



Melbourne Activist Legal Support

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Dr. Alice Jill Edwards,
UN Special Rapporteur on Torture
United Nations Office of the High Commissioner
sent via email: hrc-sr-torture@un.org

Input for the report on the nature, scope and regulation of the production and trade of law enforcement equipment and weapons and the relationship with torture and other cruel, inhuman or degrading treatment or punishment

Dear Special Rapporteur,

Please accept this contribution to inform the Special Rapporteur's annual interim report to be presented to the General Assembly at its 78th Session in October 2023.

1. Summary

In light of Resolution 2001/62, which called on "all governments to take appropriate, effective legislative, administrative, judicial or other measures to prevent and prohibit the production, trade, export and use of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment",¹ Melbourne Activist Legal Support (MALS), seeks to raise concerns regarding the effectiveness of Australia's current law enforcement equipment and weapons regulatory regime.

Whilst our geographical focus is the south-eastern state of Victoria, we assert that the numerous issues we raise with the misuse of law enforcement weaponry are broadly common to other police forces in other Australian states and territories. Whilst the Commonwealth Government of Australia is the responsible party, these recommendations are directed, by necessity, to the State of Victoria.²

MALS' focus is on the policing of assemblies and related public order events. We recognise that the unlawful use of weapons and equipment occurs in a range of other policing settings, including prisons

and places of custody and in routine policing of particular racialised and criminalised communities/individuals.

In summary, MALS asserts that despite a range of conventions, agreements, and regulations prohibiting or regulating some law enforcements weapons in Australia, the current '*Use of Force*' regulations contained in both legislation and in police internal policies do not adequately protect against the unlawful, misuse of weapons by Australian law enforcement, which in numerous cases, can constitute, torture or other cruel, inhuman or degrading treatment. The lack of adequate human rights protection and enforcement mechanisms, combined with the lack of adequate police misconduct accountability systems in any Australian state means that serious human rights abuses involving police weapons or equipment continue to occur.

Based upon our observations and monitoring of public order policing in Victoria, Australia, MALS has made the following recommendations regarding the regulation of weapons and equipment:

The Victorian Government:

1. Legislate to strictly prohibit the use of all types of explosive devices, such as stinger grenades and flash-bangs, by Victoria Police due to their documented ability to cause severe injuries (see Section 3 below).
2. Legislate to prevent the use of OC aerosols against people involved in peaceful but non-compliant forms of protest activity, and ensure Victoria Police provides clear directives against its use in picket or protest scenarios and in crowded and confined spaces (see Section 4 below).
3. Review the use of kinetic impact projectile (KIP) weapons, such as baton round launchers and pepper ball firearms, by police and legislate to strictly regulate their use. (see Section 5 below).
4. Legislate to expressly prohibit any use of police horses in public order or crowd control scenarios (see section 6 below).
5. Establish a new, independent, and adequately resourced body with the capability to investigate police misconduct and conduct wide-ranging police monitoring regimes, including transparent data on police activity, to identify systemic problems with police use of powers, weapons and equipment. (See: <https://www.policeombudsmannow.com.au/>) .

2. About Melbourne Activist Legal Support

Melbourne Activist Legal Support (MALS) was founded in 2011 as an independent volunteer group of lawyers, barristers, human rights advocates, law students, and paralegals. MALS has trained and

fielded Legal Observer Teams at protest events, monitoring and reporting on public order policing in Victoria, Australia, for over 12 years. (See: mals.au/view/reports/).

MALS members include senior community legal centre staff, experienced criminal lawyers and barristers, academic legal researchers and experienced human rights advocates.

In 2021 we produced a *Police Weapons Identification Guide* with the Police Accountability Project (PAP) for journalists and legal observers (See: <https://mals.au/2020/11/25/victoria-police-weapon-id-guide/>).

3. Stinger/flash/stun/noise distraction grenades

Stinger grenades are a pain compliance, distraction and disorientation device. It may be thrown or launched in a crowd's general direction and deployed for ground bursts or aerial bursts at the operator's discretion. It then explodes, releasing nine 32-calibre rubber pellets to waist height with a range of five metres. These grenades are indiscriminate by nature and can affect those targeted by police and bystanders alike. As the proximity of a person or group of people to the explosion increases, so too does the risk of serious injury or death.

Use in a crowd-control context is often in conjunction with other means of force, including chemical irritants, often leading to panic, with the attendant risk of serious injury. When they explode, grenades can release shrapnel and fragments with sufficient energy to cause serious injury or even death. The concussive blast of the detonation can cause burns, hearing damage, eye injuries and psychological trauma.³ Documented injuries arising from the use of grenades against protesters include closed craniocerebral trauma, acute barotrauma and burns.⁴

MALS asserts that these and other weapons can and have been used unnecessarily, inappropriately, dangerously and in ways that infringe upon human rights.

MALS reported these weapons being used by Victoria Police during the policing of anti-lockdown protests in September 2021. (See: Policing of the anti-lockdown protests: <https://mals.au/2021/10/17/policing-antilockdown/>).

Whilst the unlawful use of these stinger or flash bangs by Victoria Police has not been observed explicitly by MALS, their documented ability to cause severe injuries, the consistent unlawful use of other weapons by Victoria Police, combined with the lack of accountability, means that the precautionary principle is warranted. MALS has recommended that the Victorian Government immediately ban all explosive devices such as Stinger grenades and flash-bangs.

4. Oleoresin Capsicum (OC) or Pepper Spray/Foam

Oleoresin Capsicum (OC spray) is commonly used by Victoria Police as a crowd control tool at protests and routinely against people experiencing a mental health crisis or simply being non-compliant.

MALS has tracked the misuse of OC spray as a coercive crowd control tool at protests over the past ten years. MALS legal observers have witnessed, recorded and documented multiple incidents of excessive, unnecessary and unlawful uses of OC Spray and noted the harmful physical, emotional and psychological effects on those affected. OC spray can cause significant injuries and potentially permanent disabilities.

The VPM states that capsicum spray should only be used in limited circumstances, including situations of violence or serious physical confrontation. The guidelines (VPMG Crowd Control) clearly stipulate that OC foam cannot be used against a person who is "passively resisting," yet OC foam was sprayed in precisely these circumstances. That stipulation is a critical human rights protection for citizens. It means that police should threaten or apply force solely to make a person comply with their directions unless there is a clear and proportionate rationale to do so.⁵

MALS would like to draw the Special Rapporteur's attention to a recently filed group/class action against Victoria Police's use of capsicum foam and excessive force against protesters at the International Mining and Resources Conference (IMARC) in Melbourne in October 2019. (*Jordan Brown v State of Victoria* (S ECI 2022 03440):

"The plaintiff alleges the police officers' conduct was an unreasonable, unlawful and disproportionate use of force constituting battery and assault. The plaintiff also alleges that the police officers' conduct engaged and limited the plaintiff's rights under the *Charter of Human Rights and Responsibilities Act 2006* (Vic)."

A team of MALS Legal Observers were present at this protest and documented multiple human rights infringements in a 45-page public report. (See: <https://mals.au/2019/12/06/report-the-policing-of-the-imarc-protests>).

The Australian-first class action by Phi Finney McDonald and the Police Accountability Project at Inner Melbourne Community Legal has alleged that the use of capsicum spray on protestors is unlawful when used as a coercive tool or where there is no immediate or proportionate threat to police officers or the public.

The Statement of Claim is available here: <https://www.supremecourt.vic.gov.au/areas/group-proceedings/imarc-protest-group-proceeding-class-action>

5. Kinetic impact projectile (KIP) Weapons

MALS has observed and documented the use of coercive and excessive crowd control tactics by Victoria Police over several years at protest events throughout Victoria and has noted that the increased use of weaponry as a crowd control mechanism sets a dangerous precedent and risks their use normalised in protest contexts.

MALS has documented the use of "vapour dispersal grenades (strong OC spray), foam baton rounds (hard squash-ball like projectiles) and flexible baton rounds ('beanbag' rounds). MALS has also noted the use of 12 gauge shot-gun style weapons firing baton rounds and single and multi-gas round launchers. These weapons can fire different types of kinetic impact projectiles (KIPs), including rubber or plastic bullets.

Capsicum canisters that detonate to release a cloud of capsicum can lead to deaths if the canisters strike people or if gas gets trapped in a confined area.⁶

The 40-millimetre rubber bullet launcher has resulted in significant injuries and fatalities around the world.⁷

Pepper ball rounds were confirmed to have been used by Victoria Police during the 'anti-lock down protest' at various locations in Melbourne's central business district on the afternoon of Saturday, 21 August 2021 and at multiple times and locations during protests in September 2021. (See: <https://mals.au/2021/10/17/policing-antilockdown/>).

Victoria Police have deployed the VKS Pepper Ball firearm. These semi-automatic rifles can fire capsicum rounds, blunt force pellets the size of marbles, or dye markers that "brand people for arrest later."

These pellets, and other types of KIPs, are incredibly dangerous and can blind, maim and leave permanent injuries depending on where they hit the body. The inherent inaccuracy, the potential for misuse, and the significant associated injuries of these types of weaponry make them inappropriate for use in public order policing and crowd control settings.

MALS asserts that these and other weapons can and have been used unnecessarily, inappropriately, dangerously and in ways that infringe upon human rights. The Victorian Government needs to instigate

a review of the use of kinetic impact projectile (KIP) weapons, such as baton round launchers and pepper ball firearms, by police and legislate to strictly regulate their use.

6. Use of police horses as weapons

Victoria Police continues to deploy mounted police (Victoria Police Mounted Branch) in protest and crowd control scenarios. MALS has documented multiple incidents of police horses injuring, pushing, trampling upon and frightening people over many years. There are no controls on the transfer of police horses (other than controls on animal exports).

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 clearly demonstrate 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 have noted that the police riders deliberately rode their horses directly into crowds and used them to push forward. Some riders have been seen repeatedly kicking their horses onward into the crowd of protesters. Even when the horse is under the rider's control, this deliberate manoeuvre is extremely dangerous and places members of the public at risk of serious, permanent or life-threatening injury.

On Tuesday, 22 October 2019, at the protests against the International Mining and Resources Conference (IMARC) in Melbourne, Australia, 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.

Any loss of control of a horse, even briefly, can have potentially fatal consequences. As the incident above 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. Certain groups may be particularly vulnerable when horses are used to disperse a crowd, particularly those with limited mobility, slow reaction times, or impaired sight (including persons with disabilities, elderly persons, children, and pregnant people, for example).

For these reasons, MALS has repeatedly called for any use of horses by Victoria Police to be immediately prohibited.

6. Overview of Australia's law enforcement equipment and weapons regulatory regime

Key international conventions and agreements to which Australia is a signatory that are relevant to the regulation of law enforcement equipment and weapons:

1. United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)
2. International Covenant on Civil and Political Rights (ICCPR)
3. Convention on Certain Conventional Weapons (CCW)
4. Arms Trade Treaty (ATT)
5. Chemical Weapons Convention (CWC)
6. Biological Weapons Convention (BWC)
7. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Treaty)
8. Convention on Cluster Munitions (CCM)

These agreements and conventions establish international norms and standards for the production, trade, and use of weapons and equipment, including law enforcement equipment and weapons. As a signatory to these agreements, Australia is obligated to comply with their provisions and may also be required to take measures to implement their requirements into national legislation and policy.

In Australia, law enforcement equipment import, export, and transit are regulated by the Customs (Prohibited Imports) Regulations 1956 and Customs (Prohibited Exports) Regulations 1958. However, no specific regulations prohibit the trade of all the items mentioned in question 1.1.

Some law enforcement weapons and equipment are listed explicitly as "prohibited goods" in Australian legislation. Importing and exporting such goods is prohibited, and they are not allowed to be possessed, sold, or used in Australia.

One example is the Taser XREP (eXtended Range Electronic Projectile), a wireless, self-contained electronic control device that fires a dart capable of delivering an electric shock to a target. The Taser XREP is prohibited under the Customs (Prohibited Imports) Regulations 1956 and the Customs (Prohibited Exports) Regulations 1958.

Other examples of prohibited law enforcement weapons and equipment include certain types of knives, knuckledusters, nunchaku, and blowpipes, which are listed as prohibited weapons under various state and territory laws.

Some law enforcement weapons and equipment have been subject to import bans in Australia. For example, in 2016, the importation of weighted leg restraints, restraint chairs, and neck restraints that compress the carotid artery (such as chokeholds) was banned under the Customs (Prohibited Imports) Amendment (Goods under the Customs (Prohibited Imports) Regulations 1956) Regulations 2016. The ban was introduced due to concerns that the use of such restraints could result in serious injury or death and that their use was not proportionate or necessary in law enforcement situations. Similarly, importing laser pointers that exceed a specific power output is banned under the Customs (Prohibited Imports) Regulations 1956.

7. Use of Force regulation in legislation

Australian law does regulate the use of force by law enforcement agencies, and the use of certain types of equipment is restricted. In general, the use of force by law enforcement agencies must be proportionate, necessary, and lawful.

Both federal and state laws regulate the use of force by law enforcement agencies in Australia. These laws restrict or prohibit certain types of weapons and equipment and their use.

The most significant federal legislation governing the use of force by law enforcement in Australia is the Criminal Code Act 1995 (Cth). Part 5.3 of the Criminal Code sets out the circumstances in which the use of force by law enforcement officers is justified. The use of force is only justified if it is necessary and proportionate to prevent or minimise harm and only after other alternatives have been considered.

In addition to the Criminal Code, the use of force by law enforcement is regulated by state and territory laws, such as the Police Powers and Responsibilities Act 2000 (Qld), the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW), and the Victoria Police Act 2013 (Vic).

8. Use of Force by Victoria Police

Police use of force in Victoria is regulated by legislation, common law and Victoria Police's policies, such as the Victoria Police Manual (VPM).

Since 2006, legislation governing police use of force has included the Charter of Human Rights and Responsibilities Act 2006 (Vic) (Charter). The Charter imposes direct legal human rights obligations on Victoria Police and its members to protect and promote human rights.

Under Section 38 of the Charter, it is unlawful for Police Officers in the performance of their duties to:

- (a) act in a way that was incompatible with a human right;
- (b) when making a decision, fail to give proper consideration to a relevant human right.

Despite the explicit obligations of the State and Victoria Police to protect human rights, there has not been any substantial development of practical human rights-based policies and guidance around the use of force or the use of specific weapons or equipment by Victoria Police since the introduction of the Charter.

The Victoria Police Act 2013 (Vic), which provides for the governance, regulation, duties or functions of Victoria Police, does not explicitly refer to, regulate or ban any particular law enforcement weapon or equipment. Section 255 of the Act does prohibit the "Unauthorised manufacture, possession, use or supply of Victoria Police identification or Victoria Police equipment."

Key legislative provisions governing the use of force in Victoria are found in the Crimes Act 1958 (Vic) (Crimes Act) and the Mental Health Act 1986 (Vic) (Mental Health Act).

Section 462A of the Crimes Act sets out the circumstances in which force may be used by any person and the limitations on the extent of that force that may be used. It provides:

A person may use such force not disproportionate to the objective as he believes on reasonable grounds to be necessary to prevent the commission, continuance or completion of an indictable offence or to effect or assist in effecting the lawful arrest of a person committing or suspected of committing any offence.

In addition, members of Victoria Police are authorised to use reasonable force in relation to apprehending mentally ill persons attempting suicide or serious bodily harm.[8](#)

Furthermore, the VPM, which provides operational guidelines for Victoria Police, sets out further guidance on the use of force, including the use of various types of weapons and equipment. The VPM explains that the use of force, including operational safety equipment, must be used only in accordance with the law, such as s 462A of the Crimes Act.

Conclusion

In light of the above, MALS asserts that the current Use of Force regulations contained in both legislation and police internal policies do not adequately protect against the unlawful misuse of

weapons by Australian law enforcement, which in numerous cases, can constitute, torture or other cruel, inhuman or degrading treatment.

Kind regards,

Melbourne Activist Legal Support (MALS)

End notes:

1. UN Commission on Human Rights, Resolution 2001/62, Torture and other cruel, inhuman or degrading treatment or punishment, paras 8-9.
2. ICCPR (art 50) states, "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions." which explicitly reinforces the international legal principle established in the Vienna Convention on the Law of Treaties (art 27) which holds that federated political arrangements cannot be invoked as a justification for failing to fulfil treaty obligations.
3. Physicians for Human Rights and the International Network of Civil Liberties Organizations (INCLO), Lethal in Disguise: The Health Consequences of Crowd-Control Weapons, op. cit., note 10, pp. 66-68.
4. CPT, "Report to the Moldovan Government on the Visit to Moldova Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 to 31 July 2009", CPT/Inf (2009) 37, para. 13, <https://www.refworld.org/docid/4ee23cc72.html>
5. *OC aerosols should only be used where there are reasonable grounds to believe the use is necessary and proportionate in situations:*
 - (i) of violence or serious physical confrontation
 - (ii) where violent or serious physical confrontation is imminent
 - (iii) where a person is involved in violent or other physical conduct and 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."*
6. Haar, Rohini et al. 'Health impacts of chemical irritants used for crowd control: a systematic review of the injuries and deaths caused by tear gas and pepper spray'. BMC Public Health, 19 October 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5649076/>.
7. Chauvin A et al. (2019) 'Ocular injuries caused by less-lethal weapons in France' Lancet, 394, [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)31807-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)31807-0/fulltext); Lartzien R et al. (2019) 'Yellow vests protests: facial injuries from rubber bullets', Lancet 394, [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)31764-7/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)31764-7/fulltext); Vandoorne, Saskya. 'At least 24 Yellow Vests lost eyes in violent protests. Now they're more determined than ever', CNN, 14 July 2019, <https://edition.cnn.com/2019/07/14/europe/france-bastille-day-injured-yellow-vests-intl/index.html>
8. Mental Health Act s 10.