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Details of Filing

Document Lodged:	Concise Statement
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	5/01/2026 4:06:46 PM AEDT
Date Accepted for Filing:	5/01/2026 4:06:45 PM 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

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Important Information

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Form NCF1

CONCISE STATEMENT IN RESPONSE

No. VID1612 of 2025

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

TARNEEN ONUS BROWNE & ANOR

Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION & ANOR

Respondents

Filed on behalf of	Assistant Commissioner of Police, North West Metro Region (First Respondent) and The State of Victoria (Second Respondent)		
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A INTRODUCTION

1 By Amended Concise Statement filed 22 December 2025 (**ACS**),[1] the Applicants challenge the lawfulness of the Designated Area Declaration made by the First Respondent (**Assistant Commissioner**) and the constitutional validity of s 10KA(1) of the *Control of Weapons Act 1990* (Vic). Both aspects of the claim should be rejected.

B STANDING, JUSTICIABILITY & JURISDICTION

2 The Applicants do not have standing to seek relief in relation to the Declaration, nor to advance their constitutional claim, because they do not have a sufficient interest in the subject matter of either claim. They have no greater interest than any member of the Victorian public who has or will enter the designated area during the Declaration's period of operation. Further, insofar as the Applicants seek certiorari to quash the Declaration, the discretion to award that remedy should not issue to a party without a special interest in the relief sought in the circumstances of this case.

3 Further, in relation to the constitutional claim, there is no justiciable "matter" before the Court because the claim is hypothetical in nature, if and until a relevant power under s 10KA(1) is exercised in the designated area. The Court should decline to answer a constitutional question absent facts that make it necessary to decide the question. For the same reasons, even if there is a "matter" in respect of s 10KA(1) and the Applicants have standing to pursue it, declaratory relief should not issue.

4 In any event, even if the constitutional claim does disclose a justiciable "matter", that matter is not sufficiently related to the challenge to the Declaration so as to constitute one "matter" falling within the Federal Court's jurisdiction. That is, the Court's jurisdiction to hear the constitutional claim does not extend to the distinct and separate matter of the Declaration's lawfulness. The Federal Court should therefore decline to consider the judicial review claim on that basis.

C PROPER CONSTRUCTION OF DECLARATION POWER UNDER S 10D

5 The Applicants' construction of s 10D(1)(b)(ii) at ACS [7.2](a) is misplaced. The Applicants import into s 10D(1)(b)(ii) a need for the Assistant Commissioner to be

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1 Unless otherwise indicated, the Respondents adopt the abbreviations used by the Applicants in their Amended Concise Statement. The ACS was lodged for filing on 19 December 2025 and accepted for filing on 22 December 2025.

satisfied of "some identified occurrence … of violence or disorder involving the use of weapons", or an "Identified Threat". Those terms have no place in the statute. Importantly, s 10D(1)(b)(ii) refers to a likelihood of "any violence or disorder", not some, particular, identified occurrence. Further, contra ACS [7.2](b), the Applicants' construction of the term "necessary" in s 10D(1)(b)(ii) as essential or indispensable strains against a natural reading of the provision which — consistent with the purpose of enabling Victoria Police to efficiently respond to likely future threats of violence or disorder — suggests that "necessary" was intended to be construed as meaning appropriate and adapted, not "essential", "indispensable" or even "proportionate" (to the extent that imports some higher standard than appropriate and adapted).

D APPLICANTS' GROUNDS CHALLENGING THE DECLARATION UNDER S 10D(1)(b)

Grounds 1, 2 and 3 — "Failure to form requisite state of satisfaction under s 10D(1)(b)"

6 The Applicants' contention, by their first three grounds of review, that the Assistant Commissioner did not reach the state of satisfaction required for making the Declaration under s 10D(1)(b), is without foundation.

7 As to **Grounds 1 and 2**, the Assistant Commissioner made the Declaration under s 10D(1)(b) of the Act. He turned his mind to the statutory criteria for doing so. Contra ACS [8.1], and to the extent it is relevant, it was clear from the application materials that the declaration was proposed to be made under s 10D(1)(b). The Applicants' assertion that there is "no evidence of active consideration" of the statutory criteria in s 10D(1)(b) or that the documents did not identify the applicable statutory criteria (Ground 1), or that there is no evidence as to how the Assistant Commissioner was satisfied of the elements of s 10D(1)(b)(ii) (Ground 2), lack a proper basis, and are in any event inapposite. It is for the Applicants to demonstrate jurisdictional error. It is not for the Respondents to adduce evidence to prove the lawfulness of the Declaration.

8 As to **Ground 3,** the information that was before the Assistant Commissioner provided a sufficient basis for him to reach the state of satisfaction required by s 10D(1)(b)(ii), properly construed.

(a) Contra ACS [8.3](c)–(f), the mapping data of previous incidents of violence or disorder in the designated area — including incidents that did not involve the use of weapons — could rationally be relied on by the Assistant Commissioner to be

satisfied that there was a likelihood of violence or disorder occurring in the designated area in future — including incidents involving the use of weapons.

(b) As to ACS [8.3](i), it is self-evident that the exercise of "no suspicion" search powers in a declared designated area can deter violence or disorder there, by dissuading persons with an intention to engage in violence and disorder using a weapon from entering the area with a weapon. Insofar as the Applicants contend that the Assistant Commissioner was required to be satisfied of the occurrence of an "Identified Threat", they depart from the actual statutory text for the reasons explained at paragraph 5 above.

(c) As to ACS [8.3](j), the Assistant Commissioner assessed the validity of the information before him; the Applicants do not have a proper basis to suggest otherwise.

Grounds 4 and 5 — "Breach of statutory conditions"

9 **Grounds 4 and 5** are embarrassing. The Applicants assert that the area declared is "larger" and the duration of the declaration is "longer" than reasonably necessary to effectively respond to the threat of violence or disorder — in purported breach of ss 10D(2) and 10D(3)(a) respectively. The Applicants rely on the particulars for Ground 3, but do not explain how they support Grounds 4 or 5.

10 The statutory conditions in ss 10D(2) and (3)(a) were met. The **area** declared was not larger than "reasonably necessary". The area was confined to the Melbourne CBD and key locations in the immediate surrounds of the CBD, including sites of mass gatherings and key transit points, which it was open to the Assistant Commissioner to consider was reasonably necessary to enable police or protective services officers to effectively respond to a likely threat of violence or disorder under s 10D(1)(b)(ii). The **duration** of the declaration was not longer than reasonably necessary in the circumstances: it was open to the Assistant Commissioner to form the view that there was a persisting likelihood of violence or disorder occurring within the proposed six-month duration of the declaration, such that it was appropriate for the designation in the circumstances of this case to operate for six months as permitted by s 10D(3)(b)(ii).

Ground 6 — "Improper purpose"

11 Ground 6 should be dismissed. Section 10D(1)(b) allows for the making of a declaration to respond to a likely threat of violence or disorder for a period of up to six months. That is, where such a declaration could not be made under another sub-section of s 10D(1), which are more temporally constrained (either to a period of 24-hours under sub-section (a), or for the duration of the relevant event under sub-sections (c) and (d)). There is therefore nothing "improper" about making a declaration to address an ongoing threat of violence or disorder, for a period of up to six months — including to exercise powers under the Declaration at the particular times when the likely threat may be more pronounced — like the declaration in this case. To label the declaration as a "standing authorisation" made for reasons of "convenience" — aside from being a rather inapt or inaccurate description — ultimately does not disclose a purpose foreign to the Act, much less attribute that purpose to the Assistant Commissioner in a manner that would constitute jurisdictional error.

Ground 7 — "Unreasonableness"

12 Ground 7 is embarrassing. The Applicants have not identified any aspect of the decision or the Assistant Commissioner's reasoning process which was unreasonable or seriously irrational. Nor is this a case where the declaration itself is so manifestly unreasonable on its face that it bespeaks error, absent justification.

Grounds 8 and 9 — Charter

13 By **Ground 8,** the Applicants contend that the making of the Declaration was incompatible with Charter rights. The making of the Declaration is distinct from the exercise of powers under the Declaration. The Applicants appear to conflate the distinction at ACS [8.8], in a manner that confounds a proper analysis of the substantive limb of s 38(1) of the Charter, particularly as their arguments for incompatibility focus on the propensity for rights to be limited if powers were exercised under the Declaration in a manner that is incompatible with Charter rights.

14 To the extent that the making of the Declaration itself limited Charter rights, any such limitation should not be overstated. The exercise of search powers under the Declaration is carefully regulated under the Act. The power to request the removal of a face covering can only be exercised in narrow circumstances — upon forming a reasonable belief that

a person is wearing the face covering to conceal their identity or protect from the effects of crowd-controlling substances. The propensity for limiting Charter rights is confined.

15 Further, any such limitation on Charter rights is reasonable and demonstrably justified under s 7(2) of the Charter. The Declaration seeks to protect the safety of people in a designated area from violence or disorder, including violence and disorder involving the use of weapons. Any limitation on Charter rights in pursuit of that purpose was lawful (that is, the Declaration was made within the power conferred under s 10D(1)(b)), and proportionate to that purpose.

16 As to **Ground 9**, the Assistant Commissioner had regard to Charter rights in making the Declaration. He was not required to undertake a sophisticated legal exercise, but rather a broad and general assessment reflecting the practical reality of how the Declaration would operate. The Applicants allege a failure to properly consider Charter rights based solely on the Human Rights Assessment that was part of the material put to the Assistant Commissioner. That Assessment is not a complete record of the Assistant Commissioner's consideration of Charter rights, and it is misconceived for the Applicants to treat it as such.

17 Finally, even if the Declaration was incompatible with (Ground 8) or failed to consider (Ground 9) Charter rights, that alone would not result in jurisdictional error, or a non-jurisdictional error of law on the face of the record, for the purpose of the Applicants' prayer for certiorari.

E CONSTITUTIONAL VALIDITY OF S 10KA(1)

18 Section 10KA(1) does not burden political communication. It does not prevent a person engaging in political communication (such as attending a protest) in a designated area while using a face covering. It confers power on police officers, in limited circumstances, to direct such a person to leave the designated area after first asking them to remove the face covering. This is not a meaningful restriction on political communication.

19 Alternatively, any burden on political communication imposed by s 10KA(1) is indirect and insubstantial. That minor burden is readily justified, as it operates in pursuit of a legitimate purpose, being: (a) to protect the safety of people in a designated area from violence or disorder; and/or (b) to assist police to protect the safety of people in a designated area from violence or disorder. Not only are these purposes compatible with

the constitutional system of representative and responsible government but they enhance that system by protecting the ability of others to engage safely in political communication.

20 Section 10KA(1) is reasonably appropriate and adapted to the pursuit of any or all of these legitimate purposes. There is a rational connection between the purposes identified above and a power to direct a person who has refused to remove a face covering to leave a designated area in the circumstances contemplated by s 10KA(1).

21 For the reasons set out above, as s 10KA(1) does not authorise exercises of power that are inconsistent with the implied freedom of political communication, it is valid in its entirety. Alternatively, if there were some aspect of s 10KA(1) which was inconsistent with the implied freedom, it may well be capable of being "read down" or partially disapplied to the extent of that inconsistency — but being compatible with the implied freedom, there is no basis to read it down in that way.

Date: 5 January 2026

This Concise Statement in Response was prepared by Sarah Keating SC, Crown Counsel for Victoria, Anesti Petridis and Georgie Clough of counsel.

Certificate of lawyer

I Tony Sergi certify to the Court that, in relation to the Concise Statement in Response filed on behalf of the Respondents, the factual and legal material available to me at present provides a proper basis for each allegation therein.

Date: 5 January 2026

Signed by Tony Sergi

Lawyer for the Respondents