

**IN THE MAGISTRATES' COURT OF VICTORIA
AT MELBOURNE**

CASE NO. G11865367

IN THE MATTER OF

VICTORIA POLICE

V.

KYLE MAGEE

DEFENCE SUBMISSIONS & AUTHORITIES

Date of Document:
Prepared and filed by:

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The Accused
Kyle Anthony Magee
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1. Summary of Legal Argument and Relevant Legislation

1. There is no substantive factual disagreement regarding the physical elements of the alleged offending: the facts of the placement of posters over advertising panels in all 6 police briefs are freely conceded by the defence.
2. The defence pleads not guilty to the charge of Bill Posting or Wilful Damage under the common law defence of necessity, a defence formalised as the Sudden or Extraordinary Emergency defence in amendments to the Crimes Act 1958, under section 322R.
3. Section 322R of the Crimes Act 1958 provides:
 - (1) A person is not guilty of an offence in respect of conduct that is carried out in circumstances of sudden or extraordinary emergency.
 - (2) This section applies if—
 - (a) the person reasonably believes that—
 - (i) circumstances of sudden or extraordinary emergency exist; and
 - (ii) the conduct is the only reasonable way to deal with the emergency; and
 - (b) the conduct is a reasonable response to the emergency.
 - (3) This section only applies in the case of murder if the person believes that the emergency involves a risk of death or really serious injury.
4. The defence submits that the Accused has a reasonable belief that the combined and inter-related threats of:
 - massive and escalating global inequality,
 - the exponential growth economy,
 - climate change, and
 - the democratic deficit brought about by our for-profit media-advertising systemconstitute the existence of an extraordinary emergency.
5. This ongoing emergency involves not only the risk, but the certainty, of the continued death and really serious injury to millions of people, immediately and for as long as our present global political situation exists as it does presently.
6. The Accused reasonably believes his conduct – physically intervening against the dominance of the for-profit media-advertising system – is the **only possibly effective avenue** for addressing all the interlinked issues listed in paragraph 4.
7. It is submitted that the conduct of the Accused is a reasonable response to the emergencies that threaten global human society. The conduct is especially reasonable as it poses no danger whatsoever to any person and causes no damage, only minor inconvenience to a non-personal

commercial entity. It is therefore a very pro-social way to make the necessary point, while still making the point in a way dramatic enough to have a reasonable chance of appropriately raising the issues.

Background of the Accused

8. Kyle Magee is 33 years old and is father to a 4 year old daughter.
9. He moved from his hometown of Shepparton to Melbourne in 2002 (at age 18) to commence studying a Science (Physics)/Engineering (Electrical) degree at Melbourne University.
10. During his second year of university (2003), issues of global injustice, ecological limits, climate change and economic exploitation (amongst other issues), began to dominate his thinking – this led him to defer his studies and travel and think about how he could address these problems through the work of his life.
11. Further reflection led him to the inescapable conclusion that the for-profit media-advertising system underpins the politico-economic system that causes all the problems he was concerned with – if democracy was to function without systemic corruption by an economic elite, the media system needed to be run democratically, not be funded by the advertising of for-profit companies and run by for-profit companies pushing their own agenda.
12. He could see no way to effect such a huge change in media systems through any systemic avenue, only a mass civil disobedience campaign against the for-profit media-advertising system had any real chance of success – and as he knew this campaign was what was needed, he decided to devote his life to it.
13. Upon his return he began painting over billboards in open protest against the existence and domination of the for-profit media-advertising system – a protest he has continued until this day, and has no intention of stopping.
14. The Accused feels morally compelled to make this public protest of non-violent civil disobedience – he knows himself to be acting in a state of necessity to real emergencies.
15. Submitted as evidence is the Accused's criminal record, which details over 30 convictions all related to this protest, dating back 10 years, including 6 custodial sentences of a total of 6 months. Kyle has had no other contact with the legal system than that brought about by his protest.

Section 322R(2)

16. The relevant section of section 322R of the Crimes Act 1958, as it applies to the defence in this case, is subsection 2, which I will go through sequentially.
17. **Section 322R(2)(a)(i)** provides the requirement that: the person *reasonably* believes that circumstances of sudden or extraordinary emergency exist.

18. The Accused has a strong and reasonable belief that the combined emergencies of **massive and escalating global inequality, the exponential growth economy** and **climate change** cannot be resolved as long as the **for-profit media-advertising system** continues to anti-democratically manipulate our political process.
19. The reasons and authorities for perceiving these issues as emergencies will be covered individually:

Massive and escalating global inequality

20. Presently the richest 1% of the world's population own more than the other 99% – with the 8 richest people possessing more wealth than the poorest 50%¹.
21. While the full destructive human impact of such economic inequality is difficult to encapsulate, UNICEF predicts that on current trends, between the years 2016-2030, 69 million children under five years of age will die from preventable causes, and 167 million children will live in extreme poverty.²
22. This global inequality has only increased in the last few decades³, despite continuous attempts to address the issue through systemic avenues over that time – this is an emergency we need new approaches to address.

The exponential growth economy

23. Our public political discourse constantly and unvaryingly speaks in support of constant economic growth⁴, but as Professor Albert Bartlett⁵ made it his life's work to demonstrate: “The greatest shortcoming of the human race is our inability to understand the exponential function.”
24. What Professor Bartlett meant is that even small percentages of annual growth (say 2%), will double continuously after a certain period of time (in the case of 2% annual growth: every 35 years), which means they grow exponentially, which is of course completely unsustainable on a finite planet.
25. The facts about the unsustainable growth of the human economy and population were first famously published in a 1972 report commission by The Club of Rome, *The Limits to Growth*⁶. The report used a system dynamics computer model to simulate the interactions of five global economic subsystems, namely: population, food production, industrial production, pollution, and consumption of non-renewable natural resources.

1 *World's eight richest people have same wealth as poorest 50%*, Larry Elliot, The Guardian, 16 January 2017, accessed 30 January 2017.

2 *The State of the World's Children*, UNICEF 2016 report, accessed 30 January 2017.

3 *Divided We Stand: Why Inequality keeps rising*, OECD 2011 report, accessed 30 January 2017.

4 *Australian economy shrinks 0.5pc in September quarter, worst fall since global financial crisis*, Michael Janda, ABC News, 7 December 2016.

5 Professor Emeritus of Nuclear Physics at the University of Colorado at Boulder, USA.

6 *The Limits to Growth*, Donella H. Meadows, Dennis L. Meadows, Jorgen Randers, William W. Behrens III, 1972.

26. A CSIRO report in 2008, *A Comparison of the Limits to Growth with Thirty Years of Reality*⁷, confirmed that the projections contained in the business-as-usual “standard run” scenario described in *The Limits to Growth* were accurate for the first 30 years. This model goes on to predict the collapse of global human society before the middle of the 21st century.
27. Despite the sound evidence of this obvious emergency, we are still not addressing the problem, instead our politicians and media alike continue to venerate exponential growth as our greatest good – this is an emergency that will only worsen the longer we fail to deal with it.

Climate change

28. Of peer-reviewed scientific papers on climate change, 97.1% accept the scientific consensus on Anthropogenic Global Warming⁸ – that Global Warming is being caused primarily by human activities.
29. As far back as 2007, while visiting weather stations in Antarctica to learn of the impacts of climate change, UN Chief Ban Ki Moon remarked: "I need a political answer. This is an emergency and for emergency situations we need emergency action"⁹
30. Political action on climate change has been delayed and stalled time and time again – the political response to this serious emergency is entirely inadequate and will cost more and more lives as it continues unabated.

The for-profit media-advertising system

31. All the above emergencies are emergencies which the neoliberal, for-profit sector has no particular interest in addressing, or a particular interest in perpetuating¹⁰.
32. The for-profit media-advertising system that dominates our mainstream political discourse – a media system controlled by those who benefit from escalating inequality, exponential growth and no action on climate change – is anti-thetical to democracy and extremely dangerous.
33. The for-profit media-advertising system must give way to a democratic media system – a system that can prioritise implementing solutions to our various crises and emergencies, rather than prioritising the interest of the obscenely wealthy few.

A combined extraordinary emergency

34. It is submitted that massive global inequality, perpetual economic growth, climate change and the for-profit media-advertising system present a combined extraordinary emergency for humanity, and that the normally limited legal view of what constitutes an emergency must be

⁷ *A Comparison of the Limits to Growth with Thirty Years of Reality*, Graham Turner, 2008, CSIRO.

⁸ *Quantifying the consensus on anthropogenic global warming in the scientific literature*, John Cook et al, 2013 Environmental Research Letters, volume 8, number 2.

⁹ *UN chief says global warming is 'an emergency'*, ABC News, 11 November 2007, accessed 30 January 2017.

¹⁰ *Neoliberalism – the ideology at the root of all our problems*, George Monbiot, The Guardian, 15 April 2016, accessed 26 February 2017.

expanded so as not to ignore this combined crisis of immense importance.

35. The meaning of the term *extraordinary* is not defined in the Crimes Act 1958. The Oxford English Dictionary defines *extraordinary* to mean “very unusual or remarkable”. The Collins dictionary defines extraordinary as “very unusual, remarkable, or surprising”. The defence submits that the meaning of *extraordinary* in the context of an *extraordinary emergency* is *remarkable*, rather than *unusual* or *surprising*. While being unusual or surprising are subjective and non-consequential elements of any emergency, being remarkable, which the Oxford English dictionary defines as being “worthy of note or attention”, is what defines an emergency. Whether a situation being considered as an emergency is perceived as unusual or surprising has no relation to its ability to threaten life or really serious injury. For example, it might not be unusual or surprising that a certain person is attempting to commit violent acts against another person, but it is a remarkable and significant emergency nonetheless.
36. The defence concedes that the sudden or extraordinary emergency defence has previously been extremely limited in its interpretation and application, basically only applying to simple situations involving people in immediate proximity to one another.
37. The defence submits that more complex, global political situations can and do constitute emergencies in the world that citizens live in – the defence pleads that the interpretation of emergencies is expanded to reflect the reality citizens are dealing with.
38. **Section 322R(2)(a)(ii)** provides the requirement that: the person reasonably believes the conduct is the **only reasonable way** to deal with the emergency.
39. The Accused reasonably believes that his conduct is the only reasonable way to deal with the emergencies listed. He would love to avoid all contact with the legal system, but an analysis of all other possible methods to attempt to deal with the emergencies revealed them all to be unsatisfactory.
40. Every other unquestionably legal method to address these problems has been tried by many brilliant people over the preceding decades. Academics and authors have tried various combinations of words, but those methods have not been effective. It is not reasonable to try a method already proven to fall short, it is reasonable to try a different approach – civil disobedience – which has a historical record of producing improbable results.
41. To stop talking about myself in the third person, I believe the neo-liberal ideology – extolling the virtues of “free markets”, “free trade”, perpetual economic growth and ever-expanding profits – is fundamentally incompatible with effective solutions to escalating injustice, unsustainable levels of growth, and the climate crisis.
42. The same mechanism through which neo-liberal ideology has commandeered global governments – the for-profit media-advertising system that dominates our mainstream media and thereby manipulates our political agenda – is now being used to suppress appropriate political attention and response to escalating injustice, the problem of exponential growth and climate change.

43. The method of confronting our laughably corrupt "democratic" media systems, despite it's slim prospects of success, remains for me the only reasonable response as it is the only one that goes deep enough to the root of the issue, as well as it being one that has not yet been proven to fail – I believe if demonstration against for-profit domination of our public space and media was carried out widely and persistently, our media issues could be brought out and resolved, and we would then be in a position to regain control of our political and economic agenda and deal with all the emergencies that confront human society.
44. The language of this section makes clear that it is only I, the Accused, who must believe this action is the *only* reasonable response to the emergency, and I will give evidence to support the fact that I do genuinely believe this. This reading of section 322R(2)(a)(ii) is confirmed by the next section, section 322R(2)(b), which speaks of the necessity that the response chosen by the accused be *a* reasonable response, not the *only* reasonable response.
45. **Section 322R(2)(b)** provides the requirement that: the conduct is a reasonable response to the emergency.
46. As I couldn't have Clive Hamilton, Professor of Public Ethics at the Centre for Applied Philosophy and Public Ethics and the Vice-Chancellor's Chair in Public Ethics at Charles Sturt University, appear personally, I'll just have to settle for quoting an article he wrote for online newspaper Crikey:

The climate emergency has turned into a crisis of democracy. The government is meant to protect the interests of the people, but it has instead protected the interests of the big polluters. The Government is in the thrall of a powerful group of energy companies and it is apparent even to the most dim-witted observer that these corporations are, as Thoreau wrote, "more interested in commerce than humanity". The scientists are beginning to understand that human-induced climate change has disturbed a sleeping giant.¹¹

47. This is a simple statement of the obvious truth that for-profit entities have far too much power in our democracy, and that this hinders our response to the climate emergency, and also the emergencies of exponential economic growth and escalating inequality – it should also be clear to "the most dim-witted observer" that having a media system dominated by for-profit entities only deepens this crisis of democracy.
48. In this analysis bringing attention to the deleterious effect of the for-profit media-advertising system by refusing to live passively alongside it – in an attempt to help us deal with the crisis of democracy that prevents us from dealing with the emergencies facing humanity – is a reasonable response to the emergencies facing humanity.

11 *Hamilton: climate emergency or a crisis of democracy?*, Clive Hamilton, Crikey, February 04, 2009; Accessed 26 February 2017