Australian court rules against draconian anti-protest laws in NSW

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The New South Wales (NSW) Supreme Court ruled on Thursday that far-reaching anti-protest laws passed by the state's Labor government earlier this year are invalid, because they breach the implied right to freedom of political communication in Australia's Constitution.

The judgement is a marker of how far governments have gone in their assault on basic democratic rights over the past two years. While supporting Israel's genocide of Palestinians in Gaza, they have cracked down on mass opposition, imposing restrictions on civil liberties even deeper than those instituted over the preceding two decades of the bogus "war on terror."

The ruling is also notable, given how limited are the protections of democratic rights in Australia. The country's reactionary 1901 Constitution does not include a Bill of Rights as in the US and there is no explicit protection of key civil liberties such as freedom of political speech and expression.

The Supreme Court nevertheless found that NSW anti-protest laws "impermissibly burdens the implied constitutional freedom of communication on government or political matters."

The legislation was passed in the form of amendments to existing protest laws in February. It provided for the prohibition of protests "in or near a place of worship." Pushed through parliament by the Labor government of Premier Chris Minns, with the support of the Liberal opposition, the protest amendments were passed in conjunction with new "hate speech" laws.

The "hate speech" laws, paralleling federal legislation passed at the same time, are aimed not at antisemitism as purported but at outlawing strident condemnation of Zionism. The protest provisions were transparently aimed at creating the conditions to shut down regular, mass pro-Palestinian rallies and to abolish the right to public demonstration altogether.

The pretext was a sham. There have not been pro-Palestinian or other protests targeting religious institutions, Jewish or otherwise. The handful of occasions on which there has been discussion of protests at such institutions, it has been because they have been hosting political, not religious events, including ones legitimising Israel's war crimes.

The apparent catalyst for the legislation was a protest outside a Synagogue, called because it was holding an event at which a representative of the Israel Defence Forces was the featured speaker.

The challenge to the laws was brought by Josh Lees, a representative of the Palestine Action Group which has organised scores of protests against the genocide, often weekly, for the past 24 months. Those protests have not included a single instance of antisemitic or other racial prejudice and have been notable by the participation of prominent anti-Zionist Jews.

Lees' lawyers centrally raised the vague and far-reaching character of the legislation, noting that the phrase "in or near a place of worship" placed virtually no limits on the invocation of the law by police and governments to shut down protests.

They presented a map of common protest locations in the Sydney central business district, which made clear that virtually all of them are "near" places of worship. There is a church next to Sydney Town Hall, where rallies are frequently held. There is one across the street from Hyde Park, where the majority of anti-genocide protests have occurred.

Lawyers representing the state government had sought to claim that, when read in conjunction with other provisions covering the police, the "in or near" clause would be given a more restricted meaning.

But Supreme Court Justice Anna Mitchelmore stated that the law "is directed at protest activity, removing a limitation on police giving directions in relation to an apparently genuine demonstration or protest."

"Protests and procession routes in areas of civic significance will likely place protesters in close physical proximity to places of worship," Mitchelmore noted. The legislation could potentially be deployed, even in the event that the protests were not targeted at or in anyway related to those places of worship, meaning that the "marginal burden" it imposed "goes further than the constitutionally valid baseline in a meaningful way."

The ruling was a limited one, essentially accepting the premise of a ban on protests directed at places of worship, even if they were holding political events and that was the motivation of the demonstration.

The responses nevertheless showed that the judgement was something of a setback to the protracted push to outlaw pro-Palestinian protests.

Premier Minns labelled the ruling as "disappointing," and it is possible that the government will appeal. The NSW Jewish Board of Deputies, a frothingly pro-Zionist organisation, hysterically claimed that the judgement meant the city centre would remain a "no go zone for Jews" when protests were held. That line effaces the Jewish identity of significant layers who participate in the demonstrations.

The broader premise of the crackdown, that there has been an eruption of antisemitism associated with opposition to the Israeli war crimes, was further exposed at a NSW parliamentary inquiry on October 10.

The NSW Police admitted that their official record of antisemitic incidents, which has repeatedly been invoked by the state government, is false.

Dozens of incidents are included that are not antisemitic but are legitimate protest and political activities opposing the assault on Gaza. Incidents where Zionists attacked pro-Palestinian activists are inexplicably on the list, as are random criminal events with no connection to racial bigotry.

Taken together, the Supreme Court judgement and the police admission expose a frontal assault on the population, combining lying propaganda and the passage of unconstitutional and therefore essentially illegal legislation.

Just as the NSW government must have known that the figures on antisemitic incidents were inaccurate, so too was it aware that its anti-protest legislation would likely not pass Constitutional muster.

The *Guardian* reported after the court verdict that the introduction of the legislation had caused "internal friction" within the Labor government at the time. Labor MP Anthony D'Adam had reportedly "moved a motion to redraft the bill so that the obstruction was limited to instances where a protest was directed at a place of worship."

Labor MP Stephen "Lawrence and another Labor MP, Cameron Murphy, had warned that without this limitation, the law could be found unconstitutional."

Figures such as D'Adam and Lawrence have postured as critics of Labor's complicity in the genocide. But they have maintained party-room solidarity, passing Labor's legislation even when it is transparently aimed at repressing the pro-Palestinian movement. The *Guardian* recount paints these figures as little more than loyal advisors to Minns, warning him that if he goes too far, the government will come up against the law and the courts.

Any conception that democratic rights can be defended exclusively through the courts was refuted earlier this month, when the NSW Court of Appeals banned a planned pro-Palestinian protest to the Sydney Opera House that was to mark two years of the genocide.

The Court upheld spurious evidence from the NSW Police that the protest could not be held safely due to the numbers that would attend. It went further than previous rulings, declaring that anyone who defied its prohibition could be found in contempt of court, the penalties for which include indefinite imprisonment.

The anti-protest offensive underscores the reality that the eruption of imperialist war, of which the genocide is a particularly horrific manifestation, is incompatible with democracy.

The federal Labor government, having backed Israel politically, diplomatically and materially throughout the war crimes, has hailed Trump's so-called "peace plan," which provides for a permanent Israeli occupation of Gaza and the subjugation of the Palestinian people to out and out neo-colonial domination.