



20 July 2023

Committee Secretary  
Parliamentary Joint Committee on Intelligence and Security  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Email: [pjcis@aph.gov.au](mailto:pjcis@aph.gov.au)

Dear Committee Secretary

**Review of the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 (“the Bill”)**

The Executive Council of Australian Jewry (ECAJ) makes the following submission to the Review. The ECAJ is the peak, elected, representative body of the Australian Jewish community. This Submission is also made on behalf of the ECAJ’s [Constituent and Affiliate organisations](#) throughout Australia. We consent to this submission being made public.

**Executive summary**

The public display of hate symbols of any kind was for decades after World War II a rarity in Australia. Yet in recent years there has been a sustained proliferation of hate symbols and gestures in the public sphere including, but not limited to, displays online. The negative impacts have included threats and menace conveyed to communities who are targeted by hate-ideology, and an undermining of their sense of security, and of social cohesion. These symbols are also used to recruit and radicalise adherents, and build in-group belonging. Legislation to ban the public display of one category of hate symbols, namely Nazi symbols, has been enacted in NSW and Victoria, and Bills are currently under consideration in Queensland and Tasmania, in addition to the current Federal Bill. They take different forms and treat particular issues differently. The Tasmanian Bill would also proscribe the public performance of Nazi gestures. Australia has struggled to come up with a best practice model law. Laws in overseas countries, which have had their own particular historical experiences of the evils of extremist ideologies, are of some, but limited, relevance in Australia. In this submission we consider how the Bill defines “prohibited symbol” and the additional elements of the offence of displaying such a symbol in public, as well as specific issues such as the constitutional head of power, the display of hate symbols via body tattoos, trading of Nazi memorabilia, exceptions, defences, police powers and penalties. We consider the way the Bill treats these issues and compare this to the way these matters have been addressed by the States, and we make recommendations concerning each issue. We also address the need for any legislation to be complemented by appropriate measures in school education.

**Executive Council of Australian Jewry Inc.**

הוועד הפועל של יהודי אוסטרליה

**The Representative Organisation of Australian Jewry**

Level 2, 80 William Street  
Sydney NSW 2000

Address all correspondence to:  
PO Box 1114, Edgecliff NSW 2027

Tel (+61 2) **8353 8500**  
Fax (+61 2) **9361 5888**  
Web: [www.ecaj.org.au](http://www.ecaj.org.au)  
E-mail [info@ecaj.org.au](mailto:info@ecaj.org.au)

**PRESIDENT**

Jillian Segal AO

**DEPUTY PRESIDENT**

Robert M Goot AO, SC

**HON. TREASURER**

Peter Wise AM

**HON. SECRETARY**

Daniel Aghion KC

**Co-CEOs**

Peter Wertheim AM  
Alex Ryvchin

**VICE PRESIDENTS**

David Ossip (NSW)  
Daniel Aghion KC (VIC)  
Geoff Midalia (WA)  
Jason Steinberg (QLD)  
Annetay Henderson-Sapir (SA)  
Jeff Schneider (TAS)  
Karen Tatz (ACT)

**IMM. PAST PRESIDENT**

Anton Block AM

**CONSTITUENTS**

NSW Jewish Board of Deputies  
Jewish Community Council of Victoria Inc  
Jewish Community Council of Western Australia Inc  
Queensland Jewish Board of Deputies  
Jewish Community Council of South Australia  
Hobart Hebrew Congregation  
ACT Jewish Community Inc

**AFFILIATES**

Australasian Union of Jewish Students  
Australian Federation of WIZO  
Union for Progressive Judaism  
Federation of Jewish Aged Care Services  
Maccabi Australia Inc  
National Council of Jewish Women  
B'nai B'rith of Australia/ NZ  
Jewish National Fund of Australia  
Joint Distribution Committee Australia

**OBSERVERS**

Council of Progressive Rabbis  
Federation of Australian Jewish Ex-Service Associations  
New Zealand Jewish Council  
Zionist Federation of Australia  
Council of Orthodox Synagogues of Australia

## **Outline of submission**

This submission is divided into sections as follows:

Executive Summary – p.1

1. The need for new legislation – p.3
  - 1.1 Proliferation of Nazi symbols – p.3
  - 1.2 Manifestations of Islamist extremism in Australia – p.4
  - 1.3 Conclusions regarding Nazi and Islamist extremism in Australia – p.6
2. International practice – p.6
  - 2.1 Banning of Nazi symbols – p.6
  - 2.2 Banning of Nazi gestures – p.6
  - 2.3 Banning of Islamic State flag – p.7
3. “Prohibited symbol” – p.7
  - 3.1 Nazi symbols – as dealt with by the Bill – p.7
  - 3.2 Nazi symbols – as dealt with by the States – p.9
  - 3.3 Nazi symbols – conclusion – p.10
  - 3.4 Islamic State flag – p.11
4. Body tattoos – p.11
5. Nazi and Islamic State gestures – p.12
6. Trading in goods that bear a prohibited symbol – p.13
7. Public display of prohibited symbols – additional elements – p.15
8. Exceptions and defences – p.17
  - 8.1 Religious symbols – p.17
  - 8.2 Other exceptions and defences – p.18
  - 8.3 Evidential burden – p.18
9. Police powers – p.18
10. Penalties – p.19
11. Other legislative changes – p.20
12. Legislation should be complemented by education – p.20
13. Conclusion – p.22

Summary of recommendations – p.23

Appendix 1 – Chronology of incidents involving public displays of Nazi symbols and gestures in Australia – p.25

Appendix 2 – Examples of Nazi memorabilia traded in Australia not bearing a prohibited symbol – p.31

## **1. The need for new legislation**

Most of this submission addresses Schedule 1 of the Bill, the provisions of which would establish new criminal offences for the public display of prohibited Nazi and Islamic State symbols; and trading in goods that bear a prohibited Nazi or Islamic State symbol.

### **1.1 Proliferation of Nazi symbols**

Since the latter half of 2016, organised groups with an overtly neo-Nazi agenda have risen to prominence on the far right of politics in Australia. The ECAJ's *Annual Report on Antisemitism in Australia 2017* provides a detailed picture of the various neo-Nazi and other far-right groups, and their principal figures, at that time.<sup>1</sup>

The reasons for this development are complex and outside the terms of reference of this Inquiry. They were dealt with in detail in the ECAJ's submission to the Inquiry into matters relating to extremist movements and radicalism in Australia, conducted by the Parliamentary Joint Committee on Intelligence and Security in 2021.

Accompanying the emergence of these groups was a noticeable spike in the number of incidents involving the public display of Nazi symbols and gestures in different parts of Australia.

A year by year summary of these incidents, insofar as they promoted antisemitism in general or were directed at specific Jewish community institutions, has been extracted from the ECAJ's Annual Reports on Antisemitism in Australia. These incidents involved something qualitatively different to, and more brazen than, the perennial anonymous appearance of Nazi symbols in graffiti or in comments posted online. A chronology of these incidents appears in **Appendix A** to this submission.

The display of Nazi symbols in everyday settings, such as the wearing of swastika armbands in supermarkets or on a public street, have a propensity to "normalise" hate symbols and messages, to desensitise the wider community to hate gestures and to condition the community into acquiescing in the public expression of Nazi themes.

Nazism is not merely an abstract or theoretical ideology. It has a concrete history - the history of the Third Reich in Germany - that is drenched in human blood and misery. Whilst the 20<sup>th</sup> century witnessed many examples of state-sanctioned mass murder, Nazism was truly extraordinary. The laws on race and citizenship which the Nazi regime began to impose on taking power in Germany in 1933 and which were codified by the Nuremberg Laws of 1935, invoked the twisted pseudo-science of eugenics to make antisemitism and false doctrines of racial superiority the law. These falsehoods were the evil rationale for the Nazis' wars of aggression in Europe, and for the systematic, industrial-scale genocide of so-called "inferior races", which claimed the lives of 6 million Jews (including 1.5 million Jewish children), and millions of Roma, Serbs and other Slavic groups, and (what today are known as) LGBTIQ+ people, among others.

Given this history, the public display of Nazi symbols and gestures goes well beyond the realm of ideas, freedom of expression or legitimate political communication. Such displays are, and are usually

---

<sup>1</sup> Julie Nathan, *Report on Antisemitism in Australia 2017*, Executive Council of Australian Jewry, 26 November 2017, p.99. More recent ECAJ Antisemitism Reports have tracked the splintering and other changes that have occurred within those groups, and their overlapping personnel, including at the leadership level.

intended to be, acts of menace and intimidation. They convey hatred for individuals and groups and for the values of personal freedom, justice and democracy of our entire society. Placing Nazi signs, carrying a Nazi flag or performing Nazi salutes on or in the vicinity of a synagogue, mosque or temple or a Holocaust museum, is not an expression of an idea, but a naked threat and a promotion of hatred and violence. It is also a calculated insult to Australian service men and women who gave their lives or were wounded or suffered imprisonment during World War II in order to defeat Nazi tyranny, and to other veterans from other countries who later made Australia their home and to all of their families.

Nazism and neo-Nazism play on ignorance, fear and prejudice in order to set apart, scapegoat and demonise one or more parts of a society in the eyes of the rest of that society. This is directly contrary to a foundational principle of liberal democracy, namely the inviolability of the life and dignity of each human being. Nazism is incapable of conceiving of, and treating, each person in all of their unique individuality, and instead treats each member of a demonised group as an impersonal, abstract “other”. “Othering” is the starting point of dehumanisation. Dehumanisation is the starting point of treating others unjustly, even murderously. This is the mechanism by which neo-Nazis hope to set different parts of society against one another in a “race war”, and thereby to win power.

We fully agree with the observation in the Explanatory Memorandum to the Bill<sup>2</sup> that the propagation, especially online, of the kinds of prejudice, conspiracy fantasies and other falsehoods which fuel extremism and extremist violence, are also used by neo-Nazi and other extremist groups to groom and recruit alienated young people for exploitation as foot-soldiers in furthering their aims.

## 1.2 Manifestations of Islamist extremism in Australia

Contemporary Islamism and Jihadism in Australia began in 2000 when prominent figures within the Jihadi terrorist groups Jemaah Islamiyah and al Qaeda (whose Iraqi branch was a fore-runner to Islamic State), plotted to attack the Israeli embassy in Canberra and Consulate in Sydney during the Olympic Games.<sup>3</sup> In 2002, a plot by al Qaeda to carry out a devastating attack on the Jewish community's main building in Melbourne was uncovered.<sup>4</sup>

Networks of homegrown self-starting Jihadi groups in Melbourne and Sydney were uncovered in November 2005 in Operation Pendennis<sup>5</sup> and in 2009 in Operation Neath.<sup>6</sup>

With the rise to prominence of Islamic State in 2013-2014, jihadi activity in Australia ceased to be group-focused but was instead carried out by ‘lone actor’ operators, although they may have been influenced by, and in contact with, others in Australia or overseas, especially Islamic State in Syria. A series of shocking, lethal lone-actor terrorist incidents occurred in Australia between 2014 and 2018.

In one such incident, which occurred on 15–16 December 2014 a lone gunman, Man Haron Monis, held 18 people hostage at the Lindt chocolate café in Martin Place, Sydney. Some of the hostages were forced to display the Islamic State flag which Monis had brought with him. When Monis shot dead the

---

<sup>2</sup> General Outline, pp. 3-4, paras 2, 5, 9 and 10.

<sup>3</sup> [R v Roche WASCA 4](#) (14 January 2005), para [40] per Templeman J.

<sup>4</sup> ‘[Terror cell planned attack on Jewish centre](#)’, *The Age*, 14 June 2004

<sup>5</sup> Alison Caldwell, ‘[Two terrorist cells worked together to plot attacks](#)’, *ABC News*, 20 September 2011.

<sup>6</sup> ‘[Three found guilty of Holsworthy terror plot](#)’, *ABC Radio ‘PM’ program*, 23 December 2010.

manager of the café, police stormed the premises and shot Monis dead. Another hostage was unfortunately killed by the police gunfire.<sup>7</sup>

Successive Australian governments have met the challenge of Islamist terrorism by enacting more stringent national security laws and by improved resourcing of intelligence and law enforcement agencies. These efforts have been assisted considerably by the close co-operation with authorities of Muslim communities in Australia.<sup>8</sup>

There has been less legislative and associated activism by Australian authorities in addressing less violent forms of Islamist extremism. The most noteworthy local example is Hizb ut-Tahrir (HT) in Australia.

HT seeks to establish an Islamic Caliphate in all Muslim majority countries, and eventually globally, and to constitute it under strict Islamic religious law. The Caliphate would be a theocracy. The will of the people would be subordinated to the will of the caliph. Non-Muslim subjects would be required to pay additional taxes, would have inferior rights to Muslims and in many instances would be subject to Islamic religious law. Men and women would be segregated except for the purposes of commerce and religious pilgrimages.<sup>9</sup>

HT rejects the concepts of equal rights, democracy, personal freedom, human rights and the rule of secular law, international and domestic. Its rhetoric has frequently been antisemitic, homophobic, and anti-Western. Although the group publicly has claimed that it does not seek to achieve its goals through violent means, group leaders have consistently sought to foster a sense of grievance among impressionable young Muslim men in particular. Individuals affiliated with the group have been linked to violent acts in multiple countries, and HT disingenuously has both distanced itself from, and sought to provide a degree of justification for, their actions. HT has been banned in at least 13 countries, but not in Australia.<sup>10</sup>

HT Australia rejects the legitimacy of Australia's current secular democratic constitutional order in favour of a Muslim caliphate,<sup>11</sup> and has called for Muslim children not to have to sing Australia's national anthem.<sup>12</sup> Until recently, it was led by Islamist cleric Ismail al-Wahwah, who reportedly died of unknown causes in May 2023. Al-Wahwah delivered a public diatribe in Australia in July 2014, in which he praised and sought to justify murderous violence against Jews.<sup>13</sup> A video of the speech was uploaded to YouTube. In another public tirade in December 2017 al-Wahwah used even more

---

<sup>7</sup> For a full account of the incident and an analysis of police failures, see State Coroner of New South Wales, '[Inquest into the deaths arising from the Lindt Café Siege: Findings and Recommendations](#)', *Coroners Court of New South Wales*, May 2017.

<sup>8</sup> Michelle Grattan, '[In conversation with ASIO chief David Irvine](#)', *The Conversation* 15 August 2014.

<sup>9</sup> Information on HT's doctrine, goals and methods is taken from [The Counter-Extremism Project](#) website.

<sup>10</sup> *Ibid.*

<sup>11</sup> [The Draft Constitution of the Khilafah State, Hizb ut-Tahrir](#), February 2011.

<sup>12</sup> Saffron Howden, '[Muslim children should not be forced to sing national anthem, says Hizb ut-Tahrir](#)', *Sydney Morning Herald*, 2 November 2015.

<sup>13</sup> Taylor Auerbach, '[Hizb ut-Tahrir leader Ismail Alwahwah calls for jihad against Jews in inflammatory video](#)', *Daily Telegraph*, 9 March 2015.

graphically violent language advocating the killing of Jews and also of Muslim leaders who are prepared to accept Israel's right to exist alongside a Palestinian State.<sup>14</sup>

### **1.3 Conclusions regarding Nazi and Islamist extremism in Australia**

Forms of Nazi and Islamist extremism which stop short of terrorism are nonetheless insidiously threatening and destructive of social cohesion, and for essentially the same reasons. Both forms of extremism are dedicated to the replacement of Australia's democracy, freedoms and rights by a totalitarian order enforced by brutal repression. Both use hate speech, hate-fuelled behaviour and associated thuggery and menace to promote their dystopian vision of society. Both seek to set Australian against Australian on the basis of ethnicity, religion, gender, sexual preference, gender identity or disability. Both carry within them a clear propensity for violence, and an intimidatory menace towards any sources of opposition they encounter, including from law enforcement officials.

The public display of Nazi and Islamist symbols and gestures with impunity is therefore an objective threat to our way of life and to the freedom, safety and security of all Australians, especially those who are members of groups and communities who have historically been the targets of Nazi and Islamist policies of genocide, mass murder and other forms of persecution. We believe that legislative action to combat this menace is fully justified.

## **2. International practice**

### **2.1 Banning of Nazi symbols**

A small number of countries, including those which historically suffered most at the hands of Nazi tyranny, have banned the public display of Nazi and other hate symbols. These countries include Germany,<sup>15</sup> Austria, France, Lithuania, Latvia, Poland, Ukraine, Brazil and Israel.

Most countries which have introduced banning legislation provide exemptions or exclusions for the display of certain symbols when the purpose is clearly not to promote hatred. For example, the swastika in certain formats has for centuries been a religious and cultural symbol in several eastern and European traditions. Similarly, the use of Nazi symbols in the course of educating the public about the appalling history of Nazism or for other genuine academic, research, scientific or artistic purposes, or other purposes in the public interest, is not proscribed.

### **2.2 Banning of Nazi gestures**

Certain countries also proscribe performing Nazi gestures in public. The German *Criminal Code* bans the Nazi salute and the declaration of "Heil Hitler" in public spaces. The maximum penalty is six months imprisonment. In Austria the anti-Nazi *Prohibition Act* also bans giving the straight-arm salute in public. There are similar laws in the Czech Republic where proof of an intention to promote an extremist ideology is also required. The maximum penalty is five years' imprisonment. Slovakia has something closer to a strict liability offence, carrying only a fine. Switzerland and Sweden classify the

---

<sup>14</sup> Excerpts from the speech, including the content here referred to, were uploaded to YouTube by Memri TV on 31 August 2020: <https://www.youtube.com/watch?v=afGZKtDlatc>

<sup>15</sup> Section 86a of the German *Criminal Code* outlaws "use of symbols of unconstitutional organizations" outside the contexts of "art or science, research or teaching". The law does not name the individual symbols to be outlawed, and there is no official exhaustive list. The law has been used primarily to outlaw Nazi, Communist, and Islamist extremist symbols.

giving of the Nazi salute as a hate crime, usually carrying a fine. In Switzerland, proof of an intention to promote a racist ideology to others, is also required.<sup>16</sup>

### 2.3 Banning of Islamic State flag

In the UK, subsection 13(1)(b) of the Terrorism Act 2000<sup>17</sup> states: "[a] *person in a public place commits an offence if he wears, carries or displays an article in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation*" and, under subsection 13(3), is liable to up to six months imprisonment or a statutory fine or both. In August 2014, British Prime Minister David Cameron stated that anybody "*walking around with ISIL flags*" should be arrested.<sup>18</sup>

In the same month, the display of the Islamic State flag was banned from public demonstrations in the Netherlands.<sup>19</sup>

In September 2014, Germany banned any activities of the Islamic State of Iraq and the Levant, including recruitment, fundraising, and the use of the group's symbols under the name "Islamic State" (German: Islamischer Staat), such as the black flag bearing the group's name.<sup>20</sup>

Austria proposed a ban in the same month.<sup>21</sup>

## 3. “Prohibited symbol”

### 3.1 Nazi symbols – as dealt with by the Bill

The Bill seeks to regulate only two Nazi symbols, namely the Nazi *hakenkreuz* (hooked cross, often called the Nazi swastika) and the Nazi double-sig rune (often called the SS lightning bolts). The Bill would also apply to other symbols that so nearly resemble either of these two symbols that they are likely to be confused with or mistaken for them.<sup>22</sup> The rationale for limiting the proscription to these two symbols is that the Nazi *hakenkreuz* and the Nazi double-sig rune “*are the most widely recognised...Nazi symbols, and therefore are the most impactful in their ability to disseminate hateful views and vilify*”.<sup>23</sup>

With respect, we do not believe this statement to be accurate, and the evidentiary basis for it, if any, is not stated.

From checking the ECAJ Annual Reports of Antisemitism in Australia since 2017, it is our view that the Nazi *totenkopf* (death's head) symbol is at least as well recognised and has been used at least as frequently as the double-sig rune. It was a mainstay of the now-defunct neo-Nazi group known as ‘Antipodean Resistance’, especially as a mask for the faces of its members to hide behind in online

---

<sup>16</sup> Alexander Sehmer, [In which countries is it illegal to perform the Nazi salute?](#), *The Independent*, 20 July 2015.

<sup>17</sup> <https://www.legislation.gov.uk/ukpga/2000/11/section/13>

<sup>18</sup> ‘Iraq crisis: Cameron warns of IS threat to UK’, *BBC News*, 17 August 2014.

<sup>19</sup> Peter Cluskey, ‘Dutch ban display of Isis flag in advance Amsterdam march’, *Irish Times*, 2 August 2014.

<sup>20</sup> United States Department of State, ‘Germany 2014 human rights report’, 2014. p. 11

<sup>21</sup> ‘Austria bans ISIS terror symbols’, *The Local*, 12 September 2014.

<sup>22</sup> Proposed s.80.2E (b), (c) and (d).

<sup>23</sup> Explanatory Memorandum, p. 23, para 19.

images.<sup>24</sup> At times, the Nazi *Sonnenrad* (sun wheel) has appeared more frequently than either the double-sig runes or the *Totenkopf*.<sup>25</sup>

The main neo-Nazi organisation in Australia at present, and the successor organisation to Antipodean Resistance, is the National Socialist Network (NSN),<sup>26</sup> which should not be confused with the much smaller National Socialist Movement. The NSN has generally avoided using any of the traditional Nazi symbols in its public imagery, especially since the introduction of State legislation to ban the public display of Nazi symbols more broadly, and has instead used symbols resembling runes in pre-Christian European cultures, in keeping with symbols currently being used by neo-Nazi groups in the UK and Europe. The NSN flag, reproduced below, features inward-pointing arrows (which NSN refers to as ‘converging arrows’) from the four main points of the compass to form an ‘X’. Arrow symbols are often used by neo-Nazi groups, presumably as a derivation from the Tyr rune, the symbol of combat.<sup>27</sup>



NSN Flag

The flags and emblems used by NSN and the other known neo-Nazi groups in Australia at the present time are reproduced in the ECAJ’s [Report on Antisemitism in Australia 2022](#) at page 208. Only one of these groups, the National Socialist Movement, uses the *hakenkreuz* in its flag or emblem. None of the groups uses the double-sig rune as an organisational symbol. An NSN street demonstration in Melbourne in February 2023 (picture reproduced below) featured more than 20 Nazi symbols, only one of which (the double-sig rune) would be a prohibited symbol under the Bill.



<sup>24</sup> Julie Nathan, [Report on Antisemitism in Australia 2018](#), Executive Council of Australian Jewry, 25 November 2018, pp. 51, 59, 60, 115, 116, 212, 263, 264, 267, 268 and 269.

<sup>25</sup> Julie Nathan, [Report on Antisemitism in Australia 2020](#), Executive Council of Australian Jewry, 29 November 2020, pp. 7, 87.

<sup>26</sup> Julie Nathan, [Report on Antisemitism in Australia 2021](#), Executive Council of Australian Jewry, 12 December 2021, p. 157; Julie Nathan, ‘Current trends in antisemitism in Australia’, *Australian Jewish News*, 2 February 2023.

<sup>27</sup> Julie Nathan, [Report on Antisemitism in Australia 2022](#), Executive Council of Australian Jewry, 12 December 2022, p.155.

**Accordingly, in our view, the public display of flags and emblems presently being used by neo-Nazi groups in Australia, with the exception of the National Socialist Movement (a dysfunctional group with a negligible number of adherents), will be mostly unaffected by the Bill and their public display, including online, will therefore continue to be permitted with impunity.**

### **3.2 Nazi symbols – as dealt with by the States**

In NSW it is an offence to display, without a reasonable excuse, a “Nazi symbol”.<sup>28</sup> “Nazi symbol” is not defined, and the behaviour proscribed by the NSW legislation is therefore not limited to the display of traditional Nazi symbols, such as the *hakenkreuz* or symbols resembling them. The question of whether a symbol is a Nazi symbol in the circumstances of any particular case, is a matter of fact left to a judge or jury to decide on the evidence.

In contrast in Victoria, the relevant legislation makes it a criminal offense for a person to intentionally display a Nazi symbol in public,<sup>29</sup> but defines “Nazi symbol” only as the *hakenkreuz*, or any symbol that so nearly resembles the *hakenkreuz* that it is likely to be confused with or mistaken for it.<sup>30</sup> The display of other well-known Nazi symbols is therefore not presently proscribed by the Victorian legislation.

In Tasmania, a Bill has been introduced that would proscribe the display of a Nazi symbol by a public act and without a legitimate public purpose.<sup>31</sup> The Tasmanian Bill has now passed the second reading stage in the Tasmanian Legislative Council and is expected to be enacted in August.<sup>32</sup> It provides an inclusive rather than an exhaustive definition of “Nazi symbol”, which is much broader than the definition in the Victorian legislation:

*Nazi symbol includes –*

- (a) a symbol associated with the Nazis or with Nazi ideology; and*
- (b) a symbol that so nearly resembles a symbol referred to in paragraph (a) that it is likely to be confused with, or mistaken for, such a symbol or gesture; and*
- (c) a depiction, or recording, of a Nazi gesture within the meaning of section 6D; and*
- (d) the depiction, or recording, of a gesture that so nearly resembles a gesture referred to in paragraph (b) that it is likely to be confused with, or mistaken for, such a gesture.<sup>33</sup>*

Under a Queensland Bill that was recently introduced, “a person who publicly distributes, publishes or publicly displays a prohibited symbol in a way that might reasonably be expected to cause a member of

---

<sup>28</sup> *Crimes Act 1900* (NSW), s.93ZA.

<sup>29</sup> *Summary Offences Act 1966* (Vic), s.41K

<sup>30</sup> *Summary Offences Act 1966* (Vic), s.41J

<sup>31</sup> *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of s.6C to *Police Offences Act 1935* (Tas).

<sup>32</sup> Jeremy Rockliff, Premier of Tasmania, and Elise Archer, Attorney-General and Minister for Justice, ‘[Nazi symbols and salutes now prohibited in Tasmania](#)’, *Media Release*, 30 June 2023.

<sup>33</sup> *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of subsection 6C(10) to *Police Offences Act 1935* (Tas).

*the public to feel menaced, harassed or offended, commits an offence, unless the person has a reasonable excuse.*<sup>34</sup> The provision defines the expression “prohibited symbol” as:

*“a symbol or image—  
(a) prescribed by regulation for this section; or  
(b) that so nearly resembles a symbol referred to in paragraph (a) that it is likely to be confused with or mistaken for that symbol.”*

Before any such regulation can be made, the relevant Minister (the Queensland Attorney-General) must be satisfied that:

*“the symbol or image—  
(a) is widely known by the public as being solely or substantially representative of an ideology of extreme prejudice against a relevant group; or  
(b) is widely known by members of a relevant group as being solely or substantially representative of an ideology of extreme prejudice against that group.”*

The effect of the Queensland provisions would be to impose limits on the scope and application of the ban on displaying Nazi hate symbols, which limits do not exist in NSW and, correctly in our view, are not contemplated either in the Bill or in the Tasmanian Bill.

### **3.3 Nazi symbols – Conclusion**

In our view, any banning legislation that is introduced needs to proscribe the symbols and emblems that are presently and most frequently being used by neo-Nazi groups in Australia, both for the promotion of hatred and violence and for recruitment, in addition to the traditional Nazi symbols. The legislation also needs to be flexible enough to accommodate the constant evolution of new hate symbols by neo-Nazi groups, as well as the symbols of political movements, such as the Ustasha movement, that were historically allied to the Nazi regime in Germany, and which have been displayed at sports matches and other sports-related contexts in Australia.<sup>35</sup>

A compendium of symbols, including ‘code words’, that have been developed as Nazi symbols in recent years by neo-Nazi groups in Australia can be found in the ECAJ’s Annual Report on Antisemitism in Australia in 2020).<sup>36</sup>

We do not recommend the restricted definition of a Nazi symbol that applies in Victoria or is contemplated in Queensland, or by the Bill. In our view, the optimum approach to defining a Nazi symbol is that which has been adopted in the Tasmanian Bill, because it provides both a reasonable certainty of meaning, and the flexibility to allow the courts to determine the relevant facts in any given case, and to apply the offences to symbols associated with Nazi ideology and any new symbols that neo-Nazi groups might develop. We would also accept the approach adopted by the NSW legislation, which in effect leaves it to a court to determine as a question of fact whether the use of a symbol, taken in context, makes it a Nazi symbol. (See **Recommendation 1**).

---

<sup>34</sup> *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023* (Qld), Part 3, Amendment of Criminal Code, clause 12. Proposed new section 52D of the *Criminal Code* (Qld).

<sup>35</sup> Details are provided in Appendix A.

<sup>36</sup> Julie Nathan, [Report on Antisemitism in Australia 2020](#), Executive Council of Australian Jewry, 29 November 2020, pp. 103-105.

### 3.4 The Islamic State flag

The Bill specifies the Islamic State flag as a prohibited symbol because the public display of that flag has been used “*to promote terrorist attacks and praise terrorist incidents*”, and as part of “*Islamic State’s coordinated and effective propaganda campaign, which has...exposed Australians to extremist ideologies and radicalisation*”.<sup>37</sup> The flag has also featured in Islamic State videos of beheadings of live prisoners and hostages.<sup>38</sup>

At least one critic of the Bill has noted that the Islamic State flag includes Arabic words which express the fundamental creed of Islam, which is sacred to all Muslims and also depicts the seal of Mohammad. “*Many Muslims display the Islamic creed in its Arabic wording within their homes, as stickers on their cars, in mosques, or as artwork in various forms*”.<sup>39</sup> It is argued that by banning any symbol which so nearly resembles the Islamic State flag that it is likely to be confused with, or mistaken for that flag, those Muslims risk criminal liability for an innocuous expression of their faith.

With respect, we do not agree with this contention. If enacted, the Bill would not ban any words from any sacred text, but it would ban the distinctive ***configuration*** of particular words as they appear on the Islamic State flag, which has a unique design, or in some closely similar configuration (even if not in the form of a flag), that would be likely to be confused with it. In the latter case, the prosecutor would bear the onus of proving the likelihood of confusion. People will otherwise continue to be free to publish those exact words in any form they wish. There will be further protection in the form of an express exclusion of liability for conduct which “*a reasonable person would consider*” is engaged in for a religious purpose that “*is not contrary to the public interest*”.<sup>40</sup>

Our only recommendation about this aspect of the Bill is that the Hizb ut-Tahrir Australia logo should also be a prohibited symbol. (See **Recommendation 2**). For the reasons stated in section 1.2 of this submission, Hizb ut-Tahrir Australia has been the most active Islamist extremist organisation in Australia, and its leaders have publicly advocated violence towards and killing of Jews, among others. By comparison, since Islamic State was defeated as a territorial entity in Iraq in 2017 and in Syria in 2019, its influence and appeal has been much diminished.

## 4. **Body tattoos**

The Bill does not make any specific provision with regard to the display of a prohibited symbol in the form of a body tattoo. It would therefore be left to a court to determine whether, in the circumstances of a particular case involving a display of a prohibited symbol in the form of a body tattoo, the offence has been committed, or alternatively whether one of the defences in the Bill has been made out.

The position is similar under the relevant NSW legislation and under the Queensland Bill. In a joint media statement on 29 March 2023 the Queensland Premier and the Attorney-General announced that the new ‘Prohibited symbols’ offence “*is intended to capture a broad range of circumstances, including*

---

<sup>37</sup> Explanatory Memorandum, p.24, para 23.

<sup>38</sup> *USA v Mohammed Khalifa*, United States District Court for the Eastern District of Virginia, Alexandria Division - Case No. 1:21-mj 34, [Affidavit in support of a criminal complaint of Special Agent Joshua S. Grace, sworn 5 February 2021](#), paras 31, 40.

<sup>39</sup> Zuleyha Keskin, ‘[The Islamic State flag hijacks Muslim words of faith. Banning it could cause confusion and unfair targeting of Muslims](#)’, *The Conversation*, 10 July 2023

<sup>40</sup> Proposed section 80.2H(9)(a) of the *Criminal Code*.

*the public display of tattoos*”, even though there is no specific mention of tattoos in the Queensland Bill.<sup>41</sup>

In Victoria there is an exception<sup>42</sup> and in Tasmania a defence,<sup>43</sup> that would exclude criminal liability for the display of a prohibited symbol that is permanently tattooed on the defendant’s body or that has been made a permanent part of the defendant’s body by some other process. In our view, any such exclusion or defence is misconceived. The display of a prohibited symbol on a body, for example at a beach in the presence of families and young children, could be just as sinister and menacing in its impact as any other form of public display of that symbol. It is the display in public, not the possession, of a tattoo depicting a prohibited symbol that is in question. There seems to us to be no good reason to protect the public display of a prohibited symbol simply because of the means by which it is displayed. On this matter, we prefer the approach taken by the Bill and by the NSW legislation and the Queensland Bill, which make no mention of body tattoos and would thus leave it to a court to determine whether, in any particular set of circumstances, the bodily display of a prohibited symbol in public is an offence under the legislation.

## **5. Nazi and Islamic State gestures**

Regrettably, the Bill does not seek to proscribe Nazi or Islamic State gestures.

Gestures such as the giving of the Nazi salute or the Islamic State gesture of the index finger pointing skywards are another means of promoting their respective ideologies, recruiting followers, and conveying a message of threat and menace.

This was illustrated all too clearly during the recent incident described in Appendix A to this submission, when a group of neo-Nazis performed multiple Nazi salutes outside the Victorian parliament. Another example described in Appendix A was the performance of the fascist salute by supporters of the Nazi-allied Ustasha movement at a soccer match in Sydney in October 2022. As detailed in section 2.2 of this submission, performing Nazi gestures in public is currently banned in several countries in Europe.

We believe that the proscription of such behaviour would therefore be entirely appropriate and in keeping with Australia’s obligations under paragraph (a) of article 4 of the [\*International Convention on the Elimination of All Forms of Racial Discrimination\*](#).<sup>44</sup>

We note that none of the States currently proscribes or proposes to proscribe Islamic State gestures.

As regards Nazi gestures, in NSW, the law making it an offence to display a Nazi symbol by a public act,<sup>45</sup> defines a “public act” as including “*conduct (including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia) observable by the public*”.<sup>46</sup> However, that does

---

<sup>41</sup> [Tougher hate crime and serious vilification laws for Queensland](#), 29 March 2023.

<sup>42</sup> *Summary Offences Act 1966* (Vic), ss.41K(3)

<sup>43</sup> *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of ss. 6C(4) to *Police Offences Act 1935* (Tas).

<sup>44</sup> *United Nations Treaty Series*, vol. 660, p. 195. Entry into force: 4 January 1969.

<sup>45</sup> *Crimes Act 1900* (NSW), s.93ZA.

<sup>46</sup> *Crimes Act 1900* (NSW), s.93Z.

not necessarily mean that the giving of a Nazi salute, for example, would constitute a Nazi symbol. The expression “public act” refers to *how* something is communicated, rather than to *what* is communicated.

The relevant Victorian legislation clearly does *not* currently proscribe Nazi gestures. On 20 March 2023 Victorian Attorney-General Jaclyn Symes confirmed that the Victorian government will expand current legislation banning the Nazi swastika to include the salute.<sup>47</sup>

The Tasmanian Bill deals with the performance of Nazi gestures as a separate offence to the offence of displaying a Nazi symbol. It defines a Nazi gesture as the Nazi salute or a gesture that resembles the Nazi salute, and allows for other gestures (or gestures resembling them) to be deemed by regulation to fall within the definition.<sup>48</sup>

In the Queensland Bill, Nazi gestures are not included in the definition of “prohibited symbol” or in the provisions which would proscribe the public distribution, publication or display of a prohibited symbol. Actions and gestures are included in the provisions that would proscribe serious vilification, but those provisions would require proof beyond reasonable doubt of “incitement”. Similar provisions in other States have been shown to establish an almost impossibly high evidentiary bar against a successful prosecution, and were repealed in NSW in 2018.<sup>49</sup>

On balance, we prefer the approach adopted in the Tasmanian Bill, because it explicitly proscribes Nazi gestures and treats the performance of a Nazi salute or other Nazi gesture as a separate offence to the public display of a Nazi symbol. In our view, a Nazi gesture should be defined as the Nazi salute and any other gesture that is performed in public as a Nazi gesture. This would include new gestures which neo-Nazis have developed such as the *quenelle* (straight arm pointing downwards)<sup>50</sup> and the “WP” (White Power) hand gesture. It would be a question of fact for a court to determine, on the evidence, whether in all the circumstances a gesture was performed as a Nazi gesture. We would recommend the same approach be adopted with regard to Islamic State gestures. (See **Recommendation 3**).

## **6. Trading in goods that bear a prohibited symbol**

The Bill would establish a new offence of trading in goods that bear a prohibited Nazi or Islamic State symbol.<sup>51</sup> The purpose of creating this offence is the same as for creating the offence of publicly displaying such symbols, that is “*to reduce the prevalence of these symbols in public spaces and commercial profiting from goods that bear these symbols*” because they “*represent ideologies of hate, intimidation and racism that are incompatible with Australia’s multicultural and democratic society, and are used as tools of vilification and radicalisation.*”<sup>52</sup> These symbols are also used to recruit and

---

<sup>47</sup> Broede Carmody and Lachlan Abbott, [Victoria to ban Nazi salutes after far-right rally](#), *The Age*, 20 March 2023.

<sup>48</sup> *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of s. 6D to *Police Offences Act 1935* (Tas).

<sup>49</sup> *Crimes Amendment (Publicly Threatening and Inciting Violence) Act 2018* (NSW), Schedule 2. Assented to 27.6.2018. Date of commencement, 13.8.2018

<sup>50</sup> In August 2017, the Swiss Federal Supreme Court confirmed the conviction of three Geneva men for performing the *quenelle* in front of a synagogue, while partially masked and in military uniform, finding that performing the gesture had been antisemitic. The men incurred a suspended monetary penalty for violating a Swiss law prohibiting acts of public racism: [Swiss court judges ‘quenelle’ gesture to be racist](#), *Swissinfo*, 3 August 2017.

<sup>51</sup> Proposed section 80.2J of the *Criminal Code*.

<sup>52</sup> Explanatory Memorandum, ‘Notes on Clauses’, p. 23, para 16.

radicalise adherents to extremist groups and build in-group belonging and to intimidate or threaten ideological opponents.<sup>53</sup>

We welcome the introduction of this offence. If this provision is enacted, it will be the first express proscription in Australia of trade in goods bearing violent extremist symbols.

The NSW legislation defines “public act” to include “*the distribution or dissemination of any matter to the public*”.<sup>54</sup> This would appear to capture the display of memorabilia bearing Nazi symbols in any public advertising or offering of such memorabilia for sale. The Victorian legislation appears to leave it to a court to determine whether such circumstances would constitute a display of a Nazi symbol that “*occurs in sight of a person who is in a public place*”,<sup>55</sup> and thus be proscribed. The Tasmanian Bill has a definition of “public act” in broad terms similar to the definition in the NSW legislation.<sup>56</sup> The Queensland Bill would leave it to a court to determine in any particular case whether the public advertising or offering for sale of memorabilia bearing Nazi symbols “*might reasonably be expected to cause a member of the public to feel menaced, harassed or offended*”, or alternatively, whether it would be covered by the “*reasonable excuse*” exception.<sup>57</sup>

The Bill would not proscribe the mere ownership of goods bearing prohibited symbols, or the possession of such goods (unless it is with the intention of selling them). Nor would the Bill proscribe the purchase of such goods. The Bill is directed only at those who sell or prepare to sell those goods.<sup>58</sup> There are also exceptions for trade that a reasonable person would consider to be for any of a variety of specified purposes, including an educational purpose.<sup>59</sup>

A number of submissions to this Review have contended that the Bill goes too far in that it would proscribe what is suggested to be innocuous trade in Nazi memorabilia. In our view, none of this trade is innocuous. There are only gradations of odiousness.

We believe, on the contrary, that the Bill does not go far enough because it is limited to trade in items that bear a prohibited symbol. The only Nazi memorabilia that would be caught would be items bearing the *hakenkreuz* or the double-sig rune, or symbols closely resembling them. Yet some of the more odious examples of Nazi memorabilia which have been marketed and sold by businesses in Australia do not bear either of these symbols, but nonetheless graphically represent Nazi themes of hate, intimidation and racism, and are used to promote Nazi ideology and to recruit and mentally condition members of Nazi groups. Five of these examples are reproduced in **Appendix B** to this submission. There are, regrettably, many more such examples. It should hardly be necessary to describe the impact that trade in items of this nature has had on Australians who were victims of Nazi persecution or had family members who were. For these reasons, all trade in Nazi memorabilia should in our view be proscribed, subject to the exceptions and defences proposed in the Bill. (See **Recommendation 4**).

---

<sup>53</sup> Explanatory Memorandum, ‘Notes on Clauses’, p. 23, para 17.

<sup>54</sup> *Crimes Act 1900* (NSW), ss.93Z(5).

<sup>55</sup> *Summary Offences Act 1966* (Vic), ss.41K(1)(b)(ii).

<sup>56</sup> *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of ss. 6C(10) to *Police Offences Act 1935* (Tas).

<sup>57</sup> *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023* (Qld), Part 3, Amendment of Criminal Code, clause 12. Proposed new subsection 52D(1) of the *Criminal Code* (Qld).

<sup>58</sup> See the definition of “trades” in proposed section 80.2G.

<sup>59</sup> Proposed sub-section 80.2J(4) of the *Criminal Code*.

Those who operate businesses in which items of Nazi memorabilia are marketed and sold may well be genuine in their belief that their trade is not intended to promote Nazi ideology or racial hatred of any kind. However, their subjective intentions and beliefs are not the only, or even the most relevant, consideration. What ultimately matters is the objective effect of this trade on Australia's social fabric. As ASIO has reported, items bearing these symbols are used as tools to vilify vulnerable groups, to recruit and radicalise adherents, build in-group belonging and to intimidate or threaten ideological opponents.<sup>60</sup>

#### **7. Public display of prohibited symbols - additional elements**

Under the Bill, the public display of a prohibited symbol would not, of itself, be sufficient to constitute an offence. Proposed section 80.2H of the *Criminal Code* (Public display of prohibited symbols) would require a prosecutor to prove, in addition, that a further element, as set out in at least one of subsections (3), (4) or (7) of that section, applies.

The Explanatory Notes to subsections (3), (4) and (7) suggest that the additional elements for this offence have been drafted to give effect to particular articles of two international treaties to which Australia is a party, thereby anchoring section 80.2H to the Federal parliament's external affairs power conferred by subsection 51(xxix) of the Commonwealth Constitution. The two treaties are the *International Convention on the Elimination of All Forms of Racial Discrimination* (the Convention) and the *International Covenant on Civil and Political Rights* (the Covenant).

Whilst we accept the need for the creation of the proposed offence to be authorised by a head of power in the Constitution, many of the additional elements of the proposed section 80.2H offence are formulated in a complex, if not convoluted, manner which in our view go beyond what is needed for Constitutional purposes, and are likely to impede substantially the effective enforcement of this provision.

Subsection (3) of proposed section 80.2H would require a prosecutor to prove that the public display of a prohibited symbol either "*involves dissemination of ideas based on racial superiority or racial hatred*" or "*could incite another person or group*" to engage in certain conduct as set out in paragraph (b). Because of the use of the disjunctive "or", only one of these two elements would need to be proved to the criminal standard. The wording of the "*dissemination*" element closely follows the wording of paragraph (a) of Article 4 of the Covenant.

However, the wording of the "*incitement*" element differs from anything in the Covenant and instead follows much of the wording in section 18C of the *Racial Discrimination Act 1975* (Cth). The prohibition of racial hatred in section 18C is a civil, not a criminal prohibition. The importation of the language of section 18C into the *Criminal Code* would create a hybrid of great complexity. Reliance by a prosecutor on the "*incitement*" alternative in subsection (3) would require proof that the alleged offender engaged in conduct that, in the view of a reasonable person, "*could incite*" a second person or group to "*offend, insult, humiliate or intimidate*" a third person or group because of the race of the third person or group. In our view this requirement would make a prosecutor's task so complex as to be almost impossible to fulfil.

---

<sup>60</sup> Explanatory Memorandum, 'Notes on Clauses', p. 23, para 17.

Comparable laws in the States and Territories proscribe incitement of racial and other forms of hatred, serious contempt or severe ridicule, which seems to us to be a more straightforward concept than incitement of section 18C-type conduct. Yet, as noted earlier, experience with such laws to date has been that proof beyond reasonable doubt of even this more straightforward “*incitement*” element sets an almost impossibly high evidentiary bar against a successful prosecution. Consequently, even in egregious cases such as the public tirades and advocacy of violence against Jews and others by the Hizb ut-Tahrir cleric Ismail al-Wahwah, as referred to in section 1.2 of this submission, there have been no prosecutions.

Subsection (4) of proposed section 80.2H would require a prosecutor to prove that the public display of a prohibited symbol amounts to “*advocacy*” of national, racial or religious hatred, and also “*incitement of another person or group*” to engage in certain conduct as set out in paragraph (b), being section 18C-type conduct. Because of the use of the conjunctive “and”, both of these elements would need to be proved to the criminal standard. For the reasons stated, the requirement of proving the *incitement* element, especially incitement of section 18C-type conduct, would in our view make it unlikely that any prosecution under subsection (4) would ever be undertaken or, if undertaken, would result in a conviction.

Subsection (7) of proposed section 80.2H, also imports some of the language of section 18C of the *Racial Discrimination Act*. It would require a prosecutor to prove that the public display of a prohibited symbol “*is likely to offend, insult, humiliate or intimidate a person who is (a) a reasonable person; and (b) a member of a group of persons distinguished by race, colour, sex, language, religion, political or other opinion or national or social origin, because of the reasonable person’s membership of that group.*” Subsection (7) would not require proof of incitement of any kind and accordingly, in our view, this subsection would offer better prospects for a successful prosecution than subsection (4), or the “*incitement*” alternative in subsection (3).

Subsections (4) and (7), according to Notes appearing after each of them, would be grounded in articles 20 and 26 respectively of the Covenant. Yet there is nothing in either article that corresponds to the language of section 18C of the *Racial Discrimination Act* which appears in each subsection.

Further, we remain unconvinced that there is a Constitutional imperative for the Bill to require any additional elements to be proved, beyond simply the knowing public display of a prohibited symbol. In our view, if a Nazi symbol (for example) is “*displayed in a public place*”, as defined in proposed section 80.2F, in circumstances in which none of the relevant exceptions or defences apply, this would *ipso facto* constitute “*the dissemination of ideas based on racial superiority or hatred*”, namely the ideology of Nazism. This would be sufficient to satisfy one of the criteria in paragraph (a) of article 4 of the Convention. We see no Constitutional or other need to require proof of anything more than that.

The relevant principles for assessing the validity of Commonwealth legislation which implements a treaty on the basis of the external affairs power in section 51(xxix) of the Constitution, are the subject of settled High Court authority. These principles were applied by the Full Federal Court (Carr, Kiefel and Allsop JJ (as their Honours then were) in a case directly on point: *Toben v Jones* [\[2003\] FCFCA 137](#).

That case upheld the validity of the provisions of s18C of the *Racial Discrimination Act 1975* as a valid exercise of the external affairs power as reasonably giving effect to obligations assumed by Australia under the Convention and the Covenant. The Court emphasised that it is for the Parliament to

choose the means by which it gives effect to a treaty, and as long as the choice is of a means reasonably capable of being considered appropriate and adapted to that end, the law is valid.<sup>61</sup> It would be entirely consistent with the provisions of both the Convention and the Covenant for Australia to legislate to "nip in the bud" public displays of Nazi symbols and other acts in which racism and bigotry are a factor, *before* such acts grow into incitement or promotion of racial hatred or discrimination.<sup>62</sup>

Accordingly, we recommend that subsection (1) of proposed section 80.2H be amended to read: "*A person must not display a thing in a public place if the person knows, or ought to know, that the thing is a Nazi symbol, or the Islamic State flag, or the Hizb ut-Tahrir Australia logo or something that so nearly resembles one of those things that it is likely to be confused with, or mistaken for, that thing.*" Subsections (3)-(8) of proposed section 80.2H of the *Criminal Code*, and all references to them, be deleted from the Bill. (See **Recommendation 5**).

## 8. **Exceptions and defences**

### 8.1 **Religious symbols**

The most widely known Nazi symbol, commonly referred to as the swastika, was misappropriated by the German Nazi party from other cultures. The symbol, and the name 'swastika', have been in use on the Indian sub-continent for at least 2,500 years.<sup>63</sup> The swastika remains a sacred symbol of divinity and spirituality in Indian religions, including Hinduism, Buddhism, and Jainism. It signifies auspiciousness, good luck and prosperity. For example, followers of these religions, including in Australia, often have a swastika depicted on the entrance of their homes during festivals such as Diwali, also known as Deepawali or the Festival of Lights, which celebrates the spiritual victory of light over darkness, good over evil, and knowledge over ignorance. It was only in the early twentieth century that the swastika was first used as a symbol of international antisemitism.<sup>64</sup>

It is therefore entirely appropriate in our view that the Bill excludes liability for the public display of a symbol that a reasonable person would regard as being for a religious purpose.<sup>65</sup> For emphasis, we think it would be desirable for a note to be added to the Bill confirming that the bona fide display of a swastika in connection with Buddhism, Hinduism or Jainism does not constitute the display of a Nazi symbol, and providing illustrative examples of displays for religious purposes. (See **Recommendation 5**). Such a note appears in the corresponding Victorian legislation.<sup>66</sup>

It is a tragedy for followers of eastern religions that one of their sacred symbols, which for much of recorded human history has signified something positive and wholesome, has over the last 100 years become indelibly associated by much of the rest of humanity with the vile record of Nazi crimes. We would support including an element in school curricula to educate young Australians about the difference between the *hakenkreuz* and the ancient religious swastika.

---

<sup>61</sup> *Victoria v The Commonwealth* (1996) 187 CLR 416, 486-87; *Airlines of NSW Pty Ltd v New South Wales* [No 2] [1965] HCA 3; (1965) 113 CLR 54, 136; *The Commonwealth v Tasmania* [1983] HCA 21; (1983) 158 CLR 1, 130-31, 172, 232, 259; and *Richardson v Forestry Commission* [1988] HCA 10; (1988) 164 CLR 261, 288-89, 303, 311-12, 336, 342.

<sup>62</sup> *Toben v Jones* [2003] FCAFC 137, para [20] *per* Carr, J.

<sup>63</sup> Heinrich Zimmer, *Myths and Symbols in Indian Art and Civilization*, Princeton University Press, 2017.

<sup>64</sup> It was first used in this way by the far-right Romanian politician A. C. Cuza prior to World War I (*National Jewish Monthly, Volumes 55-56*, B'nai B'rith, 1940, p181), and was later copied by the German Nazi party.

<sup>65</sup> Subsection (9)(a)(i) of proposed section 80.2H of the *Criminal Code*.

<sup>66</sup> *Summary Offences Act 1966* (Vic), numbered examples following ss. 41K(2)(a).

## 8.2. Other exceptions and defences

The Bill,<sup>67</sup> the NSW legislation,<sup>68</sup> the Victorian legislation,<sup>69</sup> the Tasmanian Bill<sup>70</sup> and the Queensland Bill<sup>71</sup> each provide exceptions or defences, so as to exclude a person from being held liable for actions that are unrelated to the promotion of an extremist ideology. In addition to the use of religious symbols, the prohibition will not apply if the public display of a prohibited symbol is genuinely done for any one or more of a range of purposes that are in the public interest, such as a legitimate academic, educational, artistic, literary, scientific or journalistic purpose. We have no issue with the Bill providing for these exceptions, or the manner in which it does so.

## 8.3 Evidential burden

In addition to the fact that the abovementioned provisions are expressed in somewhat different ways in each jurisdiction, the Bill differs from its State counterparts by placing the onus on a prosecutor to prove that none of the exceptions in subsection (9) of proposed section 80.2H of the *Criminal Code* applies.<sup>72</sup> Under each of the State Acts and Bills it is the defendant who bears the evidential burden of making out the exception or defence.

The Bill has a corresponding provision in subsection (3) of proposed section 80.2M (offence of disobeying a police direction to cease displaying a prohibited symbol in public), setting out defences in terms which are virtually identical to the exceptions in subsection (9) of proposed section 80.2H. Despite their almost identical wording, a prosecutor would bear the onus of establishing the exception in subsection 80.2H(9), but the Defendant would bear the onus of establishing a defence under subsection 80.2M(3).

Requiring a prosecutor to prove a negative seems to us to place yet another major and unnecessary obstacle in the way of a successful prosecution. It is a Defendant who, at least initially, is best placed to produce the evidence needed to establish the purpose of publicly displaying a prohibited symbol. We recommend that subsection (9) be amended so as to place that burden on defendants, thereby making it consistent with the evidential onus for establishing a defence under proposed subsection 80.2M(3). (See **Recommendation 7**).

## 9. Police powers

A welcome feature of the Bill is the addition of a provision to empower police to give directions to a person to cease a display of a prohibited symbol in public.<sup>73</sup> However, the power would be limited and also subject to a series of pre-conditions being satisfied:

- (i) The power would not apply to an online public display of a prohibited symbol.<sup>74</sup>
- (ii) A police officer giving such a direction would have to reasonably suspect that the public display is of a kind that the Convention or the Covenant would seek to prohibit.<sup>75</sup> In part 7 of

---

<sup>67</sup> The remainder of subsection (9) of proposed section 80.2H of the *Criminal Code*.

<sup>68</sup> *Crimes Act 1900* (NSW), subsection 93ZA(1) and (3).

<sup>69</sup> *Summary Offences Act 1966* (Vic), ss. 41K(2).

<sup>70</sup> *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of ss. 6C(3) and 6D(2) to *Police Offences Act 1935* (Tas).

<sup>71</sup> *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023* (Qld), Part 3, Amendment of Criminal Code, clause 12. Proposed new ss. 52D(1) and (2) of the *Criminal Code* (Qld).

<sup>72</sup> Subsection (1)(d) of proposed section 80.2H of the *Criminal Code*.

<sup>73</sup> Proposed sections 80.2K, 80.2L and 80.2M of the *Criminal Code*.

<sup>74</sup> Para (1)(a) of proposed section 80.2K of the *Criminal Code*.

this submission we set out the difficulties a court would have in making such an assessment. Requiring a police officer to make such an assessment on the spot would in our view be unreasonably onerous.

- (iii) The power would only apply to a public display from land or premises, or from an aircraft, vehicle or vessel.<sup>76</sup> It would therefore not apply, for example, to someone displaying a prohibited symbol on a banner or placard or on their clothing during a street demonstration.

The Bill would only confer power on police to give directions to a person to cease a display of a prohibited symbol in public. Both the Victorian legislation<sup>77</sup> and the Tasmanian Bill<sup>78</sup> set out a series of police and court powers to assist in enforcement, including powers to give directions for the removal of a prohibited symbol from display, the power to carry out the removal if the direction is not obeyed, powers to stop, search and detain people and vehicles and to search premises, and powers to seize objects found during a search that the police consider to be a prohibited symbol or a display of a prohibited symbol. We would recommend that similar provisions be added to the Bill. (See **Recommendation 8**).

## 10. Penalties

The Bill provides for a maximum penalty for a public display of a prohibited symbol or trading in prohibited symbols of imprisonment for 12 months.<sup>79</sup>

In NSW, the maximum penalty for conviction for a similar offence is imprisonment for 12 months or 100 penalty units or both.<sup>80</sup> (The penalty is 500 units for a corporation). In Victoria, the maximum penalty is 120 penalty units or imprisonment for 12 months or both.<sup>81</sup> In the Queensland Bill, the maximum penalty is 70 penalty units or 6 months imprisonment.<sup>82</sup> In the Tasmanian Bill, the penalties, both for the public display of Nazi symbols and the public performance of Nazi gestures, are 20 penalty units or imprisonment for a term not exceeding 3 months, for a first offence and double for a second or subsequent offence.<sup>83</sup>

We would recommend that the penalty provisions in proposed sections 80.2H and 80.2J be amended by adding the words “or 100 penalty units or both” after the words “Imprisonment for 12 months”, so as to more closely align those penalty provisions with those currently in force for similar offences in NSW and Victoria. (See **Recommendation 9.1**)

---

<sup>75</sup> Paras (2)-(7) of proposed section 80.2K of the *Criminal Code*.

<sup>76</sup> Proposed section 80.2L of the *Criminal Code*.

<sup>77</sup> *Summary Offences Act 1966* (Vic), ss. 41L and s.41M.

<sup>78</sup> *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of ss. 6C(5) – (9) to *Police Offences Act 1935* (Tas).

<sup>79</sup> Subsection (1) of proposed section 80.2H of the *Criminal Code*; Subsection (1) of proposed section 80.2J of the *Criminal Code*.

<sup>80</sup> *Crimes Act 1900* (NSW), subsection 93ZA(1).

<sup>81</sup> *Summary Offences Act 1966* (Vic), ss. 41K(1).

<sup>82</sup> *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023* (Qld), Part 3, Amendment of Criminal Code, clause 12. Proposed new ss. 52D(1) of the *Criminal Code* (Qld).

<sup>83</sup> *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of ss. 6C(1)(a) and (b) and 6D(1)(a) and (b) to *Police Offences Act 1935* (Tas).

Also, the penalty for refusing to obey a police direction to cease the public display of a prohibited symbol is 20 penalty units.<sup>84</sup> This penalty seems to us to be too light, and it would thus undermine the force of such a police direction. We would recommend that the penalty be increased to 100 penalty units. (See **recommendation 9.2**)

### **11. Other legislative changes**

In addition to establishing new criminal offences for the public display of prohibited Nazi and Islamic State symbols, and trading in goods that bear a prohibited Nazi or Islamic State symbol, the Bill would also:

- Establish new criminal offences for using a carriage service for violent extremist material and for possessing or controlling violent extremist material obtained or accessed using a carriage service - Schedule 2.
- Expand the advocating terrorism offence in section 80.2C of the *Criminal Code* to include instructing on the doing of a terrorist act or the commission of a terrorism offence, and the praising of a terrorist act in circumstances where there is a substantial risk that such praise might have the effect of leading another person to engage in a terrorist act or commit a terrorism offence – Schedule 3.
- Increase the maximum penalty for the advocating terrorism offence from 5 to 7 years imprisonment – Schedule 3.
- Remove the sunset requirement for instruments which list terrorist organisations and bolster safeguards around the listing process – Schedule 4.

We fully support each of these proposed changes and agree with the reasons given for them in the Explanatory Memorandum. We commend the government for introducing them.

### **12. Legislation should be complemented by education**

Counteracting any form of extremism through legislative means alone will not in our view address the underlying problem, namely the propagation of the kinds of prejudice, conspiracy fantasies and other falsehoods which fuel extremism and extremist violence, and the grooming and recruitment of alienated young people by extremist groups to be used as foot-soldiers for these purposes. Whilst legislation sets society's standards, and in that sense serves an educative purpose, those standards need to be entrenched in the ethos, culture and operations of government and civil society institutions more broadly.

In this regard, Australia has an international obligation under the Convention “*to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination*” and to promoting tolerance (article 7 – emphasis added).

Racial, religious and other forms of prejudice seem to take root at a very young age, as has been reported in several high profile incidents, one involving the harassment of a child as young as 5 years old.<sup>85</sup> These incidents have demonstrated how pervasive these negative influences are, and highlighted the destructive nexus between racist and other prejudiced attitudes and language and acts of violence,

---

<sup>84</sup> Proposed subsection 80.2M(1) of the *Criminal Code*.

<sup>85</sup> Adam Carey, ‘[Jewish boys taunted in shocking cases of antisemitic bullying at Melbourne schools](#)’, *The Age*, 3 October 2019.

even in young children. Inoculation of students against prejudice and extremism thus needs to begin in early primary school.

We have no doubt that schools and educators in Australia generally (albeit with some alarming exceptions<sup>86</sup>), impart good values to children in their care and teach them the importance of mutual respect and to balance individual freedoms, rights and responsibilities in an appropriate way. The difficulty arises when the good work done by schools is undone by other influences, especially hate-content on social media and peer-group pressure exercised directly and via social media.

Most educators currently seek to inculcate critical thinking and educate against prejudice generally, but we believe that a critical part of the message will be lost unless anti-Jewish, anti-Indigenous, anti-Muslim, anti-Hindu, anti-Asian and anti-LGBTIQ+ prejudice and other commonly-encountered forms of prejudice in Australia are expressly addressed, as article 7 of the Convention envisages. Generic human rights and citizenship education are not sufficient. The focus needs to be on identifying and counter-acting specific forms of racism and bigotry, and equipping students from an early age with the intellectual, psychological and ethical tools to reject them, with the aim of preventing younger people from embarking on a pathway to extremism.

We recognise that much good work continues to be done through Holocaust education and programs such as Click against Hate, but these engage mainly older students whose opinions may already have crystallised.

We believe that curricula across the disciplines from K-12 should be adapted to include:

- in primary school, the development of a respectful understanding and de-stigmatising of difference (eg race, religion, disability);
- from Year 7 in high school, addressing specific forms of racism and bigotry eg anti-Jewish, anti-Indigenous, anti-Muslim, anti-Hindu, anti-Asian, anti-LGBTIQ+; and teaching students to self-reflect about their own prejudices;
- from Year 10, focusing on the destructive effects of racism and bigotry both in Australia and in other parts of the world, both historically and in contemporary society; and
- in Years 11-12, reinforcing those themes in more depth, in optional subjects.

Relevant high school subjects in which anti-prejudice content could be incorporated into the curriculum include History, English, GRE, SRE, Legal Studies, Biology, Geography, Civics and Citizenship.

Because influences outside the school, especially via social media, can undo much of the positive learning which students acquire at school, positive learning needs to be supplemented and reinforced by other external positive influences.

---

<sup>86</sup> For example, most recently, see Nicole Prezel, '[Nazi salutes, memes and assaults: Jewish students say state schools unsafe](#)', *WA Today*, 16 July 2023.

This could take the form of experiential learning, building on current programs such as: student visits to a Holocaust Museum; organised meetings between students from different schools who have diverse cultural and religious backgrounds; student visits to institutions (lay and religious) of organisations representing diverse cultural and religious communities; and ‘open forum’ sessions where they can ask questions and engage in discussion with leaders of those communities, including youth leaders.

Some of the above activities could be organised outside working hours, so that parents and other family members could be invited to accompany students during external visits and share in the discussion, so that the learning experience is consolidated within the family unit.

We recognise that these proposals are primarily matters falling within the responsibility of State and Territory Departments of Education. From our discussions with representatives of Departments of Education in NSW and Victoria, we believe that thinking is already starting to develop along the lines we are proposing. The problems that these proposals seek to address are not limited by State or Territory borders and therefore require a consistent response across Australia.

That is why we ask that anti-prejudice education becomes a standing item on the agenda of the Education Council where best-practice ideas can be refined and shared. To the extent that these ideas involve adding glosses to the curriculum, the Australian Curriculum and Assessment Authority and State and Territory Curriculum authorities also need to be consulted.

Whilst these may be difficult ideas to put into operation, the role of education in depriving extremist groups of future human fodder cannot be overstated. Legislation alone cannot solve the problem. (See **Recommendation 10**).

### **13. Conclusion**

We thank the Committee for inviting us to comment on the Bill, and we wish it well in its deliberations.

Yours sincerely



**Peter Wertheim AM**  
co-CEO

**[Summary of Recommendations follows on next page]**

## **Summary of Recommendations**

1. **The Bill should extend the definition of “prohibited symbol” to include any Nazi symbol, and not merely the Nazi *hakenkreuz* and double-sig rune. The Bill should adopt the definition of “Nazi symbol” set out in the *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023 (Tas)*, clause 4, proposed insertion of ss. 6C(10) and ss. 6D(3) to *Police Offences Act 1935 (Tas)*. (See sections 3.1, 3.2 and 3.3 of this submission).**
2. **The Bill should extend the definition of “prohibited symbol” to include the Hizb ut-Tahrir Australia logo.** (See section 3.4 of this submission).
3. **A separate provision should be added to the Bill to proscribe the public performance of a prohibited gesture. “Prohibited gesture” should be defined as “a gesture which in all the circumstances a reasonable person would consider to be a means of signifying support for Nazi ideology or for Islamic State”.** (See section 5 of this submission).
4. **All trading in Nazi memorabilia should be proscribed. “Nazi memorabilia” should be defined as goods of any kind that a reasonable person would consider to be associated with Nazi ideology. There should be exceptions and defences as set out in subsections (4) to (8) in proposed section 80.2J of the *Criminal Code* (See section 6 of this submission).**
5. **Subsection (1) of proposed section 80.2H of the *Criminal Code* should be amended to read: “A person must not display a thing in a public place if the person knows, or ought to know, that the thing is a Nazi symbol, or the Islamic State flag, or the Hizb ut-Tahrir Australia logo or something that so nearly resembles one of those things that it is likely to be confused with, or mistaken for, that thing.” Subsections (3)-(8) of proposed section 80.2H, and all references to them, should be deleted from the Bill.** (See sections 3 and 7 of this submission).
6. **A note should be added to the Bill confirming that the bona fide display of a swastika in connection with Buddhism, Hinduism or Jainism does not constitute the display of a Nazi symbol, and providing illustrative examples of displays for religious purposes.** (See section 8.1 of this submission).
7. **Subsection (9) of proposed section 80.2H of the *Criminal Code* should be amended so as to place on the Defendant the evidential burden of establishing an exception under that subsection.** (See section 8.3 of this submission).
8. **The Bill should include extra provisions to empower police to take action to bring an end to the public display of a Nazi symbol or gesture, if a direction to cease such a display is not obeyed, including the power to carry out the removal. Police should also be empowered to stop, search and detain people and vehicles and to search land and premises, and powers to seize objects found during a search that the police consider to be a prohibited symbol or a display of a prohibited symbol in a public place.** (See section 9 of this submission).
9. **The penalty provisions of the Bill should be amended by:**

- 9.1 adding the words “*or 100 penalty units or both*” after the words “*Imprisonment for 12 months*” in proposed sections 80.2H and 80.2J of the *Criminal Code* (publicly displaying or trading in a prohibited symbol); and
- 9.2 increasing the penalty in proposed subsection 80.2M(1) of the *Criminal Code* (refusing to obey a police direction to cease the public display of a prohibited symbol) from 20 penalty units to 100 penalty units.

(See section 10 of this submission).

- 10. **Federal and State legislation against the promotion of hatred must be complemented by enhancements to the education system so as to inoculate students against prejudice and extremism beginning in early primary school.** (See specific proposals in section 12 of this submission).

## **Appendix A to Executive Council of Australian Jewry submission to Parliamentary Joint Committee on Intelligence and Security Review of the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023**

### **Chronology of incidents involving public displays of Nazi symbols and gestures in Australia**

#### **2017**

The Annual Report on Antisemitism in Australia published by the Executive Council of Australian Jewry (ECAJ) in 2017 gave details of a spate of “sightings of people wearing Nazi insignia and symbols on their clothing or body while out and about in the public space”, as well as posters and stickers that had appeared on at least one university campus and high school in 2017. Examples included:

- *A male was seen wearing a t-shirt with a Nazi swastika on the back and the words “Sieg Heil” and “Faggots” on the front, in Daylesford during Victoria’s ChillOut festival (March 2017).*
- *Man spotted wearing a Nazi swastika armband in Melbourne suburbs: Clayton (c February), Clayton Woolworths store (4 April 2017), Clayton (18 April), Chadstone (13 April 2017), Corinda (10 May 2017), Huntingdale Station, (16 May 2017).*
- *Woman with Nazi eagle and swastika on her t-shirt, on a train near Melbourne (23 May 2017).*
- *Two men were spotted wearing t-shirts which were Nazi flags, the t-shirts were red and had the white circle with the swastika inside them, in a shopping centre in Adelaide (10 September 2017).<sup>87</sup>*

The Report noted that the display of Nazi symbols in these everyday settings had a propensity to “normalise” hate symbols and messages, and to condition the community into acquiescing in the public expression of Nazi themes.

Further examples of the display of Nazi symbols in public settings have been recorded in the ECAJ’s antisemitism reports in each subsequent year. The following is a selection of such incidents.

#### **2018<sup>88</sup>**

- Swastika shirts, SS tattoos Spotted in Elsternwick, Melbourne, a male wearing a t-shirt with the Iron Eagle and a swastika on it, and a female wearing a Nazi Deaths-head on her t-shirt, both were heavily tattooed with “SS”, swastikas and Nazi symbols, on 13 December 2017.
- Man on a tram seen wearing jeans with the words “Death to all who take” above the Jewish Star of David, in Melbourne, on 22 February 2018.
- A man was spotted wearing a Nazi armband on his arm, as well as a Confederate flag cloth badge on his jacket, and a Soviet Union communist badge on his hat, in Moorabbin, Melbourne, on 28 September 2018.
- In November 2017 a gym in regional Victoria displayed a 'White Pride World Wide' Celtic cross emblem.

---

<sup>87</sup> *Ibid*, p.94

<sup>88</sup> Extracted from Julie Nathan, [Report on Antisemitism in Australia 2018](#), Executive Council of Australian Jewry, 25 November 2018, pp. 98-99.

- A US-based company in Australia under the name “Proud Boys Australia” sold t-shirts with images of the Nazi Sun Wheel, an antisemitic caricature and other images, as well as hoodies, a coffee mugs, bags, and stickers bearing Nazi symbols and antisemitic images.
- An electrical company in Brisbane promoted neo-Nazi, white supremacist, and antisemitic images and words on its company website. Its logo includes an alt-Right figure with an “SS” badge on its collar, standing in front of the gates of Auschwitz with the words “Arbeit” from “Arbeit Mach Frei” (“Work Makes Free”) and a crematorium smokestack. The company had been a sponsor of the neo-Nazi website “The Daily Stormer” until its demise.

## **2019**

The number of antisemitic graffiti incidents doubled over previous years. The messages included in much of the graffiti called for the murder of Jews (eg “Kill the Jews” or “Gas the Kikes”) or supported Hitler and Nazism (“Sieg Heil” and display of symbols such as Nazi swastikas, SS bolts, crossed out Stars of David) or denied the Holocaust.<sup>89</sup>

In February 2019, NSW police investigated the appearance of a series of Nazi swastikas on a mural in Bondi Beach and a shop in Bondi Junction, areas in Sydney's east with a high proportion of Jewish residents.<sup>90</sup>

Racist graffiti was painted on the back walls and doors of buildings housing Asian restaurants in the middle-class Sydney suburb of Epping in March 2019. The graffiti used neo-Nazi themes and symbols, including images of swastikas, the Nazi eagle, Stars of David crossed out, and the texts “Adolf Hitler,” “SS,” “Sieg Heil,” “Skinhead,” “White Power,” “1488” (symbolising the 14 words of the white supremacist creed and the words “Heil Hitler”), “B&H” (Blood and Honour), “KKK” and “6,000,000 Lies.”<sup>91</sup>

The main part of the graffiti named the targets of the hatred: “Gooks fuck off,” “Niggers go home,” “Pakis go home,” “Watch out Jews,” “Fuck Jewish Scum,” “Kill Jews” and (to emphasise the latter, it was repeated) “Kill the Jews.”<sup>92</sup> The message is clear. People of African, east Asian and south Asian background are to go back, either voluntarily or forcibly, to their countries of origin or ancestral lands, but Jews are to be treated differently — instead of being deported, Jews are to be killed.<sup>93</sup> The overt intent was to advocate lethal violence and genocide against Jewish people.

During the 2019 Federal election campaign, several Jewish candidates had their election posters defaced with antisemitic graffiti including Nazi symbols.<sup>94</sup>

## **2020**

The ECAJ’s Annual Report on Antisemitism in Australia in 2020 noted a significant rise in the number of incidents involving the public display of Nazi symbols and also in the public sale of Nazi memorabilia.

---

<sup>89</sup> Julie Nathan, [Report on Antisemitism in Australia 2019](#), Executive Council of Australian Jewry, 24 November 2019, p. 7.

<sup>90</sup> [Police investigating swastika symbols on mural and shop in Sydney's Bondi](#), *SBS News*, 19 February 2019.

<sup>91</sup> Ally Foster, [Sick messages and symbols graffitied onto Thai restaurant](#), *News.com*, 29 March 2019.

<sup>92</sup> *Ibid.*

<sup>93</sup> Julie Nathan, [Report on Antisemitism in Australia 2019](#), Executive Council of Australian Jewry, 24 November 2019, p. 252.

<sup>94</sup> *Ibid.*, pp. 46, 47, 63, 198, 225-228, 254-255

*“Incidents included the flying of Nazi flags in public, swastika graffiti in the streets, and advertised trade in jewellery composed of Nazi swastikas and sonnenrads (sun wheels), and Nazi symbols used in artwork.”<sup>95</sup>*

The report also documented occasions when the Nazi swastika was displayed from private homes in Victoria, NSW and Tasmania, or when people dressed in SS uniforms and swastika armbands entered places of business to do their shopping. The following examples are extracted from the ECAJ’s 2020 Antisemitism Report:<sup>96</sup>

- Nazi flags were publicly displayed in 2020 in:
  - Beulah, regional Victoria, 13 Jan., above a house
  - Wagga Wagga, regional NSW, 17 Feb., from top of light tower at a sports oval
  - Perth, regional Tasmania, 23 Feb. painted flags, on house windows
  - Kyabram, regional Victoria, 12 April, on Telstra phone tower (1 swastika flag on top, 2 Chinese flags on side, with ‘Covid’ written on flags)
  - Newtown, Sydney, in 18 April, at a window in a house
  - Gladstone, Qld, 11 July, draped over car windscreen
- The Nazi swastika was publicly displayed:
  - Red neon swastika, over a metre high, on a fence, in Darwin, NT, 31 Jan. 2020
  - Swastikas and SS bolts on gate and gate posts, Cooktown, Qld, 6 Aug. 2020
- Swastikas or Nazi symbols were displayed on clothing or on the body:
  - Nazi uniforms, with swastikas and Nazi eagles, worn by 4 people into Coles store, Woodend, regional Victoria, 26 Oct. 2019 (offending staff and customers)
  - Swastika armband worn, Woolworths, Clarinda, Melbourne, 2 Feb. 2020
  - Swastika armband worn, Karkarook Park, Melbourne, 29 May 2020
  - Swastika painted on face, Maroubra, Sydney, 16 June 2020
  - Vehicle registration plate of “NAZ1” spotted on Gold Coast, Qld (9 July 2020).
  - “Reinhard Heydrich” and “88” on a t-shirt, bank in Leichardt, Sydney 28 Sep. 2020
  - Face-mask with Nazi swastika and Nazi eagle, for sale in a shop, Bondi, Sydney, 21 Sep. 2020.
- The ECAJ report also recorded at least 10 incidents in various States involving the giving of the Nazi salute, often accompanied by the yelling of antisemitic obscenities, at or near Jewish community venues or directed at people wearing Jewish religious clothing.<sup>97</sup>
- Finally, in December 2020, a car driven by a Melbourne P-plate driver displayed the Nazi swastika while crossing the busy Westgate Bridge.<sup>98</sup>

---

<sup>95</sup> Julie Nathan, [Report on Antisemitism in Australia 2020](#), Executive Council of Australian Jewry, 29 November 2020, p.7.

<sup>96</sup> *Ibid.*, pp. 89-92.

<sup>97</sup> *Ibid.*, pp. 36, 39, 40, 41 and 42.

<sup>98</sup> Jack Paynter, [Fury as Melbourne P-plater displays Nazi swastika on West Gate Bridge](#), *News.com*, 27 December 2020.

The following year, Walt Secord MLC introduced for the first time a Bill into the NSW parliament that would ban the display of Nazi symbols. Mr Secord stated that 31 incidents of displays of Nazi flags were reported to the police between June 2018 and April 2020.<sup>99</sup>

## 2021

The year saw a continuation of the proliferation of Nazi and other antisemitic symbols online and in graffiti.<sup>100</sup> In addition:

- Over the Australia Day long weekend in January 2021, a group of 38 men associated with the neo-Nazi group, National Socialist Network, wearing army fatigues or black t-shirts bearing Celtic-style symbols, and chanting white supremacist slogans, camped in the Grampian mountains in Victoria, carried out a Ku Klux Klan style burning of a wooden cross, and intimidated local residents and other tourists by marching in force through a local town and meeting the stares of onlookers with Hitler-salutes.<sup>101</sup>
- In early February 2021, a man was seen wearing a swastika armband taped to his left arm at the Moorabin Wholesale Farmers Fresh market, in Melbourne’s southeast. A few days later another man brandished a Nazi armband in peak-hour traffic while crossing a busy road from a bus stop.<sup>102</sup>
- A large red Nazi swastika sticker was displayed on the side window of a 4WD vehicle and seen at the McDonald’s drive-thru in Bendigo, west of Melbourne, on 17 April 2021.<sup>103</sup>
- A commuter at a train station in Melbourne was photographed wearing a hat with a large Nazi swastika on it.<sup>104</sup>
- In May 2021, the Nazi slogan “blood and soil” and two swastikas, were spray-painted on a train carriage at the Clapham rail yard at Moorooka in Queensland.<sup>105</sup>
- At the end of October 2021, on the Jewish Sabbath, a Nazi flag was flown over the Brisbane Synagogue from a window of the neighbouring Uni Lodge student accommodation building on Margaret Street in the CBD of Brisbane.<sup>106</sup>

## 2022

The following is an abridged list of incidents involving the public display of Nazi symbols and/or gestures in 2022.<sup>107</sup>

---

<sup>99</sup> Walt Secord MLC, [Second reading speech on Crimes Amendment \(Display Of Nazi Symbols\) Bill 2021](#), *Legislative Council Hansard*, 13 October 2021, p.79.

<sup>100</sup> Julie Nathan, [Report on Antisemitism in Australia 2021](#), Executive Council of Australian Jewry, 12 December 2021, pp. 42-48.

<sup>101</sup> Nick McKenzie and Joel Tozer, [Neo-Nazis go bush: Grampians gathering highlights rise of Australia’s far right](#), *Sydney Morning Herald*, 27 January 2021.

<sup>102</sup> Rohan Smith, [New picture emerges of Melbourne man wearing swastika armband](#), *News.com*, 9 February 2021.

<sup>103</sup> Alex Chapman, [Anti-Defamation Commission chairman slams ‘disgusting’ Nazi sticker on Victorian man’s car](#), *Seven News*, 23 April 2021.

<sup>104</sup> *Ibid.*

<sup>105</sup> Felicity Caldwell, [Calls to ban the Nazi swastika in Queensland after train vandalism](#), *Brisbane Times*, 13 May 2021.

<sup>106</sup> Matt Dennien, [Nazi flag seized after act of ‘pure evil’ over Brisbane Synagogue](#), *Brisbane Times*, 30 October 2021.

- Sticker of the “Schutzstaffel” symbol (“SS” lightning bolts) on rear window of a vehicle driving on Bussell Highway, south west Western Australia (29 Jan. 2022).
- Graffiti of a Nazi swastika depicted on the face of Dr Monique Ryan's election poster in the Kooyong area, Melbourne (2 April 2022).
- Graffiti of a Nazi swastika depicted on the forehead of an election poster of Josh Frydenberg, federal Liberal MP for Kooyong and federal Treasurer, who is Jewish, the Kooyong area, Melbourne (4 April 2022).
- Graffiti of a Nazi swastika on election poster of the Greens candidate outside the home of a Jewish resident in Carnegie, Melbourne (6 April 2022).
- Posters (double-sided) by National Socialist Movement (NSM) - one side composed of “Australia Awaken” and a Nazi swastika, the other side composed of “Every Aspect of Scott Morrison’s Cabinet is Jewish” - attached to a pole outside a synagogue, and also distributed in letterboxes around the suburb, Gold Coast, Queensland, (1 May 2022).
- Stickers composed of “Vote 1 Kosher Kim” with two yellow Stars of David with the word “Jude” (Jew) inside and another sticker “Shoah your Support” (Shoah is Hebrew for Holocaust) on election posters of a candidate, Kim Rubenstein, who is Jewish, Canberra (1 May 2022).
- Sticker of the Odal/Othala rune, a Nazi symbol, on the rear window of a vehicle driving on Loftus St, Perth (10 May 2022).
- Stickers, one type composed of a black Nazi swastika, the other type had “You censor the truth” inside the black Nazi swastika, were plastered on the exterior of the Beth Weizmann Community Centre, other Jewish venues, on fences, telegraph poles, light poles, tram shelters, bus stops, and on multiple buildings, in the Caulfield area, Melbourne (12 May 2022).
- A banner of Nationalist Socialist Network reading, “nat-soc.net”, held up on an overpass, Moore Park, Sydney (26 May 2022).
- Members of National Socialist Network gathered in a park, held their flag up and made Nazi salutes, Mosman, Sydney (18 June 2022).
- A group of seven National Socialist Network members, dressed in black and masked, performed Nazi salutes, while one took a photo of them, outside the Adelaide Holocaust Museum, Adelaide (27 Aug. 2022).
- Banner composed of “Belial Bzar”, a Star of David and “Demon Flesh” at a protest attended by neo-Nazis, Moonee Ponds, Melbourne (30 Sep. 2022).

---

<sup>107</sup> Extracted from Julie Nathan, [Report on Antisemitism in Australia 2022](#), Executive Council of Australian Jewry, 12 December 2022, pp. 44, 58-59, 64-68,

- At a soccer match in Sydney on 1 October 2022, a number of people in the audience who were supporters of Sydney United 58 (a soccer team founded in 1958 by Croatian immigrants) raised their right arms in the fascist salute (which is identical to the Nazi salute) and sang “*Za Dom Spremni*” (for homeland - ready), the anthem of the Nazi-allied Ustasha movement which formed the puppet government of Croatia during World War II. A number of Ustasha ‘U’ symbols were displayed in the crowd. The pre-match Welcome to Country was marred by booing and chanting that continued during the Australian national anthem.<sup>108</sup>

## **2023**

On 18 March 2023 a pair of rival demonstrations in the Melbourne CBD between pro- and anti-transgender activists was gate-crashed by a group of neo-Nazis from the National Socialist Network (NSN). Implying that the anti-transgender demonstrators were not hateful enough, the NSN group were dressed in black, many with black face masks to hide their identities, and performed multiple Nazi salutes outside the Victorian parliament. They held a sign that read: “Destroy Paedo Freaks.”<sup>109</sup> This incident followed a news report on the same date that the Australian Army had launched an urgent investigation after discovering that serving members of the Australian Defence Forces, as well as members of state police forces, have links to neo-Nazi groups which are seeking access to weapons and training. The Queensland Police also launched an inquiry into connections between two serving police and alleged white supremacists.<sup>110</sup>

---

<sup>108</sup> [Sydney United to track down fascist fans](#), *Yahoo News*, 3 October 2022

<sup>109</sup> [Neo-Nazi group marches into pro and anti-transgender protest in Melbourne’s CBD](#), *Herald Sun*, 20 March 2023.

<sup>110</sup> Nick McKenzie, [Soldiers of hate: Army investigates neo-Nazis in its ranks](#), *Sydney Morning Herald*, 18 March 2023.

**Appendix B to Executive Council of Australian Jewry submission to Parliamentary Joint Committee on Intelligence and Security Review of the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023**

**Examples of Nazi memorabilia traded in Australia *not* bearing a prohibited symbol**

danielleelizabeth.com.au/auction-lot/a-jewish-concentration-camp-cap-1942\_69E4A9086A

Maps



A Jewish Concentration Camp Cap 1942

[View catalog](#)

Sold: A\$650.00

Estimate: A\$120 - A\$240

June 17, 2023 10:00 AM AEST

Southport, Australia

[Request more information](#)

→ ↻ danielleelizabeth.com.au/auction-catalog/huge-militaria-sale-get-it-before-history-is-bann\_AX25VJ

YouTube Maps



158: Photo Album - Jewish Concentration Camp & Atrocity...

Estimate: A\$300 - A\$500

Sold: A\$3,600.00



159: A 1940 Jewish Winter Overcoat w/ Jewish Star Patch

Estimate: A\$600 - A\$1,200

Sold: A\$500.00



Melbourne Arms & Militaria Fair, April 2018  
– Zyklon B replica tin



Nazi children's book, Danielle Elizabeth Auctions, Qld Dec. 2021