Australian “contempt of court” threat to all protest rights

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Backed by the federal and state Labor governments, the New South Wales (NSW) Court of Appeal last Thursday issued a far-reaching threat to the right to protest, free speech and basic democratic rights.

The judges declared that unprecedented “contempt of court” charges—potentially carrying indefinite terms of imprisonment—could be laid against anyone who defied the court’s prohibition of a planned march to the Sydney Opera House yesterday to oppose the continuing US-backed Israeli genocide in Gaza.

That could mean mass arrests, detentions and prosecutions of thousands of people, and not just the march organisers, until they “purged” their “contempt” by either apologising to the court or serving whatever time in prison the court ruled necessary to uphold its authority.

The court, the highest in NSW, emphasised from the start of its judgment that it was reversing multiple previous rulings by the state Supreme Court that disobedience of such a protest ban would have only lesser legal consequences, such as prosecutions for obstructing traffic under the state’s Summary Offences Act.

NSW Labor Premier Chris Minns immediately welcomed the contempt of court threat. He told reporters on Thursday: “Anyone who breaches the Supreme Court decision can expect the full force of the law, and that’s how a civil society should operate.”

The ruling was hailed in the capitalist media. In Murdoch’s *Australian*, Chris Merritt wrote that it represented “a clean break from the past” by adding “backbone” to protest laws.

Together with millions of people around the world and across Australia, thousands had been expected to march to mark two years of the genocide and oppose the Labor government-backed US and Israeli plan for a neo-colonial occupation of Gaza.

The Opera House had been chosen as an iconic location to draw global attention to the protest, as had happened when up to 300,000 people joined an anti-genocide march over the Sydney Harbour Bridge on August 3.

In their judgment, the three Court of Appeal judges admitted this iconic appeal, then justified their prohibition of the march, citing fatuous claims by the police that the demonstration would have been an unacceptable risk to public safety via crowd crushes.

That was despite similar claims proving false in the Harbour Bridge event, when participants successfully managed their own safety, even after police dangerously intervened to turn marchers back across the bridge.

Moreover, the lawyers for the march organisers had pointed out that the Opera House had been the site of political protests over many years, as well as a 1996 Crowded House “farewell” concert that was estimated to have attracted more than 100,000 people.

In handing down last Thursday’s decision, Justice Stephen Free spelt out the court’s elevation of the spurious safety concerns over the fundamental right to free speech and the historic significance of the Gaza genocide itself.

Free stated: “The court further held that the risk to public safety associated with this public assembly was so significant that it would be irresponsible to allow the public assembly to proceed irrespective of the political significance of the event and the importance of freedom of political expression.”

The judges deliberately went further, however. Even before citing the alleged safety issues, they overturned the precedents set by the state Supreme Court in earlier protest cases that defiance of such a court ban would only expose participants to prosecution for more minor “summary offences.”

Under the state’s anti-protest regime, introduced in 1979, demonstration organisers must apply to the Police Commissioner for a “form 1” public assembly permit to avoid criminal prosecutions under the Summary Offences Act. If the police reject the application, the Supreme Court and its appellate Court of Appeal have an absolute power to either authorise or prohibit the event.

In this week’s hearings, the barrister for the Palestine Action Group, Felicity Graham, argued that finding someone in contempt of court would be a “radical departure” from what the Supreme Court had previously said about orders prohibiting rallies.

Graham pointed out that, despite the “prohibition” terminology in the Summary Offences Act, the Supreme Court had consistently ruled it to merely mean people were not afforded immunity under the Act for obstructing traffic, for example.

But the three judges—Free, Ian Harrison and Chief Justice Andrew Bell—said her argument was not “persuasive” and that the text of the legislation was “decisive.”

“It would be highly incongruous for the legislature to empower the court to make an order ‘prohibiting’ the holding of a public assembly, if the terms of that order did not accurately reflect the legal consequence of the order,” they wrote in their judgment.

“A breach of that order may render persons with knowledge of that order in contempt of court. This court proceeds on the basis that its orders … will be respected and obeyed.”

The penalty for contempt of court is at the Supreme Court's discretion, with no maximum penalty. The judges further warned that attending a prohibited protest could see people also charged under section 545C of the NSW Crimes Act for knowingly joining an unlawful assembly. That offence carries a maximum penalty of six months in jail.

They cited earlier cases in which judges said liability for contempt "may extend, in certain circumstances, to persons who were not parties to the proceedings in which the order was made." In other words, everyone who joined a banned demonstration.

Fundamental democratic rights under attack

On Facebook, Nick Hanna, a lawyer for the Palestine Action Group, warned that the ruling had undermined the right to protest.

"The impact of this judgment will not be limited to protests for Palestine. It can be applied equally to protests for any cause across the political spectrum. The decision will likely have a chilling effect on political expression in this country by deterring people from attending protests out of fear of being violently arrested by police."

Hanna pointed to the police assault in June on former Greens election candidate Hannah Thomas outside a Sydney military-related factory, causing horrific facial injuries and threatening the sight in her eye. Such scenes, in which she was "brutally assaulted for attending a peaceful protest earlier this year could become the norm."

Notably, NSW Police command defended that police operation but could not explain the legal grounds upon which they banned and attacked the rally. Months later, they charged a police officer with assault occasioning bodily harm.

Hanna explained: "The right to protest is one of the fundamental democratic rights that we have in this country and without it, there can be no real freedom of political expression. Many of the rights and privileges that we cherish today were obtained as" a result of "mass protest movements. Any threat to the right to protest is a threat to democracy itself."

In welcoming the court ruling, Premier Minns backed police threats to arrest anyone who tried to protest at the Opera House. "Reasonable people in Sydney would expect the police to uphold this judgment," he insisted.

Earlier in the week, Prime Minister Anthony Albanese threw his weight behind the crackdown, denouncing plans for demonstrations to mark the second anniversary of the onset of the Gaza genocide.

The court ruling set two other precedents. First, while accepting the police argument to limit the issue entirely to supposed public safety, the court permitted lawyers representing two Zionist lobby groups, the Executive Council of Australian Jewry and the NSW Jewish Board of Deputies, to tender evidence in the proceedings.

These groups asserted, without evidence, that the protest would cause "fear" in the Jewish community, even though one of the groups organising the protest, Jews Against the Occupation 48, consists of anti-Zionist Jews.

Second, the judges cited commercial interests that could allegedly have been affected by the march. They referred to "the substantial impact and financial burden that would fall on the [Opera House] Trust, its patrons and performers scheduled to be involved in events that would need to be cancelled if the procession were to go ahead."

Over the past two decades, governments across Australia, both Labor and Liberal-National Coalition, have imposed barrages of anti-protest laws, particularly to protect profit-making, notably by coal and other fossil fuel companies, but with far broader potential to outlaw political demonstrations.

In NSW, these laws include maximum punishments of two years' imprisonment or $22,000 fines for unauthorised protests that obstruct major bridges, tunnels and roads. Up until now, however, the courts and the police have not attempted to invoke contempt of court measures.

Last November, the NSW Supreme Court issued a prohibition order against "Rising Tide" organisers planning a blockade of the world's largest coal port in Newcastle, a working-class city two hours north of Sydney, to demand greater action on climate change, also citing safety concerns.

After people went ahead with the protest anyway, the police tried to corral them to ensure the passage of coal ships, then arrested 173 people, many on the serious charge of obstructing a major facility. But no move was made to pursue contempt of court detentions.

The Court of Appeal ruling is another signal that governments in Australia, now spearheaded by the Albanese Labor government, are mounting a frontal attack on the right to protest and other essential democratic rights, just as their counterparts in the US and Europe are doing.

This is their police-state response to deepening popular hostility over the genocide, as well as worsening social inequality, declining working-class living conditions, the climate disaster, anti-immigrant repression and the danger of another world war. Australia is no exception.