Anti-protest laws attack democratic rights in Australia

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Facing a worsening economic slump, governments in three Australian states have brought forward sweeping laws that criminalise protests or any other activities that are alleged to disrupt business operations.

The laws impose draconian punishments and boost police powers that can be used to suppress opposition, including industrial action by workers, to the deepening assault by governments and the corporate elite on jobs, living standards and social and environmental conditions.

In New South Wales (NSW), the most populous state, legislation was pushed through parliament this week that imposes fines of up to $5,500 for entering a property with the "intent" of interfering with the conduct of a business, and jail terms of up to seven years for hindering the operation of a mining-related project. The bill was passed on Wednesday, despite a protest by hundreds of people outside parliament on Tuesday.

On the other side of the country, in the former "mining boom" state of Western Australia, laws are being pushed through parliament that outlaw the possession of "things" or the erection of "barriers," including picket lines, that could prevent "lawful activity." In the island state of Tasmania, arrests have already been made under laws, first introduced in 2014, that prohibit protests that hinder business operations.

These laws blatantly attack fundamental democratic rights, including free speech, free movement and freedom to associate. Governments are pursuing the measures despite legal challenges being mounted on the grounds that they infringe the implied right to freedom of political communication that the courts previously found to exist in the Australian Constitution.

The NSW legislation delivers on undertakings by Premier Mike Baird, like those he made at a mining industry dinner in late 2014, where he said his Liberal-National government would "crack down" on civil disobedience and "throw the book" at people who "unlawfully enter mining sites."

There have been numerous protests in recent years against mining projects, particularly coal seam gas operations. However, the Inclosed Lands, Crimes and Law Enforcement Amendment (Interference) Bill 2016 goes well beyond outlawing demonstrations at mining-related sites.

The new "aggravated offence" of "unlawful entry on inclosed lands," with a maximum penalty of $5,500, will apply to any land on which a business or business-like undertaking is being conducted and where an individual allegedly interferes, attempts or intends to interfere with the business or undertaking. The inclusion of "intends to" amounts to the creation of a thought crime—a crime of thinking of interfering with a business.

Likewise, the police will have new powers of search and seizure where they suspect a person possesses "anything intended" to lock onto equipment or a structure for the purpose of interfering with a business. Police will also have wider powers to issue "move on" and other directions to people participating in demonstrations, protests, processions or organised assemblies if the police allege obstruction of people or traffic, or intimidation of other people.

The existing offence of intentionally or recklessly interfering with a mine, which carries up to seven years' imprisonment, will be extended to cover mining exploration and construction sites. Almost simultaneously, the state government promulgated regulations to reduce the penalties that could be issued against mining companies that explore or mine illegally from a maximum of $1.1 million to just $5,000.

Introducing the anti-protest bill last week, NSW Industry Minister Anthony Roberts claimed that the provisions only sought to ensure the safety of businesses, the public and protesters, and to "balance" the democratic right to protest with the rights and interests of "the community as a whole." In reality, the bill directly attacks the right to protest in order to protect the interests of the financial elite.

The Tasmanian laws are even more explicit in targeting basic democratic rights. A protestor is defined as someone who engages in an activity "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."

The Workplaces (Protection from Protest) Act imposes on-the-spot fines and escalating penalties—up to five years' jail—for protestors who hinder access to premises, disrupt or damage the operations of a wide range of businesses, including manufacturing, construction, retail, forestry and mining.

The Act gives police extraordinary pre-emptive powers to "move on" a person they believe is about to commit an offence. These powers extend to entire organisations, such as environmental groups, trade unions or rank and file workers' committees. It is then an offence for an individual or organisation to return to the area within four days.

Tasmanian Greens leader Cassey O'Connor said the legislation was driven by an anti-environmentalist ideology. But in introducing the bill, then Tasmanian Resources Minister Paul Harriss spelled out its wider pro-business and anti-democratic purposes. He said: "The central objective of the government is to ensure wealth-creating businesses can develop and grow free from disruptive protest action that prevents them from operating on a normal commercial basis."

The Western Australian legislation overturns another democratic right—the onus on the police to prove guilt. The police need only suspect that a "thing" possessed or a "physical barrier" erected may be used "for the purpose of preventing a lawful activity" and the accused person must prove otherwise. If they cannot, they face up to two years in prison or a $24,000 fine.

Picket lines and other forms of industrial action are clearly covered by the legislation, because they can involve creating a physical barrier to prevent a "lawful activity."

Former Greens federal leader Bob Brown last week issued a High Court constitutional challenge to the Tasmanian laws after being arrested in January, along with others, for protesting against the logging of a forest. The Act "impermissibly burdens the implied freedom of communication on government and political matters," according to a writ filed by Brown's solicitor. In NSW, Unions NSW, the state's trade union federation, has threatened to mount a similar challenge.

However, the High Court, Australia's supreme court, has in recent years eviscerated the so-called implied freedom of political communication in the Australian Constitution. The constitution contains no bill of rights, or any other guarantee of basic democratic rights. During the 1990s, the court declared that the document implicitly prohibited laws that blocked political discussion, provided it occurred within the framework of the current parliamentary order, unless the legislation served a "legitimate end" of government.

Even that limited freedom has since been substantially nullified. In 2013, the High Court handed down two decisions that permitted governments to impose laws that override free speech if the measures sought to protect the public from "offensive material" or ensure that people could "go about their business unimpeded and undistracted."

No section of the ruling establishment, including the courts, can be relied upon to defend even the most essential democratic rights. The anti-protest laws add to the vast framework of police state-style measures—such as detention without trial, mass surveillance and the outlawing of organisations—that has been erected by successive governments since 2001 on the pretext of combatting terrorism.

None of these measures is aimed at protecting the public, whether from terrorism or "unsafe" protests. Rather they are preparations to suppress the growing disaffection and unrest being produced by the assault on jobs and social conditions, and the accompanying US-led drive to war in the Middle East and against China.