



POLICING OF WEEKEND PRO-PALESTINE STREET MARCHES IN SYDNEY

Since the beginning of October 2023, Legal Observers NSW has fielded observers at 19 weekly street rallies protesting Israel's genocide in Gaza. The policing of these rallies has been marked by ubiquitous surveillance, police and state pushback and the deployment of higher than usual levels of police resources, including a new protest-focused taskforce 'Operation Mealing' and pro-Palestinian activity focused 'Operation Shelter'. This response has been justified by reference to a supposedly heightened risk of violence posed by pro-Palestine rallies.

Several factors used as the basis for this risk assessment are questionable. The establishment of Operation Shelter was a direct response to a now-discredited doctored video of a small group of protestors at the Opera House chanting an anti-Semitic phrase and despite political and media portrayals of pro-Palestine protestors as hateful and violent. The protests observed by LONSW have been overwhelmingly peaceful. Protest organisers have taken direct steps to address the few observed sporadic incidents of anti-Semitic language and emphasised the political nature of the Palestinian struggle. Conversely, the policing of these protests has taken on an intimidatory character that has served to stoke tensions and increased the risk of harm to social cohesion. The framing of the pro-Palestine rallies as dangerous and requiring heightened police resources has served to stoke tensions in the community, which have resulted in acts of violence against individuals displaying Palestinian symbols.

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Misuse of police powers

LONSW has observed persistent misuse of police powers at pro-Palestine rallies since October 2023, often escalating benign incidents, intimidating protestors and giving unlawful directions.

Baseless assault and detainment of protestor 25 February

At the weekly street march on 25 February, police conducted a violent arrest of a peaceful protestor. A protest participant of Sudanese origin was attempting to approach the state to ask organisers to share a poem on the microphone at the time of his arrest. The protestor was speaking loudly but did not pose a safety risk to himself or others, nor was he using offensive language. LONSW observed police approach the protestor and tell him to remain calm. The protestor responded that he was calm and tried to walk away from the police. Several police officers then followed him and told them to leave him alone. Police then tackled the person to the ground. Three police officers restrained him, with one placing a knee on his head.

Police later confirmed that the person was detained on the basis of erratically opening his bag which police took as reasonable grounds upon which to suspect a bomb threat. The person was searched by police and made to take off his shoes and socks in public for the purpose of the search. Sniffer dogs were used to inspect his bag. Police were also heard saying that the person's phone, laptop and camera would be retained for data inspection.

At the time police told organisers that the person was being charged with a 'public disorder offence', which is not a separate offence in and of itself in NSW law. The person was subsequently released without being taken into custody and without being charged with any offences. It is unclear whether his electronic devices were retained for data inspection.

During this incident, police also violently pushed away a photographer who was lawfully attempting to document the arrest.

3 protestors violently arrested and charged with assaulting police for accidentally getting small splashes of coloured water on officers' uniforms

Most recently, at the street march on 23 March, three people were arrested following a “die in” on the road, wherein protesters splashed a water based red solution on themselves to symbolise blood. The solution contained water, corn syrup and red food dye, was non-toxic and clearly not real blood as it was too bright and too watery and within bottles. As they splashed the solution on themselves, a small amount got on one of the police officers, which was used as a justification to charge all three people with assaulting a police officer. It was obvious to everyone present that getting any solution on any police officer was clearly accidental, not intended to cause harm or intimidation, and the vast majority of the solution which was sprayed went onto the protesters themselves, which would indicate that the solution was not dangerous.

The police moved in quickly to make arrests, violently grabbing and shoving protesters, which resulted in another officer getting the solution on her uniform. This would not have happened if the police had not used unnecessary force against the people still holding the bottles of solution (which were plastic squeeze bottles like those that might be used for BBQ sauce).

Furthermore, the person who suffered the most heavy handed arrest was not observed to throw the solution on anything at all before being placed under arrest. He had a bottle of the solution in his hand but had not yet done anything with it before being forcefully grabbed and picked up by a group of four or five officers who carried him by his limbs. He was put on the ground on Pitt St pedestrian mall, wherein an officer placed a knee on his back with considerable pressure despite him already being on the ground, completely surrounded by officers, and totally incapacitated. This is despite not having been observed to engage in any conduct that would constitute the legal definition of assault.

Having engaged in this potentially unlawful arrest, at least five different officers were asked what the arrested people were to be charged with and all of them answered to the effect of “I don’t know”. A significant amount of time passed, during which the higher ranking officers seemed to be conferencing and issuing instructions to lower ranking officers, before any officer could name a charge that they intended to lay.

At the conclusion of the march, Detective Superintendent Despa Fitzgerald approached the rally organisers and attempted to hold them accountable for the alleged “assaults” on the police officers, including herself. She verbally reprimanded a marshall who was present saying “you’re

there to help us” - which is somewhat at odds with the positive duty that law enforcement have to facilitate civilians’ exercise of their civil and political rights.

During this verbal reprimand, she stated that “that group of people who put on that stunt have done it before”. This comment alone has no major significance. However, taken together with the speed at which police moved in to make arrests, the fact that any solution getting on police officers was clearly accidental, the fact that at least one of the three was placed under arrest before using the solution at all, and the amount of time it took the officers to come up with a charge, suggest that police targeted a specific group of people, placed three of them under arrest, and then spent some time retrospectively deciding what offence they could potentially argue the conduct constituted.

Misuse of directions

LONSW observed several incidents at pro-Palestine rallies in October and November 2023 where protestors were directed to remove their facial coverings and keep them off in order to enter the protest. This is not a power police can exercise, as the power to ask for a facial covering to be removed is circumscribed to a short period to allow the examination of a face against photo ID.

LONSW observed several occasions where police told protestors to remove their facial covering without reference to checking it against their photo ID and without having lawful justification for the checking of photo ID. On one occasion police also questioned a group of young men of Arab appearance about whether they had previously had their faces covered. These incidents are particularly concerning given the widespread use of police surveillance at these protests, with the request to remove facial coverings seemingly calculated to maximise the efficacy of surveillance.

In one instance, police followed a protestor who had walked away from the protest to take a phone call, surrounded them and started questioning them. Eventually the protestor asked if it was because of the face covering to which they replied yes and the protestor felt compelled to momentarily remove the face covering while body worn cameras were on.

Police were observed requesting that protestors provide identification (including photo ID) without having lawful justification for doing so. At one rally, three police officers crowded around a young woman who was standing at the edge of the march holding a case containing a drone. She was not flying the drone, nor was there an indication that she was about to launch it. Rather than inform her that flying a drone in the area was illegal and moving on, the officers

proceeded to question her in an intimidatory manner. They demanded she identify herself, asked her for her photo ID, and personal details like what she did for work, and where she studied. One of the police officers did not have a name tag, and another deliberately obstructed his tag with his hand. When the officers were asked to identify themselves they refused, one eventually mumbling inaudibly and refusing to repeat himself clearly.

Police have also been observed pulling over cars displaying Palestinian flags and requiring them to remove the flags. Police then issued fines for minor infringements, such as P plates being tucked under a number plate instead of on a bracket, as pretext for the stop.

At each of the weekly rallies LONSW has attended, most police officers wearing hi-vis vests have been observed to be wearing their vests in a way that obscures their badge. This is an issue for effective police accountability, as the identities of police officers issuing directions to protestors or exercising police powers cannot be identified.

When police issue a move on direction, they are supposed to provide their name, station, and the reason for the issue of the direction. Police are frequently observed not to follow these guidelines when issuing directions, almost always failing to give a reason. When these procedures are not followed, it becomes unclear whether the instructions were a mere informal request or a formal direction with which it would be an offence to not comply. This frequently results in police effectively exercising powers that they do not have in law, either because the civilians being issued said directions believe something to be a lawful formal direction when it is not - or conversely, being unaware that failure to comply with the direction would constitute an offence.

High visibility policing

NSW has explicitly adopted an approach of High Visibility Policing in relation to protest, framing the deployment of high numbers of officers as a means of ‘facilitating’ protests. LONSW has observed an average of 100-150 police being deployed at weekly Palestine rallies. These include general duty officers, highway patrol, the mounted unit, the Public Order and Riot Squad, South West Metro Operations Support Group, North West Metro Operations Support Group, ODN and Strikeforce Raptor.

Protest organisers have fielded significant teams of marshals at each rally to guide the crowd along the specified route. Crowd control and direction have therefore been the domain of the organisers themselves, while the role of the police has been setting up roadblocks and lining the intersections and streets down which the protest proceeds. Police have on several occasions created a formation of about 40-50 police in front of a Starbucks shop on the march route. The taking of the formation in front of Starbucks seemed to be precipitated by the mass sticking of Starbucks stores in Melbourne and the use of chants about Starbucks at the rally. However, no actual incidents have occurred in relation to the store on the march route. Even when Starbucks is not along the march route there has been a team of officers stationed outside the store. There has also been a similarly heavy presence around the Pitt Street Mall intersection when the march passes through there.

The reliance on High Visibility Policing as a means of protest policing unduly criminalises protestors; the highly visible mobilisation of police force communicates the supposed untrustworthiness of the protestors themselves and the state’s pre-emptively hostile attitude towards them. The effect is an escalatory one, as at the protest on October 9 where the formation of a 100-strong police officer line along the Opera House steps galvanized attendees in the crowd.

At the same time as large numbers of officers have been deployed to weekly pro-Palestine rallies, the Police Minister has commented on the shortage of police officers across the state, with over 1,500 vacancies in October 2023.

Surveillance

The police have undertaken a significant amount of surveillance at pro-Palestine actions observed by LONSW as compared to the surveillance normally faced by mass street rallies.

At each of the weekly Palestine rallies LONSW has observed since October 2023, two mobile CCTV trailers have been deployed by police. One is typically stationed near the speaking stage and one near an entrance point to the protest. These trailers have not in the past been routinely utilised for street protests. There is no indication of how the data collected by this CCTV is used and stored.

LONSW has frequently observed police taking photos or videos of protest attendees on their personal phones. The protestors in question have all been rally attendees not engaging in any illegal activity. Police have also been observed to keep their body-worn video cameras on during the protests, indiscriminately filming peaceful protest activity. This can include taking close up photos of people's faces and/or identifying tattoos, as the following anonymised account details:

"During the student strike, officer who I know as Sam was taking photos of me. Two different marshals saw her recording me in different times using her personal phone and zooming in on both my tattoos, one on my back shoulder and one on the front of my arm.

By the end of the strike, she had given move on orders that I was not aware of because I was at the back. As I moved to the front, she is able to make me out from between the crowd even though I was wearing all black and not flashy enough to see. She walks toward me and tells me "get your people out of here, get them off the streets" even though that day I wasn't wearing a marshal vest and was not there in my capacity as an organiser.

I say "they're your people just as much as mine" and walk towards the side walk to which she responds "you are a main organiser, they're your people, move". I did continue complying and could not understand her aggression towards me, especially since if she did assume I was an organiser, she had not made contact with me all day.

She did in fact make contact with organisers and they probably wouldn't have mentioned me because most of them don't know me. I felt targeted before she even spoke to me and her picking me from a crowd to intimidate me and make it seem as an "us vs. them" situation made me feel very unsafe about her role and presence on the day."

Surveillance data is routinely shared between State police and the AFP, as well as with ASIO and international law enforcement agencies. Facial recognition technology is also known to be employed by NSW Police in relation to protest activity. The lack of publicly available guidelines and accountability mechanisms for the use of police surveillance data means these instances of protest surveillance are particularly concerning, lacking any oversight. Mass surveillance of protest creates a culture of intimidation and preemptively casts protests as giving rise to criminal activity.

Political and police attempts to repress the protests

The policing of recent pro-Palestine rallies has taken place in a political context marked by a significant government backlash to the Palestinian liberation movement as a whole and an ongoing restriction of the right to protest in NSW and nationally. This has informed a government and police response that has misrepresented the nature of the protests and the laws around street marches in NSW in an attempt to restrict the right to protest.

October 9 and October 15

The October 9 protest in response to the lighting of the Opera House sails with the Israeli flag was characterized by media and the NSW government as not being peaceful and therefore warranting the restriction of further protests. The basis for this was the chanting of 'fuck the Jews' and 'gas the Jews', the latter chant going viral in international media before subsequently being revealed as a fabrication.

LONSW observed the protest on October 9. The protest-goers consisted largely of families with children, young people, and older community members. The rally had proceeded peacefully from Town Hall to Bennelong Point and all police directions complied with. Nonetheless, an inordinate number of resources including general duty officers, ODN squad, the mounted unit and police boats were drawn upon. The presence of approximately 140 police officers in the area of Bennelong Point and the formation held on the Opera House steps contributed to heightened tensions during the protest. Despite the size of the group steadily decreasing over time once the march reached the Opera House, the number of police increased.

The small group of people who engaged in anti-Semitic chants only joined the rally once it had reached Bennelong Point, were swiftly noticed by the rally organisers who, when seeking assistance to move them on, were refused support from police.

The rally was self-regulating. The rally organisers were in contact with police and complied with directions at all times despite the stated refusal of police to support the protest organisers. The protest-goers also made efforts to ensure the safety of other protesters, keenly aware of the many children and older family members present. Palestine Action Group member Fahad Ali stated that *“I intervened to shut down antisemitic chants from a group of idiots who were in the minority. Police told me to my face that they would not assist.”*

The subsequent representation of the October 9 rally as proof that protestors were ‘not peaceful’ is at odds with the observations made by LONSW. Nevertheless, the NSW government sought to use this rally as a basis for opposing the holding of a Palestine rally the following weekend, threatening the use of ‘extraordinary powers’ such as setting up roadblocks into the city and enabling indiscriminate searches and the deployment of 1,000 police officers. While being interviewed about the rally the following morning on 2GB, NSW Police Minister Yasmin Cately said “I don’t want to see protests on our street at all, from anybody. I don’t think anybody really does”. NSW Premier Chris Minns had stated that a planned rally on Sunday is “not going to happen”. Ultimately, NSW Police elected not to go to court to challenge the rally, allowing it to go ahead without incident. Minns has maintained that the protest was “violent and racist” even after the doctored footage was discredited.

Misrepresentation of Form 1 regime

In attempting to suppress the October 15 rally, the Police Minister repeatedly misrepresented the operation of the Form 1 regime. It is not correct to claim, as the Police Minister did, that police have a right to reject a Form 1 on the basis of it being submitted less than 7 days before the protest. It is also not correct to state, as the Police Minister did, that “the process to complete a Form 1 generally takes about a week”. The Form 1 regime was developed with the supposed intention of providing protections for snap rallies as well as rallies planned further ahead and police routinely facilitate protests that submit Form 1 notifications less than 7 days before the protest.

The Summary Offences Act does not provide a minimum timeframe within which notification of a protest must be given and it does not contemplate that an assembly can be considered unauthorised solely on the basis of the Commissioner being given less than 7 days’ notice.

Raul Bassi v Commissioner of Police (NSW) [2020] NSWCA 109 expressly contemplates that an assembly can be authorised despite a Form 1 falling short of providing seven days’ notice of the proposed assembly.

This was the fourth time in 2023 that LONSW had seen NSW Police willfully misrepresent the functioning of the Form 1 regime. NSW Police have previously used the same misrepresentation

in communications with organisers of a First Nations vigil, a Sydney Climate Coalition action and an Action for Public Housing march. In the lead up to the International Mining and Resources Conference in 2022, police visited dozens of homes to question people who had been seen at environmental protests previously and communicated incorrect information to them, stating that it was unlawful to attend a protest for which no form one had been submitted. In communications with organisers police frequently use the language of “rejecting” a form one as if it is an application which they may approve or deny, as opposed to a notification of intention to hold a public assembly as outlined in the NSW Summary Offences Act 1988. In 2024, NSW Police have continued to misrepresent the Form 1 regime to suppress pro-Palestine protests, telling organisers of a speakout on 5 February that they couldn’t set up their PA on the footpath due to not having a Form 1. Police also cited City of Sydney council bylaws regarding amplification as a basis for restricting PA use, a question that has not to LONSW’s knowledge been previously posed to organisers.

The misrepresentation of the Form 1 regime and Council bylaws 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.