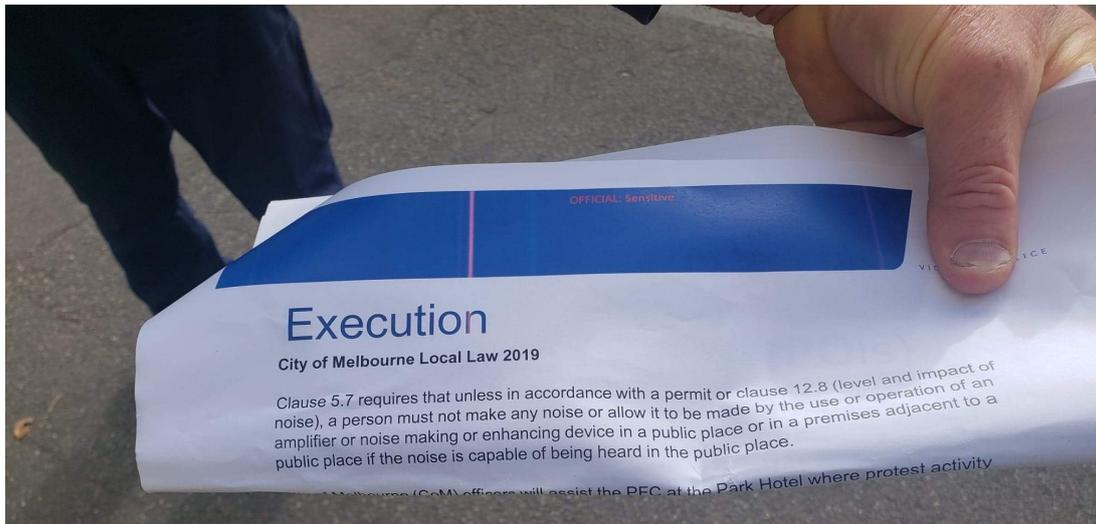




Statement of Concern

15 January 2021

The misuse of Council Local Laws to restrict protest



For some time now Victoria Police have been using a City of Melbourne Council by-law – [Local Activities Act 2019](#) – as a way of controlling and restricting protest events.

Specifically Victoria Police have been calling City of Melbourne compliance officers to enforce Sections 5.7 and 12.8 of this Local Law to restrict any use of amplified sound at protest events.

On Wednesday 13th January 2021, two protesters using a small portable speaker system were threatened with \$500 fines and then issued with *Notices to Comply* by council officers at a refugee [protest event](#) at 1 Treasury Place in East Melbourne. Protesters have subsequently been informed that a \$500 fine has been forwarded in the mail.

A video of the interaction can be viewed online [here](#).



Figure 2: Incident on 13th
January 2021

In this and other recent cases, police notify the City of Melbourne council and request Council *authorised officer* attend the event in order to issue the notices. Council officers are often accompanied by multiple police when handing out the Notices. In the case above, protesters were surrounded by police when council officers issued the notices. Police members have been provided with Execution instructions explaining use of the local law in the form of a powerpoint presentation print out in a clipboard. (See figure 1 and 2 above.)

Victoria Police members have also threatened people using hand-held megaphones at a related protest outside the Park Hotel in Swanston St, Carlton with these same local laws.

The use of local council by-laws to restrict and control protest is not unprecedented.

In 1969 several students were arrested for distributing 'Don't register' leaflets in the Melbourne CBD under a [Melbourne City Council by-law \(By-Law 418\)](#) which prohibited leaflet distribution without a permit. By-Law 418 was seen as an anti-democratic denial of freedom of speech and became an early test of civil disobedience tactics in opposition to conscription and the Vietnam War.

Within a week of these arrests a call went out and the following Saturday morning more than 500 demonstrators handed out 'Don't Register' leaflets at the GPO steps. This became a regular event at the GPO; many more

hundreds of arrests were made over the next nine months and several of us went to gaol for up to ten days for refusing to pay fines.¹

These particular by-laws were not used again until 2001, when Melbourne City Council officers handed out on-the-spot-fines of \$500 to worker's rights activists leafleting in the Bourke Street mall.

Police have used these council local laws in similar ways against various protest events over recent years. Megaphones and small portable speakers are regular features of protest event throughout Victoria. They provide the means for voices, political demands, arguments and protest music to be heard by large groups of participants and the public at large. The ability to amplify voices and political messaging is fundamental to protest.

Area of concern:

We believe that this practice is a misuse of council local laws which were developed for a different purpose. The Activities Local Law 2019 is made under the *Local Government Act 1989* and aims to "protect the amenity of public places" regulating things like dogs, motorized toys, busking and advertising signage and other activities. It is not designed or written to control or regulate protest events or to assist police in doing so. Section 5.7 is written specifically to regulate busking. (see Figure 3 below)

MALS observes that these council local laws are applied selectively by Victoria Police. Large public address systems are permitted at large protests without question in most circumstances, yet small speakers and hand-held megaphones have been subject to threats or council intervention in others. There appears to be no relation to actual noise levels and no complaints from the public have been referred to by police. It appears from our observations that police are applying these laws as a way to contain, or hamper particular protests on a selective basis. The refugee rights protests on Swanston Street in Carlton is ongoing and has been growing over recent weeks and we understand police are under pressure to contain or limit the protest.

This selective or targeted application of these local laws indicates that they are being used by police as an operational policing tool far beyond the public amenity purpose of the Act.

1. <http://www.livingpeacemuseum.org.au/omeka/exhibits/show/hvm-vietnam/vietnam-early-draft-resistance>

Further, the selective and targeted application of this local law against protest events undermines the human rights to freedom of expression (s 15) and peaceful assembly and association (s 16) in the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

A related case in the Federal Court, [Muldoon v Melbourne City Council](#), and its appeal case ([Kerrison v Melbourne City Council \[2014\] FCAFC 130 \(2014\)](#)), essentially found that Councils can make and enforce Local Laws which impact upon political communication *if* those Local Laws are “reasonably appropriate and adapted to serve a legitimate purpose”. This case dealt with the erection of tents and camping infrastructure and not with amplification of sound at protest events.

Although the Court found against the protesters in this instance it maintained that restrictions on the rights under the Charter require reasonableness and proportionality. The requirement to act compatibly with human rights remains in council acts and decisions.

“The Court’s reasoning on s 38(1) is confined to the making of ‘statutory provisions’ and not, for example, to the making of policies, guidelines and directions. The obligations to act compatibly with human rights and properly consider human rights continue to apply to such acts and decisions.”²

MALS asserts that the restriction of megaphones and small speakers at protest events serves no legitimate purpose and is entirely inappropriate. Protests by their nature can be loud and noisy events and the application of Sections 5.7 or 12.8 in these circumstances serves tactical policing priorities rather than any public amenity. The amplification of voice and sound is fundamental to protests and political expression.

It is deeply concerning that the City of Melbourne is permitting the use of its staff and amenities in ways which restrict and hamper fundamental rights of Victorians.

Recommendations:

1: We call upon the City of Melbourne Council to abandon the practice of selective enforcement of this by-law at protest events and issue instructions to its compliance

² <https://www.hrlc.org.au/human-rights-case-summaries/appeal-to-occupy-melbourne-decision-dismissed>

officers not to apply clauses 5.7 or 12.8 when it comes to protest activities in the City of Melbourne;

2: We call upon the City of Melbourne Council to specifically recognise the right of people to use megaphones and portable speakers at protest events and;

3: We urge Victoria Police to cease the practice of making requests to the City of Melbourne and other councils in regard to the selective enforcement of by-laws relating to protests;

4: We urge IBAC and VEOHRC to monitor the use of this by-law by police and council officer at protest events.

We request that human rights, legal and advocacy organisations raise these concerns with the City of Melbourne Council and Victoria Police directly.

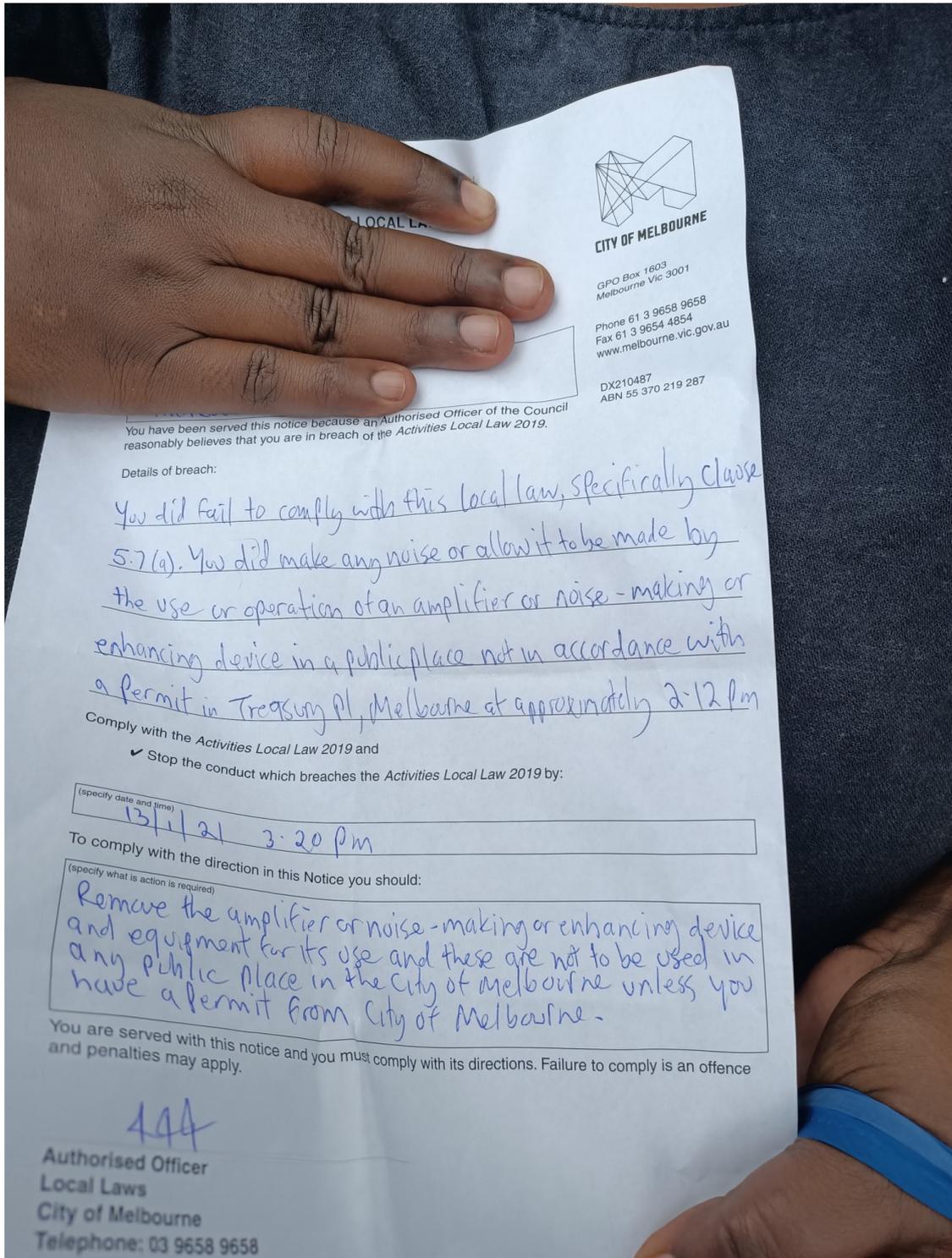


Figure 3. Photo of Notice to Comply provided by protest group

Permit required for busking

- 5.6 Unless in accordance with a *permit*, a *person* must not in or on a *public place*:
- (a) sound or play a musical instrument, sing, give a recitation or perform any conjuring, juggling, puppetry, mime or dance or other entertainment or do any of those things concurrently; or
 - (b) draw any message, picture or representation on a wall or pavement surface.
- 5.7 Unless in accordance with a *permit* or in accordance with clause 12.8, a *person* must not make any noise or allow it to be made by the use or operation of an amplifier or noise-making or enhancing device:
- (a) in a *public place*; or
 - (b) in *premises* adjacent to the *public place* if the noise is capable of being heard in the *public place*.

Figure 4: Section 5.7 Activities Local Laws 2019

Prohibition against causing excessive noise

- 12.8 Unless specifically authorised by and in accordance with legislation, a *person* must not in, on or over a *public place* or in *premises* adjacent to such a *public place* make or allow the making of a noise which:
- (a) is capable of interfering with the reasonable comfort of any *person* who may be in the vicinity in that *public place*; or
 - (b) at a point:
 - (i) if the noise comes from *premises* adjacent to a *public place*:
 - (A) not less than 3 metres from but outside and adjacent to the frontage of the *premises*; or
 - (B) outside but near the rear boundary of the *premises*; or
 - (C) outside but near the side boundary or extension of the side boundary of the *premises*; or
 - (ii) if the noise comes from a *public place*, not less than 3 metres from the source of the noise,

exceeds the *designated sound level* when measured on sound level measuring equipment.

Figure 5: Section 12.8 Activities Local Laws 2019

About this Statement

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.

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About Melbourne Activist Legal Support

Melbourne Activist Legal Support (MALS) is an independent volunteer group of lawyers, human rights advocates, 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.