



Statement of Concern

13 April 2020

Good Friday Protest Suppressed by Police under COVID Restrictions

Melbourne Activist Legal Support (MALS) is extremely concerned about the way in which the police have used their special policing powers in relation to COVID-19 to suppress peaceful protest. The effect has been to prevent political communication. The situation highlights the lack of exception for peaceful protest under Victorian emergency restrictions.

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Police arrested one of the protest organisers before the protest, seizing his phone and home computers, and charging him with 'incitement.' Twenty-six of the approximately 30¹ protesters² present at the Mantra were issued or threatened with fines of \$1652 each.

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On Friday 10 April the Melbourne based Refugee Action Collective (RAC) hosted a cavalcade of cars that slowly circumnavigated the Mantra Hotel in Preston where asylum seekers have been held since the 25 July 2019. Each car held a maximum of two people (from the same household).³

Darebin Police officers told protesters they would be fined for breaching the Stay at Home directions.

It is understood that some police present were not wearing protective masks and not practicing social distancing while interviewing protest attendees.

Chris Breen, an organiser of the protest, was arrested before the cavalcade took place. Around 6 police officers came to his home and sized his phone and computers, along with the computer of his 15-year-old son.⁴ Mr Breen was held in police custody for 9 hours and charged with 'incitement'.

Inspector Tom Ebinger from Darebin Police was quoted as saying: *"They were here for an honourable purpose but community health has got to take priority for us and protest activity isn't legal in the current environment."*⁵

Notably in Sydney the day before, a protest staged by the United Workers Union (UWU) using the same motor cavalcade strategy attracted limited police intervention.

¹ <http://www.refugeeaction.org.au/?p=14125>

² <https://www.sbs.com.au/news/melbourne-refugee-protesters-fined-43-000-for-breaching-coronavirus-rules>

³ <https://www.theage.com.au/politics/federal/medevac-asylum-seekers-detained-in-a-melbourne-hotel-for-months-20191217-p53kmh.html>

⁴ <https://www.facebook.com/chris.breen.5439/posts/10156607252131741>

⁵ <https://www.heraldsun.com.au/truecrimeaustralia/police-courts/a-convoy-of-protesters-calls-for-refugees-beings-held-at-preston-mantra-to-be-released/news-story/679033dcb78ee791d55d42b5a4553826>

Mr Breen published a statement on his Facebook page on Saturday 12 April about his arrest and the protest.⁶

“In my house there were six police in total none of whom practiced social distancing (staying 1.5m away) either with myself or with each other,” the statement says.

In contrast, the Mantra protest motor cavalcade was designed to keep protesters isolated in their cars.

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MALS reiterates that efforts to protect public health in the face of the coronavirus pandemic may require temporary restrictions on some individual freedoms.⁷ However, under international human rights law such freedoms can only be restricted to the “extent strictly required” of the circumstances.⁸

MALS also reiterates its concern that a protest where tactics have been adapted to comply with government public health restrictions could be suppressed by police. This policing approach quashes protesters’ rights to free expression and peaceful association. These rights are recognised in the Victorian Charter and the right to political communication is implied under the Commonwealth Constitution.

MALS stresses the legality of protest and the importance of protecting these rights.

MALS notes that the Victorian Charter permits only “reasonable” limits to the rights to speech and association and only to the extent that “such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom”. Furthermore under the Charter these limits must take into account, amongst other factors, “the relationship between the limitation and its purpose.”⁹

MALS asserts that, because the cavalcade nature of the protest was designed to comply with the public health social distancing measures, the purpose of preventing the protest could not have been strictly public health.

This is supported by the fact that Mr Breen was charged with the offence of incitement under section 321G of the Crimes Act 1958.¹⁰ This offence is an indictable criminal offence, meaning that it cannot be heard without Mr Breen attending court.

MALS emphasises the need for the Victorian Government to exempt organised and peaceful protest from emergency restrictions in so far as they comply with necessary social distancing measures. The extension of the Victorian state of emergency heightens MALS’s concern regarding the lack of institutional oversight to the powers police officers have been given in enforcing the Stay at Home directions.

MALS asserts that Mr Breen’s arrest ahead of the protest and seizure of his phone and family computers constitutes an unnecessary and invasive tactic

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⁶ <https://www.facebook.com/chris.breen.5439/posts/10156607252131741>

⁷ <https://melbourneactivistlegalsupport.org/2020/04/04/statement-of-concern-unique-protest-squashed-by-police-due-to-covid-restrictions/>

⁸ *International Covenant on Civil and Political Rights*, article 4(1).

⁹ *Charter of Human Rights and Responsibilities 2006* (VIC) section 7(2)(d).

¹⁰ <https://www.facebook.com/chris.breen.5439/posts/10156610552661741>

MALS expresses extreme concern that police actions:

- Regarding the protest, were disproportionate to the purpose of the Deputy's Chief's Health Officer Stay at Home directions;
- Regarding Mr Breen's arrest and charges, were excessive in relation to the actions Mr Breen was alleged to 'incite;' and
- Portend a dampening on political communication and peaceful association that will be difficult to roll back.

MALS urges Victoria Police and all authorities to:

1. Exercise discretion in line with the public health purpose of the legislation;
2. Read down the Stay at Home directives to exclude political communication; and
3. Recognise that peaceful protest is right and a legitimate form of expression.

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This Statement of Concern 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.

A downloadable copy of this Statement is available *here* (PDF).

For inquiries regarding this statement please contact: media@melbactivistlegal.org.au

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About Melbourne Activist Legal Support

Melbourne Activist Legal Support (MALS) is an independent volunteer group of lawyers, human rights advocates and, law students and para-legals. 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 & political rights.