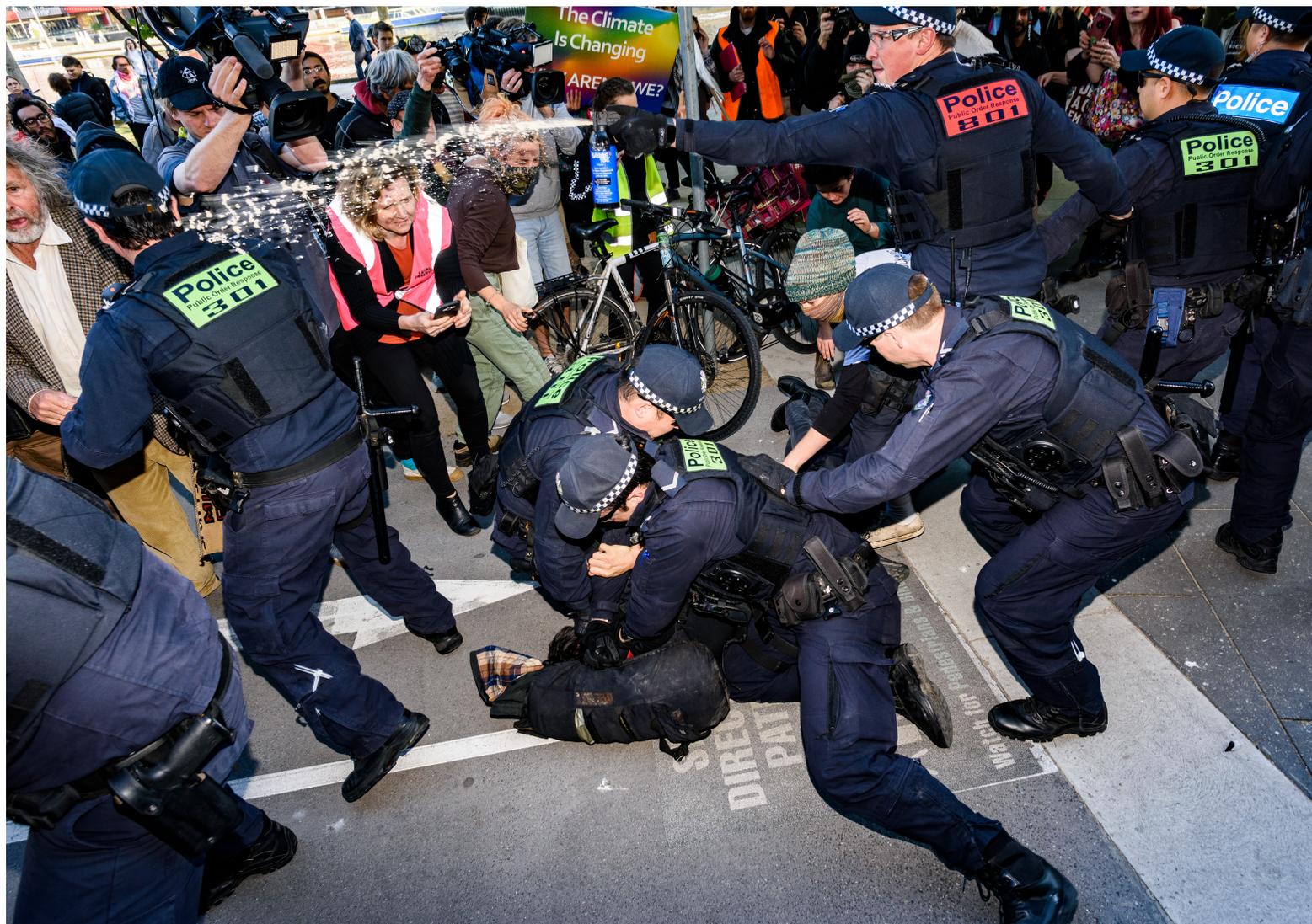




## LEGAL OBSERVER TEAM REPORT

# The Policing of the IMARC Protests



December 2019

Melbourne Activist Legal Support

## Acknowledgement

MALS acknowledges it works on the un-ceded lands of the great Kulin Nations and pays respect to Country and to Elders past and present. We acknowledge the centuries of Aboriginal struggle against dispossession and genocide and that the Australian police and legal system have been and continue to form a primary component of the colonial project in this country.

## About Melbourne Activist Legal Support

Melbourne Activist Legal Support (MALS) is an independent volunteer group of lawyers, human rights advocates, law students, and paralegals. MALS trains and fields Legal Observer Teams at protest events, monitors and reports on public order policing, provides training and advice to activist groups on legal support structures, and develops and distributes legal resources for protest movements. MALS works in conjunction with law firms, community legal centres, and a range of local, national, and international human rights agencies. We stand up for civil and political rights.

[www.melbourneactivistlegalsupport.org](http://www.melbourneactivistlegalsupport.org)

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This report is a public document and is provided to media, Victoria Police Professional Standards Command (PSC), Independent Broad-based Anti-corruption Commission (IBAC), the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), Government ministers, Members of Parliament and other agencies upon request. None of this report should be held or taken as legal advice and all commentary and analysis is of a general nature only.

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## Introduction

Melbourne Activist Legal Support (MALS) fielded a team of Legal Observers at protest events at the [International Mining and Resources Conference](#) (IMARC) that took place at the Melbourne Convention & Exhibition Centre, South Wharf in Melbourne, Victoria. The conference, and the protest events surrounding it took place from Monday 28<sup>th</sup> to the evening of Thursday 31<sup>st</sup> October 2019.

Legal Observers were present at the site on the Tuesday, Wednesday and Thursday of the event, from 6.30am until mid afternoon each day, observing, monitoring, and recording police conduct and interactions with protesters.

The team observed several hundred Victoria Police members working in different Public Order Response Team (PORT) units, arrest teams, the Mounted Branch (police horses), the Evidence Gathering Team (surveillance), and witnessed multiple arrests by police over the Tuesday, Wednesday and Thursday.

This report is designed to report upon and assess the potential and actual impacts of police actions, tactics and approaches, in terms of human rights, health, and other impacts, as well as assisting all parties in their analysis and understanding of the IMARC protest event itself. Importantly, it is based upon the first-hand observations of the team, photo/video evidence, and direct testimony either recorded by Legal Observers onsite or made available to the team since.

A set of important, clear, and achievable recommendations to Victoria Police and the Victorian Government stemming from these observations are included at the end. (See Pages 41-42).

This report is a public document and is provided to media, Victoria Police Professional Standards Command (PSC), Independent Broad-based Anti-corruption Commission (IBAC), the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), legal and human rights agencies, Members of Parliament, Ministers and other agencies upon request.

It will also be submitted to inform the Joint NGO Report to the United Nations Human Rights Council in Geneva for its major Universal Periodic Review (UPR) in 2020.

This report should be read in the context of deep problems with public order policing in Victoria that have been evident over many years and as such, we have included a section on this context and background.

We wish to thank the many Legal Observers who volunteered their time and,

as the reports cover photo attestations, took risks to observe, monitor and record evidence. We would also like to thank the IMARC Blockade Legal Team, who documented so much as they were supporting injured or arrested activists. Thanks to the photographers and videographers who captured and provided such important visual documentation. Thanks also to everyone who sent in their detailed testimony and accounts. This report does not include every incident or report provided to us, nor does it claim to be an exhaustive account of every incident over the three days. We do hope that it provides both a comprehensive analysis and a representative account.

## Context + background

Melbourne Activist Legal Support has tracked the rise in coercive and excessive crowd control tactics by Victoria Police over several years at protest events throughout Victoria.<sup>1</sup>

Victoria Police's approach to protests has been characterised by a lack of willingness to tolerate community disruption when unfamiliar forms of protest are used, indicated by unnecessarily aggressive arrests, the unlawful use of police powers, an unnecessarily antagonistic attitude toward people engaged in protest combined with a disregard for their dignity and welfare.<sup>2</sup>

*this tactical repertoire is dangerous and harmful when applied against defiant and disruptive but peaceful protest events.*

The continued misuse of OC aerosols, dangerous use of police horses, weaponry and excessive use of force is taking place in the context of a near total lack of any clear, effective accountability processes when concerns or allegations are provided to police.

The repertoire of public order tactics employed by Victoria Police reflect the rapid expansion of the Public Order Response Team (PORT) as the primary riot control capacity in Victoria, and the intelligence and strategic planning centered within the Operations Response Unit (ORU).

Over years we have seen Victoria Police move away from a 'negotiated management' approach to protest policing to adopt more of an approach scholars have labeled 'strategic incapacitation', reflecting a global trend in public order policing since 2001. *Strategic Incapacitation* is described as a multidimensional policing strategy characterized by the deployment of massive police presence, the use of barriers, 'preventative' arrests, selective use of force with an array of less-lethal weapons, combined with efforts to control both the production and dissemination of information, media management and unprecedented levels of monitoring and surveillance.<sup>3</sup>

This report will argue that this tactical repertoire is dangerous and harmful when applied against defiant, disruptive but peaceful protest events and is certainly not fit for purpose in an era when Victoria Police is presenting itself

as working within a 'human rights compliant' model of protest policing. It suggests that Victoria Police's commitment to a human rights approach to protest facilitation is contingent upon the focus and form of that protest and varies accordingly.

*'Strategic incapacitation'* serves policing imperatives by deliberately containing and hampering and even neutralising protest movements, limiting their growth, size and political effectiveness. The sheer number of police at events and ever-present threat of violence deters new and a broader range of people becoming involved in protest groups, intimidates and scares people from public participation and serves to further the often conflictual and antagonistic attitude toward social movements from some sections of the wider public.

By applying levels of force designed for riots against peaceful protests, police, in alignment with conservative and simplistic media reporting, can successfully reframe a peaceful protest as 'violent' thereby adding to the existing demonisation of protest groups by some sections of the media and government. We saw this in the Victoria Police media management during the IMARC protest event.

From a policing perspective this approach serves to keep disruptive or *potentially disruptive* protest movements smaller and easier to control. It is very apparent that this operational imperative outweighs human rights considerations.

Victoria Police command invests a great deal of energy in ensuring that government and key public agencies sanction their tactical repertoire. This investment acts to shield parliamentarians, human rights bodies, journalists and the wider public from awareness of the substantial danger in this sort of policing. By permitting, encouraging or tolerating policing which undermines the civil and political rights enshrined in Victoria's Charter of Human Rights and Responsibilities (the Charter) we risk reducing the vital political space we need to maintain and enhance an effective democracy.

***It is very apparent that this operational imperative outweighs human rights considerations.***



Figure 1: A static line of protesters prior to any police action. Photo: Liam Petterson, Farago

## Executive Summary

The police tactics, approaches and the behavior of individual police members during the IMARC protest events from Tuesday 29<sup>th</sup> to Thursday 31<sup>st</sup> October demonstrated that Victoria Police do not have the tactical or operational ability to manage peaceful but defiant protests of this nature without resort to excessive levels of coercive force that exceed their lawful powers and obligations under the Charter.

*A Legal Observer stated; "From the moment we arrived at 6.30 on Tuesday, even with relatively small number of activists present the police were using violence and aggression. They were clearly not responding to 'escalating tensions' or 'risks' posed by protesters. Police set a tone of violence from the outset. Even before delegates or larger numbers of protesters arrived I witnessed police pushing people to the ground and reacting in a violent and aggressive manner."*

The protest activities that took place in the conference vicinity over the four days took various forms, including a 'First Nations smoking ceremony, marches, a 'die-in', mock dinners, public speeches, musical performances, meditation, and a picket-line-style human blockade of several key entrances.

Most protest activities included or were accompanied by activists chanting, singing, or holding banners. Other blockade protests included people using superglue to attach their hands to roads or to surfaces to slow or prevent

removal by police. One person was observed who had locked on to a handrail by a bicycle D-lock.

Prior to any police action, the picket involved activists linking arms and standing in lines in order to block venue entrances. A critical point to make here is that despite this configuration being disruptive and aimed at preventing access to an area or an entrance the actions of people standing in a line, linking arms were not physically threatening or violent in an of themselves (See *Figure 1* above). It was the response by authorities to this protest activity that warrants attention.

We noted and were deeply concerned by the targeted arrests of protest organisers – some at the very moment they were addressing the crowd with a megaphone. The deliberate confiscating of megaphones, either during an arrest or by taking them off the ground when left unattended early on the Tuesday 29<sup>th</sup> was also concerning. This clearly limited protester's ability to communicate political messages effectively to the large crowd and was specifically mentioned by police liaison and protest organiser's as hampering their ability to prevent unnecessary escalations. It pointed to an antagonistic and stifling approach to the protest. More than anything it indicated police willingness to flagrantly ignore Charter rights to political expression, not to mention the freedom of political communication protected by the Constitution.

Legal observers witnessed, recorded and documented multiple incidents of excessive, unnecessary and potentially unlawful uses of force, either as a coordinated crowd control tactic or by individual police members using excessive force within a police maneuver or tactic. This policing had a series of obviously harmful physical, emotional and psychological effects on the individuals affected.

### Inappropriate and mis-applied tactics

The use of force and crowd control techniques we observed being applied at the IMARC protest event were designed and developed for circumstances where police face direct physical threat.

***This report asserts that Victoria Police cannot use the tactics observed at IMARC and maintain their obligations under the Charter.***

At the IMARC protest event these same techniques were directed in most cases at people who were offering no direct physical threat to police. The police actions over those three days shocked many protestors, journalists and observers present. That people were scared, injured, and placed in excruciating levels of pain for what was an act of peaceful protest is greatly disturbing.

Victoria Police do not appear to have developed tactics and approaches that can be lawfully applied when a person is defiant or refusing to cooperate with their directives. As discussed in detail below, the law, and Victoria Police's own internal Regulations and Guidelines clearly stipulate that OC foam cannot be used against a person who is "passively resisting,"<sup>4</sup> yet OC foam was sprayed in precisely these circumstances.

That stipulation is a critical human rights protection for citizens. It means that police cannot threaten or apply force solely to make a person comply with their directions unless there is a clear and proportionate rationale to do so.

Victoria Police appear not to have considered developing tactical options and approaches to managing protest events like this in the 13 years since Victoria enacted the Human Rights Charter.

This report asserts that Victoria Police cannot use the tactics we observed at IMARC and maintain their obligations under the Human Rights Charter.

It is the actions of police where use of force has been applied against protesters who *were not physically threatening* that will be the focus of this report.

Victoria Police Commander Libby Murphy was reported in the media as stating: "We are doing things lawfully and we are doing things in line with policy and anything that is of a concern to anyone we will review and make our own assessment."<sup>5</sup>

"Everything the police are doing are [sic] predicated by the behaviour of the protesters," declared Murphy.<sup>6</sup>

Justifying or rationalising abuses by pointing to the poor conduct of some protesters is a common response by police during and after protest events such as these, and no doubt police were disturbed by the level of defiance and determination of protesters to physically blockade entrances to the conference venue, however it contradicts a basic principle of human rights protection: that the rights and dignity of a person must be observed despite the behaviour or criminality of that person or other people.

*The documented tactics, behaviour, and demeanour of police observed at the IMARC event was far from impartial.*

Even the most exceptional circumstances such as a state of emergency do not justify a departure from basic human rights standards for law enforcement.

### 'Disruption' is not a justification for unlawful assault

'Disruptions' occur every day throughout metropolitan Melbourne. Road works, traffic accidents, street parades, despite their potential inconvenience to ambulances, people using public roads or amenities, or getting to and from work—are accepted by the public and policed in ways which reflect that acceptance and safely facilitate their existence.

When it comes to political protest the rhetoric of 'balancing rights' quickly becomes a useful justification to intervene and limit protest rights rather than a genuine attempt to uphold them. We see this in the arbitrary time limits police place upon protesters standing on a road. We also see it when levels of force are used to move protesters standing outside a building that are totally disproportionate to any harms caused by the protest itself.

*peaceful assembly,  
by its very nature, is  
disruptive*

This claim by Victoria Police of 'balancing rights' also creates the misconception that police must be acting impartially. The documented tactics, behaviour, and demeanour of police observed at the IMARC event were far from impartial.<sup>7</sup>

International human rights jurisprudence clearly recognises that peaceful assembly, by its very nature, is disruptive, can inconvenience, and be perceived as a nuisance by some people, but that "*rights worth having are unruly things.*"<sup>8</sup>

As discussed below, even if the actions of some or a minority of people involved in an event are unlawful, this does not remove the right of peaceful assembly for others collectively. Individual actions that are unlawful committed in the course of a demonstration cannot be used to justify the removal or limitation of the collective rights to peaceful assembly and expression.<sup>9</sup>

The rights to peaceful assembly, association and expression are *explicitly recognised and protected* within Victorian legislation and international human rights law precisely due to their importance to the establishment and maintenance of a free, equal and democratic society. The freedom of political communication is likewise protected by Australia's Constitution.

In essence, the bar to determine whether 'disruption' becomes a threat to 'public order or safety or morality' needs to be set quite high by police,

courts and authorities. Particularly in light of the extent of disruption caused regularly by other public events mentioned above.

Any policing of civil society actions or events that limits these Charter rights must be lawful; necessary, reasonable and proportionate as set out in the Charter itself.

The United Nations Code of Conduct for Law Enforcement Officials is also clear that police use of force must be strictly necessary and proportionate.<sup>10</sup>

By refusing to move upon the direction of police, IMARC protesters were committing, at worst, very minor (Summary Act) offences. These offences do not justify the use of batons, punches, kicks, the dangerous use of horses, or pepper spray. People should not suffer bruising, scratches, soft tissue, ligament damage and intense pain from chemical sprays for engaging in civil disobedience.

In many cases noted by legal observers, police failed to give directions, commands or orders prior to police use of force. In effect, protesters were engaged in civil disobedience in order to maintain a picket line or blockade of the conference. Despite chanting and yelling at times, the actions of the protesters, although they included periods of rapid movement and outright defiance of police directions, did not include physical violence.

Police will often use a legal construct called '*Breach of the Peace*'<sup>11</sup> as the reason to arrest, to move-on or use force against protesters—yet that legal term is extraordinarily vague and open almost entirely to the police member's interpretation and 'reasonable belief.' It is not an offence found in the Summary Offences Act, but rather a so-called 'common law offence' that permits police to arrest the individual to prevent further breaches of the peace.



Figure 2: Use of police horses was particularly dangerous; Photo, Liam Petterson, Farago

The common law does, however, provide some guidance on what may be considered a breach of the peace. Common law courts (in Australia and the United Kingdom) have held that the following do not, in themselves, constitute breaches of the peace:

'Mere refusal of a trespasser to leave [a] premises';<sup>12</sup>

'Mere disobedience of a police direction';<sup>13</sup> and

'Peaceful and non-violent' protest, even if an activist is 'loud and assertive.'<sup>14</sup>

In the *Max Brenner Case* the court held that what constituted a 'threat to public order' needed to take the rights of protesters to express their political beliefs into consideration.<sup>15</sup>

A colourful, loud, active protest that attracts public interest and generates robust discussion may be lawful and legitimate even if it causes inconvenience to the public.

The lawfulness of protesters' conduct is contested. The various charges laid by police will be heard in court and are outside the scope of this report. A

great many, if not most, of the charges laid by police were for an offence that *would not have occurred* if it were not for the police crowd control tactics employed—i.e. the offence would not have occurred were it not for the police action.

### Generating chaos and confusion

Police tactics such as crowd pushes and manoeuvres directly into crowds by the Mounted Branch turned static and peaceful picket lines into dangerous commotions, and generated high degrees of distress and chaos. The policing tactics understandably caused confusion and alarm amongst protesters.

Legal observers present at the IMARC protest stated that police “set the tone for the protest from the outset,” and that police surges into the crowd, and their hostility and aggression, was “clearly not responding to any ‘escalating tensions’ or ‘risks’ posed by the protesters.” In fact, observers noted that prior to many police manoeuvres, protesters were standing in lines, listening to speakers, singing and chanting like many protests.

The angry, surging, chaotic scenes covered in the television news footage were often the direct aftermath of a crowd surge by a phalanx of police, injurious use of force or a push by police horses into a crowd.

Much has been made in the media commentary of the chaotic, seemingly aggressive nature of the crowd behaviour.

We note that many commentators, including the Police Minister, the Premier of Victoria and the Deputy Prime Minister, would have only seen footage provided by news channels, most of which captured this chaotic, angry aftermath of a police use of force tactic. We advise commentators and external parties to consider the context of news footage prior to making broad public statements about the nature of a complex event such as this. (See *Recommendation 9*).

This dynamic of police actions generating chaotic and uncontrolled crowd reactions is well documented in the literature of public order policing.<sup>16</sup> Even unintentionally, police crowd control tactics can cause panic, distress, generate anger, confusion and create enormous harms far worse than the supposed offence or ‘breach of the peace’ that the tactic is intended to mitigate. These tactics therefore affect people arbitrarily including the media, legal observers, first aiders, the elderly, the disabled, the young and the less physically robust people present. This is what we saw at IMARC.

## Tactical options & alternative approaches

Police have a range of non-force tactical options available to them at public order events that present far less risk to everyone. As an example to illustrate this, had the disruption to the conference been a gas leak rather than a protest, police would have facilitated foot and vehicular traffic safely around the disruption, planned alternative access measures with conference organisers and sought to minimise risks to the public and maintain safety. In some circumstances this may have involved finding an alternative venue. The principles of safety and minimising risks to the public would have guided a policing response to many other significant disruptions to an event, building or public thoroughfare such as a traffic accident or medical emergency. As the protest completed soon after midday each day, police had the option to leave a protest in place for periods of time and direct conference attendees well away from the protest area.

As illustrated below (See 1. Police Negotiators) police did not take a *Negotiated Management* approach to this event.

Notably, the Melbourne Convention & Exhibition Centre has approximately 39 different access points including the car park. As part of their operations, police, undoubtedly in collaboration with building security, locked multiple entrances and left only a few open and accessible to conference attendees. Although there may have been several operational reasons for this decision, it had the effect of most conference attendees having to make their way inside the building via one of the few entrances where protesters were concentrated. In some cases, police and private security were seen directing or shepherding attendees toward entrances already blocked by the protest picket line. Police were specifically requested not to do this by protesters engaged in police liaison roles. Whether intentional or not, this had the effect of maximising the contact between conference attendees and protesters, which in-turn meant police using the levels of force as described below in order to make a gap in the picket line.

We noted that on the Tuesday police created an entry point for delegates at the Clarendon Street entrance and protesters responded by stretching their blockade line further to prevent that entrance being used as well.

We acknowledge that the protest groups were mobile and determined to block all access to the conference if possible and that police would have been concerned about protesters entering and disrupting the conference from inside had more entrances been available.

It was noted however that by the final day of the conference, venue staff were directing attendees to other building access points, which significantly reduced police and protester contact. It remains unclear why this was not done earlier.

Overall it appears that police did not plan for or did not take up numerous opportunities for a *negotiated management* approach to this protest event. This is discussed further in 1. Police Negotiators below.

It remains concerning that police chose to apply coercive tactics that maximised the risks to members and the public. Police tactics shifted static, managed, and relatively well-behaved crowds into chaotic scenarios; and, utterly failed to take into account the safety, well-being, or rights of people who were protesting.

Police were obviously concerned about potential ‘breaches of the peace’ and had publically stated their concern over some protester behaviour toward conference attendees. Legal observers present did not directly observe any physical interactions between protesters and conference attendees, although we noted some reported in the media.<sup>17</sup>

In general we observed the police response to the public was plainly excessive and generated more harm than that which the police were supposedly attempting to prevent. Police teams would run out of the police line, push, shove, and in some cases arrest people who were simply holding banners or making a speech through a megaphone. Observers noted that police were often confused, reactive and often appeared unsure as to the purpose of a particular tactic.

Police use of force that falls outside police guidelines and regulations is serious and could be determined to constitute unlawful assault by a court.

This report highlights multiple incidents which, if brought before a court, or if were independently investigated, we believe would likely found to be unlawful.

*..it is not possible for Victoria Police to deploy horses as a use of force technique and still abide by its own Use of Force policy*

Policy Rules contained in the Victorian Police Manual (VPM) cited below are mandatory and provide the minimum standards that employees must apply. Non-compliance with or a departure from a Policy Rule may be subject to management or disciplinary action.

Amongst other findings, we argue below that it is not possible for Victoria Police to deploy horses as a use of force technique *and still abide by its own Use of Force policy, practices and procedures.* (see Recommendation 2)

## Complaints and accountability

We understand that numerous formal complaints have been submitted to either Victoria Police or IBAC since the IMARC protests. We also understand that many people have decided not to submit complaints due to lack of confidence in the current system of internally handled complaint investigation. It is of deep concern that the vast majority of the many allegations of potentially unlawful police behaviour documented in this report are unlikely to ever be adjudicated independently. To date the current police oversight body IBAC have not scrutinised the varied controversial issues with public order policing in Victoria in any systemic way.

We have included a recommendation for the Victorian Government to enact and resource a *Police Misconduct and Corruption Division* within IBAC that can independently investigate allegations of serious police misconduct.

## 1. Police negotiators

Victoria Police Commander Libby Murphy was quoted in an article in the Herald Sun as saying “We’ve actually tried to negotiate really well and engage with some of the protesters and unfortunately that hasn’t come to fruition.”<sup>18</sup>

This was contradicted by accounts of protesters who took on police liaison roles during the event.

*“The day started with myself and the two other [protester] Police Liaisons engaging in futile negotiations with the two Police Negotiators, requesting that our megaphone (confiscated the day before via the violent arrest of one of the PLs [police Liaison] when they were giving the crowd an update) be returned to us so that we could communicate with the blockade.*

*It continued with the (also futile) request that PORT (the Public Order Response Team) stop dragging conference attendees through the blockade - traumatising attendees and creating tense and violent situations that they then exacerbated by punching and pepper spraying people - and instead walk them around the blockade and in through the single open entrance. It became apparent that the Police Negotiators had no authority, their role was defunct, and by default our role was useless.*

- Excerpt of statement by one of the IMARC protest police liaisons (Wednesday 30/10/19)

One Police Liaison person, despite being identified by a green armband was arrested on Tuesday 29<sup>th</sup> whilst in the process of updating the protest on a megaphone.

*“By mid-morning it became very clear to us that the police negotiators had no control or authority over the Public Order Response Team (PORT) squads. The police negotiators openly stated that their commander wasn’t listening to them. We asked repeatedly for the gaps in the bollards to be closed so snatch PORT crews couldn’t harm people. The negotiators would make this happen and the PORT squads would simply open a new gap. We agreed to move people off the footpath on the Tuesday if they would agree to keep PORT squads behind the bollards and no more pepper spray. We stuck to our agreement, but PORT continued to spray people and punch people and charge them with horses.*

*Everything we asked of the police negotiators they said they had taken back to the commander and that they were trying. But it became very clear to us that the police negotiators had no control over PORT’s behaviour and that they were either powerless or disingenuous in their engagement with us as police liaisons. Ultimately, we had to scream at the police negotiators to call*

*paramedics to treat all the people that they had pepper sprayed. That incident was totally avoidable if the police negotiators had engaged in good faith the climbers would have come down safely and 60 protestors would not have been unlawfully pepper sprayed.*

*The police are undermining an extremely important role designed to help keep protestors safe and prevent escalation of violence by police. "*

- Statement by IMARC Protest Police Liaison

There are clearly challenges in any communication or dialogue between police and protest groups.

Victoria Police have attempted in the past to undertake a '*negotiated management*' approach before, during and after protest events to establish relationships of trust with protesters and event organisers. This '*communications-oriented approach to protest policing*', based on human rights principles structured around a commitment on the part of police to facilitation and dialogue is certainly something to be encouraged.

But any dialogue and communication can be easily undermined by multiple factors including the existing attitudes towards police from protest groups, the labeling or risk assessment by police that categorises the protest group as 'bad', suspicion of or actual monitoring and surveillance by police, police use of force incidents and arrests which are perceived to be unfair or excessive, and the inability of police negotiators to have any decision-making power within the police chain of command.

IMARC protesters were certainly willing and were actively engaging in dialogue with police before and during the protest. There were several incidents and issues such as the one noted above which undermined constructive communication.

The use of force and the sudden '*snatch squad*' arrests of several protest organisers early on the Tuesday morning, and the confiscation of several megaphones established a distrustful relationship very early.

On Tuesday morning, Lidia Thorpe, former Victorian Greens Member of Parliament, attempted to arrange for a respected Aboriginal Elder to address both the police and protesters in an effort to reduce tensions and call for calm and respect based upon her authority as a Traditional Landowner. According to Thorpe, senior police she spoke with refused to allow the Elder up on steps of the Convention Centre to address the large numbers present or to return a megaphone that had been taken in the hours prior in order for her to address the crowd.

To make negotiated management approaches work to deescalate and reduce use of force incidents then Victoria Police need to engage in good faith with protest organisers. Critically they need to deploy senior members in community liaison or negotiator roles who have the requisite rank and command authority over *all police units* likely to be deployed. (See Recommendation 4)

## 2. Excessive use of physical force



Figure 3: Photo by Jake Nowakowski

Legal Observers have recorded multiple instances of police pulling or shoving protesters with such force that they were propelled to the ground.

Police were observed pushing protesters down concrete stairs and kicking protesters without giving prior warning to move on. Police were observed grabbing and pulling protesters around the neck. Police were observed grabbing and holding wrists or twisting arms in painful ways.

Multiple injuries of protesters were reported including one protester who was thrown into a cement wall and hit the back of his head.

Many, if not most, of these uses of coercive force examples were to force protesters away from an area, to break a picket line of people standing with linked arms, or in response to interactions between protesters and conference attendees.

*"Police were consistently shoving protesters away from the conference delegates, even when none of the protesters I saw weren't doing anything but talking to the delegates."*  
- Legal Observer

*"Police consistently shoving protesters without warning to move on..."*

– Legal Observer



Figure 4: Photo by the Australian

Several incidents were recorded of police grabbing, holding, pulling, or restraining people by their necks. This is of particular concern due to the high risk of serious neck or spinal injuries.

At approximately 10:30am on Tuesday 29 October a woman was locked onto a ramp-rail by a bicycle D-lock. The woman was grabbed roughly by her right arm despite the fact that she was locked-on and unable to move (see Figure 5 below).



Figure 5: Photo by Alex Coppel (Herald Sun)

Another incident of grabbing by hair and neck which resulted in injuries is described by a protester below:

*On Tuesday 29th of Oct I was in the picket line next to a pillar adjacent to the glass windows on the inside side from Clarendon St at main door/entrance. I had one arm around a pillar and the other linked to other activists in the line.*

*The police officer(s?) grabbed my friend and I by the hair (ponytail/buns) and yanked our necks back. The police officer proceeded to grab me around the neck with two hands in a choke hold fashion. At this point my friend (he is a registered nurse) was exclaiming to the police to "stop", "let go" and "she can't breathe" as he saw me turning blue and could see the pain and distress I was in. I am not totally sure how I got out.*

*I went to the medical tent/space to be supported by the medic team. My neck, shoulders and body were sore (but also running on high adrenaline). I had multiple scratches and some bruises forming from the altercation. I got some ice for a bruised thumb and spoke with someone from the support team.*

*I was sore and spacey for a lot of the day. That evening I found it difficult to eat, but managed. The next morning, my neck/throat was inflamed and sore, and could not really swallow and had to mush my food to eat (bread was a challenge). My voice started to go, it was painful to speak and started sounding real croaky and squeaky by 11am the next day (Wednesday 30th). By the afternoon I had no voice left and could not complete a full sentence. On Thursday (hoping my voice would have returned) I went to local doctors who referred me to the Austin hospital for a CT scan to see if there were any fractures or internal damage.*

- Excerpt from victim statement.

Scans at the hospital found no further damage and she was prescribed *Pantoprazole* for management of oesophagus and internal inflammation of the throat.

Another protester described how they were in a blockade line at approximately 9.00 on the Tuesday, when a conference delegate walked up to them. When the delegate was about 2 metres away, a group of police charged and the person was hit 4 to 5 times in the back. One police member pulled them to the ground by their neck and dragged them about 2 metres by their hair.

*"At no time did I see any protester do anything violent, but I did see violence from many police officers in the form of capsicum spray, pushing, throwing etc. I did not see any police take the option of arresting someone on their feet – people were thrown to the ground instead."*

- Excerpt from a complaint made to IBAC.

*"While the protesters clearly wanted to make the conference participants uncomfortable, at no time did I see a protester physically assault a conference attendee or a member of Victoria Police."*

– Legal Observer

By taking a person into custody, police impact a person's rights and freedoms under the Charter. *"Any use of force must be justified and only to the level required to reasonably effect arrest or removal of persons."*<sup>19</sup>



Figure 6: Photo by Julian Meehan Wednesday 30



Figure 7: Photo by Julian Meehan Wednesday 30-10

There were numerous incidents of excessive use of force being used during an arrest:

*"I was one of the people arrested and subject to police violence on Tuesday (29/10/19). What happened was that I was part of the first aid team and as we were walking back across the road the police started pushing the protesters and we got roped in and started holding the line.*

*I heard them say "that guy" and then they snatched me. I was pulled down and pushed to the ground while they yelled not to resist. I tried to keep my head from slamming into the ground by doing a push up like motion and I guess they thought that was resisting as opposed to protecting my head.*

*I was repeatedly punched while already restrained on the ground.*

*They then took me in and I was charged with obstruction and assaulting an officer."*

- Statement by protester

Legal Observers also noted the treatment of Channel 7 journalist Paul Dowsley who was grabbed and roughly pushed in different directions by different police members for several seconds at a time when he said he was "obeying [police] direction to move to another area" at the time of the incident.<sup>20</sup>

Although police later released a statement claiming that Mr Dowsley "did not follow police instructions to move away from the area" his treatment was typical of many in the protest area where police would make sudden rushed movements, bark orders and push people roughly before they had a chance to react.

### 3. Use of mounted horses for crowd control.

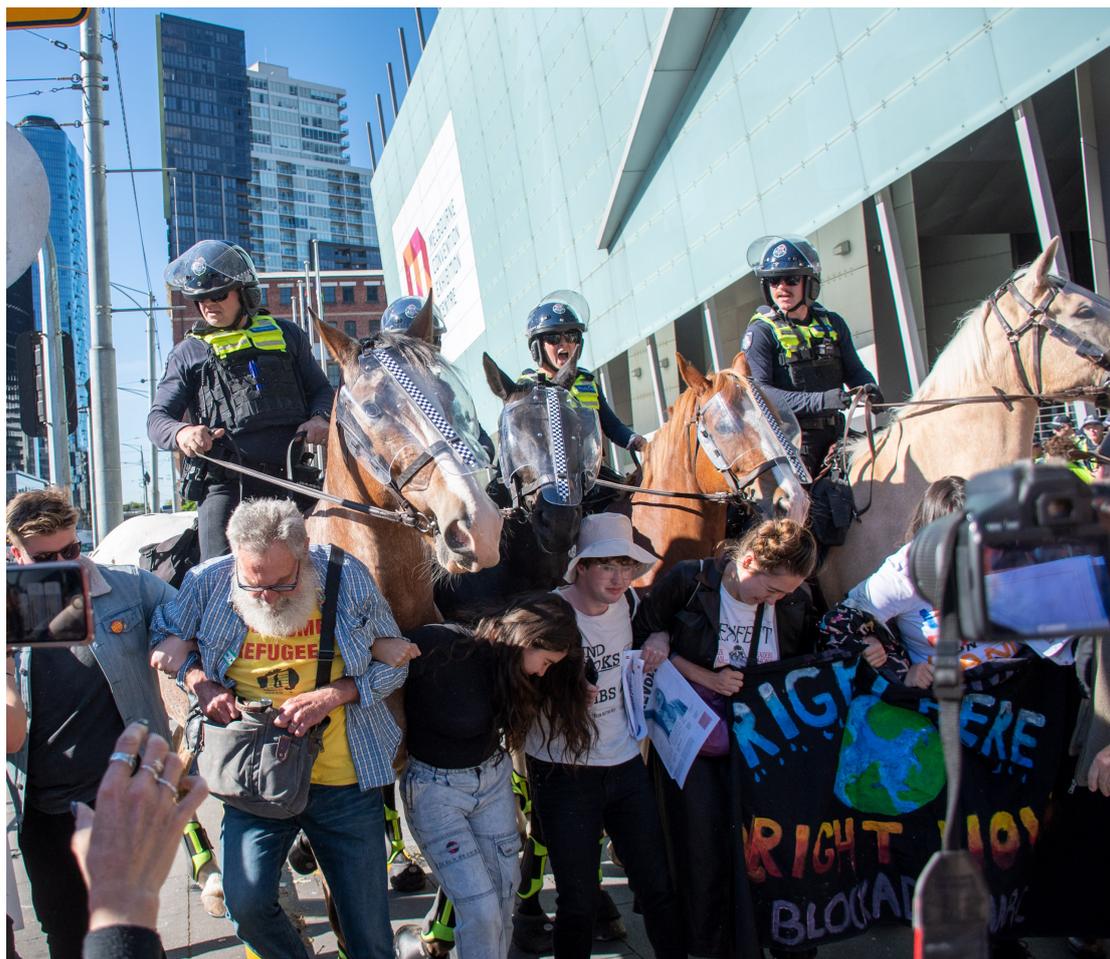


Figure 8: Horses being used to push into static picket lines Photo: Liam Petterson, Farago

The Victoria Police Mounted Branch was present at each of the four days of the protest event.

Although taking up static positions for the majority of time at over the four days, at multiple times, lines of police horses were recorded moving in formation directly into crowds or lines of protesters. These manoeuvres were deliberate and seemingly designed to push back protesters from an area.

First use of police horses being pushed into a line of protesters was recorded at just after 8.00 on Tuesday 29 October. Similar manoeuvres were recorded at multiple times over the next two days.

Multiple injuries were reported relating to the use of horses, including one woman who received medical attention by emergency service workers and was then taken by ambulance to hospital with a suspected broken arm and leg.

One person reported being pushed into the path of police horses by other police.

It is well recognised that horses can cause severe, bone breaking injuries. When being used to push into lines of people who are refusing to move or who cannot move easily due to the numbers of people around them, the risk of serious injury is extremely high.

Despite extensive training by the Victoria Police Mounted Branch for crowd control scenarios—including training techniques to allow horses to become ‘accustomed’ to loud noises, crowd movement and commotion—the behaviour and actions of the unit at IMARC demonstrates clearly that this is inadequate to ensure the safety of members of the public when being used in crowd control.

Any use of horses in public environments and amidst large crowds is by its very nature extremely hazardous, due to the risk of uncontrolled and potentially fatal use of force.

Legal Observers clearly saw horses acting nervously, and for brief times were clearly not under the control of the rider. Legal Observers noted that the horses were visibly ‘spooked’ at times. (Tues 29/10 8:15).

Legal Observers noted that the police riders were deliberately riding their horses directly into crowds and using them to push forward. Some riders were seen repeatedly kicking their horses onwards into the crowd of protesters. Even in situations when the horse is under the rider’s total control, this deliberate manoeuvre is extremely dangerous and places members of the public at risk of serious, permanent or life-threatening injury.

Any loss of control of a horse, even briefly, can have potentially fatal consequences. As the incident below illustrates, it only takes a second for a person to fall under the horse’s hooves, or for the horse to rear or step or surge forward and seriously injure a person. This incident below illustrates the danger and impact of such police use of force.



Figure 9: Photograph from The Australian



Figure 10: Photograph by James Ross, AAP

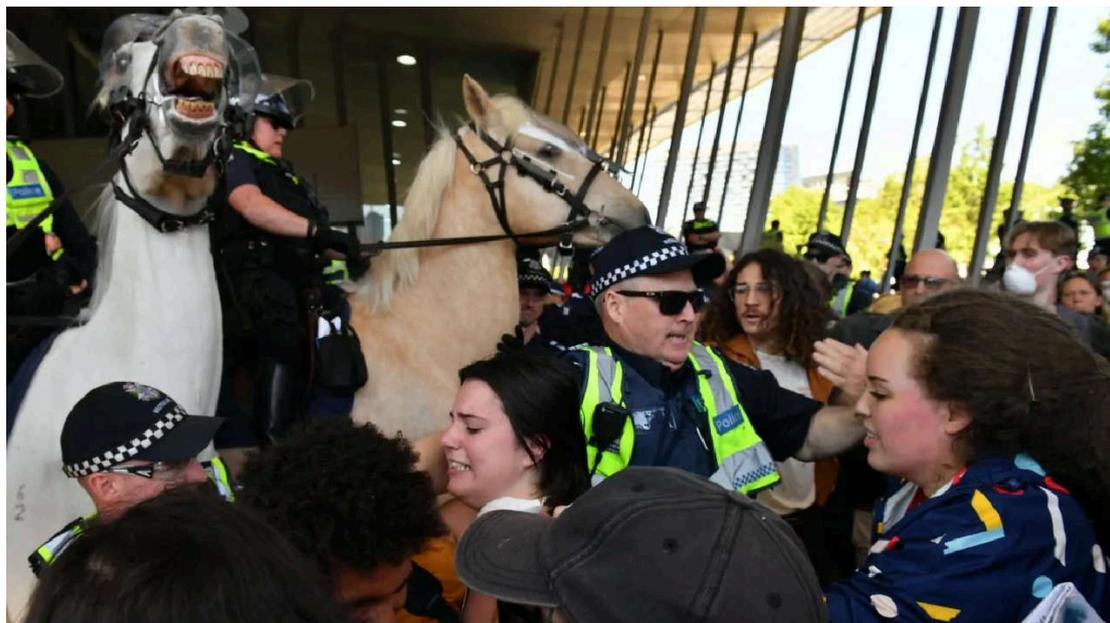


Figure 11: Photograph by Jake Nowakowski

**Incident report:** On Tuesday 22<sup>nd</sup> of October, 2019 at approx 8.15 a young woman standing in a line of protesters was knocked from behind by a police horse being riding into the line; was knocked to the ground with several others; was trampled by the horse, and was subsequently hospitalised with injuries.

*"I was peacefully protesting with the people. And then the police started pushing us from behind, so aggressive. So I went to get out because I had to go my childcare work placement. A police [officer] got me and pushed me in the ground and I fell forwards. On the way down, a horse reared up its front legs and they came down on my right leg and landed on my back. I hit my head hard and lost consciousness for about a minute. I woke up and I was on the ground with horse feet around my head. I was very scared and an old man came and helped me to get up and run away out of the area. I went to the first aid section. A boy treated me and I had panic attack and was crying a lot. I was placed on a stretcher and then in an ambulance and taken to Alfred Hospital."*

- Victim statement

*"Protesters had formed a line and had linked arms. Behind them the mounted police had started to urge their horses forward. The horses seemed to be shying back from moving into the line of protesters but police kept trying to encourage them forward into the backs of protesters.*

*I was standing around 2-3m in front of this with protesters facing me and the police line behind them. Any video from that time/area will show me wearing a hi-vis vest and hard hat.*

*There was a sudden violent movement and a group of the protesters was sent sprawling forward and downward. There might have been up to 5 or more people who went to ground.*

*Two people in particular landed very heavily and there was a sickening thud from their bodies hitting the ground. I actually feared for their lives at that moment.*

*As others crawled away and staggered to their feet, these two people stayed down.*

*I was in shock/stunned for a moment as my brain processed what I'd just seen.*

*A young woman with short, dark hair was lying face down and motionless and seemed unconscious for a bit but then looked at me with a blank or stunned expression.*

*I went to help her fearing she would be injured further if the horses trampled her. She was not responding to my questions but, as she was conscious, I decided the situation was too dangerous there, so another person and myself lifted her to her feet and assisted her away from the immediate danger. Other people came to help and took her to the medics."*

- Witness statement

If police choose to use force, they are required by law to limit it to that which is appropriate in the circumstances. It is clearly and unequivocally impossible to guarantee that a large horse will not seriously injure a member of the public when deployed in a crowd situation. If a person stumbles, trips, is pushed or falls under a police horse in such situations—which eventuated at the IMARC protest event—the police rider has limited to no ability to draw back or prevent a potentially fatal injury.

No level of control or rider skill can determine where a horse places its hooves in a chaotic situation. This clearly differentiates police horses from other police Use of Force options, such as batons, tasers, guns, and OC spray, which allow a more precise degree of directional control, and when the member can, to a large extent, control the amount and duration of force. All Use of Force options available to Victoria Police carry the risk of misuse and accident, but the use of horses, carries this risk inevitably to an unacceptable level.

Furthermore, the use of horses in this context clearly fails the principles of 'proportionality' and 'reasonableness' required by human rights law. Using a horse to push people involved in what may constitute the offence of 'obstruction,' or disobeying a police direction, falls well outside any test of proportionality. Therefore, it is not possible for Victoria Police to deploy horses

and still abide by its own Use of Force policy, practices and procedures, not to mention applicable human rights norms.

In common law and in Section 462A of the Crimes Act, police use of force must not be disproportionate to the objective as the person believes on reasonable grounds to be necessary.

The force must not be disproportionate to the “evil to be prevented” (*R v Turner* [1962] VR 30).

The level of force that is ‘reasonable’ is to be determined objectively.

In light of the above, this report recommends that Victoria Police immediately prohibit any use of police horses in public order or crowd control scenarios, and that their use near any crowds of people be restricted in general. We recommend that the Mounted Branch be restricted to ceremonial and patrol duties only. (See *Recommendation 2*).

#### 4. Use of police batons

Legal Observers recorded a police member using their extendable (ASP) police issue baton to strike and push back protesters. Several overhead baton strikes were recorded. Captured in the stills below. The police member using the baton in this case, after striking two people several times, was seemingly taken back behind the police line by a more senior officer.<sup>21</sup>



Figure 12: Tuesday 29/10/19 Video stills: Sam Crosser

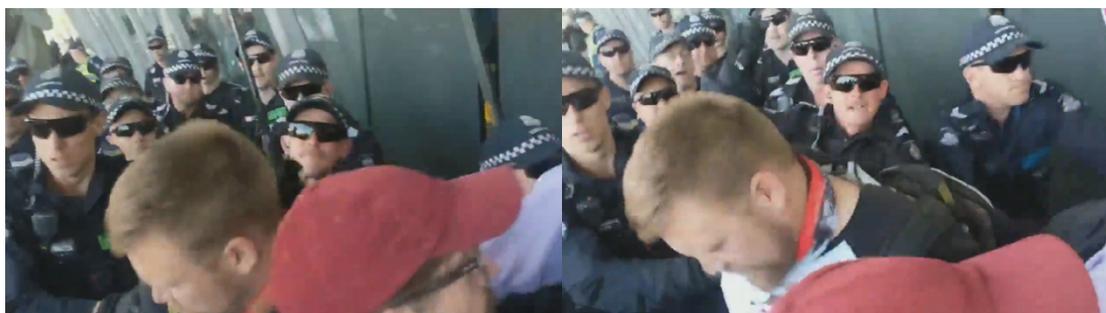


Figure 13: Tuesday 29/10/19 Video stills: Sam Cossar

Other uses of police using batons to strike protesters were observed and reported on by media outlets, or were published on Twitter by members of the public.<sup>22</sup>



Figure 14: Tuesday 29/10/19 Police member striking stationary protester multiple times. Video stills: Bloomberg TicToc

In both of the incidents recorded above the protesters had their backs turned to the police member and were either stationary or moving away from the police at the time they were struck by the baton. In neither circumstance were the protesters being aggressive or violent toward the police.

Our observations were that in these instances, the use of batons was excessive, harmful, unnecessary, and was well outside of Victoria Police's Use of Force guidelines.

In light of the above we recommend that Victoria Police update its Operational Safety and Tactics Training (OSTT) regulations and training to explicitly prohibit the use of batons against citizens involved in peaceful but non-compliant forms of protest activity;

The following clause should be inserted: *"Members should not use batons when a person is only passively resisting e.g. simply hanging limp or refusing to comply with instructions only."* (See Recommendation 1)

## 5. Use of OC foam

OC foam was used multiple times by police officers on the Tuesday and Wednesday of the event. The first use of OC foam was recorded by Legal Observers at 8:05 on Tuesday 29th October.

In the incidents described below, the use of OC foam appeared to be an undisciplined and indiscriminate reaction to a protest situation, and was neither necessary nor proportionate to any purported risk faced by police members at that time. It appeared that the use of OC spray was a measure to force compliance, rather than in response to any violence or physical threat to police or bystanders, that would warrant such use of force under common law requirements, or Section 462A of the Crimes Act.<sup>23</sup>

Our observations were that in numerous instances, the use of OC foam was excessive, harmful, unnecessary, and was well outside of Victoria Police's Use of Force guidelines.

*"I witnessed police deploy OC spray after about 4 of them failed to tear a protester from linking arms with others - there was no risk, it was purely to disperse the protesters so they could grab this person - I'm unsure if they were arrested or not as I moved away from the OC spray."*

*- Legal Observer*

**Incident:** Wednesday 30 October Approx 12:40. (See Figures 16-18 below)

*"... two young protesters climbed some poles outside the Centre and unfurled a banner. I am assuming that on any other day, this would attract a fine at most. As they descended, the organisers of the protest suggested we go and get lunch, have something to drink and relax. While that was happening, dozens of riot police suddenly arrived.*

*I was concerned for the welfare of the two climbers when the riot police arrived, so I joined a small crowd at the bottom of one of the poles that one climber was descending. I linked arms with people next to me and stood still.*

*No police officer spoke to me directly or as part of the group around me. At no point was I asked to move. I had a good view of the other pole. No protester there was violent and none were violent at the pole I was at. I had my back to many at my pole, but did not hear or see anything of concern. If I had noticed violence or sensed that violence was imminent from protesters, I would have left as I don't condone violence.*

*The next thing I remember was hearing the capsicum spray and feeling it landing on my head and smelling it. I have never been around the spray before, but knew instantly what it was as the air changed. I shut my eyes to protect them.*

*My next memory is of a young man dropping like a stone onto the ground. I thought he was unconscious. By then, there was a lot of pushing from police and I was concerned about the man on the ground, so another protester and I helped move him to a safer place. After that, I realised he was not unconscious, but he was probably suffering from the spray.*

*My next memory is of being on the ground. I don't know how I ended up there, so I suspect I was pushed or knocked from behind. I felt it was dangerous to stay on the ground but also dangerous to try to get up, so I put my arms over my head and stayed on the ground. A police officer helped me up and asked if I was okay (I have no complaints against this officer – he seemed genuinely concerned about my welfare).*

*I tried to get my bearings and figure out what was going on.*

*My next memory is of a different officer saying, "You're obstructing police" and I thought I was about to be arrested, but instead I was pushed towards the water away from the Centre. There then followed a bizarre series of being pushed in different directions by different police, accompanied by "you're obstructing police" which I think I heard 3 times in total. One of the officers pushed me back in the direction with another officer had just pushed me from. I had the sense that they didn't know where they wanted me to go. I was pushed up some steps, which I felt was dangerous as I had less control over where my feet went on the steps."*

*- Excerpt from a complaint made to IBAC.*



Figure 15: Protesters surround one of the columns where the climbers are descending: Photo - Julian Meehan

*“During the late morning, two protesters began to climb the poles near the Convention Centre entrance. I was aware that police were reacting to this activity and I could see officers pointing at the protesters climbing the structure.*

*The climbing was slow going and looked precarious, with the climbers using pole straps to inch their way upwards. Eventually, both protesters reached the roof structure and began to hang a banner about eight metres of the ground. Once the banner had been hung, the two climbers began their slow descent and an organiser announced that the morning’s activities were finished. He thanked those who attended and noted that the organised activities would resume the next morning.*



Figure 16: Police move in on crowd; Note OC canister Photo: Julian Meehan

*As the protesters began to make their way on to the nearby lawn, members of PORT formed two snatch teams and pushed into the dispersing crowd to try and surround the poles where the climbers were still descending. The officers pushed roughly through the crowd, and in response, protesters began to try to hold the space at the bottom of the poles. Police used force to try and push protesters away from the base of the pole, tackling protesters or striking them in the process. Unlike the conduct on the earlier day, I did not see any batons used during this conduct.*



Figure 17: One of several canisters of OC foam directed at protesters; Photo Julian Meehan

One of the climbers descending from the pole had a canister of OC foam deployed directly at her face. At this time, she was tethered to the pole and working on her straps, so she wasn't able to shield her eyes. Other officers deployed OC foam in the crowd, in an apparent attempt to disperse protesters who had gathered at the base of the poles. Officers deployed OC foam indiscriminately on protesters who had fallen to the ground as well as those who were attempting to move away. The climber who had been targeted was being roughly handled by police while she remained harnessed to the pole. Watching this struggle, I was concerned because officers appeared to be pulling her by holding her in a chokehold while she remained tethered to the pole. I was concerned she would suffer a neck injury due to the strain.



Figure 18: Entire crowd is sprayed with OC foam: Photo Julian Meehan

Officers continued to deploy OC foam and from later reports, I understand around seven arrests were made at this time. I noticed Senior Sergeant Harry Van Andel hurriedly rounding up the officers, giving instructions for them to retreat behind the temporary barrier that had been erected.

The officers retreated, with several taking up fighting stances while they moved backwards. This seemed strange because at no time during the fracas did I see a protester violently resist an officer.

The whole scene left me shaken and confused because the police operation was so ill-conceived and unexpectedly violent. Prior to witnessing this event I was not aware of the degree to which Victoria Police would deploy physical violence in response to a peaceful demonstration."

- Statement by Legal Observer

In the circumstance described above, police were dealing with a non-compliant group of protesters, holding space. However, aside from this non-compliance, police did not appear to be facing the violent or serious physical threat that would warrant such use of force under common law requirements or Section 462A of the Crimes Act.

Instead, the use of OC foam appeared to be deployed in order to force compliance and to move protesters.

The use of OC foam in these circumstances was used contrary to Victoria Police Guidelines. OC spray should not be used as a crowd control tool or to force compliance. Police also need to prohibit its use in crowded and confined spaces. The risk of harm increases with proximity. Use of OC and batons in crowded spaces can become indiscriminate and uncontrollable.

## Victoria Police Manual 2019 – Procedures and Guidelines (VPMG)

### Operational safety and equipment

#### 3.2 Use of OC aerosols

As stated in VPMP Operational safety and equipment, members must only use force in accordance with legal requirements (e.g. 462A Crimes Act, common law). In keeping with this, members should only use OC aerosols where they believe on reasonable grounds it is necessary and proportionate in situations:

- of violence or serious physical confrontation
- where violent or serious physical confrontation is imminent
- where a person is involved in violent or other physical conduct likely to seriously injure themselves or result in suicide

**Members should not use OC aerosols when a person is only passively resisting e.g. simply hanging limp or refusing to comply with instructions only.**

In all observed incidents, the OC spray affected an array of people in a seemingly indiscriminate manner—either over a large number of people in a crowd, or toward third parties such as media photographers or Legal Observers.

This use of OC spray reflects similar well documented incidents at other protest events in Victoria, where police have sprayed at people not directly confronting police, or at third parties such as street medics or media.<sup>24</sup>

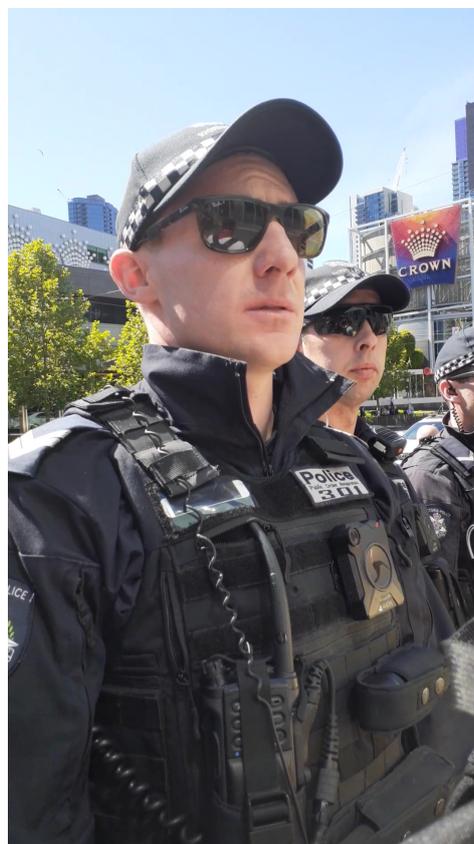
This history of misuse of OC foam indicates that there is a very poor transmission of police guidelines via the OSTT training within Victoria Police.

Victoria Police must provide clear directives to members and reinforce training practices to prevent further unlawful use of OC aerosols against citizens involved in peaceful but non-compliant forms of protest activity. (See *Recommendation 1-3*)

## 6. Removal or obscuring of identification name-tags and Body Worn Cameras

Legal Observers observed police officers removing their name badges, or turning them around to obscure their identification. In other instances, police equipment such as radios were mounted over identification tags, or the place where identification tags should have been worn, preventing the identification of the officer.

**Figure 19:** One of many members observed with name tags reversed or obscured.



All Victoria Police members in uniform are required to wear current issue name tags that specify first name or initial/s, surname and rank.<sup>25</sup>

The adoption of protective clothing, vests and tactical equipment should not prevent the individual identification names or numbers being readily visible. If police officers cannot be identified, then they can act with a high degree of impunity. Research suggests that police officers who wear nametags are more conscious of the needs of the general public they are interacting with.<sup>26</sup> Nametags, therefore, are an important safeguard that can help ensure individual police are held responsible for their actions.

Observers also noted occasions where newly issued Body Worn Cameras (BWC) or radios were positioned in places that would impede the camera's recording field of view, such as being mounted too low, or being mounted in such a way so as to be slightly off to one side, increasing the potential for the occurrence of 'blindspots.'

## 7. Court-issued banning notices

On the Wednesday, 30<sup>th</sup> October, the Herald Sun reported that Victoria Police were considering 'bans' on certain activists, in anticipation of their possible involvement in future events, such as protests against the Melbourne Cup which was to take place in the weeks soon-after the IMARC protests.<sup>27</sup>

Superintendent Therese Fitzgerald was reported in the article to have said, "We are certainly gathering intelligence, looking at people who are perhaps causing trouble and might be looking to cause trouble here [Flemington] at these events."<sup>28</sup>

Commander Libby Murphy was reported in the same article, stating, "If there is illegal activity and if we are in a position where we charge somebody with certain conditions and have appropriate intelligence that we could put to a court as part of bail conditions, we will certainly ask for that if we think it's necessary."

"We see some of the people who participate in activities and events across the state," she said. "We will be monitoring those people."

This disclosure of surveillance, monitoring, and the pre-emptive targeting of people who are politically active is extremely concerning. The existence of lists of targeted activists is something the human rights community in Australia has long been concerned about.

Victoria has a lengthy and shameful history of political surveillance and monitoring by police. Special Branch Unit infiltrated and compiled dossiers on citizens, community groups, and 'Persons of Interest'. It is not something Victoria Police should be proud of. In 1997, an Ombudsman's special investigation was launched after *The Age* revealed members of Victoria Police Operations Intelligence Unit had gone undercover to spy on dozens of community groups.<sup>29</sup> In one report, then Ombudsman Dr Barry Perry found that in some cases the unit's activities "cannot be justified by any stretch of the imagination."

If Victoria Police's Operations Response Unit (ORU) has continued some of this political intelligence gathering on Victorian citizens, then its activities should be scrutinised by parliament and by independent bodies such as the Independent Broad-based Anti-corruption Commission (IBAC) or the Victoria Equal Opportunity and Human Rights Commission (VEOHRC).

The pattern of policing following the much smaller protests against the International Mining And Resources Conference in 2018 during which homes were visited and searched by members of Victoria Police Operational Response Unit. The extent of arrests, interviews, phones, computers and other belongings being seized and the array of charges laid points to a worrying pattern of targeted policing which verges on political interference or 'strategic incapacitation' rather than protecting safety or upholding human rights. (See Recommendation 10)

The lawfulness of the use of bail as a form of injunction against public participation arose recently when onerous bail conditions were applied to people who had been arrested as part of the 'Spring Rebellion' protest organised by Extinction Rebellion. Those conditions were found by a magistrate to be an inappropriate use of the Bail Act. In 1994 The Supreme Court of Victoria, in an application for bail by East Gippsland forest protesters, Flynn and Patten, set a precedent in ruling that police could not use bail conditions as an injunction against participation in protests.<sup>30</sup>

## 8. Treatment of Legal Observers

Whilst the presence of Legal Observers at the protest event was generally respected and acknowledged by senior police officers, there were a number of incidents of ill-treatment and obstruction by police members.

On Tuesday 29th October at 11:05am, a Legal Observer, identified by a pink hi-visibility vest with "Legal Observer" labelled across the back and front, was told by a police member to "move away or be arrested," even though the observer was on the sidewalk with other spectators.

Other Legal Observers reported being pushed and shoved by police and very nearly being sprayed with OC foam whilst observing during the three days.

*"I was standing at the police barrier and the police officer shoved me without warning so hard I fell backwards. ... Other times that day I also had people thrown into me and was pushed down stairs by people – before being asked to move."*

- Statement by Legal Observer

Any obstruction, and mistreatment of legal or human rights observers is extremely concerning and needs to be prevented. (See Recommendation 6)

We remind the public and Victoria Police that civilian Legal Observers are classified as 'human rights defenders'. Under the United Nations Declaration of Human Rights Defenders, Legal Observers have a right to fulfill their role unhindered and without obstruction.<sup>31</sup>

## Recommendations:

In light of the above areas of concern, Melbourne Activist Legal Support makes the following recommendations:

1. Victoria Police update its Operational Safety and Tactics Training (OSTT) regulations and training to explicitly prohibit the use of force, pain-compliance techniques and weaponry against citizens involved in peaceful but non-compliant forms of protest activity. ie: There should be a clear instruction that states *"Members should not use this weapon / technique when a person is only passively resisting e.g. simply hanging limp or refusing to comply with instructions only."* included throughout the OSTT in relation to all police weapons and use of force options;
2. Victoria Police immediately restrict the Mounted Branch to ceremonial and patrol duties only and specifically prohibit any use of police horses in public order or crowd control scenarios;
3. Victoria Police provide clear directives to members and reinforce training practices to prevent further unlawful use of OC aerosols against citizens involved in peaceful but non-compliant forms of protest activity and provide clear directives against its use in crowded and confined spaces;
4. Victoria Police only deploy senior members in community liaison or negotiator roles who have the requisite rank and command authority over all police units likely to be deployed at future protest events;
5. Victoria Police consult with bodies such as the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) to review its VPMP *Police attendance at events and incidents*, operational planning and operation orders in relation to all large civil disobedience protest events in order to ensure that the rights to peaceful assembly, association and expression are fully respected and not limited by operational tactics that contain or restrict access to protests areas;
6. Victoria Police specifically note the role of civilian Legal and Human Rights Observers within its Crowd Control VPMG and for Forward Commanders to brief operational members of the requirement to ensure the safety and access of Legal Observers who may be present at subsequent protest events;
7. Victoria Police specifically note the role of media representatives and camera operators within its Crowd Control VPMG and for Forward Commanders to

- brief operational members of the requirement to ensure the safety and access of media who may be present at subsequent protest events;
8. Victoria Police ensure that Operational Orders contain risk assessments that acknowledge and incorporate the risk of limiting Victorian Charter rights through the open and visible deployment of police weaponry, police horses, and intrusive surveillance by drone or Evidence Gathering Teams;
  9. The Victorian Government develop protocols and directives to ministers and spokes people not to make broad public statements of support or condemnation of protest events until there has been some independent analysis and review of the policing, the context and the nature of the event;
  10. The Independent Broad-based Anti-corruption Commission (IBAC) and the Victoria Equal Opportunity and Human Rights Commission (VEOHRC) maintain a watching brief on the nature and extent of targeted surveillance, monitoring and policing of political activists by the Operations Response Unit (ORU).
  11. Victorian Government act upon the recommendations contained in the Independent Broad-based Anti-corruption Commission Committee's report into the external oversight and investigation of police corruption and misconduct in Victoria that called for a *Police Misconduct and Corruption Division* to be established within IBAC that could independently investigate allegations of serious police misconduct.<sup>32</sup>

This report is a public document and is provided to media, Victoria Police Professional Standards Command (PSC), Independent Broad-based Anti-corruption Commission (IBAC), the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), Government ministers, Members of Parliament and other agencies upon request.

For inquiries regarding this report, please contact: [melbactivistlegal@gmail.com](mailto:melbactivistlegal@gmail.com)

## Endnotes:

<sup>1</sup> We note that numerous activists involved in the much smaller protests against the International Mining And Resources Conference (IMARC) in 2018 had their homes raided and searched by members of Victoria Police Operational Response Unit in the months following that event; they were arrested, detained and interrogated and had phones, computers and other belongings seized. Some of the charges resulting from this event are still before the court.

<sup>2</sup> Melbourne Activist Legal Support: Statements of concern and protest reports can be found at: <https://melbourneactivistlegalsupport.org/news-issues/>

<sup>3</sup> Gillham, Patrick F. 2011. "Securitizing America: Strategic Incapacitation and the Policing of Protest Since the 11 September 2001 Terrorist Attacks." *Sociology Compass* 5(7):633-652.

<sup>4</sup> Victoria Police Manual (VPMG Crowd Control)

<sup>5</sup> <https://www.abc.net.au/news/2019-10-30/climate-rally-police-pepper-spray-protesters-imarc-melbourne/11652182>

<sup>6</sup> <https://www.theage.com.au/national/victoria/police-insist-actions-showed-fine-restraint-despite-violent-clashes-with-protesters-20191030-p535wk.html>

<sup>7</sup> The two most prominent cases of a police demeanour could be exemplified through the reports of one police officer having been disciplined for posting a sticker on his police-issued Body Worn Camera that said, "EAD hippy," where 'EAD' is slang "Eat A Dick." Another officer was observed to have been making racist comments and was later reprimanded for flashing a white-power hand gesture, to which the media revealed a context of his apparent affiliation with white-supremacist groups on social media. In both cases, Victoria Police at first vehemently denied the reports, and even questioned the credibility of those making the claims, only to admit a short time later that they were accurate, and that they were "extremely disappointed by the situation." These were the most publicised cases, but can reflect the general attitude and demeanour of the police presence observed throughout the IMARC event.

<sup>8</sup> In considering the need for tolerance of disruptive protest (whether intentional or collateral) the words of Laws LJ in *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 are insightful: "*Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them.*" (at [43]).

<sup>9</sup> Strasbourg case law which emphasises that a protester does not lose the right to assemble/protest peacefully unless they themselves are violent: "*an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration if the individual remains peaceful in his or her own intentions or behaviour.*" (*Ziliberberg v Moldova*, App no 61821/00 Admissibility decision of 4 May 2004).

<sup>10</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>

<sup>11</sup> <https://www.findlaw.com.au/articles/4539/what-is-breach-of-the-peace.aspx>

<sup>12</sup> *Jordan v Gibbon* (1863) 8 LT 391, cited in *White v South Australia* (2010) 106 SASR 521 [399].

<sup>13</sup> *R v Reid (No 2); Forbutt v Blake* (1981) 2 A Crim R 28, cited in *White v South Australia* (2010) 106 SASR 521 [399].

<sup>14</sup> *Percy v Director of Public Prosecutions* [1995] 1 WLR 1382.

<sup>15</sup> *Max Brenner* (Unreported, Magistrates Court of Victoria, 23 July 2012). As a Magistrates Court case, it has limited precedential value, but it is significant as it is the first case to examine trespass laws in public places in light of the *Charter*.

<sup>16</sup> See for example: della Porta, D. and Reiter, H., eds., 1998. *Policing protest: the control of mass demonstrations in contemporary democracies*. Minneapolis, MN: University of Minnesota Press.

<sup>17</sup> <https://www.theaustralian.com.au/nation/police-clash-with-climate-activists-outside-mining-conference-in-melbourne/news-story/3426da4225b27a15848edbeb1019193c> (Mining conference delegates tell of abuse by climate change protesters, *The Australian*, [Nick Evans](#), [Tessa Akerman](#) and [Scott Henry](#))

<sup>18</sup> "IMARC protesters to be banned from wreaking havoc on Melbourne Cup Carnival" *Herald Sun*, 30 October 2019  
<https://www.heraldsun.com.au/news/victoria/protesters-to-delay-cbd-traffic-for-a-second-day/news-story/4969141327d1e3f82ea43ac515ba4b9d>

<sup>19</sup> Victoria Police Manual (*VPMG Crowd Control*)

<sup>20</sup> <https://www.theguardian.com/australia-news/2019/oct/30/melbourne-police-arrest-12-on-second-day-of-climate-protest-at-imarc-mining-conference>

<sup>21</sup> Victorian Ombudsman: Investigation of police action at the World Economic Forum demonstrations September 2000  
<https://www.ombudsman.vic.gov.au/Publications/Parliamentary-Reports/Investigation-of-police-action-at-the-World-Econom>

<sup>22</sup> Bloomberg TicToc <https://twitter.com/tictoc/status/1189109782680080384>

<sup>23</sup> **AustLII, Crimes Act 1958**, Use of force to prevent the commission of an indictable offence;  
[http://classic.austlii.edu.au/au/legis/vic/consol\\_act/ca195882/s462a.html](http://classic.austlii.edu.au/au/legis/vic/consol_act/ca195882/s462a.html)

<sup>24</sup> See: STATEMENT OF CONCERN: Unlawful use of OC Foam 25/6/2017  
<https://melbourneactivistlegalsupport.org/2017/08/29/statement-of-concern-unlawful-use-of-oc-foam/>

<sup>25</sup> Victoria Police Manual, Uniform and Appearance Standards,.

<sup>26</sup> For example: <https://www.theioi.org/ioi-news/current-news/lack-of-identification-of-law-enforcement-officers-results-in-impunity>

<sup>27</sup> "IMARC protesters to be banned from wreaking havoc on Melbourne Cup Carnival" *Herald Sun*, 30 October 2019  
<https://www.heraldsun.com.au/news/victoria/protesters-to-delay-cbd-traffic-for-a-second-day/news-story/4969141327d1e3f82ea43ac515ba4b9d>

<sup>28</sup> [ibid](#)

<sup>29</sup> Report of the Ombudsman on Police Special Branch documents, Melbourne : Government Printer, 1990 <https://www.parliament.vic.gov.au/vufind/Record/40971>

<sup>30</sup> *R v Flynn & Patten* [Supreme Court of Victoria, {MC23/94}, 21/10/1994].

<sup>31</sup> Declaration on Human Rights Defenders  
<https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>

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<sup>32</sup> The report from the Inquiry into the external oversight and investigation of police corruption and misconduct in Victoria report can be found at <https://www.parliament.vic.gov.au/58th-parliament/ibacc/article/3802>