



Misuse of the Form 1 system by NSW Police 2022-24

Police misrepresentation of notification requirements under Form 1 System

NSW Police have repeatedly misrepresented the Form 1 regime as a means of suppressing protest, including in communications with organisers of a First Nations vigil held on 2 November 2022, a Sydney Climate Coalition action on 13 December 2022 and an Action for Public Housing march on 25 August 2023. NSW Police have repeatedly stated in writing that in order for a protest to be authorised under the Summary Offences Act, organisers must submit a Notice of Intention to police more than 7 days prior to the event.

This is an unambiguous misrepresentation of the Form 1 system. NSWCCCL President at the time, Josh Pallas, has stated that “failure to authorise a public assembly on the basis that insufficient notice has been given to you and your officers flies in the face of the parliamentary intention and the proper balancing exercise that your office is expected to undertake pursuant to the principles contained within the case law.” The reasoning for this is extracted from a 10 December 2022 [letter](#) sent from Mr Pallas to Commissioner Karen Webb:

Section 26, which allows a court to authorise a public assembly for which you did not receive seven days’ notice but only on the proviso that you have not already given notice to the organiser that you do not oppose the public assembly, fortifies this conclusion. If you were unable to authorise an assembly for which seven days’ notice had not already been given, that aspect of s. 26 would have no work to do which would be an absurd outcome and one which the common law would seek to avoid.

Secondly, s. 23(1)(f)(ii) provides an alternate avenue for approval if you have not been given notice of the proposed assembly seven days prior. This is through the processes set out in s. 26 of the Summary Offences Act 1988 (NSW) whereby a court can grant authorisation of the assembly, if seven days’ notice has not been served on you and you have not otherwise authorised the assembly (as you have the power to do under s. 23(1)(f) as discussed above). This pathway is also expressed in clear and unambiguous terms.

... Raul Bassi v Commissioner of Police (NSW) [2020] NSWCA 109... also expressly contemplates that an assembly can be authorised despite a Form 1 falling short of providing seven days' notice of the proposed assembly and adds weight to our analysis.

Despite this being brought to the attention of NSW Police, the practice has been ongoing.

A 'Public Assembly Information Sheet' (Figure 1) sent to organisers of a First Nations vigil for Cassius Turvey held at Sydney Town Hall on 2 November 2022 clearly mis-stated the Form 1 system as requiring 7 days notice in order for a protest to be authorised. Police told organisers that the protest would not have the protections of the Form 1 system because the Notice of Intention to hold the protest was submitted less than 7 days before the date of the vigil. The vigil was organised rapidly as a response to the death of Cassius. Police told organisers that if their protest blocked the footpath, they could be subject to obstruction offences.

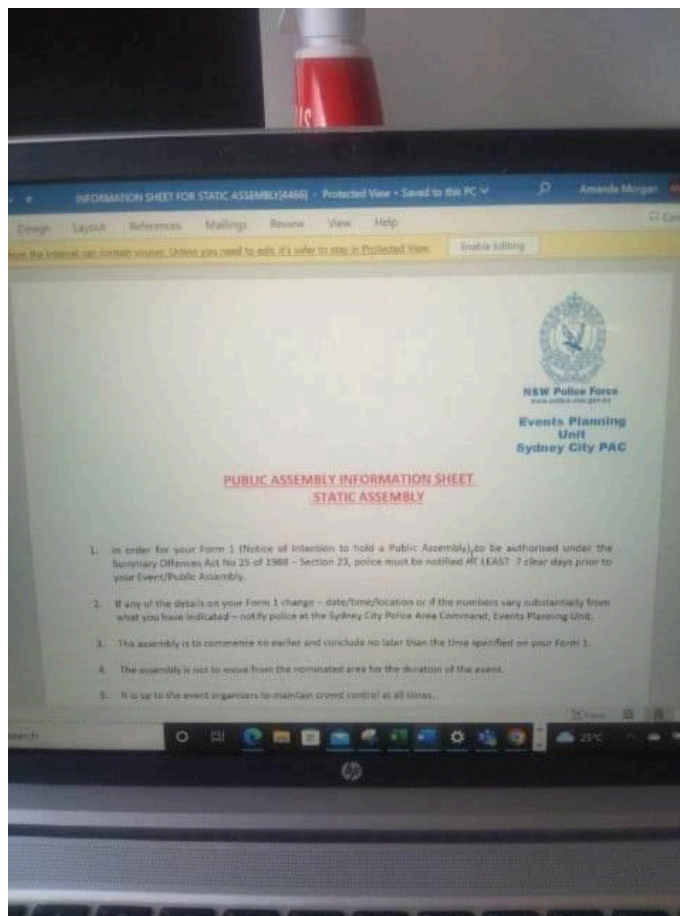


Figure 1: Public Assembly Information Sheet

An email from Sergeant Jeannie Assaf on 8 November 2022 (Figure 2) stated that 'A Form 1 requires 7 days notice'. No other reason was given for opposing the Form 1.

From: **#SYDCITYEVENTS** <SYDCITYEVENTS@police.nsw.gov.au>
Date: Thu, Dec 8, 2022 at 1:36 PM
Subject: RE: Attached Image [SEC=OFFICIAL]
To: [REDACTED]

Good Afternoon [REDACTED]

Thank you for your email. The NSW Police Force has not refused your Form 1. In previous correspondence and communication, we informed you that the public assembly is 'Unauthorised.'

A Form 1 requires 7 days notice. 'Notice of Intention to Hold a Public Assembly', Schedule 1 - Summary Offences Act 1988. If you are going ahead on 17th December, we need to get as much detail as possible, especially re numbers so that I can try facilitate.

Regards,



Jeannie Assaf
Sergeant
Sydney City Police Area Command
192 Day Street Sydney NSW 2000
P: [02 9265 6499](tel:0292656499) E: 56499

Figure 2: Email from Sergeant Jeannie Assaf of Sydney City Police Area Command

An email from Inspector Kimberley Penfold on 24 August 2023 (Figure 3) stated that an Action for Public Housing march was 'an unauthorised protest due to the insufficient notification provided'.

From: Kimberley Penfold [REDACTED]
Date: Thu, Aug 24, 2023 at 10:49 AM
Subject: Action for Public Housing 25/08/2023 [SEC=OFFICIAL]
To: [REDACTED]

Hello [REDACTED]

As stated on the telephone call, we will assist in facilitating the protest along Redfern Street. This is an unauthorised protest due to the insufficient notification provided. As such, and in order to ensure public safety and that of the police, the procession can be facilitated via the footpath, with all participants adhering to pedestrian rules. Please advise Redfern Police Station of any changes to timings or anticipated numbers via ph 83035199.

Regards,

Kimberley Penfold
Inspector
Duty Officer – Professional Standards
South Sydney PAC
1 Lawson St, Redfern NSW 2016
Ph: 83035199 E/N: 55199

Figure 3: Email from Inspector Kimberley Penfold of South Sydney Police Area Command

Most recently, on 11 October 2023 NSW Policy Deputy Commissioner David Hudson [stated to media](#) that a 7 day timeframe was required for police to authorise a protest. The Police Minister also [stated](#) on 10 October 2023 that “the process to complete a Form 1 generally takes about a week”.

The repeated and systematic misrepresentation of the Form 1 system has the effect of denying protest organisers the right to protest urgent matters without facing the possibility of obstruction charges, including under the 2022 anti-protest laws which impose a maximum penalty of 2 years imprisonment for obstruction of certain places.

Police misrepresentation of the effect of the Form 1 system

Several instances have been recorded of NSW Police misrepresenting the effect of a protest not being authorised under the Form 1 system, falsely claiming that a lack of authorisation would mean the protest was unlawful.

IMARC protests 2022

A significant instance of this was a series of visits to over 100 homes in NSW in the leadup to the IMARC conference in Sydney in November 2022. These homes were based on the identification of 93 persons of interest by NSW Police, with 28 people spoken to by Police. Police identified individuals involved in the 2019 Melbourne protests, members of Blockade Australia subject to current court-imposed bail conditions and potential Blockade IMARC protestors.

The Minister for Police at the time [stated](#) that the people visited “were advised that if a Form 1 had not been submitted to the NSW Police Force as outlined in the Summary Offences Act 1988, then this event may constitute an unauthorised public assembly” and “warnings were given with regards to the provisions of the new legislation under Section 144G of the Roads Act 1993, in addition to the Form 1 process in NSW”.

In [video footage](#) of one of these interactions captured on 26 October 2022 during a police visit to the home of a student climate activist in Sydney, police made several misleading statements about the nature of a Form 1, telling people that “it is an offence to protest without completing a Form 1”. Individuals were told that “if you attend any unplanned protest or disruption event in Sydney between 2-4 November you may be committing an offence and will be arrested”. This is a concerning misrepresentation of protest rights in NSW. It is not an offence in and of itself to protest without a Form 1, nor is it an offence to participate in ‘unplanned’ protests. Submitting a Form 1 can provide protestors protection from obstruction offences that may occur during a protest, but that doesn’t mean protests that don’t have a Form 1 are illegal or an offence in themselves. The Form 1 regime was intended as a means of facilitating large gatherings, not for criminalising protests that don’t obtain a Form 1.

Those questioned included a 16 year old on their way home from a peaceful climate rally, the relatives of activists and university climate collective members. Several people were told that the police would keep coming back to their home until they were there to answer their questions. The vast majority of those questioned had no intention to protest at IMARC, with some not even knowing it was on.

Five activists across NSW were pulled over by police seemingly based on number plate identification and had their cars searched, with one having their car defected despite it having been recently serviced. Police justified the search as based on the suspicion that the relevant individuals would engage in unlawful assembly based on having previously participated in protest.

Police also misrepresented the nature of the Form 1 regime to IMARC protest organisers who did submit a Form 1, stating that they would be unable to receive the protections of the Form 1 framework due to putting it in less than 7 days before the protest. Police told organisers that they could be subject to obstruction offences and would not have Form 1 protections, despite police having stated their non-objection to the protest. Again, this points to a misuse of the Form 1 regime as a means to criminalise even protests that comply with the legislation.

Court Protest February 5 2024

On Monday 5 February a protest gathered outside Downing Centre in support of the arrestees facing court in relation to protests at Port Botany. When they attempted to set up a small speaker system regularly used at protests around the city, they were told by Chief Inspector Samantha Fordy that they couldn't do so because they didn't have a Form 1 and the City of Sydney has bylaws requiring a permit for amplified sound and a PA would not be allowed at this protest due to the absence of such a permit.

The PA setup was eventually allowed by Police following negotiation from organisers. However, the misrepresentation of the Form 1 regime and Council by-laws to restrict the right to protest is a significant concern.

The Summary Offences Act Form 1 provisions are a protection against obstruction offences that would normally apply if a person walks on the road. Instead, the NSW Government and NSW Police have increasingly sought to represent them as a permit one needs in order for a protest to be 'allowed'. The notion that a government can and should have the power to deny or allow protests occurring is repressive in nature and poses a significant threat to the right to protest.

Police using the Form 1 system to improperly constrain protest

Legal Observers NSW has documented several instances of police using 10 minute delays to the running order of a protest to begin putting pressure on organisers by stating that they risked not being in compliance with their Notice of Intention, including at recent street marches for Palestine. In one instance in November 2023, police made Form 1 authorisation conditional on a

climate group not using a skeleton prop in their march due to the proximity of anti-war rallies nearby.

Several instances have also been recorded of police making Form 1 approvals conditional on compliance with a long list of conditions including obtaining permission from the local government authority and minimum numbers of rally marshals being present to 'control the protest rally'. An example of these conditions for a rally held on 29 January 2022 is set out in Figure 4.

PROPOSED ASSEMBLY

Commencing at 12 pm the assembly of 40 persons will assemble at 29/1 Broadway Punchbowl NSW 2196. The gathering of persons will remain on site until 3.00pm. The purpose of the assembly is to 'allow people facing Minister Burke's new Workforce Australia system to speak against it to him outside his office.'

CONDITIONS SUBJECT TO ISSUE OF APPROVAL LETTER

1. Any police direction is to be promptly obeyed.
2. No unreasonable obstruction to be caused to vehicular or pedestrian traffic.
3. At no time above (unless otherwise stated) will the assembly be held above the ground level of the street.
4. Permission is to be obtained from the local government authority where the protest group will use public streets. Where the protest group intends to congregate in parks, public places, etc. the local government having control of such parks and public places must be informed. If any public place is not under local government control, then it is the organiser's responsibility to make enquiries to find out who owns the land and obtain appropriate permission to occupy such land.
5. Any unreasonable use or noise from a loud hailer or amplification equipment may result in police stopping any further use of the equipment. This will also apply if police receive a formal noise complaint from residents.
6. No banners, placards or material of a dangerous or offensive nature to be carried and/or displayed.
7. Under no circumstances are participants to throw any object/s, articles, etc.
8. The NSW Police Force considers the burning of any article, flag or effigy a public safety hazard. The Police Force reserves the right to take such action as may be necessary to ensure the safety of participants and general public and police should such activity occur.
9. The organiser is to ensure that no damage is occasioned to any public or private property prior to, during or post event.
10. Alcohol is not permitted to be consumed at any time during the proposed event.
11. Ensure sufficient 'rally marshals' are employed to control the expected numbers and to ensure these guidelines are complied with. The 'rally marshals' are to number 1 to every 50 protestors. The 'rally marshals' are to be clearly distinguishable with yellow fluorescent vests and are to take no part as protestors in the rally. They are not to hold banners, placards or any type of material. They are to control the protest rally.

Figure 4: Conditions presented by Campsie Police Area Command to a rally organiser

Conclusion

Legal Observers NSW has observed a prevalent misuse of the Form 1 system by the NSW police over the last 2 years. This has resulted in a disturbing power overreach that is inconsistent with the provisions in the Summary Offences Act 1988. Misrepresentation of the notification of public assembly requirements has been utilised as a means to deny the right to protest. The misuse of the Form 1 process to needlessly make its approval conditional on onerous demands defies its purpose of facilitating protest gatherings. Frivolous micromanagement of lawful protest activity has also exposed protests to the risk of non compliance. Such misuse results in protesters not being afforded the Form 1 protections. In practice, this misuse has led to arbitrary exercises of power that unjustifiably criminalize protest activity. This creates a landscape that stifles the fundamental right of protest.