

# New Australian police powers overturn presumption of innocence

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Bob Carr, the Labor Party Premier of the Australian state of New South Wales, has foreshadowed sweeping increases to police powers, under the pretext of combatting illicit drug use. His proposed legislation will repudiate one of the traditional principles of the English-based legal system—that an accused person is innocent until proven guilty.

It will become an offence, punishable by up to five years' jail, to enter or leave a dwelling identified by police as a “drug house”. No evidence has to be produced that illegal substances are on the premises, or that anyone sold, handled or used them. Instead, those arrested will be obliged to prove a negative—that neither they nor the building have any association with drugs.

Police will have the unprecedented power to arrest and detain anyone who, for whatever reason—a social visit, a business call—enters or leaves an apartment block alleged to be a “drug house”. One concerned resident of Sydney's western suburbs commented, in a letter to the *Daily Telegraph*:

“Look at this scenario. Your 18-year-old daughter is taken out by her boyfriend. He casually says to her that they need to pick up a friend. She enters the house. Unknown to her, someone from those premises sells drugs. On her way out she is arrested, taken to the police cells and locked up...

“And how does she prove that she did not know? Make no mistake, this new law does not say that the police must prove she is guilty, but that she must prove she is innocent.”

Officers will be able to subject anyone arrested under the legislation to a forced medical examination to detect traces of illicit drugs. But they can be convicted regardless of whether or not any are found. The penalties will be one year's jail for a first offence and five years for a second offence.

Police will have further powers to enter, close down or confiscate alleged drug premises, with tenants facing the possibility of eviction. Anyone who warns the occupants of the building of an impending police raid can be arrested, as can anyone who “assists” or “allows” a drug house to operate.

While the text of the legislation has not yet been released, it appears that by insisting that police have the power to enter an alleged drug house without warning, the legislation will violate another basic democratic right—that one's home cannot be raided by police without a judicial search warrant.

The type of evidence police will use to justify a “drug house” designation was revealed at a press conference held by Carr to announce the new measures. Senior officers displayed steel-mesh

doors and claimed that metal grilles, steel-plated locks and internal metal hinges were being used to keep police at bay during drug raids, giving the occupants time to flush drugs down toilets or sinks. The mere existence of such fittings, which are widely used in working class suburbs as elementary security devices, will be regarded as sufficient proof that a dwelling is being used as a drug “fortress”.

As well, police will be authorised to “move on” anyone suspected of waiting to buy or sell drugs in a public place. Those who disobey can be arrested, even if they have no drugs in their possession.

These measures will give the police arbitrary powers of arrest and detention that can be used, on the excuse of cracking down on drugs, to victimise any individual or groups of youth and workers.

The government has already extended to police the power to stop and search people suspected of buying or selling drugs. During the past two months, police have used sniffer dogs at random on streets and in hotels and dance clubs. If a dog indicates to its handler that it can smell an illicit substance, the officer can order an on-the-spot body search.

Carr has predicted that the new laws, to be passed by June, will lead to large-scale arrests and convictions, swelling prison numbers, and has vowed to build new jails if needed. He declared that more than 200 police, including a “supersquad” of 90 Tactical Action Group officers and a team of drug sniffer dogs, would “saturate” the western Sydney suburb of Cabramatta, alleged by Carr to be “swamped” by drugs peddled by Asian traffickers.

## “Nazi-style” laws

Civil liberties groups have denounced the planned laws, warning of the potential for abuse of police power. NSW Law Society president Nick Meagher described the legislation as “Nazi-style” because it “rips out the basic legal tenet of innocence until proven guilty”. He said the Law Society had not been consulted about, or shown, the legislation.

NSW Council for Civil Liberties president Cameron Murphy commented: “The criminal justice system in Australia was built on principles designed, above all else, to protect the innocent. These principles are now being eroded and the rights and liberties of ordinary citizens are being removed.”

The legislation is an open assault on two long-standing principles in criminal law—the presumption of innocence and the rule that crimes must be proven “beyond a reasonable doubt”. These protections against arbitrary arrest and punishment

developed out of the struggle against the power of the church, the absolute monarchy and the propertied classes in Britain.

The presumption of innocence became entrenched after the English Civil War, followed by other basic protections for prisoners, such as the right to remain silent under interrogation. In practice, however, these safeguards were reserved for the moneyed classes, who could afford legal representation.

For most prisoners in the 18th and 19th centuries—predominantly dispossessed small farmers, workers and the poor, charged with offences ranging from petty theft to rioting—these principles remained a myth. Extracted confessions and flimsy evidence prevailed in local courts. Punishments such as whipping, hanging and transportation were imposed after trials that lasted less than half an hour.

During the 19th century, the British ruling class responded to the emergence of mass political struggles by the working class, by establishing a full-time police force and prison system. It was also, however, forced to provide more formal trial procedures, including the right to testify, call witnesses and cross-examine the police witnesses.

Over the past century, the police have routinely subverted the presumption of innocence by falsifying evidence, intimidating witnesses and pressuring prisoners into making admissions. A study of NSW District Court criminal trials in the early 1980s found that the police had obtained a confession or admission in 96 percent of the cases. Inquiries into the conduct of NSW and other Australian state police during the 1980s and 1990s produced ample evidence of systemic frame-ups, involving false confessions and the planting of evidence.

Governments at all levels have also introduced a battery of offences that modify or partially reverse the burden of proof in various circumstances. Nevertheless, the underlying doctrine that the onus is on the police to prove guilt has largely remained intact. Legal texts invariably cite a 1935 English case known as *Woolmington* in which the judge referred to “one golden thread” running through criminal law—that it is the duty of the prosecution to prove the prisoner’s guilt”.

#### **Carr's right-wing campaign**

While claiming to have “hesitated” before deciding to overturn this historic principle, Carr has in fact conducted a carefully-orchestrated campaign to pave the way for the new police powers, whipping up fears of drug abuse and crime, so-called ethnic youth gangs and alleged Asian and Lebanese criminals.

The Premier resorted to outright racial stereotyping last month declaring—without the slightest substantiation—that Vietnamese, Indo-Chinese and Lebanese migrants with “criminal histories in their own country” were responsible for drug and violence problems in Cabramatta, Lakemba and other working class suburbs.

This followed an extraordinary racist comment by outgoing Federal Police Commissioner Mick Palmer, who, in a farewell speech, accused immigrant gangs of being responsible for a supposed increase in violent crime and illegal use of guns. Like Carr, Palmer offered no evidence whatsoever for his racial slur.

Both daily newspapers in Sydney, the Fairfax-owned *Sydney Morning Herald* and the Murdoch-owned *Daily Telegraph*, gave

fulsome coverage to the two outbursts. In an editorial, the *Daily Telegraph* congratulated Carr for spurning “political correctness” to “call a spade a spade”.

Just before the new laws were announced, the media picked up and sensationalised claims by a Cabramatta-based detective sergeant that the government had abandoned the suburb to drug traffickers. Other police officers and local business figures weighed in, demanding greater police powers. The police commander in the western suburbs, Assistant Commissioner Clive Small, later declared that he was “quite elated” with Carr’s announcement.

Perhaps more than any other Australian politician, Carr has identified his government with “law and order”. At the last state election in 1999 the Labor Party’s main slogan was “Tough Times Requires Tough Action”. TV ads showed the Premier walking through well-guarded railway stations and streets at night, extolling his government’s record of boosting police numbers.

Facing growing political disaffection in working class areas, amid declining living standards and mounting social polarisation, Carr is pandering to the most backward and reactionary elements. Two days after he announced the new police powers, state parliament unanimously passed legislation, initiated by extreme right-wing Shooters Party MP John Tingle, that will allow shopkeepers and others to take the law into their own hands against alleged thieves or violent customers. The legislation permits shopkeepers to use weapons and whatever force they believe necessary to defend themselves.

The ease and unanimity with which such vigilante-style laws have been introduced, supported not only by the Liberal-National Party opposition but the minor parties, including the Greens and Australian Democrats, shows just how far to the right official politics has shifted and how tenuous basic democratic rights have become.

The Carr government has already made serious inroads into civil liberties. DNA sampling of suspects has been introduced, paving the way for DNA tests to be used as prima facie evidence of guilt. At the same time legislation is being drawn up to abolish the right to pre-trial silence. Dock statements, whereby defendants could address juries and assert their innocence without being subjected to cross-examination, have already been abolished.

Last week Carr boasted that police powers introduced by his government in 1998 to impose curfews on youth, stop and search young people on the street and issue general “move on” orders had been used 54,000 times.

Unable to address the deteriorating social conditions and mounting social tensions, the political establishment is increasingly turning to police-state measures. Long-standing legal and democratic rights are being clawed back while police are being handed far-reaching powers, designed specifically for use against the working class.



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