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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.

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AMENDED CONCISE STATEMENT

No. ~~VID1612~~ 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 2524~~ 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 there described~~ as the “Melbourne CBD and Vicinity” (**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 “no-suspicion search powers”, namely:

- (a) the power, without a warrant (and without the need for any reasonable suspicion¹), to stop and search a person, and search any thing in the possession of or under the control

¹ 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.

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

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of the person for “weapons”;² 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);

(b) the power, without a warrant, to stop and search a vehicle, and anythingany thing 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

1.2 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)).³

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

² As defined in s 10C, and being weapons other than firearms: s 4(1).

³ 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)).

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.

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 purportedly~~ made the declaration under s 10D(1)(b) of the Control Act.⁴ ~~Accordingly, it was necessary. On the proper construction of s 10D(1)(b), for the power to be validly exercised:~~

~~7.1~~ ~~under s 10D(1)(b)(i), the~~ First Respondent ~~was required 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”~~(?)~~;

~~6-17.2~~ ~~under 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] required to be satisfied is likely to occur” (s 10D(1)(b)(ii)):~~

~~7~~ ~~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:~~

~~7.1~~ ~~the First Respondent could not have reasonably formed the state of satisfaction required by s 10D(1)(b)(ii);~~

~~7.2~~ ~~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);~~

~~7.3~~ ~~the Designated Area Declaration was otherwise unreasonable;~~

~~7.4~~ ~~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:~~

- ~~(a)~~ ~~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**);
- ~~(b)~~ ~~the First Respondent was required to be satisfied that it was “necessary” (meaning essential or indispensable, in contrast to “reasonably necessary”⁵ as used elsewhere in s~~

⁴ ~~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)).~~

⁵ ~~Cf *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181 at [39]–[40] (Gleeson CJ).~~

~~10D)that it was “necessary” to make the Designated Area Declaration “for the purpose of enabling police officers or protective services officers to exercise” the no-suspicion 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;with “necessary” meaning:~~⁶

~~(i) essential or indispensable;~~

~~(ii) alternatively, proportionate;~~

~~7.57.3~~ objectively assessed, the Designated Area “must not be larger than is reasonably necessary” ~~(in the sense of reasonably proportionate)~~ “to enable police officers or protective services officers to effectively respond” to the Identified Threat (s 10D(2)); and

~~7.4~~ objectively assessed, the period of the Designated Area Declaration “must be not longer than is reasonably necessary” ~~(in the sense of reasonably proportionate)~~ “to enable police officers or protective services officers to effectively respond” the Identified Threat (s 10D(3)(a)).

~~8~~ Based on the material currently available to the Applicants,⁷ the Applicants contend:

~~***Failure to form requisite state of satisfaction under s 10D(1)(b)***~~

~~8.1~~ ~~***Ground 1:***~~ The First Respondent failed to independently turn his mind to and consider each of the relevant mandatory statutory criteria for exercising the power in s 10D(1)(b).

~~***Particulars:***~~

- ~~(a)~~ There is no evidence of active consideration by the First Respondent of the applicable statutory criteria.
- ~~(b)~~ The documents before the First Respondent did not clearly identify the applicable statutory criteria governing the making of the Designated Area Declaration.
- ~~(c)~~ The documents before the First Respondent did not make clear that the First Respondent was being asked to exercise the power under s 10D(1)(b) specifically. To the contrary, the documents stated that the application was made on the basis of s 10D(3)(b) of the Control Act.

~~8.2~~ ~~***Ground 2:***~~ The First Respondent did not form the state of satisfaction required by s 10D(1)(b)(ii) based on a proper understanding of the law.

~~***Particulars:***~~

- ~~(a)~~ The Applicants refer to and repeat the particulars for Ground 1 above.
- ~~(b)~~ There is no evidence that the First Respondent was satisfied that an identified occurrence (or occurrences) of violence or disorder, involving the use of weapons, was likely to occur within the Designated Area, or of what that Identified Threat was.

⁶ See *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181 at [39]-[40] (Gleeson CJ); *Thomas v Mowbray* (2007) 233 CLR 307 at [22] (Gleeson CJ); *Hogan v Hinch* (2011) 243 CLR 506 at [70]-[72] (Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ); *Charter of Human Rights and Responsibilities 2006* (Vic) (**Charter**), s 32.

⁷ Noting the Respondents have foreshadowed filing an affidavit the decision-maker.

- (c) There is no evidence that the First Respondent considered *how* and *to what extent* the exercise of no suspicion search powers in the Designated Area would prevent or deter the Identified Threat.
- (d) There is no evidence that the First Respondent considered *why* making the Designated Area Declaration (covering the Melbourne CBD and Vicinity, for a period of nearly six months) was necessary in its ordinary meaning of essential or indispensable for the purpose of enabling police to exercise no suspicion search powers to prevent or deter the Identified Threat.
- (e) Alternatively, there is no evidence that the First Respondent considered *why* making the Designated Area Declaration (covering the Melbourne CBD and Vicinity, for a period of nearly six months) was reasonably necessary for the purpose of enabling police to exercise no suspicion search powers to prevent or deter the Identified Threat.
- (f) There is no evidence that the First Respondent considered the availability and feasibility of any alternative measures to prevent or deter the Identified Threat (as part of any assessment of what was “necessary”), or whether those measures would have a less restrictive effect on human rights protected by the Charter.

8.3 **Ground 3:** On the information before him, the First Respondent could not have reasonably formed the state of satisfaction required by s 10D(1)(b)(ii).

Particulars:

- (a) The Applicants refer to and repeat the particulars for Grounds 1 and 2 above.
- (b) The documents before the First Respondent did not provide a sufficient basis on which to form the requisite states of satisfaction identified in paragraph [6.2] above.
- (c) The data and statistical analyses (the **OMNI Support Summary**) before the First Respondent were not limited to, or filtered by reference to, previous offences and incidents of “violence or disorder” involving weapons within the meaning of the Control Act, and were otherwise overinclusive, for example by including offences for possession, offences for behaving in a riotous, indecent or offensive manner, offences for assault involving no weapon, and incidents involving firearms.
- (d) The First Respondent was provided with no data or statistical analyses outside of the proposed boundary. It can be inferred from the documents that the proposed boundary was determined before the statistical analysis was performed.
- (e) The mapping of data in the OMNI Support Summary provides no support for designating the whole of Melbourne CBD and Vicinity, including because there are large areas within the boundary where no or few offences were identified within the preceding 12-month period. Further and in any case, by reason of the particulars in (c) above, it is not possible to interpret the data map and draw specific conclusions about the Identified Threat.
- (f) The combination of (c), (d) and (e) above means that the First Respondent could not rationally rely on the mapping of the data in the OMNI Support Summary.
- (g) The documents before the First Respondent stated that the size of proposed designated area “would allow for resources to be deployed at specific areas at the discretion of the Police Commander based on events, incidents and contemporarily intelligence” and that the operation would “run as deemed necessary”.

- (h) The documents before the First Respondent recorded the request of Superintendent Dunstan to “[p]lease note that this is for 6 months. It is intended to have weekly scheduled operations to ensure implementation complies with legislation.”
- (i) The First Respondent had insufficient material on the efficacy of no suspicion search powers to address the Identified Threat.
- (j) Further, in making the Designated Area Declaration, the First Respondent was required, by reason of s 61 of the *Victoria Police Act 2018* (Cth), to comply with the obligation in the Victoria Police Manual that, based on the supporting material, he must assess the validity of intelligence or information received relating to violence or disorder involving weapons in the area; and assess if the circumstances meet the legislated criteria for a planned designation. There is no evidence that the First Respondent assessed the validity of intelligence or information received relating to violence or disorder involving weapons in the area.

Breach of statutory conditions

7.68.4 **Ground 4:** The area designated is larger than is reasonably necessary to enable police officers or protective services officers to effectively respond²² to the ~~Identified Threat~~ ~~(threat of violence or disorder, in breach of s 10D(3)(a)-2).~~

Particulars:

The Applicants ~~propose~~refer to ~~provide further and repeat the~~ particulars ~~upon receiving production~~to Ground 3 above.

8.5 **Ground 5:** The period ~~of the documents that were before the First Respondent at the time he made operation of~~ the Designated Area Declaration, ~~and any other documents upon which the First Respondent relied. To~~ is longer than is reasonably necessary to enable ~~the matter to be resolved on an expedited basis, the~~ police officers or protective services officers to effectively respond to the threat of violence or disorder, and therefore in breach of s 10D(3)(a).

Particulars:

The Applicants ~~refer and repeat the~~ particulars to Ground 3 above.

Improper purpose

8.6 **Ground 6:** The Designated Area Declaration was made for an improper purpose, being the convenience of a standing six-month authorisation for the exercise of “no suspicion” search powers in the Melbourne CBD and Vicinity, thereby enabling operations to occur at places within that area when deemed necessary or desirable, based on events, incidents and intelligence, without the need to make a declaration or satisfy the criteria under ss 10D(1)(a), (c), (d) or 10E.

Particulars:

The Applicants refer to and repeat the particulars (g) and (h) to Ground 3 above.

Unreasonableness

8.7 **Ground 7:** The Designated Area Declaration was otherwise unreasonable or seriously irrational.

Particulars:

The Applicants refer to and repeat the particulars to Ground 3 above.

Charter have sought interlocutory relief

8.8 Ground 8: The making of the Designated Area Declaration was incompatible with human rights, and therefore unlawful under s 38(1) of the Charter.

Particulars:

(a) By reason of the making of the Designated Area Declaration, the following rights of persons in the Melbourne CBD and Vicinity were limited:

(i) Rights to freedom of movement (s 12), privacy (s 13), protection of children (s 17) and liberty (s 21): within the Melbourne CBD and Vicinity, any member of the public (including a child) can be stopped anywhere, at any time and for no reason, and be subjected to a search (which can extend from an initial electronic device search to emptying of pockets, searching of bags and vehicles, running of hands over the body, removal of outer clothes, and strip searches under certain conditions) without notice and without any choice as to whether or not to submit to a search.

(ii) Rights to freedom of expression (s 15), peaceful assembly (s 16) and freedom of movement (s 12) and privacy (s 13): the no suspicion search powers and power to request a person to remove a face covering (or leave the Melbourne CBD and Vicinity) can be exercised against persons engaged in free expression or peaceful assembly (e.g. at a protest) in the Melbourne CBD and Vicinity, and may impair the willingness of members of the public to enter, move within or assemble in the Melbourne CBD and Vicinity.

(iii) Right to equality (s 8) and cultural rights (s 19): the no suspicion search powers and power to request a person to remove a face covering (or leave the Melbourne CBD and Vicinity) are particularly intrusive or disadvantageous to persons engaged in religious or cultural practises that the First Respondent produce those documents urgently involve the carrying of a weapon (with lawful excuse or exemption under the Control Act) or the wearing of a face covering or religious headwear, and to persons with protected attributes under s 6 of the *Equal Opportunity Act 2010* (Vic), including race, religious belief or activity, and disability (such as persons with immunocompromising conditions and persons with metal implants).

(b) The onus of demonstrably justifying the limits on rights resides with the Respondents. The limitations on rights cannot be demonstrably justified under s 7(2) of the Charter, because the Designated Area Declaration was unlawful, in pursuit of an improper purpose and, in any event, not proportionate to its purpose (on any view).

8.9 Ground 9: In deciding to make the Designated Area Declaration, the First Respondent failed to give proper consideration to human rights, and therefore the decision was unlawful under s 38(1) of the Charter.

Particulars:

The material before the First Respondent (the Human Rights Risk Assessment) did not enable him to give proper consideration to human rights because it: (i) did not identify

all relevant rights that were limited; (ii) where limits were identified, failed to explain how the rights were limited; and (iii) did not justify limitations on rights.

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.⁸ 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.⁹

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 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.¹⁰ 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.¹¹ Alternatively, any such burden

⁸ *Palmer v Western Australia* (2021) 272 CLR 505 at [68] (Kiefel CJ and Keane J), see also at [122] (Gageler J), [208] (Gordon J).

⁹ See *Cotterill v Romanes* (2023) 413 ALR 360 at [85] (Emerton P, McLeish and Kennedy JJA).

¹⁰ See *Brown v Tasmania* (2017) 261 CLR 328 at [199] (Gageler J); *Clubb v Edwards* (2019) 267 CLR 171 at [164], [170] (Gageler J).

¹¹ See *McCloy v New South Wales* (2015) 257 CLR 178 at [126]-[132] (Gageler J).

could not be justified: any exercise of the power would not be reasonably appropriate and adapted to advance any identified legitimate purpose.¹² 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 disappplied) to permit only those exercises of power that are consistent with the implied freedom.¹³ 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 Amended Concise Statement was prepared by Thomas Wood, Rohan Nanthakumar and Margie Brown of counsel.

Certificate of lawyer

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

Date: 819 December 2025



Signed by Sarah Schwartz
Lawyer for the Applicants

¹² See *Farmer v Minister for Home Affairs* (2025) 99 ALJR 1408 at [39], [57] (Gageler CJ, Gordon and Beech-Jones JJ), [243] (Jagot J).

¹³ *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.