

# Australian state Labor government defends unconstitutional anti-protest law

Mike Head  
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For the second time in six months, the Labor government in the state of New South Wales (NSW) has defiantly defended imposing sweeping anti-protest legislation despite courts striking the laws down for violating the Australian Constitution.

“The NSW government absolutely stands by the decision to introduce this legislation,” Premier Chris Minns declared on Thursday. “We believe it was necessary and important for Sydney at the time.”

This was in response to Thursday’s NSW Court of Appeal ruling, which declared the Minns government’s laws banning all protests across entire areas of Sydney to be unconstitutional. It must be taken as another warning of the readiness of all the Labor governments, both state and federal, to violate basic democratic rights regardless of court decisions.

Moreover, Minns’ government is going ahead with arrests and charges of people who were violently attacked by the police at a February 9 protest at Sydney Town Hall against the visit of Israeli President Isaac Herzog, which had been banned under the now-overturned legislation.

The Albanese federal Labor government invited Herzog, who has been accused of inciting the genocide in Gaza, to Australia in another display of Labor’s political, diplomatic and material support for the Israeli regime’s mass killings.

Authorised by the Minns government, the police went on a vicious rampage of bashing, pepper-spraying and mass arresting at the Herzog protest, explicitly invoking the now-invalid laws. In recent weeks, police in combat gear have conducted intimidating early morning raids on homes across Sydney to arrest people alleged to have participated in that protest.

The struck-down legislation gave the NSW Police Commissioner the power to issue Public Assembly Restriction Declarations (PARDs), outlawing protests in any part of the state for 14 days at a time. These PARDs could be renewed repeatedly, effectively giving the government and the police powers to indefinitely shut down all demonstrations, whether anti-genocide, anti-war or anti-government more broadly.

Under the PARD laws, the police were granted strengthened police-state powers, including to detain and search people and issue directions to disperse. The police have so far charged 25 people with various trumped-up offences, such as assaulting

police, related to the Herzog protest.

The Minns government, working in close collaboration with that of Prime Minister Anthony Albanese, defied warnings by legal and civil liberties groups about the unconstitutional character of the PARD laws to rush them through the state parliament last December.

It did so on the false pretext of responding to the December 15 terrorist shootings at Sydney’s Bondi Beach—blatantly accusing the mass anti-genocide rallies and marches across Australia of being responsible for the anti-Jewish atrocity committed by two alleged Islamic extremist gunmen.

The verdict by the Court of Appeal, the highest NSW court, was unanimous and unequivocal. The PARD legislation was unlawful, even under the 1901 Australian Constitution. This constitution contains no bill of rights or any other explicit protection of basic democratic rights, such as freedom of speech and assembly, only what the courts have defined as an implied freedom of political communication.

Nevertheless, the three judges declared the legislation to be doubly unconstitutional. First, they rejected the Minns government’s insistence that the protest ban was “constitutionally legitimate” to protect “social cohesion” by preventing anyone from being upset or offended by demonstrations.

The judgment by NSW Chief Justice Andrew Bell and Justices Julie Ward and Stephen Free ruled against the “notion that the community can and should be protected from political expression by some members of the community because it might be upsetting, inflammatory and divisive for other members of the community.”

Second, the judges said the PARD legislation was a “blunt tool which does not require, or even allow for, consideration of the characteristics or conduct of any particular public assemblies or the nature or severity of any threat to the community that could be said to arise.”

The legislation was “a sweeping and indiscriminate restriction on all public assemblies, without any mechanism for tailoring the restriction to assemblies that have the particular consequence of causing another part of the community to feel fearful or threatened.”

This is a partial blow to the offensive spearheaded by the

Labor governments to outlaw anti-genocide and other dissent by banning protests, supposed “hate speech” or designated “hate groups.” All these measures are flagrant violations of free speech.

It is the second such legal defeat, following last October’s ruling that the Minns government breached the constitution by legislating a similar blanket ban on all protests allegedly anywhere near places of worship. The state Labor government responded by amending that legislation to try to achieve the same anti-protest purpose without being so sweeping.

Thursday’s Court of Appeal verdict still leaves open the powers of the government and the police, under pre-existing legislation, to deny protest permits to specific protests, as they did in banning a march to the Sydney Opera House last October to mark the second anniversary of the US-backed Israeli genocide.

The judgment also leaves intact the Minns government’s declaration of the Herzog visit as a “major event” under the 2009 Major Events Act, which a NSW Supreme Court judge ruled constitutionally valid in February.

That court decision upheld police powers to search individuals without warrant, move people on and shut down a designated “major event area.” Failure to comply with police directions within this area could lead to fines of up to \$5,500.

The judge allowed the Minns government to invoke the major events legislation to also cover entire areas of Sydney for the Herzog visit, even though the Act itself said the powers could not be used to prevent political demonstrations. “The Israeli President’s visit was manifestly not a political demonstration or protest,” the judge insisted.

Now Minns and his ministers are arguing that all the charges against the people being arrested for the Herzog protest remain valid because the police commanders at the protest issued dispersal orders under the Major Events Act, not the PARD laws.

On Friday, NSW Treasurer Daniel Mookhey told Australian Broadcasting Corporation (ABC) radio the PARD legislation was not used by police in the arrests, just the Major Events Act. But a video recorded by the *Sydney Morning Herald* at the Herzog demonstration plainly shows a senior police officer invoking the PARD powers when ordering protesters to disperse.

Superintendent Paul Dunstan says in the video: “We’re not facilitating a march. It is in breach of the PARD. The PARD is in place for a reason, it is staying as it is.”

One of the recent arrests in Sydney was a pre-dawn raid involving eight police commandos smashing in the front door of a woman asleep in bed. Her lawyer, Nick Hanna, said on social media on Thursday that a senior police officer had told him that at least 30 more Herzog demonstrators could be expected to be similarly arrested in operations that could include such combat-style gear, handcuffs and battering rams.

As the narrow character of Thursday’s Court of Appeal

ruling underscores, democratic rights cannot be defended exclusively through the courts, whose function is to uphold and seek to legitimise the capitalist economic and legal order overall.

The demand must be raised throughout the working class for the dropping of all the charges and the overturning of all the anti-protest and “hate speech” laws. That must include the equally trumped-up and anti-democratic arrests and charges by the Labor government in the state of Victoria, for erecting an anti-genocide-related banner, and by the Liberal National Party government in Queensland, for using a prohibited anti-genocide slogan.

The Minns government’s belligerence and the ongoing police raids are warnings that the trade union-backed Labor governments, state and federal, are escalating their assault on anti-genocide and anti-war opposition, regardless of any, even limited, constitutional restraint. This is occurring as the US-Israeli onslaught on Gaza extends to Iran and Lebanon, with the political and material backing of the Albanese government, which has sent SAS troops, missiles, a war command plane and other military personnel to the Persian Gulf.

By releasing its 2026 National Defence Strategy on Thursday, the Albanese government restated its total commitment to US-led wars globally, and above all to Washington’s advanced preparations for a catastrophic war against China, of which the drive for US control over the entire resource-rich and strategic Middle East is a critical part.

In his speech, Defence Minister Richard Marles repeated the US litany of accusations of aggression against Beijing. He pledged to increase military spending by \$53 billion over the coming decade, on top of record expenditure of more than \$60 billion this financial year. That means further cutting social spending—from health and education to disability services—to pay the colossal bill, at the expense of working-class households.

The only way to defeat the attacks on fundamental democratic rights and stop the plunge into wider wars is through the mobilisation of the power of the working class against all those responsible, including the Labor governments. This fight requires the development of an independent working-class movement—in workplaces, throughout industries and across national borders—against the capitalist system that is the root cause of war and repression.



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