Australian High Court approves “criminal organisation” laws

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Under conditions of deepening political instability at both federal and state levels, and growing popular hostility toward all the traditional ruling parties, the Australian High Court has cleared the way for legislation that potentially could be used to outlaw a wide range of organisations, including political parties regarded as a threat to the political establishment.

For the first time, Australia’s supreme court has upheld far-reaching state “criminal association” laws. Far from being confined to “bikie gangs,” as the mass media and governments claim, these provisions create a framework for the unprecedented use of secret evidence and undisclosed hearings to illegalise organisations.

Significantly, the beleaguered federal Labor government of Prime Minister Julia Gillard intervened in the case, as did nearly all the state governments, to support the Queensland Criminal Organisation Act of 2009, which had been introduced by the former Queensland Labor government of Premier Anna Bligh.

Earlier this month, as part of her campaign for the scheduled September 14 election, Gillard called on the state and territory governments to refer constitutional powers to Canberra to declare groups “criminal associations.” She did so in a conscious effort to divert mounting discontent over the destruction of working class jobs and conditions behind a “law and order” scare campaign, while further boosting and centralising the powers of the police and state apparatus.

Dating back to 2001, and increasingly over the past five years, state Labor governments have made repeated attempts to enact such draconian laws, only to have them struck down by the High Court on a series of constitutional technicalities. Now the court has declared unanimously, by 7 to 0, that the Queensland legislation was perfectly valid under the Australian constitution, and could be applied, in the first instance, to the Finks Motorcycle Club.

The court ruled that an organisation can be outlawed on the basis of secret “criminal intelligence” that is tabled in a “special closed hearing,” of which the group is not given notice, let alone allowed to attend. Under the legislation, when a court then conducts a hearing to decide on an organisation’s illegality, the group and its lawyers are excluded from any part of the hearing where the “criminal intelligence” is to be considered.

These are police-state measures. The use of secret evidence and closed hearings deprives accused groups of any right to know, query or test the allegations against them. It thus allows for unchecked victimisation and persecution.

This legislation applies to any organisation that represents “an unacceptable risk to the safety, welfare or order of the community.” This definition is broad enough to cover political opposition that threatens the present capitalist social order. To be banned, the organisation must exist for the purpose of engaging in, or “conspiring” to engage in “serious criminal activity.” But such activity is also defined to include political offences such as sedition and riot.

That outlaw status can be imposed, not on what its members have actually done, or even are suspected of having done, but on police and court *predictions* that some members—not even all—may plan criminal activity in the future. This allows targeted groups to be criminalised for what some of their members might do, or think of doing, or for what carefully planted police or intelligence infiltrators might say they intend to do.

Once again, as has happened on many fronts, the legislation extends similar authoritarian powers first imposed under the cover of the fraudulent “war on terrorism” after 2001. In the name of cracking down on “gangs,” crucial legal and democratic principles—such

as the right to a public trial, procedural fairness and freedom of speech and association—have been abrogated.

Under the Queensland provisions, police informants also remain anonymous, and police affidavits can be accepted as good evidence, as can hearsay evidence—third party accounts of what someone else was reported to have said or done. Reminiscent of the old Star Chamber of the British monarchy, all proceedings under the legislation, even subsequent appeals, are closed to the public and the media. Transcripts can be obtained only with the permission of the police commissioner.

If an organisation is outlawed, its members can be stripped of essential legal and democratic rights, and their livelihoods. They can be placed under indefinite "control orders" banning them from associating with any other member or person, or possessing specified things, or being in certain places, or undertaking stated employment. "Associating" includes communicating in any way, personally or electronically. Members include "prospective members" and anyone who "identifies as belonging" to the group. Non-members can also be barred from "associating" with members.

"Public safety orders" can be issued, barring anyone from a specified building, location or event, even if the likely purpose of the person's presence would be "advocacy, protest, dissent or industrial action." This proviso has nothing to do with "bikie gangs." It is a clear attack on civil and political rights, notably to demonstrate or organise working class resistance.

Breaches of those orders can result in prison terms of up to five years. Trying to recruit someone to an outlawed group can also mean five years' jail.

The language and logic of the High Court judgments indicated a willingness to accept a wider assault on core legal and democratic rights. Chief Justice Robert French, for example, admitted that the secretive procedures laid down by the legislation "undoubtedly represent incursions upon the open court principle and procedural fairness." But he said these "fundamental common law rights" were not "rigid" and could be overridden by "public interest" considerations. These interests, he said, included protection of "sensitive information" and the identities of "vulnerable witnesses." The notoriously vague and highly political notion of "public interest" could be used to justify trampling over principles that have been regarded as "fundamental" for hundreds of years.

The only concern of the judges was whether the legislation affected the independence and integrity of the courts, by requiring them to implement such "novel" procedures. Unlike the US constitution, or even the European Convention on Human Rights, the Australian constitution contains no bill of rights. Instead, its "separation of powers" doctrine simply prevents governments from undermining the supposed sanctity and credibility of the courts.

In previous cases, involving similar laws in New South Wales and South Australia, the High Court had objected to clauses that made it mandatory for courts to issue banning orders. As the *World Socialist Web Site* previously warned, these decisions presented no real barrier to the rolling out of anti-organisation laws across Australia.

In this case, the judges ruled that the Queensland law satisfied the constitution because it retained the "decisional independence" of the courts. This ruling underscores the complicity of the courts in the destruction of basic rights. It built on two earlier High Court decisions. In 2007, in the "terrorist" case of *Thomas v Mowbray*, the judges said a control order could be imposed without any finding of criminal guilt. In another case in 2009, the court allowed secret "criminal intelligence" to be used in civil proceedings.

Both the Gillard government and the conservative Queensland government enthusiastically welcomed the High Court decision, claiming it gave the go-ahead for "tough" measures against "bikie gangs." In reality, basic democratic rights are being ripped up, with bipartisan support in the political establishment, aided by the media and the courts. The powers of the state are being strengthened in preparation for the eruption of major social and political struggles.