

Friday, 12 December 2025

Supreme Court finds police unlawfully used capsicum spray at climate protest in landmark class action

The rights of protesters to demonstrate without fear of heavy-handed police tactics have today been upheld by the Supreme Court.

The court found in favour of a landmark class action over Victoria Police's use of capsicum spray against lead plaintiff Jordan Brown at a protest outside the International Mining and Resources Conference (IMARC) in Melbourne on 30 October 2019.

Her Honour Justice Harris held that police officers' conduct at the IMARC protest when they twice sprayed Mr Brown with Oleoresin Capsicum (OC) foam, also known as capsicum spray, was an unlawful use of force, constituting battery. The claims of other group members are yet to be resolved.

Phi Finney McDonald together with the Police Accountability Project at Inner Melbourne Community Legal launched the class action in 2022 that examined the ever-broadening scope of police powers, protection of protest rights and Victoria's human rights laws.

Mr Brown and class members alleged they suffered harm as a result of being sprayed with capsicum foam.

"The batteries caused by physical injury to the plaintiff were a material contributor to the plaintiff's psychological injury," Justice Harris said.

The evidence before the court "established that OC aerosols are a weapon which can cause painful effects on persons on whom it is deployed, including acute burning to the skin, painful eye irritation and the potential to cause breathing difficulties. It can also cause acute panic and confusion".

She said he also suffered ongoing psychological injury, including depression, anxiety and stress.

She awarded Mr Brown \$54,000 in damages in recognition that the incidents were "likely to increase his distress and humiliation".

It was not open to the court to grant declarations with respect to the conduct of individual police officers for a breach of the *Charter of Human Rights and Responsibilities Act 2006*.

However, her Honour made factual findings that the "deliberate deployment of OC foam on the plaintiff constituted cruel inhuman or degrading treatment" within the meaning of the charter, limiting his "right to peaceful assembly" and "did not satisfy the requirements of proportionality and justification".

Background

Between 29 and 31 October 2019, a large number of protestors demonstrated outside the IMARC conference in Melbourne to oppose the mining industry's violation of human rights, dispossession of First Nations people, exploitation of workers and to highlight climate justice.

The conduct of Victoria Police drew criticism, including the use of capsicum spray against groups of people exercising their right to protest. OC foam contains an extremely high concentration of capsaicin, a chemical found in chilli peppers, which can cause significant injuries and potentially permanent disabilities.

The claim alleged the use of OC foam on protestors was unlawful and breached the law when used as a coercive tool, or where there is no immediate or proportionate threat to police officers or the public.

Quotes attributed to lead plaintiff Jordan Brown:

“Putting up a banner protesting against the expansion of mining companies and technologies that destroy the planet should never be a reason for police to come in and use chemical weapons. Today is a vindication that the police’s conduct was wrong, the system is wrong, and it all needs to change.

“This decision is a condemnation of serious police violence. And one that I hope reverberates through the corridors of power to stop these weapons from being used against people peacefully exercising their democratic rights, and to change the culture to one that actually tolerates the right of political communication, democratic values, and makes the human rights charter in Victoria ultimately meaningful.”

Quotes attributed to Grahame Best, Special Counsel at Phi Finney McDonald:

“After a hard-fought case, this outcome is a welcome result for Mr Brown and other protestors subjected to unreasonable, unlawful and disproportionate use of police force at the IMARC demonstration in 2019. This has been an important case to test the boundaries of police powers relating to the use of capsicum spray during protests.

“Upholding the right to peacefully protest without harm is a key pillar of democracy. Phi Finney McDonald is proud to pursue class actions that ensure public authorities act according to the law, which we see as vital to a functioning democratic society.”

Quotes attributed to Michelle Reynolds, Director of Policy and Advocacy at Inner Melbourne Community Legal/Police Accountability Project:

“This outcome is the result of unflinching courage by Jordan Brown and other victims who were determined to hold police to account for their actions at the IMARC protest. But it would never have needed to be heard in court if Victoria had an effective independent oversight body to investigate police misconduct.

“This is an important judgement. When police harm occurs there needs to be consequences, particularly at a time when police have more powers than ever before over people attending protests.

“For the public to have confidence in Victoria Police, it must take heed of this decision by ensuring that there is enforcement of its rules around the use of capsicum spray and the use of force, and this should be underpinned by independent scrutiny.”

More information about the class action is available [here](#).

For more information, contact Mark Phillips – media@imcl.org.au or 0455 203 258