Greater police powers and penalties threaten civil liberties in NSW for public safety

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Abstract
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Greater police powers and penalties threaten civil liberties in NSW for ‘public safety’

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The Knitting Nannas Against Gas could be caught up in a push by the NSW government to criminalise legitimate protest. AAP/Tony Markham

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The New South Wales government recently introduced two new laws that impose serious constraints on how we use public spaces. They represent just the latest round of expanded police powers and higher criminal penalties justified in the name of “public safety”. The government’s solution is to let police decide who has the right to protest.

State parliament passed one of these laws in March. The other has been introduced and is likely to be passed when parliament resumes in May.

The measures are said to be a response to the dangerous and disruptive activities of a “radical minority” who “abuse” the democratic right to protest, and to organised crime gangs who threaten our “way of life” if allowed to move freely in the community.

Whether these groups really do pose the risks the government claims is debatable. The bigger problem is that it isn’t just the “bad guys” who are exposed to restrictive powers and tougher penalties. Anyone whose behaviour is regarded as a public safety risk is potentially in the frame.

The government has yet again vested enormous discretion in police officers to make that assessment – in some instances with no opportunity for judicial review.

New offences and police powers

The offence of trespass has a long history as a mechanism for criminalising political protest. In the early 1970s it was used against squatters and protesters opposed to over-development in Kings Cross.

Harsh punishment was never really the objective. Having the offence on the statute books gave police a reason to intervene, arrest and charge protesters.

Now the police have a new tool in their anti-protester toolkit. This has a very different complexion. An aggravated offence of unlawful entry on inclosed lands now carries a maximum fine of A$5,500.

“Aggravation” can take two forms: interfering with the business being conducted on the land in question; or conduct deemed to give rise to a “serious risk to the safety” of anyone present, including the protester.

Even more troubling, police now have the power to give “move on” directions to break up a protest if they believe that direction is necessary to deal with a serious risk to safety. Police previously weren’t allowed to give move-on directions at an “apparently genuine demonstration or protest”.

The parliament has authorised police to be the arbiters of what makes a legitimate protest.

Public safety orders

The yet-to-be-passed bill will give a senior police officer – not a judge – the power to make “public safety orders”. These will prohibit someone from attending a specified public event or entering specified premises for up to 72 hours.

An order can be made if the person’s presence at the event or premises is regarded as...
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