

Australian state government imposes draconian “public safety” laws

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For the second time in two months, extraordinary laws that can be used to shut down political protests and punish dissent have been pushed through the parliament of Australia’s most populous state, New South Wales (NSW), giving the police far-reaching repressive powers.

Brought forward amid a deteriorating economic situation, along with political instability caused by rising social discontent, the legislation can only be described as police-state in character. The two latest bills allow police officers to issue sweeping “crime prevention” and “public safety” orders—including forms of house arrest for up to five years—without a charge, trial, or conviction.

Last week, the Serious Crime Prevention Orders Bill and the Organised Crime and Public Safety Bill were simultaneously rammed through both houses of parliament by the state’s Liberal-National government in just 24 hours. The laws override fundamental legal and democratic rights, going beyond the anti-protest legislation adopted in March.

The law enacted in March imposes extraordinary punishments—such as jail terms of up to seven years for hindering a mining project—that can be used to suppress opposition, including industrial action by workers, to the deepening assault on jobs, living standards and social conditions. But those punishments still require convictions recorded by courts. Last week’s bills give police officers themselves virtually unchallengeable powers to impose orders that can strip individuals of their freedom of movement, employment and right to communicate.

Such laws are only possible because the Australian constitution contains no bill of rights or any other guarantee of basic democratic rights—not even a mention of the word “democracy.” Moreover, the High

Court, Australia’s supreme court, has in recent years eviscerated the limited so-called freedom of political communication that its judges previously found to be implied by the 1901 colonial-era constitution.

In France, where President François Hollande’s Socialist Party administration used last November’s terror attacks in Paris as a pretext to hand open-ended powers to the police, the parliament endorsed a three-month state of emergency under the country’s constitution. There is no such requirement in Australia.

Politically, such laws could only be enacted due to the complicity of the entire political establishment, and the virtual silence of the mass media. Unprecedented measures, adopted by Liberal-National and Labor governments alike in the “war on terrorism,” such as detention without trial, are being extended throughout the legal system as a whole. Although the Labor Party and the Greens formally voted against the two latest bills—warning their government colleagues that the provisions were so extreme they could fuel political disenchantment—they have issued no public statements in opposition to the legislation or warned the population about its significance.

Under the guise of combatting “organised crime,” police officers can now “make public safety orders” where a person, or class of person, at a public event or in any other area, “might” pose a serious risk to “public safety or security.” Such orders can essentially abolish the freedom of assembly, association, expression and movement, all on the assessment of a senior police officer or, where the orders are supposedly required “urgently,” any police officer, even a probationary constable. The penalty for disobeying an order is up to five years’ imprisonment.

There is no right of appeal, unless the order extends beyond 72 hours. Then an appeal can be made to the

state's Supreme Court, but the police do not have to disclose any "criminal intelligence evidence." The hearing is conducted without the presence of either applicants or their lawyers.

Alternatively, the police, or the NSW Crime Commission or the Director of Public Prosecutions, can apply to a court for "serious crime prevention orders," lasting up to five years. These can effectively punish people for alleged involvement in, or "facilitation" of, offences, even those for which they were acquitted in a criminal trial.

Orders may restrict a person's movements, activities, employment, residence, expression, assembly, association or anything else "if there are reasonable grounds to believe that the making of the order would protect the public." An order "may contain such prohibitions, restrictions, requirements and other provisions as the court considers appropriate."

A serious crime is defined as one punishable by imprisonment for five years, which includes most offences in the state's Crimes Act, and could extend from "seditious conspiracy" (anti-government activity) to possession of a cannabis plant. In crime prevention order hearings, the normal rules of evidence do not apply. Hearsay is admissible, the standard of proof is "the balance of probabilities," not the criminal law standard of "beyond reasonable doubt," and police can provide untested criminal intelligence.

Conditions may be imposed on any reporting of the existence of the order. Because of the broad discretions given to the police, court appeals are unlikely to succeed. Breaches of orders can also result in imprisonment for five years.

The bills were rushed through despite condemnations by civil liberties groups and the legal profession. In its submission to parliament, the NSW Bar Association declared: "The bill effectively sets up a rival to the criminal trial system and interferes unacceptably in the fundamental human rights and freedoms of citizens of NSW." The legislation was "contradictory to long-settled principles concerning the adjudication of criminal guilt by a fair trial."

In parliament's upper house, Labor and the Greens combined to propose a series of amendments that would have referred the bills to a parliamentary committee inquiry or put a cosmetic gloss on the police powers, such as by requiring more senior police

officers, or courts, to issue the "prevention" or "safety" orders.

Greens MP David Shoebridge said the amendments were proposed in "good faith" because they "simply civilise what we say is fundamentally inappropriate and liberty-thieving legislation."

Labor's Adam Searle said his party had done its best to improve the legislation, "to make it properly fit for purpose and to render it in a form where everyone in the community can have confidence in the probity and the integrity of the regime of orders to be created."

Another Labor MP, Ernest Wong, said he was offended by government suggestions that his party did not support the police. He insisted: "It was the Labor Party that, for 16 years, oversaw the building of the most professional, best funded, best equipped and most contemporary police force in the nation."

No reliance can be placed on any of the establishment parties, the courts or the media, which has barely reported the passage of the bills, to defend essential democratic rights.

With Labor's support, Premier Mike Baird's state government is about to unveil another package of "anti-terrorism" laws, which will provide a model for matching legislation by all states and territories. These measures, agreed upon at a summit of federal and state leaders, both Labor and Liberal-National, last month, will feature detaining and interrogating suspects, as young as 14, for up to 14 days without charge.

These developments highlight an escalating pattern. As the WSWs has repeatedly warned, the ever-expanding terrorism legislation introduced since 2001 is being used to establish an authoritarian framework, aimed at targeting not just a relative handful of alleged Islamic extremists, but at suppressing the inevitable social struggles that will emerge against the drive to war and austerity.



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