

Court bans protest against Gaza genocide at the Sydney Opera House

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The New South Wales (NSW) Court of Appeal this morning banned a march to the Sydney Opera House on Sunday, which was to mark two years of Israel's genocide of the Palestinians.

The Palestine Action Group (PAG) had selected the iconic location to provide the population with an opportunity to send a message to the world, in opposition to the support for the atrocities by the federal Labor government and the entire political establishment.

The court accepted the evidence of the NSW Police that the rally would pose an unacceptable risk to public safety.

In taking that evidence at face value, the judgement abstracted the inherently political question of whether the march would be permitted from its political context.

The NSW Police leadership has been intensely hostile to pro-Palestinian protests. The only serious incidents of violence at such protests have been perpetrated by the police themselves, rendering their concern for the safety of demonstrators spurious.

That aside, the NSW Police application to ban the rally was made in tandem with a political campaign for it to be outlawed, which was not based on safety but on support for the genocide.

Before the police initiated court action, the NSW Labor government's police minister Yasmin Catley made clear that the protest would not be allowed. Catley did not cite safety, but the fact that the by-laws governing the Opera House include a blanket ban on protests.

On Monday, Prime Minister Anthony Albanese declared, "Tomorrow is not a day for demonstrations," because it was the two year anniversary of the October 7 Palestinian military operation. Albanese and other senior Labor leaders denounced a separate pro-Palestinian demonstration in the Sydney suburb of Bankstown that day, on those explicitly political grounds.

So did NSW Labor Premier Chris Minns. Last year too, the NSW Police, acting in concert with Minns, unsuccessfully sought to ban a protest called in close proximity to October 7.

Even as the legal case was underway, the NSW government failed to conceal its political motives. According to the Australian Associated Press, "Outside court, NSW Premier Chris Minns has backed police, noting a protest outside the waterside venue in October 2023, when an Israeli flag was set alight and some protesters chanted antisemitic slurs."

That 2023 protest occurred because Minns made the highly provocative decision to light up the Opera House sails in the colours of the Israeli flag, as the Zionist regime was already carpet-bombing Gaza.

The incidents at the protest were blown out of all proportion, partly based on a Zionist group posting doctored footage of an antisemitic chant that was not made.

Federal opposition leader Sussan Ley blurted out the real character of the political establishment's campaign for the rally to be banned. She hysterically denounced the organisers for "sowing division and tearing at social cohesion," declaring that "The Sydney Opera House belongs to all Australians, not activists and protestors."

In their arguments against the police's attempt to ban the protest, the organisers had intended to raise the implied right to freedom of political speech in the Constitution, which, they argued, trumped the Opera House by-laws.

They also requested that the court take a position on whether Israel was committing a genocide. This, they argued, was relevant to the public interest of the protest and its urgency, and there was scope for such a determination given the statements of authoritative experts on genocide and international legal bodies. The court declined.

While accepting the police attempts to limit the issue entirely to the question of public safety, the court did permit lawyers representing the Executive Council of Australian Jewry (ECAJ) and the NSW Jewish Board of Deputies to tender evidence in the proceedings.

That was an unusual decision. Notwithstanding their names, the two bodies are not politically impartial. They are rabidly pro-Israeli lobby groups. ECAJ leaders have issued statements explicitly defending Israeli war crimes, including

the bombing of hospitals.

Their legal representatives were nevertheless permitted to enter into the court record hazy and unsubstantiated claims that allowing the rally to proceed would cause “fear” within the Jewish community. Notwithstanding that, of the two groups organising the protest, one is composed of anti-Zionist Jews, this was a case of organisations that support the genocide demanding that a peaceful protest against it be illegalised.

The arguments that the police set upon, related to public safety, were far from unchallengeable. They claimed that the crowd could be far larger than organisers anticipated and cited estimates that the Opera House forecourt has a capacity of 6,000 people. There would be a danger of crushes related to egress and ingress.

NSW Police Assistant Deputy Commissioner Peter McKenna was incredulous at the claims of organisers that protesters would file past the Opera House, rather than staying there for an extended period.

The fact that the organisers stated that they would ensure over 100 trained marshals were present was brushed off by the police, as was the record of the PAG in holding dozens of protests without incident.

Some of the evidence relating to safety was simply ludicrous.

The Sydney Opera House Trust, which had the appearance in the proceedings of holding a suspicious and hostile attitude towards the general population, warned of a “heightened potential for breaches of the Opera House sails to undertake protest activity (e.g. climbing of the sails to unfurl banners/flags), which presents significant risk to life/or injury.”

Warnings of that alarming scenario, for which no evidence was presented whatsoever, were accompanied by more prosaic fears over the prospect of “medical incidents, including slips, trips and falls.”

The Trust also cited its “standard protocol for mass events” involving “security inspections,” which can include X-raying and extensively searching people. Those provisions, covering an ostensibly public space, would scarcely be required for a peaceful public protest, whose participants had no intention of entering the Opera House itself.

In addressing the issue of egress, the organisers had pointed to the 30-hectare Sydney Botanical Gardens that are next to the Opera House and would provide ample space for a large crowd.

The Royal Botanic Gardens and Domain Trust, apparently no less wary of ordinary people than its neighbours in the Opera House, raised fears that the crowd would trample on its plants and endanger the safety of its staff in an

unspecified manner. And besides, the Trust had already permitted a couple to hold their wedding in the Botanic Gardens on Sunday.

These various concerns are cited in the court judgement.

A mass protest across the Sydney Harbour Bridge on August 3 was also referenced by the police and the court, primarily from the standpoint that the crowd of up to 300,000 vastly exceeded the organisers’ estimates. The police had unsuccessfully sought to have that rally banned on the same safety grounds.

There was no incident, however; and the crowd was entirely peaceful. The only hint of danger arose when the NSW Police, in a confused and unclear manner, attempted to redirect the crowd mid-rally, for reasons that have yet to be fully explained.

What is the broader record of the NSW Police, in relation to safety at pro-Palestinian protests?

- In June, police set upon a small protest outside a defence-related company in the Sydney suburb of Belmore, declaring it to be unauthorised. A police officer allegedly assaulted legal observer Hannah Thomas, causing horrific facial injuries and threatening the sight in her eye.

NSW Police command defended the rampage, but was subsequently unable to explain the legal grounds upon which they banned and attacked the rally. Only months later did they charge the officer with assault.

- In March 2024, at a peaceful pro-Palestinian protest in Sydney, several activists poured paint on themselves to symbolise the blood of murdered Palestinians. Police officers, acting in an irrational and thuggish manner, responded by tackling the activists, throwing them to the ground and pinning them down for no apparent reason.

- At two protests at the Botany port, police went on a rampage, dragging demonstrators who were peacefully sitting on a road.

Such are the guardians of public safety.

In their ruling today, the Court of Appeal declared that anybody who violated their prohibition could be found in contempt of court, the penalty for which can include prison time. That is a strengthening of state powers against the democratic right to protest, going beyond previous judgements that such a prohibition only removes certain legal protections from demonstrators.



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