

**IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY**

No M46 of 2018

BETWEEN:

KATHLEEN CLUBB
Appellant

AND:

ALYCE EDWARDS
First Respondent

10

AND:

ATTORNEY-GENERAL FOR VICTORIA
Second Respondent

20

APPELLANT'S SUPPLEMENTARY SUBMISSIONS



Filed on behalf of the Appellant by
Khor & Burr
Lawyers
Suite 1, 594 St Kilda Road
MELBOURNE VIC 3004

Dated: 8 October 2018
Tel: (03) 9629 8711
Fax: (03) 9629 8477
Mobile: 0409 821448
Email: d.burr@khorburr.com.au
Ref: David Burr

Part I: Certification

1. This document is in a form suitable to be placed on the internet.

Part II: Argument

Overview

2. The privacy, dignity, physical safety and psychological wellbeing of people accessing premises where abortions are provided are protected by a variety of criminal and civil laws.¹
3. Full copies of the relevant statutory provisions are in the Annexure, save in respect of the Local Laws in respect of which the relevant Melbourne Local Law is provided and references are provided for the other 78 council local laws.

10 Physical safety

4. Assault: *Crimes Act 1958* (Vic) s 31 (*Crimes Act*)
5. Affray: *Crimes Act* s 195H
6. Obstruction of footpaths: *Summary Offences Act 1966* (Vic) s 4(e) (*SOA*)
7. Move on directions: *SOA* s 6
8. Disorderly conduct: *SOA* s 17A
9. Common assault: *SOA* s 23
10. Assaulting registered health practitioners: *SOA* s 51A
11. Besetting premises: *SOA* s 52(1A)
12. Riotous meetings: *Unlawful Assemblies and Processions Act 1958* (Vic) s 5 (*UAP Act*)

20 13. Unlawful political or religious processions and assemblies: *UAP Act* s 10

14. Unreasonably obstructing pedestrians: *Melbourne City Council Activities Local Law 2009* cl 5.9 (*MCCALL*)
15. Common law – tort of false imprisonment
16. Common law – tort of battery
17. Common law – tort of trespass to land

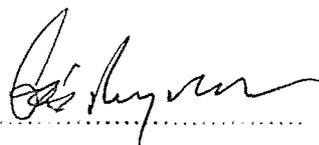
¹ Including paragraphs (a), (c) and (d) of the definition of “prohibited behaviour” in s 185B of the *Public Health and Wellbeing Act 2008* (Vic).

Privacy and dignity

- 18. Stalking: *Crimes Act* s 21A
- 19. Abusive, insulting, offensive words or manner: *SOA* s 17(1)
- 20. Installation, use or maintenance of optical or aural surveillance devices: *Surveillance Devices Act 1999* (Vic)
- 21. Committing an offensive act: *MCCALL* cl 2.1(f).
- 22. Using insulting words: *MCCALL* cl 2.1 (g).
- 23. Distributing handbills: *MCALL* cl 5.4.
- 24. Common law – torts of defamation and injurious falsehood
- 10 25. Common law – torts of private and public nuisance

Psychological wellbeing

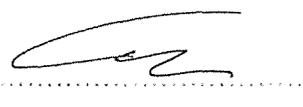
- 26. Stalking: *Crimes Act* s 21A
- 27. Threatening words or manner: *SOA* s 17(1)
- 28. Adversely affecting the amenity of a public place: *MCCALL* cl 2.1 (b).
- 29. Interfering with the use or enjoyment of a public place or the personal comfort of a person in a public place: *MCCALL* cl 2.1 (c).
- 30. Annoying a person in a public place: *MCCALL* cl 2.1 (d).
- 31. Threatening words: *MCALL* cl 2.1 (g).
- 32. Committing any nuisance: *MCALL* cl 2.1 (a).
- 20 33. Common law – tort of assault
- 34. Common law – tort of intimidation
- 35. Common law – torts of defamation and injurious falsehood



G. O'L. Reynolds



F. C. Brohier



D. P. Hume

ANNEXURE A –VICTORIAN AND COMMOWEALTH STATUTES

CRIMES ACT 1958 - SECT 21A

Stalking

S. 21A(1) amended by No. 48/1997

s. 60(1)(Sch. 1 item 14).

(1) A person must not stalk another person.

Penalty: Level 5 imprisonment (10 years maximum).

10 S. 21A(2) amended by Nos 105/2003 s. 4(1), 20/2011 s. 3(3).

(2) A person (the offender) stalks another person (the victim) if the offender engages in a course of conduct which includes any of the following—

(a) following the victim or any other person;

S. 21A(2)(b) substituted by No. 105/2003 s. 3(1).

(b) contacting the victim or any other person by post, telephone, fax, text message, e-mail or other electronic communication or by any other means whatsoever;

S. 21A(2)(ba) inserted by No. 105/2003 s. 3(1).

(ba) publishing on the Internet or by an e-mail or other electronic communication to any person a statement or other material—

20 (i) relating to the victim or any other person; or

(ii) purporting to relate to, or to originate from, the victim or any other person;

S. 21A(2)(bb) inserted by No. 105/2003 s. 3(1).

(bb) causing an unauthorised computer function (within the meaning of Subdivision (6) of Division 3) in a computer owned or used by the victim or any other person;

S. 21A(2)(bc) inserted by No. 105/2003 s. 3(1).

(bc) tracing the victim's or any other person's use of the Internet or of e-mail or other electronic communications;

(c) entering or loitering outside or near the victim's or any other person's place of residence or of business or any other place frequented by the victim or the other person;

(d) interfering with property in the victim's or any other person's possession (whether or not the offender has an interest in the property);

S. 21A(2)(da) inserted by No. 20/2011 s. 3(1).

(da) making threats to the victim;

S. 21A(2)(db) inserted by No. 20/2011 s. 3(1).

(db) using abusive or offensive words to or in the presence of the victim;

S. 21A(2)(dc) inserted by No. 20/2011 s. 3(1).

(dc) performing abusive or offensive acts in the presence of the victim;

S. 21A(2)(dd) inserted by No. 20/2011 s. 3(1).

10 (dd) directing abusive or offensive acts towards the victim;

(e) giving offensive material to the victim or any other person or leaving it where it will be found by, given to or brought to the attention of, the victim or the other person;

(f) keeping the victim or any other person under surveillance;

S. 21A(2)(g) substituted by No. 20/2011 s. 3(2).

(g) acting in any other way that could reasonably be expected—

(i) to cause physical or mental harm to the victim, including self-harm; or

(ii) to arouse apprehension or fear in the victim for his or her own safety or that of any other person—

20 with the intention of causing physical or mental harm to the victim, including self-harm, or of arousing apprehension or fear in the victim for his or her own safety or that of any other person.

S. 21A(3) substituted by No. 105/2003 s. 4(2), amended by No. 20/2011 s. 3(4).

(3) For the purposes of this section an offender also has the intention to cause physical or mental harm to the victim, including self-harm, or to arouse apprehension or fear in the victim for his or her own safety or that of any other person if—

(a) the offender knows that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear; or

(b) the offender in all the particular circumstances ought to have understood that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear and it actually did have that result.

(4) This section does not apply to conduct engaged in by a person performing official duties for the purpose of—

- (a) the enforcement of the criminal law; or
- (b) the administration of any Act; or
- (c) the enforcement of a law imposing a pecuniary penalty; or
- (d) the execution of a warrant; or
- (e) the protection of the public revenue—

that, but for this subsection, would constitute an offence against subsection (1).

S. 21A(4A) inserted by No. 105/2003 s. 3(2).

10 (4A) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that the course of conduct was engaged in without malice—

- (a) in the normal course of a lawful business, trade, profession or enterprise (including that of any body or person whose business, or whose principal business, is the publication, or arranging for the publication, of news or current affairs material); or
- (b) for the purpose of an industrial dispute; or
- (c) for the purpose of engaging in political activities or discussion or communicating with respect to public affairs.

S. 21A(5) repealed by No. 68/2008 s. 69(1).

* * * * *

20 **S. 21A(5A) inserted by No. 52/2008 s. 242, repealed by No. 68/2008 s. 69(1).**

* * * * *

S. 21A(6) inserted by No. 105/2003 s. 5.

(6) It is immaterial that some or all of the course of conduct constituting an offence against subsection (1) occurred outside Victoria, so long as the victim was in Victoria at the time at which that conduct occurred.

S. 21A(7) inserted by No. 105/2003 s. 5.

(7) It is immaterial that the victim was outside Victoria at the time at which some or all of the course of conduct constituting an offence against subsection (1) occurred, so long as that conduct occurred in Victoria.

S. 21A(8) inserted by No. 20/2011 s. 3(5).

(8) In this section—

"mental harm" includes—

- (a) psychological harm; and
- (b) suicidal thoughts.

Note to s. 21A inserted by No. 68/2008 s. 69(2), substituted by No. 53/2010 s. 221(Sch. item 4).

Note

The Personal Safety Intervention Orders Act 2010 provides that the Court within the meaning of that Act may make a personal safety intervention order in respect of stalking.

10 CRIMES ACT 1958 - SECT 31

Assaults

S. 31(1) amended by Nos 49/1991 s. 119(1)

(Sch. 2 item 13), 48/1997

s. 60(1)(Sch. 1 item 16).

(1) A person who—

(a) assaults or threatens to assault another person with intent to commit an indictable offence; or

20 S. 31(1)(b) amended by Nos 43/2011 s. 16, 37/2014 s. 10(Sch. item 36.3), substituted by No. 69/2014 s. 13(1), amended by Nos 28/2016 s. 7(1), 43/2017 s. 48(1).

(b) assaults or threatens to assault, resists or intentionally obstructs an emergency worker on duty or a youth justice custodial worker on duty, or a custodial officer on duty, knowing or being reckless as to whether the person was an emergency worker or a youth justice custodial worker or a custodial officer; or

S. 31(1)(ba) inserted by No. 69/2014 s. 13(1), amended by Nos 20/2015 s. 21, 28/2016 s. 7(2), 43/2017 s. 48(2).

30 (ba) assaults or threatens to assault, resists or intentionally obstructs a person lawfully assisting an emergency worker on duty or a youth justice custodial worker on duty, or a custodial officer on duty, knowing or being reckless as to whether the person was assisting an emergency worker or a youth justice custodial worker or a custodial officer; or

(c) assaults or threatens to assault a person with intent to resist or prevent the lawful apprehension or detention of a person—

is guilty of an indictable offence.

Penalty: Level 6 imprisonment (5 years maximum).

(2) In subsection (1), "assault" means the direct or indirect application of force by a person to the body of, or to clothing or equipment worn by, another person where the application of force is—

(a) without lawful excuse; and

(b) with intent to inflict or being reckless as to the infliction of bodily injury, pain, discomfort, damage, insult or deprivation of liberty—

10 and results in the infliction of any such consequence (whether or not the consequence inflicted is the consequence intended or foreseen).

S. 31(2A) inserted by No. 69/2014 s. 13(2).

(2A) In subsection (1)—

S. 31(2A) defs of custodial officer on duty and custodial officer inserted by No. 28/2016 s. 7(3), amended by No. 38/2017 s. 81(1).

custodial officer on duty and custodial officer have the same meanings as in section 10AA of the **Sentencing Act 1991** ;

S. 31(2A) defs of emergency worker on duty and emergency worker amended as emergency worker on duty , emergency worker , youth justice custodial worker on duty and youth justice custodial worker by No. 43/2017 s. 48(3).

20 "emergency worker on duty", emergency worker , youth justice custodial worker on duty and youth justice custodial worker have the same meanings as in section 10AA of the **Sentencing Act 1991** .

(3) In subsection (2)—

"application of force" includes—

(a) application of heat, light, electric current or any other form of energy; and

(b) application of matter in solid, liquid or gaseous form.

CRIMES ACT 1958 - SECT 195H

Affray

30 (1) A person who uses or threatens unlawful violence and whose conduct would cause a person of reasonable firmness present at the scene to be terrified commits an offence and is liable to—

(a) level 6 imprisonment (5 years maximum); or

(b) imprisonment for 7 years if, at the time of committing the offence, the person is wearing a face covering used primarily—

(i) to conceal the person's identity; or

(ii) to protect the person from the effects of a crowd-controlling substance.

Example of unlawful violence

Engaging in unlawful fighting with another person.

10 (2) A person is guilty of an offence under subsection (1) only if the person intends to use or threaten violence or is reckless as to whether the person's conduct involves the use of violence or threatens violence.

(3) For the purposes of subsection (1), a threat of unlawful violence must involve more than words alone.

(4) An offence under subsection (1) may be committed—

(a) in private as well as public places; and

(b) whether or not a person of reasonable firmness is present at the scene.

(5) For the purpose of subsection (1), if 2 or more persons use or threaten unlawful violence—

(a) it is the conduct of them taken together that must be considered; and

20 (b) it is immaterial whether or not those persons use or threaten unlawful violence simultaneously.

Division 3—Criminal damage to property

Pt 1 Div. 3 Subdiv. (1) (Heading) repealed by No. 9228 s. 2(1)(c), new Pt 1 Div 3 Subdiv. (1) (Heading) inserted by No. 9228 s. 2(1)(d).

(1) General offences and procedural provisions

S. 196 repealed by No. 9228 s. 2(1)(c), new s. 196 inserted by No. 9228 s. 2(1)(d).

SUMMARY OFFENCES ACT 1966 - SECT 4

Offences relating to the good order of towns etc.

Any person who—

(e) obstructs a footpath or road whether by allowing a vehicle to remain across such footpath or road or by placing goods thereon or otherwise;

SUMMARY OFFENCES ACT 1966 - SECT 6

Direction to move on

S. 6(1) amended by Nos 43/2011 s. 48(2), 37/2014 s. 10(Sch. item 160.2).

10 (1) A police officer, or a protective services officer on duty at a designated place, may give a direction to a person or persons in a public place to leave the public place, or part of the public place, if the police officer or protective services officer suspects on reasonable grounds that—

(a) the person is or persons are breaching, or likely to breach, the peace; or

(b) the person is or persons are endangering, or likely to endanger, the safety of any other person; or

S. 6(1)(c) amended by Nos 15/2014 s. 3(1), 6/2015 s. 4(1).

(c) the behaviour of the person or persons is likely to cause injury to a person or damage to property or is otherwise a risk to public safety.

S. 6(1)(d)–(h) inserted by No. 15/2014 s. 3(2), repealed by No. 6/2015 s. 4(2).

* * * * *

20 S. 6(1A) inserted by No. 15/2014 s. 3(3), amended by No. 37/2014 s. 10(Sch. item 160.3), repealed by No. 6/2015 s. 4(3).

* * * * *

S. 6(2) amended by Nos 15/2014 s. 3(4), 6/2015 s. 4(4).

(2) A direction under this section may be given orally.

(3) A direction under this section may direct the person or persons not to return to the public place or part of a public place or not to be in that public place or part for a specified period of not more than 24 hours.

(4) A person must not without reasonable excuse contravene a direction given to the person under this section.

Penalty: 5 penalty units.

S. 6(4A) inserted by No. 45/2017 s. 57(1).

(4A) A protective services officer may only exercise the power to give a direction under this section in relation to a person who is at a public place that is at, or in the vicinity of, a designated place.

S. 6(5) amended by Nos 15/2014 s. 3(5), 6/2015 s. 4(5).

(5) This section does not apply in relation to a person who, whether in the company of other persons or not, is—

(a) picketing a place of employment; or

(b) demonstrating or protesting about a particular issue; or

10 (c) speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publicise the person's view about a particular issue.

S. 6(6) inserted by No. 15/2014 s. 3(6), amended by No. 37/2014 s. 10(Sch. item 160.3), repealed by No. 6/2015 s. 4(6).

Pt 1 Div. 1B (Heading and ss 6C–6J) inserted by No. 15/2014 s. 5, amended by No. 37/2014 s. 10(Sch. items 160.6, 160.7), repealed by No. 6/2015 s. 7, new Pt 1 Div. 1B (Heading and new s. 6A) inserted by No. 32/2017 s. 3.

SUMMARY OFFENCES ACT 1966 - SECT 17

Obscene, indecent, threatening language and behaviour etc. in public

20 S. 17(1) amended by Nos 9509 s. 11(1), 9554 s. 2(2)(Sch. 2 item 313) (as amended by No. 9902 s. 2(1)(Sch. item 194(a)(b)), 9945 s. 3(1) (Sch. 1 item 100).

(1) Any person who in or near a public place or within the view or hearing of any person being or passing therein or thereon—

(a) sings an obscene song or ballad;

S. 17(1)(b) amended by No. 8267 s. 6.

(b) writes or draws exhibits or displays an indecent or obscene word figure or representation;

(c) uses profane indecent or obscene language or threatening abusive or insulting words;
or

30 (d) behaves in a riotous indecent offensive or insulting manner—

shall be guilty of an offence.

Penalty: 10 penalty units or imprisonment for two months;

For a second offence—15 penalty units or imprisonment for three months;

For a third or subsequent offence—25 penalty units or imprisonment for six months.

S. 17(1A) inserted by No. 47/2016 s. 24.

(1A) For the purposes of subsection (1)(d), behaviour that is indecent offensive or insulting includes behaviour that involves a person exposing (to any extent) the person's anal or genital region.

Example

Mooning or streaking.

10 S. 17(2) amended by No. 37/2014 s. 10(Sch. item 160.8).

(2) Where in the opinion of the chairman presiding at a public meeting any person in or near the hall room or building in which the meeting is being held—

- (a) behaves in a riotous indecent offensive threatening or insulting manner; or
- (b) uses threatening abusive obscene indecent or insulting words—

the chairman may verbally direct any police officer who is present to remove such person from the hall room or building or the neighbourhood thereof and the police officer shall remove such person accordingly.

S. 17(3) inserted by No. 9519 s. 2.

20 (3) Where at a general meeting of a corporation a person wilfully fails to obey a ruling or direction given in good faith by the chairman presiding at the meeting for the preservation of order at the meeting, such person shall be liable to be removed from the meeting if the meeting so resolves or where because the meeting has been so disrupted that it is not practicable to put such a resolution to the meeting the Chairman so directs.

S. 17(4) inserted by No. 9519 s. 2, amended by No. 37/2014 s. 10(Sch. item 160.8).

(4) Where a person is liable to be removed from a meeting under subsection (3) the Chairman may verbally direct any police officer who is present to remove such person from the hall, room or building in which the meeting is being held or the neighbourhood thereof and the police officer shall remove such person accordingly.

S. 17A inserted by No. 92/2009 s. 6, amended by No. 18/2010 s. 52.

30 **SUMMARY OFFENCES ACT 1966 - SECT 17A**

Disorderly conduct

Any person who behaves in a disorderly manner in a public place is guilty of an offence and liable to a penalty not exceeding 10 penalty units.

SUMMARY OFFENCES ACT 1966 - SECT 23

Common assault

Any person who unlawfully assaults or beats another person shall be guilty of an offence.

Penalty: 15 penalty units or imprisonment for three months.

SUMMARY OFFENCES ACT 1966 - SECT 51A

Assaulting registered health practitioners

(1) If a registered health practitioner—

10 (a) is employed, self-employed or engaged to provide, or support the provision of, care or treatment in a hospital to a person; and

(b) is in the hospital or on the hospital premises—

a person must not assault the practitioner, knowing or being reckless as to whether the practitioner is a health practitioner.

Penalty: 60 penalty units or imprisonment for 6 months.

(2) If a registered health practitioner—

(a) is employed, self-employed or engaged to provide, or support the provision of, care or treatment, other than in a hospital, to a person; and

20 (b) is providing, or supporting the provision of, care or treatment to a person in the course of that employment, self-employment or engagement—

a person must not assault the practitioner, knowing or being reckless as to whether the practitioner is a health practitioner acting in accordance with paragraph (b).

Penalty: 60 penalty units or imprisonment for 6 months.

(3) In this section—

health practitioner and *registered health practitioner* have the same meanings as in the Health Practitioner Regulation National Law;

"hospital" means a public hospital, private hospital, denominational hospital or day procedure centre within the meaning of the **Health Services Act 1988** ;

"hospital premises" includes parking areas, driveways, courtyards and forecourts on the premises occupied by a hospital.

S. 52 (Heading) inserted by No. 69/2014 s. 15(1).

SUMMARY OFFENCES ACT 1966 - SECT 52

Besetting premises

S. 52(1) amended by Nos 8085 s. 3(1), 9554 s. 2(2)(Sch. 2 item 339), 12/1989 s. 4(1)(Sch. 2 item 115.12), 43/2011 s. 51(1), 37/2014 s. 10(Sch. item 160.17(a)), repealed by No. 69/2014 s. 15(2).

* * * * *

S. 52(1A) inserted by No. 8085 s. 3(2), amended by No. 9554 s. 2(2)(Sch. 2 item 340).

10 (1A) Any person who together with others wilfully and without lawful authority besets any premises, whether public or private, for the purpose and with the effect of obstructing, hindering, or impeding by an assemblage of persons the exercise by any person of any lawful right to enter, use, or leave such premises shall be guilty of an offence.

Penalty: 15 penalty units or imprisonment for three months.

S. 52(2) amended by Nos 46/1998

s. 7(Sch. 1), 43/2011 s. 51(2), 37/2014 s. 10(Sch. item 160.17(b)), repealed by No. 69/2014 s. 15(3).

Unlawful Assemblies and Processions Act 1958 No. 6406 of 1958

20 Part I—Unlawful Assemblies

5 Riotous meetings

It shall not be lawful for any persons to assemble together riotously and tumultuously and to the disturbance of the public peace at any place in Victoria; and if persons so unlawfully riotously and tumultuously assembled or any of them happen to be killed maimed or hurt in the dispersing seizing or apprehending or endeavouring to disperse seize or apprehend them, the persons so dispersing seizing or apprehending or endeavouring to disperse seize or apprehend the offenders shall be free discharged and indemnified of for and concerning the killing maiming or hurting of any such person or persons so unlawfully assembled as aforesaid.

30

No. 3796 s. 5.
S.5 amended by No. 9902 s. 2(1)(Sch. item 258).

PART II—PARTY PROCESSIONS

10 Unlawful processions and assemblies

Any body of persons who meet and parade together or join in procession or who assemble in any public house tavern or other place within Victoria for the purpose of celebrating or commemorating any festival anniversary or political event relating to or connected with any religious or political distinction or differences between any classes of Her Majesty's subjects or of demonstrating any such religious or political distinction or difference, and who bear wear or have among them any fire-arms or other offensive weapons or have publicly exhibited any banner emblem flag or symbol the display whereof may be calculated to provoke animosity between Her Majesty's subjects of different religious persuasions or who are accompanied by any music of a like nature or tendency, shall be and be deemed to be an unlawful assembly; and every person present thereat shall be and be deemed to be guilty of an indictable offence and shall upon conviction thereof be liable to be punished accordingly: Provided that nothing in this Part shall extend to any procession or assemblage held in the course of any election of any member to serve in the Parliament of Victoria.

Public Health and Wellbeing Act 2008

No. 46 of 2008

61 Offence of causing a nuisance

(1) A person must not—

(a) cause a nuisance; or

(b) knowingly allow or suffer a nuisance to exist on, or emanate from, any land owned or occupied by that person.

20 Penalty: In the case of a natural person,

120 penalty units;

In the case of a body corporate,

600 penalty units.

(2) A person is not guilty of an offence under subsection (1)(b) if the person had a lawful excuse for knowingly allowing or suffering a nuisance to exist on, or emanate from, any land owned or occupied by that person.

SURVEILLANCE DEVICES ACT 1999 - SECT 6

30 **Regulation of installation, use and maintenance of listening devices**

S. 6(1) amended by No. 26/2004 s. 7(a).

(1) Subject to subsection (2), a person must not knowingly install, use or maintain a listening device to overhear, record, monitor or listen to a private conversation to which the person is not a party, without the express or implied consent of each party to the conversation.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

40 In the case of a body corporate, 1200 penalty units.

Note to s. 6(1) inserted by No. 13/2013 s. 42(1).

Note

Section 32A applies to an offence against this subsection.

(2) Subsection (1) does not apply to—

S. 6(2)(a) amended by No. 26/2004 s. 7(b).

(a) the installation, use or maintenance of a listening device in accordance with a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or

S. 6(2)(b) amended by No. 26/2004 s. 7(c).

10 (b) the installation, use or maintenance of a listening device in accordance with a law of the Commonwealth; or

S. 6(2)(c) inserted by No. 26/2004 s. 7(d).

(c) the use of a listening device by a law enforcement officer to monitor or record a private conversation to which he or she is not a party if—

(i) at least one party to the conversation consents to the monitoring or recording; and

20 (ii) the law enforcement officer is acting in the course of his or her duty; and

S. 6(2)(c)(iii) amended by No. 54/2017 s. 4(1)(a).

(iii) the law enforcement officer reasonably believes that it is necessary to monitor or record the conversation for the protection of any person's safety; or

S. 6(2)(d) inserted by No. 54/2017 s. 4(1)(b).

30 (d) the overt use of a body-worn camera or a tablet computer by a police officer or an ambulance officer acting in the course of the officer's duty and the recording of a private conversation to which the officer is not a party is inadvertent, unexpected or incidental to that use; or

S. 6(2)(e) inserted by No. 54/2017 s. 4(1)(b).

(e) the overt use of a body-worn camera or a tablet computer by a prescribed person, or a person belonging to a prescribed class of persons, acting in the course of the person's duties in the prescribed circumstances and the recording of a private conversation to which the person is not a party is inadvertent, unexpected or incidental to that use.

40 S. 6(3) inserted by No. 54/2017 s. 4(2).

(3) For the purposes of subsection (2)(d) and (e), a police officer, an ambulance officer, a prescribed person or a person belonging to a prescribed class of persons is not required to inform a person that the person is being recorded with a body-worn camera or a tablet computer.

SURVEILLANCE DEVICES ACT 1999 - SECT 7

Regulation of installation, use and maintenance of optical surveillance devices

50 S. 7(1) amended by No. 26/2004 s. 7(a).

(1) Subject to subsection (2), a person must not knowingly install, use or maintain an optical surveillance device to record visually or observe a private activity to which the person is not a party, without the express or implied consent of each party to the activity.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate, 1200 penalty units.

10 Note to s. 7(1) inserted by No. 13/2013 s. 42(1).

Note

Section 32A applies to an offence against this subsection.

(2) Subsection (1) does not apply to—

20 S. 7(2)(a) amended by No. 26/2004 s. 7(b).

(a) the installation, use or maintenance of an optical surveillance device in accordance with a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or

(b) the installation, use or maintenance of an optical surveillance device in accordance with a law of the Commonwealth; or

(c) the installation, use or maintenance of an optical surveillance device by a law enforcement officer in the performance of his or her duty on premises if—

30 (i) an occupier of the premises authorises that installation, use or maintenance; and

S. 7(2)(c)(ii) amended by No. 54/2017 s. 5(1)(a).

(ii) the installation, use or maintenance is reasonably necessary for the protection of any person's lawful interests; or

S. 7(2)(d) inserted by No. 54/2017 s. 5(1)(b).

40 (d) the overt use of a body-worn camera or a tablet computer by a police officer or an ambulance officer acting in the course of the officer's duty and the recording of a private activity to which the officer is not a party is inadvertent, unexpected or incidental to that use; or

S. 7(2)(e) inserted by No. 54/2017 s. 5(1)(b).

(e) the overt use of a body-worn camera or a tablet computer by a prescribed person, or a person belonging to a prescribed class of persons, acting in the course of the person's duties in the prescribed circumstances and the recording of a private activity to which the person is not a party is inadvertent, unexpected or incidental to that use.

50 S. 7(3) inserted by No. 54/2017 s. 5(2).

(3) For the purposes of subsection (2)(d) and (e), a police officer, an ambulance officer, a prescribed person or a person belonging to a prescribed class of persons is not required to inform a person that the person is being recorded with a body-worn camera or a tablet computer.

ANNEXURE B- LOCAL LAWS

MELBOURNE CITY COUNCIL

ACTIVITIES LOCAL LAW 2009

(Incorporating Amendments up to and including the Activities (Miscellaneous Amendments) Local Law 2015)

Part 1 Preliminary

Title

10 1.1 This Local Law is called the “Activities Local Law 2009”.

What are the objectives of this Local Law?

1.2 The objectives of this Local Law are to:

(a) promote a physical and social environment free from hazards to health, in which the residents of and visitors to the *municipality* can enjoy a quality of life that meets the general expectations of the community;

(b) control noise, behaviour, *liquor* consumption, *animals*, *spruiking*, busking, *advertising sign*, works and obstructions on *roads*, street trading, the use of *toy vehicles* and other activities;

(c) protect the use of *public places* and control activities in or near them;

(d) provide for safety in *public places*;

20 (e) regulate and manage the legitimate display of *street art*, in or within view from, a *public place* so as to facilitate a vibrant urban culture;

(f) provide for, control and manage the use of *premises* and *vehicles* in particular circumstances;

(g) regulate the number and manner of keeping of *animals*;

(h) control, prevent and abate *nuisances*; and

(i) provide for the peace, order and good government of the *municipality*.

1.3 This Local Law contributes to the Council's long term and responsible approach to the ongoing health, vitality, prosperity, security and welfare of the city's residents, businesses and environment.

What authorises this Local Law?

1.4 This Local Law is made under the provisions of Part 5 of the *Local Government Act 1989*. City of Melbourne Activities Local Law 2009 6

When does this Local Law commence?

1.5 This Local Law commences on the first day of July 2009.

To what part of the *municipality* does this Local Law apply?

1.6 Subject to clauses 1.7, 1.8 and 1.9, this Local Law applies throughout the whole of the *municipality*.

1.7 Clauses 3.1 to 3.3 inclusive apply as follows:

- (a) to that part of the *municipality* which is *prescribed* by the *Council* for the purposes of this clause 1.7(a), throughout the whole of each year; and
- (b) to that part of the *municipality* which is *prescribed* by the *Council* for the purposes of this clause 1.7(b), during:

(i) *prescribed* days or periods; or

10 (ii) on each day during the race period within the meaning of the *Australian Grand Prix Act 1994* (or its successor legislation) and to 8.00 a.m. on the day immediately following the last day of the race period; or

(iii) on any day during the period specified in a notice signed by the *Council's* Chief Executive Officer as being the period during which Melbourne Moomba Waterfest or any other festival is to occur and to 8.00 a.m. on the day immediately following the last day of the period specified in the notice.

Are there any exemptions from this Local Law?

1.8 Nothing in this Local Law prevents a member, officer or employee of:

(a) the Commonwealth or State Government;

20 (b) the Victoria Police;

(c) the Metropolitan Fire Brigade;

(d) the Ambulance Service - Victoria;

(e) any first-aid or emergency service organisation;

(f) any military or civil-defence force; or

(g) a *public body* other than the *Council*;

from performing any of the duties he or she is lawfully entitled or required to perform while engaged in those duties, provided that:

(i) 48 hours notice of the person's intention to perform the activity is given to the *Council* beforehand, or

30 (ii) in the event of an emergency, notice is given as soon as practicable after the activity has been carried out. City of Melbourne Activities Local Law 2009 7

1.9 Nothing in this Local Law relating to an *animal* prevents:

- (a) a blind or deaf *person* being entitled at all times and in all places to be accompanied by a guide dog; or
- (b) a member of the Victoria Police in charge of a police dog or police horse from carrying out police duties.

1.10 The *Council* may *prescribe* specified *persons*, *premises* or areas within the *municipality* to be exempt from a provision of this Local Law for a specified time and on specified conditions.

Definitions

1.11 The words identified in italics throughout this Local Law are intended to have the following meaning:

... "*Act*" means the *Local Government Act 1989*.

10

"*advertising sign*" includes any letter, figure, symbol, device, poster, sign, banner or message used for notifying:

- (a) the existence of the sale or use of any *goods* or services; or
- (b) the holding of an event or function; or
- (c) the promotion of any person, company, organisation or thing.

... "*building*" includes a part of a building and the whole or any part of a structure, temporary building or structure, fence, gate, wall, *pavement light*, outbuilding, service installation, mast, pole and other appurtenance of a building.

"*building works*" includes works, activities, events and practices for or in connection with the construction, alteration, demolition or removal of a building.

"*central city*" means the area depicted in the *Plan*.

20

...

"*Council*" means the Melbourne City Council.

"*Council land*" means land, buildings and facilities which are owned or occupied by or vested in the *Council* or in respect of which the *Council* has the care and management to which the public has access whether an entry fee is paid or not.

... "*handbill*" includes a placard, notice, book, pamphlet, paper and advertisement other than an advertisement affixed to any *building* abutting any *road* or public highway, but does not include a newspaper, magazine or book sold by a newsvendor or other *person* authorised by the *Council* nor any *handbill* containing material of an exclusively political nature distributed by hand to any *person*.

... "*premises*" includes the whole or part of any land, a lot on a plan of subdivision and a *building* or *building* under construction.

... "*public place*" has the same meaning as in the *Summary Offences Act 1966* and, to the extent that it does not include the following, also includes:

10

- (a) any place *prescribed* by the *Council* as a public place, other than an interior part of a *building* which is not occupied by the *Council* or a *public body* unless that part has been *prescribed* by the *Council*;
- (b) any place to which the public whether upon or without payment for admittance have or are permitted to have access, but does not include a shopping centre;
- (c) any park, garden, reserve or other place of public recreation or resort;
- (d) any vacant land or vacant space adjoining any *road*;
- (e) any wharf, pier or jetty; and
- (f) a *Council building*.

... "*road*" has the same meaning as in the *Act*.

Prohibited activities in *public places*

2.1 A *person* must not in, on or within the hearing or sight of a *public place*:

20

- (a) cause or commit any *nuisance*;
- (b) adversely affect the amenity of that *public place*;
- (c) interfere with the use or enjoyment of that *public place* or the personal comfort of another *person* in or on that *public place*;
- (d) annoy, molest or obstruct any other *person* in or on that *public place*;
- (e) defecate or urinate except in a toilet or urinal (as the case may be) in a public convenience; or
- (f) commit an indecent or offensive act; or
- (g) use any threatening, abusive or insulting words.

2.2 A *person* must not in or on a *public place*:

30

- (a) destroy, damage, alter, mark, deface or remove any property or thing;
- (b) walk on or over any plant bed, plant box or garden plot except with the consent of the *proprietor*;
- (c) cause risk of personal injury or damage to property by climbing or walking on or over, sitting on or sliding down any structure, *building*, fixture, free standing object, appliance or equipment (other than play equipment or recreation and fitness equipment installed by the *Council*) except with the consent of the *proprietor*;
- (d) after having been directed to leave by an *authorised officer*, enter or remain in any area, place, *building* or structure that is not open to the public; or

- (e) enter any area, place, *building* or structure in respect of which the *Council* has *prescribed* an entry fee, unless the entry fee has been paid to *an authorised officer* or authorised representative of the *Council* or the *person* enters in accordance with the written consent of the *Council* or the *proprietor*.

Authorisation required for *advertising sign* or other thing on or between *buildings*

4.1 Unless:

- (a) in accordance with a *permit*; or
- (b) to do so is specifically authorised by and in accordance with legislation or the *Planning Scheme* or a planning permit issued under it; or

10 (c) no part of the *advertising sign* or other thing is in, on or over a *public place*,

a person must not hang, *place* or affix any *advertising sign* or other thing on or between any part of a *building*, plant, pole, post or other structure or allow that to occur.

Permit required for handbills

5.4 Unless in accordance with a *permit*, a *person* must not display or distribute to any *person* any *handbill* in or on a *public place* or allow that to occur.

Permit required for filming and *special events*

5.5 Unless in accordance with a *permit*, a *person* must not in or on a *road* or any other *public place prescribed* by the *Council*:

(a) conduct any *special event*.

20 (b) conduct any filming where the film is for a commercial purpose, public exhibition or as part of a course conducted by a tertiary institution.

Note: The *Council* will take into account the *Filming Approval Act 2014* in considering an application for a *permit* under clause 5.5(b).

Causing obstruction

5.9 A *person* must not:

(a) without a *permit*, unreasonably obstruct or interfere with the passage of pedestrian or vehicular traffic in or on a *public place*; or

(b) invite, encourage or allow the congregation of *persons* so as to unreasonably obstruct or interfere with the passage of pedestrian or vehicular traffic in or on a *public place*.

30 <https://www.melbourne.vic.gov.au/about-council/governance-transparency/acts-local-laws/Pages/activities-local-law-2009.aspx>

Other Local Laws

Alpine Shire Council Local Law No. 2 Municipal Places (2012) Part 2- 7; Ararat Rural City Council General Local Law- 29,51 and 85; City of Ballarat Community Local Law- 60, 66 and 68; Banyule City Council General Local Law No. 1- 8.2, 8.3 and 8.4; Bass Coast Shire Council Local Law No. 1- 75 and 82; Baw Baw Shire Council Local Law- 4.10 and 4.11; Bayside City Council Local Law- 50, 58 and 69; Benalla Rural City Council Community Local Law- 8, 24 and 27; City of Boroondara Amenity Local Law- 26 and 30; Brimbank City Council General Local Law- 25, 28 and 34; Buloke Shire Council Community Local Law- 28; Campaspe Shire Council General Local Law- 9,13 and 15; Cardinia Shire Council Local Law- 11; City of Casey Community Local Law- 21 and 40; Central Goldfields Shire Council General Local Law-2.3; Colac Otway Shire Council General Local Law- 11, 16, 17, 116 and 119; Corangamite Shire Council Local Law- 8, 31 and 45; Darebin City Council General Local Law- 24 and 37; East Gippsland Local Law General Local Law 66 and 71; Frankston City Council General Local Law- 2.1 and 2.11; Gannawarra Shire Council Local Law- 59 and 71; Glen Eira City Council Local Law- 318, 326 and 404; Glenelg Shire Council General Local Law- 2.13 and 4.28; Golden Plain Shire Local Law- 48; City of Greater Bendigo Community Local Law- 4.3, 4.4 and 4.7; City of Greater Dandenong Local Law- 7 and 28; City of Greater Geelong Local Law- 41, 67, 71 and 75, Greater Shepparton City Council Local Law- 2.10, 4.5 and 10.1; Hepburn Shire Council Local Law- 3.7 and 12.4; Hindmarsh Shire Council Local Law- 610; Hobsons Bay City Council Community Local Law- 106, 107 and 123; Horsham Rural City Council Community Local Law 2.9; Hume City Council General Local Law- 2.1; Indigo Shire Council Local Law- 17, 18 and 44; City of Kingston Community Local Law 80, 157 and 158; Knox City Council Local Law- 7; Latrobe City Council Local Law – 72, 73, 74, 76 and 140; Loddon Shire Council Local Law- 6 and 7.2; Macedon Ranges Shire Council Local Law- 1, 2 and 3; Manningham City Council Community Local Law- Part 2- 2.1, 2.3, 2.4, 2.5, 2.6 and 2.12; Mansfield Shire Council Local Law- 8 and 22; Maribyrnong City Council General Purpose Local Law- 9 and 26; Maroondah City Council General Local Law- 1 and 2; City of Melton General Local Law- 27, 42 49 and 50; Mildura Rural City Council Community Local Law- 5.3, 5.6 and 5.8; Mitchell Shire Council Local Law- 8; Moira Shire Council Local Law- 2.13 and 4.5; City of Monash Local Law- 14 and 124; Moonee Valley City Council Local Law- Part 2 and 4.21; Moorabool Shire Council General Local Law- 24 and 31; Moreland City Council General Local Law- Part 2, Part 7 and 14.1; Mornington Peninsula Shire General Purpose Local Law- 12, 14 and 66; Mount Alexander Shire Council Local Law- 8 and 16; Moyne Shire Council General Local Law- 25, 35 and 44; Murrindindi Shire Council Community Local Law- 17, 18, 23 and 57; Nillumbik Shire Council Amenity Local Law- 9 and 17; Northern Grampians Shire Council General Local Law- 29 and 35; City of Port Phillip Local Law- 15 and 52; Pyrenees Shire Council Local Law- 8.1, 8.5, 8.6 and 7.6.1; Borough of Queenscliffe Local Law- 12, 14 and 44; South Gippsland Shire Council General Local Law- 38 and 41; Southern Grampians Shire

Council Community Local Law- 57, 59, 60 and 65; City of Stonnington General Local Law 117, 122, 123, 140 and 141; Strathbogie Shire Council Community Local Law- 20 and 41; Surf Coast Shire Council Local Law- 2.3, 2.5, 2.6,4.1 and 6.2; Swan Hill Rural City Council Local Law- 39, 45, 47 and 52; Towong Shire Council Local Law- 3.9; Rural City of Wangaratta Local Law- 9.4, 15 and 24; Warrnambool City Council Local Law- L3.16, L4.8, L5.104 and L5.105; Wellington Shire Council Local Law No. 2- 7.19 and Local Law No.3- 5.1; Whitehorse City Council Community Local Law- 2.1.1, 2.1.2, 2.1.3 and 4.21; Whittlesea City Council General Municipal Law- 12.6 and 13.2; Wodonga City Council Local Law 19, 20, 21 and 22; Wyndham City Council Community Amenity Local Law- 2.1, 2.2, 154 and 155; Yarra City Council General Local Law- 28, 29 and 45; Yarra Ranges Shire Council General Provisions Local Law- 6.3, 6.6, 9.1 and 20.3; Yarriambiack Shire Council General Local Law- 208 and 303.