
Prepared by (name of person/lawyer)	Sarah Schwartz, Lawyer
Law firm (if applicable)	Human Rights Law Centre
Tel	_____ Fax _____
Email	_____
<b>Address for service</b>	_____
_____	_____
_____	_____
postcode)	_____



The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable]

Date:

.....  
Signed by an officer acting with the authority  
of the District Registrar



### **Details of claim**

On the grounds stated in the Concise Statement, the Applicants apply for the following relief under s 39B(1A)(b) of the *Judiciary Act 1903* (Cth) and ss 21, 22 and 23 of the *Federal Court of Australia Act 1976* (Cth):

1. An order in the nature of a writ of certiorari quashing the First Respondent's declaration made on or around 25 November 2025 of a designated area under s 10D of the *Control of Weapons Act 1990* (Vic) effective from 30 November 2025 to 29 May 2026 (the **Designated Area Declaration**).
2. Further to paragraph 1, a declaration that the Designated Area Declaration is:
  - a. affected by jurisdictional error, and therefore invalid and unlawful; and
  - b. incompatible with human rights within the meaning of s 38(1) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic), and therefore unlawful.
3. A declaration that s 10KA(1) of the *Control of Weapons Act 1990* (Vic) 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 is engaged in political communication.
4. In the alternative to paragraph 3, a declaration that s 10KA(1) of the *Control of Weapons Act 1990* (Vic) contravenes the implied constitutional freedom of political communication, and is therefore invalid.
5. Costs.

### **Claim for interlocutory relief**

The Applicants also claim interlocutory relief.

1. An order that the hearing of the proceeding be expedited, with a final hearing no later than 25 January 2026.
2. An order that, by 4pm on 10 December 2025, the First Respondent produce to the Applicants all material that was before the First Respondent at the time the First Respondent made the Designated Area Declaration, or which was otherwise relied upon by the First Respondent in making the Designated Area Declaration.
3. An order that, pursuant to r 40.51 of the *Federal Court Rules 2011* (Cth), the maximum costs that may be recovered in this proceeding as between the parties is \$7,000.

### **Applicants' address**

The Applicants' address for service is:



Place: [REDACTED]

Email: [REDACTED]

The First Applicant's address [REDACTED], [REDACTED].

The Second Applicant's address is [REDACTED] e [REDACTED], [REDACTED].

**Service on the Respondents**

It is intended to serve this application on all Respondents.

Date: 8 December 2025

A handwritten signature in blue ink, appearing to read "S.S." followed by a flourish.

.....  
Signed by Sarah Schwartz  
Lawyer for the First and Second Applicants

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

**TARNEEN ONUS BROWNE and BENJAMIN ZABLE**

Applicants

**ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others**

Respondents

Affidavit of: **Sarah Schwartz**

Address: 461 Bourke Street, Melbourne VIC 3000

Occupation: Solicitor and Legal Director, the Human Rights Law Centre

Date: 19 December 2025

**Certificate identifying Exhibit**

This is the Certificate identifying Exhibit 'SS-2' annexed to the Affidavit of Sarah Schwartz dated 19 December 2025.

.....  
Signature of witness  
Honor Kelly, Solicitor

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Filed on behalf of (name & role of party)	Tarneen Onus Browne, First Applicant and Benjamin Zable, Second Applicant
Prepared by (name of person/lawyer)	Sarah Schwartz, Lawyer
Law firm (if applicable)	Human Rights Law Centre
Tel	+61 410 570 362
Fax	
Email	[REDACTED]
(include state and postcode)	[REDACTED]

---

**VID 1612/2025 Tarneen Onus Browne & Anor v Assistant Commissioner Victoria Police & Anor**

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From Sarah Schwartz <[REDACTED]>

Date Wed 12/10/2025 12:21 PM

To Andrew Hillier <[REDACTED]>; Nicola Rostron <[REDACTED]>; Maria De Marco <[REDACTED]>

Cc Honor Kelly <[REDACTED]>; Sophie LEstrange <[REDACTED]>

 2 attachments (520 KB)

2025.12.10 1612-2025 Cover Letter to Attorneys General, s78B Notice.pdf; 2025.12.10 1612-2025 s78B Notice [stamped].pdf;

Dear Mr Hillier,

Please find attached, by way of service, a s78B notice in the abovementioned matter, which has been served on all Attorneys General by email with the attached cover letter.

Sincerely,

**Sarah Schwartz**

Legal Director

[REDACTED]



W: [hrlc.org.au](http://hrlc.org.au)

[REDACTED]

Pronouns: she / her



*I acknowledge and pay my respects to the people of the Kulin Nation, the Eora Nation and the Larrakia Nation on whose unceded lands our offices operate. This email and attachments are confidential and may be privileged. If you received this email in error, please inform the sender immediately, delete it and do not use, copy or disclose it.*

The Hon. Michelle Rowland MP  
Attorney-General of the Commonwealth

By [REDACTED]

The Hon. Michael Daley MP  
Attorney-General of New South Wales

By [REDACTED]

The Hon. Deborah Frecklington MP  
Attorney-General of Queensland

By e [REDACTED]

The Hon. Sonya Kilkenny MP  
Attorney-General of Victoria

By e [REDACTED]

The Hon. Marie-Clare Boothby MLA  
Attorney-General of the Northern Territory

By email: [REDACTED].it [REDACTED]

The Hon. Kyam Maher MLC Attorney-General of  
South Australia By email:

[REDACTED]

The Hon. Guy Barnett MP  
Attorney-General of Tasmania

By [REDACTED]

The Hon. Dr Tony Buti MLA  
Attorney-General of Western Australia

By e [REDACTED]

The Hon. Tara Cheyne MLA  
Attorney-General of the Australian Capital  
Territory

By e [REDACTED]

10 December 2025

Dear Attorneys-General,

***Re: Tarneen Onus Browne and Benjamin Zable v Assistant Commissioner of Victoria Police and State of Victoria (Proceedings No VID 1612/2025, Federal Court of Australia)***

We act for Tarneen Onus Browne and Benjamin Zable (the Applicants) in the above proceeding filed in the Federal Court.

**Notice under s 78B of the *Judiciary Act 1903* (Cth)**

As the above proceedings involve a matter arising under the Commonwealth Constitution or involving its interpretation, we **enclose** a notice, by way of service pursuant to section 78B of the *Judiciary Act 1903* (Cth) and rule 8.12 of the *Federal Court Rules 2011* (Cth).

By way of brief procedural background:

On 8 December 2025 our clients filed an Originating Application seeking the following relief:

1. An order in the nature of a writ of certiorari quashing the First Respondent's declaration made on or around 25 November 2025 of a designated area under s 10D of the *Control of Weapons Act 1990* (Vic) effective from 30 November 2025 to 29 May 2026 (the **Designated Area Declaration**).
2. A declaration that the Designated Area Declaration is:
  - o affected by jurisdictional error, and therefore invalid and unlawful; and
  - o incompatible with human rights within the meaning of s 38(1) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic), and therefore unlawful.

3. A declaration that s 10KA(1) of the *Control of Weapons Act 1990* (Vic) 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 is engaged in political communication.
4. In the alternative to paragraph 3, a declaration that s 10KA(1) of the *Control of Weapons Act 1990* (Vic) contravenes the implied constitutional freedom of political communication, and is therefore invalid.
5. Interlocutory relief:
  - An order that the hearing of the proceeding be expedited, with a final hearing no later than 25 January 2026.
  - An order that, by 4pm on 10 December 2025, the First Respondent produce to the Applicants all material that was before the First Respondent at the time the First Respondent made the Designated Area Declaration, or which was otherwise relied upon by the First Respondent in making the Designated Area Declaration.
  - An order that, pursuant to r 40.51 of the Federal Court Rules 2011 (Cth), the maximum costs that may be recovered in this proceeding as between the parties is \$7,000.

**Enclosures:**

- Originating Application dated 8 December 2025;
- Section 78B Notice dated 10 December 2025; and
- Concise Statement dated 8 December 2025.

We look forward to your reply.

Sincerely,



**Sarah Schwartz**  
Legal Director

## NOTICE OF FILING

### Details of Filing

Document Lodged: Notice of a Constitutional Matter under s78B Judiciary Act 1903 - Form 18 - Rule 8.11(2)  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 10/12/2025 11:26:20 AM AEDT  
Date Accepted for Filing: 10/12/2025 11:26:20 AM AEDT  
File Number: VID1612/2025  
File Title: TARNEEN ONUS BROWNE & ANOR v ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION & ANOR  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



**Notice of a Constitutional matter  
under section 78B of the Judiciary Act 1903**

No. 1612 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**

First Respondent

The Applicants give notice that the proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903*.

**Nature of Constitutional matter**

1. The constitutional matter arising in this proceeding is:
  - a. whether s 10KA(1) of the *Control of Weapons Act 1990 (Vic)* 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 is engaged in political communication; and
  - b. if the answer to (a) is no, whether s 10KA(1) of the *Control of Weapons Act 1990 (Vic)* contravenes the implied constitutional freedom of political communication, and is therefore invalid.

---

Filed on behalf of (name & role of party)	Tarneen Onus Browne, First Applicant, and Benjamin Zable, Second Applicant
Prepared by (name of person/lawyer)	Sarah Schwartz, Lawyer
Law firm (if applicable)	Human Rights Law Centre
Address for service (include state and postcode)	[REDACTED]

**Facts showing that section 78B Judiciary Act 1903 applies**

2. The facts showing that this proceeding involves a matter arising under the Constitution or involving its interpretation are those set out in the documents annexed to this notice (the originating application and the concise statement).

Date: 10 December 2025

A handwritten signature in blue ink, appearing to read 'S.S.' followed by a stylized flourish.

.....  
Signed by Sarah Schwartz  
Lawyer for the First and Second Applicants  
.....