

Australian state government drafts anti-free speech defamation laws

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The state Liberal government in Tasmania is setting sweeping precedents for the suppression of protests against, and even criticism of, corporate activities. Having already imposed laws last November banning protests near business premises, the government last week confirmed that it is preparing new legislation, unique in Australia, to allow corporations to sue people for defamation.

The anti-democratic legislation will give companies operating anywhere in Australia the power to drag individuals or organisations through the courts, potentially bankrupting them, just for criticising their activities, including on social media. Defamation damages can run into millions of dollars in alleged lost profits, on top of the legal costs of fighting such cases.

Those potentially subject to the new defamation laws will include workers organising industrial campaigns against a company or industry, groups mounting boycott campaigns against particular corporations, and organisations exposing exploitative or destructive corporate operations. Even historians writing on the nefarious past record of a still-operating company could be financially ruined.

Tasmanian Premier Will Hodgman demagogically insisted last Tuesday that the new laws were about “defending jobs,” claiming that there were “radical environmental groups who make a hobby of spreading misinformation to markets with the aim of destroying Tasmanian jobs.” The premier bluntly stated that the “right to free speech needs to be balanced by the opportunity to challenge clearly false and misleading claims.”

Hodgman’s measures have national scope, because they will allow corporations throughout Australia to take defamation action in the Tasmanian courts, even if the allegedly defamatory action or speech took place

elsewhere.

In 2006, the Australian states adopted nationally uniform defamation laws. Part of the package removed the ability that had existed in some states for corporations with more than 10 employees to sue for defamation. Businesses were instead able to take legal action for “injurious falsehood.” This set different requirements. Sydney University associate professor in law David Rolph told *Crikey*: “In injurious falsehood claims the plaintiff has to prove the defendant published false statements about a plaintiff’s goods or services, that the defendant was motivated by malice or another improper motive, and that there was injury, or damage, caused to the plaintiff.”

The new defamation laws will remove the requirement that corporations must both prove malicious intent, and establish that they have suffered financial losses as a result of the allegedly false statements.

The legislation follows similarly draconian laws targeting the right to protest, passed by the Tasmanian government in November.

The Workplaces (Protection from Protesters) Act defines “protest activity” as any act “in furtherance of, or for the purposes of promoting awareness of or support for, an opinion, or belief, in respect of a political, environmental, social, cultural or economic issue.” Any such activity conducted on a “business premise” or a “business access area” is prohibited if it “prevents, hinders or obstructs the carrying out of a business activity” or if “that action is likely to have that effect.”

Police can use force to remove protesters, and issue “on the spot” infringement notices, fining individuals \$2,000. Offences can also be pursued in the courts, with repeat offenders subject to \$10,000 fines and four

years' imprisonment.

This four-year jail sentence was doubled from the two years initially proposed by the government. Premier Hodgman had also first suggested limiting the anti-protest laws to five industries: mining, forestry, agriculture, construction and manufacturing. However, the amended act extended its scope to also cover shops, markets and warehouses, as well as government business operations. In other words, there is virtually no limit on the scope of business activity covered.

So-called independents in the Tasmanian upper house voted for the laws after the government removed a proposed three-month mandatory jail term for repeat offenders, and made other cosmetic amendments. One amendment provides a limited exemption for industrial action, but only if it is "protected" action under the federal Fair Work Act, which outlaws industrial action except within narrow enterprise agreement "bargaining periods."

Michel Forst, of the Office of the UN High Commissioner for Human Rights, described the measures as "shocking," noting that they "curtail [protestors] right to express their opinions, especially when they are at odds with the government or industry."

Neighbouring Victoria last year enacted anti-protest laws bolstering police powers to "move on" demonstrators in "designated areas," including near businesses. But the Tasmanian measures set a new benchmark. Corporate law firm Clayton Utz issued a memo last month noting: "The Bill imposes criminal sanctions for a range of protest related activities, and is specifically intended to protect economic activity. It breaks new ground in Australia, and may provide a significant precedent for governments around the country which are concerned about the effect of protest activities on Australian businesses."

New South Wales Liberal Premier Mike Baird recently told a Minerals Council Awards dinner that similar measures would be enacted this year in Australia's most populous state. "For too long protesters have entered mining sites, illegally damaged equipment and disrupted activity and escaped serious penalties," Baird declared. "We need legislation which provides a real deterrent to this unlawful behaviour and protects businesses from illegal protesting activities."

While they opposed aspects of the Tasmanian

legislation, the Labor Party and the Greens are complicit in this offensive against democratic right. In Tasmania, the two parties formed a coalition government between 2010 and 2014, and their austerity budget cuts to basic services triggering widespread working class opposition, paving the way for the Liberal Party's 2014 election victory.

The Labor Party's only complaint about the anti-protest laws was that they were "poorly written" and a "dog's breakfast" as a result of many amendments. During the parliamentary debate, Labor leader Bryan Green falsely claimed that the amended bill was substantially watered-down, and insisted that Labor agreed with the need to "support business" against "protest activity."

The Greens sought to defend the environmental protest organisations that form part of their constituency, playing down the legislation's wider anti-democratic implications. The Greens' former federal leader Bob Brown declared that "the four-year jail sentence for nature lovers, people who defend Tasmania's forests peaceably, are totally out of kilter," adding the laws were "a bad look for Tasmania."

Those first prosecuted under the anti-protest laws may prove to be anti-logging environmentalists, as the government is preparing to grant timber companies lucrative new licences to operate in previously protected forests.

The real target of the anti-democratic legislation, however, is the working class. Like their international counterparts, the Australian ruling elite has responded to the post-2008 global economic breakdown by bolstering the state's repressive apparatus in preparation for the eruption of social and political unrest. The scaffolding of a police state has been steadily erected, under the banner of the "war on terror" and various "law and order" campaigns. Now state governments are going further, openly proscribing political protest and cracking down on any criticisms of corporate activities.



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