



THE ONLINE HATE PREVENTION INSTITUTE
Empowering communities, organisations and agencies in the fight against hate.

ONLINE HATE PREVENTION INSTITUTE SUBMISSION

COUNTER-TERRORISM
LEGISLATION AMENDMENT
(PROHIBITED HATE SYMBOLS AND
OTHER MEASURES) BILL 2023



SUBMISSION TO
PARLIAMENTARY JOINT COMMITTEE ON INTELLIGENCE AND SECURITY

21 JULY 2023

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ABOUT THE ONLINE HATE PREVENTION INSTITUTE

The Online Hate Prevention Institute (OHPI) is Australia's only harm prevention charity dedicated to tackling online hate and extremism; working with government agencies, civil society groups, and social media platforms to remove dangerous content that can lead to real-life violence and harm.

OHPI has been operating since January 2012 and in January 2023 absorbed Exit Australia and New Zealand, which provides deradicalisation services helping people leave extremist organisations of all persuasions.

Our focus on online hate and extremism covers hate against individuals and hate against specific groups within society. Antisemitism is a large part of that focus, as is Holocaust denial and distortion as well as extremism where far-right groups often use Nazi symbols. We have been actively involved in responding to multiple far-right terrorist attacks around the world, preventing the spread of terrorist manifestos and abhorrent violent content videos recorded by extremists during deadly attacks; content which often spurs further violent action as occurred immediately following the Christchurch massacre.

We support the work of the Australian Delegation to the International Holocaust Remembrance Alliance (IHRA) with our CEO appointed by DFAT as an expert member of the Australian Government's delegation and serving on IHRA's Committee on Antisemitism and Holocaust Denial. We also serve as experts to the Interparliamentary Task Forum on Combating Online Antisemitism, and our CEO testified in the European Parliament in June 2023 to support this work.

Our CEO has also held appointments from the Swedish Government as a member of the International Advisory Group for the Malmö International Forum on Holocaust Remembrance and Combating Antisemitism, from the Israeli Government as a member of the Steering Committee for the Global Forum for Combatting Antisemitism, and from the Victorian Education Department as cultural adviser for an independent inquiry into antisemitism in schools.

ABOUT THE AUTHOR, DR ANDRE OBOLER

Dr. Andre Oboler is the CEO & Managing Director of the Online Hate Prevention Institute. He is an Honorary Associate at La Trobe Law School, serves on IEEE's Global Public Policy Committee, and as an IEEE Global Tech Ethics Ambassador. He is an expert member of the Australian Government's Delegation to the International Holocaust Remembrance Alliance and an expert adviser to the Interparliamentary Task Forum on Combating Online Antisemitism, a member of the Australian Human Rights Commission's Media Standards and Regulations working group, and a member of Meta's Australian based Combating Hate Speech Advisory Council.

Dr. Oboler was formerly a Senior Lecturer in Cyber Security at the La Trobe Law School, intercultural liaison for the Victorian Education Department's independent inquiry into antisemitism, co-chair of the Online Antisemitism working group of the Israeli Government's Global Forum to Combat Antisemitism, an expert member of the Inter-Parliamentary Coalition to Combatting Antisemitism, an expert adviser to

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the Interparliamentary Task Forum on Combating Online Antisemitism, a member of the Swedish Government's expert advisory group for the Malmo Forum, and served for two terms with the board of the UK's higher education regulator the QAA.

He holds a PhD in Computer Science from Lancaster University, and a B. Comp. Sci. (Hons) & LLM(Juris Doctor) from Monash University. He is a Senior Member of the IEEE, a member of the IEEE Computer Society's Golden Core, a Graduate of the Australian Institute of Company Directors, and a Member of the Victorian Society of Computers & Law.

SUMMARY OF RECOMMENDATIONS IN THIS SUBMISSION

Recommendation 1: Add a note to the effect that: "Note: The use in public of certain symbols contributes to the advocating terrorism or genocide. To prevent that, this section includes mechanisms to proscribe the use or trade in such symbols."

Recommendation 2: add the words "(Nazi Swastika)" after the words "the Nazi hakenkreuz", additionally, add a note to this section stating: "Note: The Nazi Hakenkreuz, commonly referred to as the Nazi Swastika, which represents the genocidal ideology of Nazism, is distinct in meaning and design from the ancient and sacred symbol in Hinduism, Buddhism, Jainism, and Odinism, known as the Swastika, which represents good fortune and well-being. The modern Nazi symbol, prohibited by this legislation, should not be confused with the ancient symbol which is sacred to many Australians and continues to be used in religious cultural settings."

Recommendation 3: Add a note: "The prohibition on the ISIS flag refers only to the flag as a whole, and not to passages of Islamic scripture found on the flag, but also used in other religious and cultural contexts."

Recommendation 4: Renumber 80.2E to 80.2E(1), Renumber 80.2E(d) to 80.2E(2) and adapt it to read "something that so nearly resembles a thing to which 80.2E(1) applies that it is likely to be confused with, or mistaken for, that thing." Then expand 80.2E(1) to include additional symbols such as: "(d) Totenkopf/Death's Head", "(e) Sonnenrad / Black Sun", "(f) the symbol of a group listed under Division 102". The regulations to list the organisation under Division 102 might be amended to explicitly include details of any symbols of listed groups to give effect to (f) and to allow the parliament the power to disallow the addition of symbols in this manner.

Recommendation 5: An additional provision is needed, perhaps with a lower penalty such as a fine, for the display of other proscribed hate symbols. These symbols should be easy to proscribe, but subject to Parliamentary oversight. Such a scheme is best handled through regulations and should apply to groups that promote violent extremism.

Recommendation 6: Adjust (7)(b) to read: "a member of a group of persons distinguished by race, colour, sex, language, religion, political or other opinion, national or social origin, caste, or sexual orientation." And add a note: "Note: caste and sexual orientation are included as part of the 'other status' in Article 26 of the ICCPR."

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Recommendation 7: Insert a new (9)(c) “the conduct mentioned in paragraph (1)(a) is engaged in for the purposes of anti-hate advocacy, public education, training, or monitoring of hate, that: (i) is in the public interest; and (ii) is made in the course of their work by a person working for a registered charity with the purpose of combat hate, or promote community cohesion, or representing an impacted group.” Insert a new note: “Note: Working in (9)(c) may be paid or in a volunteer capacity.”

Recommendation 8: Add a new exemption as (h) and renumber the existing (h) and beyond. The new provision should read: “all of: (i) the conduct is in connection with efforts to analyse, monitor, or reduce harm from violent extremist material; and (ii) the conduct is performance by staff or volunteers of a registered charity whose purpose includes countering extremism; and (iii) the conduct is reasonable in the circumstances for the purpose of countering extremism.”

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GENERAL COMMENTS

We welcome this opportunity to provide a submission. While broadly supportive of the legislation, we have a number of recommendations to address potential shortcomings around the details of legislation and how online work is resourced.

Our first concern is that there may be insufficient exemptions for organisations like ours that work in this space in a practical manner. We are a specialist charity, on the register of harm prevention charities, and we work with stakeholders in government, civil society, and technology companies to address the threat of hate and extremism. Legislation, including that in the bill, routinely provides protections for those in government, contractors supporting government, journalists, and academics, our legislation seldomly acknowledges the role played by non-government organisations. In Australia such organisations are usually registered charities.

As a specialist charity our work includes research, but being outside a university the academia exemption may not apply. It also includes practical interventions, such as notify technology companies they are hosting terrorist content and requesting its removal – a process that involves explicitly sharing links to the extremist content. The legislation seems to envision that only government actors could perform this function, yet we know from experience that we are often successful in cases where government cannot act, and act far more rapidly than government can in other cases. Our track record demonstrates this. The lack of an exemption for our type of organisation undermines the objective of the legislation.

Our second concern is we believe the law is too narrow in the range of symbols it prohibits. We appreciate the high bar that has been put in place, but we believe several additions could widen the scope without creating cause for concern. Without these changes, or a mechanism to allow the courts to expand the list, we believe the law would be largely symbolic and hard to implement. We also believe greater protection for the LGBTIQ+ community is needed in this legislation.

The third concern is around the lack of government funding to support our internationally recognised and highly impactful counter-terrorism work and our related work on online hate. At present we have resources for less than one Full Time Equivalent role which makes it hard to do our practical reporting work and to make recommendations to government agencies and departments. In contrast, we have been able to scale up to a team of five to undertake analysis on extremist groups in the United States, thanks to paid consultancy arrangements with US based stakeholders. A legislative mechanism giving an appropriate agency responsibility to make grants to support non-government work tackling extremism would address a gap. We note eSafety has such grant making powers in other areas, but the legislation doesn't extend this funding work tackling online extremism. The bill could correct this oversight.

Kind regards,

Dr Andre Oboler
CEO, Online Hate prevention Institute

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COMMENTS ON SPECIFIC AMENDMENTS

We provide the following comments on specific provisions of the Bill.

4 DIVISION 80 OF THE CRIMINAL CODE (HEADING)

1. The Online Hate Prevention Institute strongly supports federal legislation prohibiting certain symbols, the question is what basis should be used to determine which symbols are banned. We believe the existing heading “Treason, urging violence and advocating terrorism or genocide” is sufficient (without change) under the logic that the only symbols being banned are those whose use in public would be a form of advocating terrorism or genocide.
2. This reasoning would add clarity to what symbols should then be banned and what the threshold should be. Additional prohibitions (such as preventing the sale of symbols) is a necessary precaution to prevent their use in a manner that advocates for terrorism or genocide.
3. **Recommendation 1:** Add a note to the effect that: “Note: The use in public of certain symbols contributes to the advocating terrorism or genocide. To prevent that this section includes mechanisms to proscribe the use or trade in such symbols.”

80.2E MEANING OF PROHIBITED SYMBOL

4. We support prohibiting the Nazi symbol commonly referred to as a (Nazi) Swastika,¹ and referred to in the bill as a “Nazi Hakenkreuz”. We appreciate the concern of the Hindu, Buddhist and Jain communities regarding potential misunderstandings that might arise when they use the traditional Swastika in religious and cultural setting, and this needs to be addressed. We do not feel efforts to simply refer to the symbol as a “Hakenkreuz” or “Nazi Hakenkreuz” achieves this. If anything, these words add an extra layer of obscurity. We favour the use of “Nazi Swastika” as it is plain language that makes the law understandable to the public. It also creates the opportunity to explain why the “Nazi Swastika” is different in appearance, meaning, and history,

¹ <https://encyclopedia.ushmm.org/content/en/article/history-of-the-swastika>;
<https://www.britannica.com/topic/swastika>; <https://www.bbc.com/news/magazine-29644591>;
<https://www.smithsonianmag.com/history/man-who-brought-swastika-germany-and-how-nazis-stole-it-180962812/>

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to the Hindu, Buddhist and Jain Swastikas. We believe education is more valuable than obfuscation.

5. **Recommendation 2:** add the words “(Nazi Swastika)” after the words “the Nazi hakenkreuz”, additionally, add a note to this section stating: “Note: The Nazi Hakenkreuz, commonly referred to as the Nazi Swastika, which represents the genocidal ideology of Nazism, is distinct in meaning and design from the ancient and sacred symbol in Hinduism, Buddhism, Jainism, and Odinism, known as the Swastika, which represents good fortune and well-being. The modern Nazi symbol, prohibited by this legislation, should not be confused with the ancient symbol which is sacred to many Australians and continues to be used in religious cultural settings.”
6. We also support the inclusion of the Nazi double-sig rune, commonly referred to as the “SS Bolts”. This is the symbol of the Schutzstaffel, the Nazi SS, who were charged with carrying out the Holocaust.² This symbol has appeared in antisemitic graffiti in Australia.³
7. We are aware of internal debate within the Muslim community around the inclusion of the ISIS flag. The issue is not the flag itself, but a concern it may lead to confusion over the profession of faith (contained in Arabic script on the flag) in other contexts. We support the inclusion of the ISIS flag, but the concerns of the Muslim community over potential misunderstandings need to be addressed.
8. **Recommendation 3:** Add a note: “The prohibition on the ISIS flag refers only to the flag as a whole, and not to passages of Islamic scripture found on the flag, but also used in other religious and cultural contexts.”
9. Finally, we are concerned that the list of prohibited symbols is so narrow. If the threshold is understood as advocating terrorism or genocide, a range of other Nazi symbols should be included, as well as a general provision prohibiting (unless under an exception) the use of symbols related to already proscribed terrorist groups.

² <https://encyclopedia.ushmm.org/content/en/article/ss>;
<https://encyclopedia.ushmm.org/content/en/article/ss-and-the-holocaust>

³ E.g. in Cheltenham, Melbourne in 2021, see <https://www.ecaj.org.au/wordpress/wp-content/uploads/ECAJ-Antisemitism-Report-2021.pdf> pg 47.

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10. **Recommendation 4:** Renumber 80.2E to 80.2E(1), Renumber 80.2E(d) to 80.2E(2), and adapt it to read “something that so nearly resembles a thing to which 80.2E(1) applies that it is likely to be confused with, or mistaken for, that thing.” Then expand 80.2E(1) to include additional symbols such as: “(d) Totenkopf/Death’s Head”, “(e) Sonnenrad / Black Sun”, “(f) the symbol of a group listed under Division 102”. The regulations to list the organisation under Division 102 might be amended to explicitly include details of any symbols of listed groups to give effect to (f) and to allow the parliament the power to disallow the addition of symbols in this manner.
11. There are other Nazi symbols, like the Parteiaedler (Nazi Eagle) but these symbols would be covered by the ban on the Nazi Swastika as they incorporate it as a key element.
12. There are many additional neo-Nazi, white supremacy, and other hate symbols. The FBI in the United States maintains a list of around 30 symbols and no distinction between historic Nazi symbols and modern neo-Nazi and other violent extremist group symbols.⁴ The ADL in the United States has a list of 214 hate symbols.⁵ These symbols, like the “88” and Valknut, have at times been used by Australian hate groups.⁶ There are additional Australian specific hate symbols, such as the logos of groups like National Socialist Network (a blue flag with a white diamond and four red inward pointing arrows).⁷ Such symbols are used to promote extremist ideology and cause fear in targeted minority communities.
13. We acknowledge that proscribing a wider range of hate symbols would lower the threshold of the legislation, however, we believe the current threshold is so high that it would in practice be symbolic. Even if our recommendation 4 were adopted, hate groups in Australia would continue to glorify Nazism, terrorise minority communities, and create fear in the wider community.

⁴ https://portal.ct.gov/-/media/SDE/Digest/2021-22/RMVE_Symbols_Guide.pdf

⁵ https://www.adl.org/sites/default/files/ADL%20Hate%20on%20Display%20Printable_0.pdf

⁶ Mark Morri, “Hate symbols seen in Sydney are a sign of evil times”, Herald Sun, 18 November 2013 <https://www.heraldsun.com.au/news/hate-symbols-seen-in-sydney-are-a-sign-of-evil-times/news-story/664c21112fc9252178d17e5fa4db96f2>

⁷ Nick McKenzie and Joel Tozer, “Inside Racism HQ: How home-grown neo-Nazis are plotting a white revolution”, *The Age*, 16 August 2021. <https://www.theage.com.au/national/inside-racism-hq-how-home-grown-neo-nazis-are-plotting-a-white-revolution-20210812-p58i3x.html>

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14. **Recommendation 5:** An additional provision is needed, perhaps with a lower penalty such as a fine, for the display of other proscribed hate symbols. These symbols should be easy to proscribe, but subject to Parliamentary oversight. Such a scheme is best handled through regulations and should apply to groups that promote violent extremism.

80.2F MEANING OF DISPLAYED IN A PUBLIC PLACE

15. We support this section and in particular 80.2F(3) as the internet is a primary means of distribution of such content.

80.2H PUBLIC DISPLAY OF PROHIBITED SYMBOLS

16. The notes reading “The object of this subsection is to give further effect to article [X] of the Covenant” presumably refers to the ICCPR, it should say so clearly. We note (4)(a)(ii) refers to “a member of a targeted group”, this goes beyond the ICCPR Article 20. We strongly support its inclusion, particularly in regards to the targeting of the LGBTIQ+ communities, but would suggest a legal basis for its inclusion be included to avoid potential challenges.
17. We note that ICCPR Article 26 is abridged in (7)(b). The Convention also refers to “property, birth or other status”. Sexual orientation and caste could be included in this list under the “other status” provision. Issue of caste-based discrimination are an existing gap in the law in Australia. We note that the Nazi symbols in the bill have been used in the context of homophobia and transphobia in Australia so this inclusion would be particularly meaningful.
18. **Recommendation 6:** Adjust (7)(b) to read: “a member of a group of persons distinguished by race, colour, sex, language, religion, political or other opinion, national or social origin, caste, or sexual orientation.” And add a note: “Note: caste and sexual orientation are included as part of the ‘other status’ in Article 26 of the ICCPR.”
19. Section 9 does not provide a sufficient exemption for the display of hate symbols by civil society groups whose purpose is to advocate against such hate. While such advocacy might fall under “education” a clearer exemption would be welcome.
20. **Recommendation 7:** Insert a new (9)(c) “the conduct mentioned in paragraph (1)(a) is engaged in for the purposes of anti-hate advocacy, public education, training, or monitoring of hate, that:

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(i) is in the public interest; and (ii) is made in the course of their work by a person working for a registered charity with the purpose of combat hate, or promote community cohesion, or representing an impacted group.” Insert a new note: “Note: Working in (9)(c) may be paid or in a volunteer capacity.”

80.2J TRADING IN PROHIBITED SYMBOLS

21. We support the inclusion of this section.

474.45D DEFENCES IN RESPECT OF VIOLENT EXTREMIST MATERIAL

22. We are very concerned about a gap in these exemptions when it comes to non-government organisations like ours that are actively engaged in counter-terrorism work in the public interest. While ideally such work should be undertaken under contract to the government, and therefore fall within the (1)(g) exemption, despite a proven track record and many attempts, we have so far been unsuccessful in creating such an arrangement. This not only leaves us under-resourced, impacting our effectiveness, but these changes have the potential to create legal barriers to our work.

23. To give an example, in 2022 we took successful action to remove two original copies of videos of the terrorist attack in Buffalo, New York.⁸ Our work required verification of possible copies of the material in question, which also required the download and storage of the material in question to assist with the identification (including in the future) of other copies. We tracked one copy of the material as it grew from just over 100,000 views to over 3.2 million in under 13 hours, and each data point required an additional attempt to access the material. Our work also identified the involvement of a number of people who identified themselves as Australians in the spread of this material. We were successful at preventing the further spread of this content when many government agencies and larger international NGOs were not.

24. Another example occurred in 2019 when we provided a detailed analysis of the terrorist attack in Halle, Germany.⁹ Our world- leading report on the topic carried a foreword from the

⁸ <https://ohpi.org.au/buffalo-terrorist-attack/>

⁹ <https://ohpi.org.au/hate-and-violent-extremism-from-an-online-subculture-the-yom-kippur-terrorist-attack-in-halle-germany/>

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European Commission and our recommendations have helped shape counter-terrorism policy globally. This analysis required the download and analysis of the manifesto and related content. It also documents the successful action we took to have multiple copies of the manifesto removed. The research and practical counter-terrorism action is essential but is neither academic, nor governmental.

25. A third example is the 2019 attack in Poway, California.¹⁰ Our work here again resulted in monitoring of the spread of a terrorist manifesto, and our successful action to have it removed. Again, this removal was not due to government action, or in support of government officials.
26. A fourth example is the valuable analysis we provided after the terrorist attack in Christchurch in 2019.¹¹ Again, such work is strictly speaking not “academic” as it is carried out in a dedicated harm prevention charity, rather than an academic institution.
27. As we have recently reached a data-sharing arrangement with the Global Internet Forum to Counter Terrorism (GIFCT), and are the only Australian organisation with such an arrangement as far as we are aware, we expect such work to increase in the future.
28. Our work to remove terrorist content often involves us sharing links or copies of such content with others working in space, that includes the government, civil society organisations, journalists, and technology companies who are or may be hosting such content.
29. **Recommendation 8:** Add a new exemption as (h) and renumber the existing (h) and beyond. The new provision should read: “all of: (i) the conduct is in connection with efforts to analyse, monitor, or reduce harm from violent extremist material; and (ii) the conduct is a performance by staff or volunteers of a registered charity whose purpose includes countering extremism; and (iii) the conduct is reasonable in the circumstances for the purpose of countering extremism.”
30. One thing that is missing from this section is a reference to eSafety. The Commissioner should be given the power to order the proscribed symbols removed by online platforms using the

¹⁰ <https://ohpi.org.au/poway-synagogue-attack/>

¹¹ <https://ohpi.org.au/new-zealand-terrorist-attack/>

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existing mechanism. This would be less onerous and more effective than having to rely on police in the case of online content.