



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

ONLINE HATE PREVENTION INSTITUTE SUBMISSION

CRIMINAL CODE AMENDMENT
(PROHIBITION OF NAZI
SYMBOLS) BILL 2023



SUBMISSION TO
SENATE LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION
COMMITTEE

17 APRIL 2023

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ABOUT THE ONLINE HATE PREVENTION INSTITUTE

The Online Hate Prevention Institute (OHPI) is Australia's only harm prevention charity dedicated to tackling online hate and extremism. We have been doing so since January 2012.

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

We support the work of the Australian Delegation to the International Holocaust Remembrance Alliance (IHRA) with our CEO appointed by DFAT as an expert member of the Australian Government's delegation and serving on IHRA's Committee on Antisemitism and Holocaust Denial. We are also supporting his work assisting the Interparliamentary Task Forum on Combating Online Antisemitism.

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

ABOUT THE AUTHOR

DR ANDRE OBOLER

Dr Andre Oboler is the CEO & Managing Director of the Online Hate Prevention Institute. He is an Honorary Associate at La Trobe Law School, serves on IEEE's Global Public Policy Committee, and as an IEEE Global Tech Ethics Ambassador. He is an expert member of the Australian Government's Delegation to the International Holocaust Remembrance Alliance.

Dr Oboler was formerly a Senior Lecturer in Cyber Security at the La Trobe Law School, intercultural liaison for the Victorian Education Department's independent inquiry into antisemitism, co-chair of the Online Antisemitism working group of the Israeli Government's Global Forum to Combat Antisemitism, an expert member of the Inter-Parliamentary Coalition to Combatting Antisemitism, an expert adviser to the Interparliamentary Task Forum on Combating Online Antisemitism, a member of the Swedish Government's expert advisory group for the Malmö Forum, and served for two terms with the board of the UK's higher education regulator the QAA.

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

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APPROPRIATENESS OF COMMONWEALTH LEGISLATION & RECOMMENDED CHANGES

The Online Hate Prevention Institute strongly supports federal legislation to tackle Nazi / neo-Nazi extremism and has previously called for this in the media.¹ We call for this because such a ban would be consistent with both the external affairs power granted to the Commonwealth, particular in regards to our treaty obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), and the defence power in respect of counter-terrorism legislation. Practically it would ensure a level of national consistency, as well as supporting international cooperation in countering extremism. The Online Hate Prevention Institute is particularly concerned about the nexus between the use of Nazi and neo-Nazi symbols and online radicalisation and incitement to terrorism, and we note such activities fall squarely within the Commonwealth’s communications power.

Regarding Australia’s obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination*, we draw the Committee’s attention to the relatively recent United Nations General Assembly resolution 75/169 (16 December 2020) on “Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance”.² This resolution builds on the ICERD and highlights how combating the glorification of Nazism and neo-Nazism is consistent with implementing existing treaty obligations under ICERD.

Further, we draw attention to the report of the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, titled “Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance” (30 September 2021).³ We will discuss the report

¹ Andre Oboler, “Swastika ban is not enough: anything that glorifies Nazism must be outlawed”, Plus61J, 24 March 2023. Online at: <https://plus61j.net.au/plus61j-voices/swastika-ban-is-not-enough-anything-that-glorifies-nazism-must-be-outlawed/>

² <https://digitallibrary.un.org/record/3896029?ln=en>

³ E. Tendayi Achiume, “Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance”, Report A/76/369. Online at: https://www.ohchr.org/sites/default/files/Documents/AboutUs/NY/GA76/A_76_369_AdvanceUneditedVersion.docx

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later in this submission, but we note both the report and resolution GA 75/169 are focused on **preventing the glorification of Nazism and neo-Nazism**. This can be contrasted with the draft legislation which seeks to declare certain symbols as inherently unlawful, except in limited special cases.

We strongly believe the law would be more appropriate and adapt if the legislative text were framed as a law to prevent the glorification of Nazism and neo-Nazism. The explanatory memorandum does this, stating “All Australians are diminished by the sharing and glorification of an ideology which is characterised by genocide, mass murder and other forms of persecution.” Yet the legislation itself does not mention glorification at all.

RECOMMENDATION: As an alternative for 81.1(1)(a) consider “the person publicly displays a symbol in a manner that glorifies or promotes a Nazi or Neo-Nazi group, movement, or ideology” and as an alternative for 81.1(1)(b) consider “the person knows that the symbol is a Nazi or neo-Nazi symbol.”

We wonder if “knows” should be replaced by “knows or ought to have known” in order to allow a more objective test. When it comes to less obvious symbols, proving the person knew it was specifically a “Nazi symbol” may in practice become a barrier.

We highlight how UN GA 75/169 noted with concern “that the variation in national standards prohibiting hate speech may provide safe havens for neo-Nazi, extremist, violent nationalist, xenophobic or racist speech owing to the fact that many neo-Nazi and relevant extremist groups of a racist or xenophobic character operate transnationally by relying on Internet service providers or social media platforms”.⁴

We believe commonwealth legislation is an appropriate way to prevent gaps that may otherwise allow some symbols to be used in some parts of Australia (depending on the wording of state legislation). Further, noting the transnational nature of neo-Nazi groups and their symbols, preventing Australia from becoming a haven for the use of symbols belonging to foreign neo-Nazi groups is a commonwealth responsibility and relevant to our standing in the international community.

⁴ <https://digitallibrary.un.org/record/3896029?ln=en>

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EXCEPTIONS

If the legislation is not altered to refer to glorification of Nazism, we recommend an additional exception be added to cover anti-racism work. This would be covered by the public interest provision, but there is value in making it explicit. The work the Online Hate Prevention Institute does in monitoring and deconstructing hate and extremism require us to publish such content. It may fall under scientific or educational work, but perhaps not if these terms are interpreted strictly. More generally the use of a crossed-out Swastika to symbolise that Nazis are not welcome, for example in a placard at a counter rally, has a positive effect and should be clearly indicated as protected within the legislation.

INTRODUCTION OF A CIVIL PENALTY

The UN Special Rapporteur noted the recommendation of the UN's Committee on the Elimination of Racial Discrimination that only serious cases of racial discrimination be criminalised and that non-criminal sanctions be used in other cases:⁵

“Member States must take urgent action to ensure that racist expression violating the standards set out in the International Convention on the Elimination of All Forms of Racial Discrimination are made punishable by law. In this regard, the Committee has recommended that the criminalization of forms of racist expression be reserved for serious cases, to be proven beyond reasonable doubt, that the application of criminal sanctions be governed by the principles of legality, proportionality and necessity, and that less serious cases should be dealt with using non-criminal sanctions.”

We believe a civil penalty provision would be helpful, particularly (but not only) for cases involving the online use of symbols for glorification of Nazism / neo-Nazism. We have concerns online activity (short of incidents connected with terrorism) may not be readily prosecuted. The ability for a regulator outside of law enforcement, such as the eSafety Commission, to order an Australian to remove content they have posted that glorifies Nazism / neo-Nazism would be helpful. The ability to impose a small penalty

⁵ E. Tendayi Achiume, “Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance”, Report A/76/369. Online at: https://www.ohchr.org/sites/default/files/Documents/AboutUs/NY/GA76/A_76_369_AdvanceUneditedVersion.docx

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for posting such online content, and a larger penalty for failing to promptly remove it when directed to do so, would act as a more effective deterrent with lower costs and effort than a criminal prosecution.

Recommendation: That a civil penalty provision be added in the Online Safety Act allowing the eSafety Commissioner to issue a penalty notice, and demand content be removed, to an Australian who posts content online using symbols to glorify Nazism or neo-Nazism. That the eSafety Commissioner may issue a larger penalty notice for failure to follow a take down order.

GREATER ATTENTION IN THE LEGISLATION IS NEEDED ON NEO-NAZISM

We highlight how UN GA 75/169 noted “that neo-Nazism is more than just the glorification of a past movement, it is a contemporary phenomenon with strong vested interests in racial inequality and an investment in gaining broad support for its false claims of racial superiority”.⁶

It is for this reason we believe neo-Nazism and its symbols needs to be explicitly mentioned in the legislation. This would also allow a court to identify any symbols of overseas neo-Nazi groups as being covered by the legislation, as well as any invented symbols for new Australian groups. An example of the first would be the efforts of Greek neo-Nazi party Golden Dawn to move into Australia, supported by Australian neo-Nazis, as we documented in 2014.⁷ An example of the second would be the creation of bespoke symbols for various Australian neo-Nazi groups, generally started by the same small group of people who splinter, merge, or rebrand themselves every few years. They use international symbols as well as their own bespoke symbols.

In her report the UN Special Rapporteur warns:⁸

⁶ <https://digitallibrary.un.org/record/3896029?ln=en>

⁷ “Social media connects far-right groups”, Online Hate Prevention Institute, 10 May 2014 <https://ohpi.org.au/social-media-connects-far-right-groups/>; “Golden Dawn Australia Update” , Online Hate Prevention Institute, 10 May 2014 <https://ohpi.org.au/golden-dawn-australia-update/>

⁸ E. Tendayi Achiume, “Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance”, Report A/76/369. Online at: https://www.ohchr.org/sites/default/files/Documents/AboutUs/NY/GA76/A_76_369_AdvanceUneditedVersion.docx

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“Member States... must remain vigilant in their identification of racist expression in national climates in which certain groups, including neo-Nazis, are openly committed to spreading and enforcing intolerance. The Committee warns that racist speech may sometimes rely on indirect language to disguise its targets or objectives and may rely on coded symbolic communication to achieve its ends. Even incitement may be express or implied, through actions such as displays of racist symbols or the distribution of materials as well as words.”

We note that banning Nazi symbols, or even Nazi and neo-Nazi symbols, would not be fully effective as coded symbolic representation can include the use of symbols with alternative meanings which cannot be banned altogether. The use of the OK sign by neo-Nazis to represent “White Power”, used by the Christchurch attacker while in court, is an example of this.⁹ Our proposed wording to the legislation would capture the use of any symbol (even one with another meaning) when co-opted to represent Nazism / neo-Nazism. We must remember the Swastika itself was co-opted by the Nazis and not invented by them.

GREATER ATTENTION IN THE LEGISLATION IS NEEDED IN RELATION TO THE INTERNET

We highlight how UN GA 75/169 stated the General Assembly was “Concerned by the use of Internet platforms by groups that advocate hatred to plan, fundraise and circulate information about public events aimed at promoting racism, xenophobia and related intolerance, such as rallies, demonstrations and acts of violence”.¹⁰

We saw this with the “Let Women Speak” tour by Posie Parker which led to scenes of neo-Nazis from the National Socialist Network throwing Hitler salutes on the steps of the Victorian Parliament.¹¹ In the UK security for her speaking tour was provided by the “Hearts of Oak”, an anti-Muslim far-right group that is a successor to the English Defence League.¹² In the US she passed the microphone to a former leader of the Proud Boys, a group the FBI described as an “extremist group with ties to white

⁹ Andre Oboler, “New Zealand Terrorist Attack”, Online Hate Prevention Institute, 16 March 2019
<https://ohpi.org.au/new-zealand-terrorist-attack/>

¹⁰ <https://digitallibrary.un.org/record/3896029?ln=en>

¹¹ “Melbourne’s Nazis highlight a bigger problem”, Online Hate Prevention Institute, 19 March 2023.
Online at: <https://ohpi.org.au/melbournes-nazis-highlight-a-bigger-problem/>

¹² Video of the interview: <https://www.youtube.com/watch?v=g8ITHh5shWw>

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nationalism”,¹³ and which led the January 6th Insurrection according to US prosecutors.¹⁴ KJK (Posie Parker) has herself be interviewed by Hearts of Oak co-founder Carl Benjamin in 2020.¹⁵ In 2019 She spoke alongside and took selfies with antisemite and Holocaust denier Hans Jørgen Lysglimt Johansen,¹⁶ who has friendly connections with the *Nordic Resistance Movement* (one of the neo-Nazi groups inspiring the National Socialist Network) and who founded *Alliance - Alternative for Norway* a political party that the Norwegian Center Against Racism says has ties to neo-Nazis.¹⁷ Also in October 2019 KJK appeared in a video with French Canadian white supremacist Jean-François Gariépy.¹⁸ The presence of the National Socialist Network at her talk in Melbourne should not have surprised anyone. The antics were designed for the cameras and the internet. The same could be said for the speaking tour as whole.

Many of the in-person activities and events where Nazi symbols are used in Australia are specifically designed to create online content. Some of that content is created and shared by the groups themselves, and some of it is design to get media attention. There is often an overlap with content posted in online spaces run by these neo-Nazi groups, but known to be watched by the media.

The neo-Nazis use the media as their proxy for promotion and recruitment. Some media organisations are aware of this and check with experts such as ourselves not only the facts behind stories they are planning, but also on whether publication of a particular story would be in the public interest, or if publication would only help boost extremism. In the last 12 months more than half the stories the media have contacted us regarding have (in the public interest) not gone to press. Unfortunately, not all media outlets act this responsibly and some are increasing the risk of extremism due to the regular coverage they give to both neo-Nazis and to more minor incidents involving Nazi symbols (e.g. random acts of graffiti). In these more minor incidents, most of the damage that is caused comes from the high

¹³ <https://www.theguardian.com/world/2018/nov/19/proud-boys-fbi-classification-extremist-group-white-nationalism-report>

¹⁴ <https://www.washingtonpost.com/dc-md-va/2023/01/12/proud-boys-trial-openings/>

¹⁵ Video of the interview: <https://www.youtube.com/watch?v=g8ITHh5shWw>

¹⁶ <https://www.timesofisrael.com/norways-state-broadcaster-airs-jewish-swine-cartoon/>

¹⁷ <https://antirasistisk.no/alliansen-alternativ-for-norge/>

¹⁸ <https://www.wehuntedthemoth.com/2019/10/16/transphobic-feminist-posie-parker-appears-on-a-white-supremacist-podcast-and-somehow-were-not-surprised/>;
<https://www.thepinknews.com/2019/10/15/gender-critical-posie-parker-interview-jean-francois-gariepy-mumsnet/>

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publicity given to the incident and its circulation online by those in the media and beyond who are promoting outrage.

While we would oppose any restriction on freedom of the press when legitimately reporting on neo-Nazism and the use of Nazi symbols, **we urge the Committee to include some discussion in its report on the responsibility of the press** to act in the public interest and to avoid giving undue publicity to extremist groups. In particular, we urge the exception for the media to be considered not in isolation.

Finally we return to UN GA 75/169 which also stated the General Assembly was “Seriously concerned that neo-Nazi groups, as well as other groups and individuals espousing ideologies of hatred, have increasingly targeted susceptible individuals, mainly children and youth, by means of specifically tailored websites with the aim of their indoctrination and recruitment”.¹⁹

Online indoctrination, including through games, spaces in the metaverse, and memes, is having a seriously harmful effect on some young people, leading them down a path into extremism. The number of people impacted should not be overstated²⁰, but neither should the risk one radicalised individual poses be under-estimated. Through our work overseeing the Exit Project we are aware of children in their early teens needing deradicalisation support. We are also aware of Australians in online spaces used to promote abhorrent violent content, videos of live streamed terrorist attacks inspired by neo-Nazi ideology, and of some of those Australians actively speaking to assist the spread of such content.

Recommendation: Support needs to be provided to fund the work of the Exit Australia project to provide greater deradicalisation capacity in Australia.

Recommendation: Support needs to be provided to the Online Hate Prevention Institute to increase monitoring of online spaces promoting Nazi symbols. This work should report on the symbols in play, as well as the presence of Australians in such spaces.

¹⁹ <https://digitallibrary.un.org/record/3896029?ln=en>

²⁰ “Buffalo Terrorist Attack”, Online Hate Prevention Institute, 15 May 2022. Online at: <https://ohpi.org.au/buffalo-terrorist-attack/>

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LAW REFORM IS ONLY A PARTIAL RESPONSE

In her report the UN Special Rapporteur:²¹

“highlights the need to develop and implement effective, inclusive and comprehensive frameworks complemented by other means to combat racism. In this regard, collaboration with civil society and international, regional and national human rights mechanisms can reinforce the efforts to counter anti-Semitism and extremist movements and groups, including neo-Nazis. In particular, civil society can play a vital role in collecting information on racist crimes, working with victims and raising awareness. The Special Rapporteur encourages robust coordination between governmental structures and civil society entities to amplify efforts to develop and implement relevant legislation and policies.”

In Australia the Executive Council of Australian Jewry (ECAJ) creates an annual report on antisemitic incidents. The Online Hate Prevention Institute is currently working in partnership with ECAJ to add greater coverage of online content to the 2023 report. The existing arrangement between OHPI and ECAJ includes provisions for real time data-sharing by OHPI with Government if a partnership between OHPI and a relevant part of government were to be created.

We note, however, that not all glorification of Nazism / neo-Nazism constitutes an antisemitic incident. The Nazi salutes outside the Victorian Parliament, for example, were a transphobic incident rather than an antisemitic one. The same is true for some of the posters we reported on in the early days of Antipodean Resistance, while some were deeply antisemitic, others were deeply homophobic.²² For context, Antipodean Resistance (the group that first started doing Nazi stunts in the Grampians National Park in 2017) merged with the Lads Society (a spin off from the United Patriots Front – the group behind the beheading stunt in Bendigo in 2015) to form the National Socialist Movement, with more marching

²¹ E. Tendayi Achiume, “Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance”, Report A/76/369. Online at: https://www.ohchr.org/sites/default/files/Documents/AboutUs/NY/GA76/A_76_369_AdvanceUneditedVersion.docx

²² “Nazi Group’s Poster Campaign in Melbourne”, Online Hate Prevention Institute, 14 February 2017. Online at <https://ohpi.org.au/nazi-groups-poster-campaign-melbourne/>

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through the Grampians in 2022,²³ and then Nazi salutes on the steps of the Victorian Parliament in 2023.²⁴ As we work across all forms of hate and extremism, OHPI's data tracks their impact as it moves from the Jewish communities, to Muslim communities, to LGBTIQ+ communities, to Asian communities, to engagement with overseas extremist groups.

Recommendation: The Federal Government should increase the funding available to support expert civil society groups, such as the Online Hate Prevention Institute, that are working to monitor and document Nazi and neo-Nazi groups in Australia. Partnerships should be put in place to ensure open channels of communication and data sharing with relevant parts of government.

Returning to the question of international engagement, we urge the Committee to advocate for greater Australian engagement with the Interparliamentary Taskforce for Combating Online Antisemitism. Australia is a member of this body and it provides a forum to question executives from technology companies on their efforts to prevent the spread of Nazi / neo-Nazi activity online.

We also recommend the Committee take note of our involvement in the International Holocaust Remembrance Alliance and encourage greater engagement of a range of government departments and agencies with DFAT and our expert delegation to IHRA in order to make best use of our membership. There are regular discussions on matters related to the spread of Nazism, neo-Nazism, and related extremism within the IHRA framework. We have the ability to directly discuss such matters with other governments tackling similar challenges at both the diplomatic and expert level. There is also some work, such as reporting on current Nazi / neo-Nazi groups and symbols, that IHRA could potentially manage to the mutual benefit of the member countries.

²³ ABC News, 18 January 2021. Online at: <https://www.abc.net.au/news/2021-01-28/andre-obeler-says-australia-could-see-rise-in-far-right-in-2021/13100538>

²⁴ "Melbourne's Nazis highlight a bigger problem", Online Hate Prevention Institute, 19 March 2023. Online at: <https://ohpi.org.au/melbournes-nazis-highlight-a-bigger-problem/>