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Australian police and policing

Climate protesters win groundbreaking class action against Victoria police over use of capsicum spray

Potentially precedent-setting case brought after Jordan Brown hit with capsicum spray outside mining and resources conference in Melbourne in 2019

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Fri 12 Dec 2025 17.50 AEDT
First published on Fri 12 Dec 2025 13.19 AEDT

Climate protesters have won a class action against **Victoria** police over their use of capsicum spray during an anti-mining demonstration in Melbourne.

The first class action against Victoria police in relation to alleged excessive use of oleoresin capsicum (OC) spray was heard in the state's supreme court earlier this year, and a decision was handed down on Friday.

The trial before Justice Claire Harris was led by protester Jordan Brown, who was twice hit with OC spray while protesting outside the international mining and resources conference in October 2019.

Harris found on Friday that Brown had been subject to an unlawful battery by police, and awarded him \$54,000 in damages.

“The batteries caused both physical injury to the plaintiff and were a material contributor to the plaintiff’s psychological injury,” Harris said.

She said these injuries were caused intentionally by police.

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Brown said during the trial that “it’s the most excruciating pain that I’ve ever experienced.

“I checked out of my body for long periods of time.”

While police admitted OC spray was used, they argued that its use was lawful.

Brown’s lawyers argued the spraying was in breach of Victoria police’s internal policies and procedures, Victoria’s Crimes Act and the state’s charter of human rights, and that it was “an unreasonable, unlawful and disproportionate use of force constituting battery and assault”.

They said the trial could set a precedent for how police use OC spray, but Harris stated otherwise on Friday, saying her judgment only related to the way it had been used by police in this case.

She awarded Brown \$40,000 in general damages, \$4,000 in special damages and \$10,000 in aggravated damages, noting he had sought more than \$200,000 and the state had argued he was only eligible for nominal damages.

In a statement issued after the judgment, Brown said that “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” with OC spray.

He said he hoped for a change in culture “to one that actually tolerates the right of political communication, democratic values, and makes the human rights charter in Victoria ultimately meaningful”.

Melbourne Activist Legal Support spokesperson Anthony Kelly said that on the strength of the legal win, police should immediately ban the deployment of OC spray and other dangerous weapons at protests.

Police and protesters clashed outside the conference, with officers using OC spray as they attempted to arrest two activists who scaled the **Melbourne** Exhibition and Convention Centre, **the court heard**.

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Victoria police said in a statement on Friday that the public “should have confidence our members are highly trained and there are strict rules surrounding the use of OC spray”.

“It provides police with a vital tool to safely resolve situations of violence or serious physical confrontation,” it continued.

“As this trial forms part of a class action with further matters before the court it would be inappropriate to comment further.”

Fiona Forsyth KC, representing Brown, had argued the use of OC spray was “entirely unjustified” and left the lead plaintiff with physical and psychological injuries.

Forsyth told the court that Brown was unarmed when he was sprayed twice by two police officers on 30 October 2019. Brown was attempting to run away when he was sprayed by the second officer, the court heard.

But a lawyer representing the state said the protester was part of a group that “piled” into an area and blocked their attempts to make arrests.

In evidence, police officer **Sgt Nicholas Bolzonello told the court** he deployed OC spray because he and colleagues were in a “stalemate” with protesters and were unable to move through the crowd to arrest a protester who was climbing a pole.

Bolzonello told the court “tensions were high” and that he and his colleagues had

just emerged from a “hostile environment”.

He had called it “an effective crowd dispersal tool that allows us to move through crowds”, according to the court transcript, but the lead plaintiff’s barrister, Stella Gold, suggested to the officer that there was nothing in the police OC manual that described such use.

Bolzonello later clarified that his understanding came from training and how it was referred to “internally”.

Harris will make a ruling on costs in the case next year.

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I hope you appreciated this article. Before you move on, I’d like to take a moment to talk about why independent journalism matters – and why, more than ever, we need your help to sustain it.

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