



AUSTRALIAN JEWISH DEMOCRATIC SOCIETY

a progressive voice among jews, a jewish voice among progressives

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Inquiry Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 66021
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Canberra ACT 2600
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Submission to Parliamentary Joint Committee on Intelligence and Security – Review of the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023

Dear Members,

The Australian Jewish Democratic Society appreciates the opportunity to make this submission after the closing date. This submission complements the Submission made to the Senate Committee on Constitutional Affairs on 17 April 2023 by the Australian Jewish Democratic Society concerning the Criminal Code Amendment (Prohibition of Nazi Symbols) Bill 2023.

The Australian Jewish Democratic Society Inc. (AJDS) was established in 1984 by Norman Rothfield and Moss Cass (a former Minister in the Whitlam government), as a politically progressive voice in the Australian Jewish community. Currently its focus is on advocating in favour of a Voice to Parliament and the Israel/Palestine issue. The AJDS has taken positions on a range of freedom of expression issues, including opposition to racism and antisemitism.

1) In the Senate submission, we argued, and repeat this point, that the banning of the “Nazi Hakenkreuz (or hooked cross), the Nazi double sig rune (the Schutzstaffel insignia or ‘SS bolts’” (Explanatory Memorandum 5) , is problematic for these reasons:

- Neo-Nazis have any number of other symbols, both physical and virtual with which to signal support for Nazi-related beliefs and support for terrorist acts. Such symbols are already known to police and intelligence authorities, as well as non-government

agencies such as the Anti-Defamation League in the US¹ or the Southern Hate Centre² which list numerous other variants, including numbers (e.g 88 for “Heil Hitler”).

- such symbols can be instantly broadcast across the internet, either overtly or covertly through any number of private and hidden social media channels. Thus, while amending legislation to bring about prosecutions is theoretically commendable, the ability of people to avoid prosecution is probably high. As well, as argued by one of the problems with tracking down and identifying material online, is that the choice of words and symbols can be quite ambiguous and robots and trawling tools may not catch the subtleties, and indeed, errors can be made by both humans and machines in classifying content as hateful or not hateful according to various criteria (many of us have had this problem with Facebook robots). And all sorts of memes can be used, such as ‘Pepe the Frog’ or the ambiguous OK finger symbol to avoid direct labelling as hateful.
- New hate symbols and workarounds will be instantly invented when others are banned.
- We know that provocateurs are not deterred by penalties, and in fact, may seek jail as a means (as they see it) of promoting their cause and to test out the police capacity for identifying an act that can be prosecuted.
- The legislation avoids covering related and continuing hatreds such found in other communities. Most notoriously, there are elements of the Croatian community who continue to publicly use particular slogans (“za dom spremni” for “homeland ready”, banned in Croatia, and flags, and portraits of fascist leaders are displayed in community places, a problem that goes back decades³. Are their symbols (including photos of wartime leaders) to be banned as well? Following the logic of the ban on Nazi symbols, the answer could be yes.
- We note that the legislation does not ban Nazi salutes and the like. As argued in the submission to the Senate, The Nazi Salute (Hitlergruß) is only one form of support for Nazism. There is also the Italian or Roman fascist salute, the ‘ok’ signal, and others. Banning one hand signal will result in the use of another, or the invention of a new signal. There is also neo-Nazi music which is used to signal support for hate. Legislation will not take care of this problem, offensive as it is.

Consequently, believing that that legislating away hate by banning of symbols when there first, many alternative symbols at hand and second, other hateful are left out of the equation, leaves the legislative solution somewhat inadequate.

2) The banning of the Islamic State and therein its constituent symbols, is also difficult, problematic and likely to cause offence. It may cause further alienation in parts of the Muslim community. People will certainly feel stigmatized. Concerns have been raised in the past⁴ and we note that the Council of Imams as recently as 3 August⁵ has raised very similar concerns to us (The Age and SMH 5 August, 2023). The matter is now getting international coverage⁶. There is a particular difficulty with the attempt to ban the Islamic State flag or banner with its constituent symbols because what it consists of are words and symbols and a form of writing

¹ <https://www.adl.org/resources/hate-symbols>

² <https://www.splcenter.org/fighting-hate/intelligence-report/2006/look-racist-skinhead-symbols-and-tattoos>

³ <https://www.theage.com.au/politics/federal/croatian-sporting-clubs-with-fascist-links-promised-millions-in-public-money-20230712-p5dno8.html>

⁴ For example, <https://www.sbs.com.au/news/article/muslim-groups-fear-unintended-consequences-of-imprecise-is-flag-ban/8t7ckn8hm>

⁵ <https://www.theage.com.au/politics/federal/muslim-groups-alarmed-by-push-to-ban-flag-used-by-islamic-state-20230802-p5dt8q.html>

⁶ <https://nybreaking.com/australian-muslims-reject-the-ban-on-the-flag-used-by-the-islamic-state-fearing-it-will-criminalize-legitimate-expressions-of-their-faith/>

with deep meaning to all Muslims, and particularly words of belief that are constantly repeated in prayer and in the call to prayer. This may cause problems in relations with some in the Muslim community who may believe that it is an attack by government on the words of the Prophet (Muhammed) given that those words of the Shahada- the witness to faith and a representation of his seal on the flag. Their legitimate expression of faith and freedom of expression will appear to be under attack by the state. Government needs to consult very carefully with both secular and religious leadership if the Islamic State flag is in fact banned to develop an explanation that is credible to the Muslim community, if that is at all possible.

It also appears odd that the Islamic State banner or flag is considered appropriate to ban, when arguably, following the same principles, the flags of Hamas, Hizbullah and other Islamist and political organizations should be banned as they appear far more frequently in public in Australia than Islamic State. Hamas and Hizbullah are proscribed, yet their flags are not and feature at demonstrations. This is very odd policy making. As well, why isn't the flag illustrated at C in the Appendix with Thuluth script being banned, even if also sold and used for general consumption?

Indeed, as Liberty Victoria has noted in its submission to you, "to our knowledge there are no recent examples of the public display of the ISIS flag that could be argued to make this measure necessary. Even if there are such examples, they have not been widely publicised".

In detail, to the best of our knowledge we see the issues as follows.

The whole phrase with words left out (أشهد أن - I bear witness that) in the Islamic State banner is usually translated as "I bear witness that there is no god but God, and I bear witness that Muhammad is the messenger of God." Classical Arabic reads "Ashadu an lā ilāha illā Allāh: Muḥammadun rasūl Allāh أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ

The Islamic State banner repeats the fundamental Muslim religious phrase or credo, the Shahadah. It is found on the walls of mosques, on walls in general, over doorways, in houses, on bumper stickers, everywhere in the Islamic world, on the Saudi flag using the fancy Thuluth script, and is always repeated in prayer. In fact, one can buy reproductions of the credo in all sorts of script variants, and Muslim homes have all sorts of wall decorations with the phrase. It is adapted a personal item as well – See all the photos below.

Given that these words and their reproduction are standard Islamic practice, some problems about the crossover of calligraphic choice, colour and Muhammad's seal between the Islamic State banner and ordinary use are listed below in detail.

- First the banner or flag is black, the "black standard", hearkening back to a flag used by Muhammed) The black background is also used by ordinary Muslims, but it is also appropriated by terrorist groups⁷. For example, various jihadist groups use the black standard, along with the credo or Shahadah in white using fancier calligraphic script. But this flag is also used as an ordinary thing displaying faith (see Images B and C in Appendix A).
- Second, the particular script in the case of the Islamic is a political statement, but it can also be a-political. The first line (in white on black) is an abbreviated first part of the credo or Shahadah in an almost entirely unvocalized, early al-Jazm script, again hearkening back to the earliest days of Islam and early Koranic texts. This antiquity is

⁷ Bahari, Mustazah, and Muhammad Haniff Hassan. "The Black Flag Myth: An Analysis from Hadith Studies." *Counter Terrorist Trends and Analyses*, vol. 6, no. 8, 2014, pp. 15–20. *JSTOR*, <http://www.jstor.org/stable/26351277>. Accessed 4 Aug. 2023.

obviously intended to give Islamic State credibility. But the reproduction of this line in early script could also be entirely religious in intent as it is part of the Credo.

- Third, on the flag, is a circle in white with black script and the second part of the Shahadah. This is not an ordinary circle, but is a reproduction of what is believed to be the Seal of Muhammad (or at least the impression of the inverse engraved image), perhaps made when he wrote to the Byzantine emperor Heraclius in 628. It is regarded as a holy relic, akin to something found in Catholic churches. This seal repeats the second part of the credo, though in inverse order to what is usually written in Arabic⁸. Thus, Islamic State uses Muhammad's seal as a kind of endorsement. However, calligraphy, and text and seal are reproduced as personal items (images below). Political or not?

Consequently, there is no fixed boundary between the words and objects and other public display of the credo, ancient script and the seal for religious, cultural and aesthetic reasons.

Note the proposed legislation (sec. 802E (d) that covers IS as a prohibited symbol: "something that so nearly resembles a thing to which paragraph (a), (b) or (c) applies that it is likely to be confused with, or mistaken for, that thing." And at (22) in the Explanatory Memorandum, "it is not intended that the symbol must be displayed on a flag".

Thus, selling or displaying a T-shirt with the Shuhadah in a pseudo-archaic script, or a reproduction of Muhammad's seal as a finger ring or necklace item, or a backpack with Muhammed's seal could be construed as supporting IS ("something that so nearly resembles the Islamic State flag that it is likely to be confused with, or mistaken for, the Islamic State flag" Schedule 1 — Prohibited symbols 80.2.H 10.f.2), and construed to be public support for terror (see images E-G below in the Appendix), and charges brought about. Though charges would likely be dismissed, the public damage to relations with Muslims both in Australia and overseas would be enormous for even engaging in an investigation or prosecution⁹. A report over the ambiguities of prosecuting the Islamic State flag was made by the BBC in 2015¹⁰.

Consequently, as Liberty Victoria has noted in its submission to you, "how are police, or other members of the community for that matter, to know whether a particular form of stylised Arabic text (noting the importance of calligraphy to the Muslim faith) is a version of the same text on the ISIS flag", and in fact, the likelihood of confusion by non-Arabic readers in identifying what they are seeing, whether in writing or on an object like a ring is likely to be high. There is also the potential for vexatious activity by members of the public. And, as cited in The Age, "Raihan Ismail, an expert in political Islam at the Australian National University, said the bill's wording was "dangerously broad" and, unless it was rewritten, "no Australian Muslim could feel free to display a black flag, or indeed any flag, containing Arabic script"".

We attach images for your consideration that support this argument.

⁸ The Explanatory Statement at (21) is deficient in its discussion of the above point. The writing is not just in a circle, nor are the words Allah / rasūl / Muhammad God/Messenger/Muhammed without meaning. For believers, this is a holy relic of Muhammed that has great symbolism given that with its script form it is a relic of Muhammad himself. The three words, as noted by Islamic scholars, need to be read from bottom to top, grammatically – the Name of the Prophet, followed by a genitive construction, rasūl Allah, all forming a nominative sentence. Muhammed is the messenger of God. This has enormous religious meaning. Policing its representation is dangerous.

⁹ Note Rankin v Murray in the UK where a man was convicted for wearing a ring inscribed with the initials of the proscribed Ulster Volunteer Force. A wrongful prosecution in Australia for wearing a similar item such as a Seal of Mohammed ring would cause enormous damage.

<https://www.theguardian.com/uk/2004/jun/02/northernireland.gerardseenan>.

¹⁰ <https://www.bbc.com/news/magazine-33406768>.

3) We also note that there is a broader political issue, and that is the Israel/Palestine conflict. A distinction must be made between supporters of Islamic State or similar groups and legitimate political discourse over Israel/Palestine by other Muslims, where a variety of flags may be displayed in protest or images put online.

4) Whether it applies to neo-Nazis or Islamic extremists, the mass media (specifically commercial television and affiliated online presences) have demonstrated a tendency to sensationalise extremist activity. This only encourages on groups to seek attention as intelligence agencies have noted. There are better ways of reporting the activity of such groups and the media should be encouraged to be sober in reporting about violent extremist groups. We are aware that neo-Nazi groups are now in fact staging otherwise unknown provocative events, taking photos, and then passing them onto susceptible media and others to get free publicity. Responsible media should avoid uncritical reporting and use of photos.

5) While the intention to ban Nazi symbols is laudable, it is a performative, reactive, and narrowly construed gesture coupled with the difficulties of enforcement. With respect to the activity of neo-Nazis groups, we see a continuing gap by a focus on banning symbols alone, rather than engaging in long-term community-focussed activity. All parties need to be proactive in countering infiltration by neo-Nazis into groups of disenchanted citizens. This activity is deeply disturbing, whether it is in protests at the local government level against trans people reading books to children or the conflation of conspiracy theories with neo-Nazi ideology. We know the problem as seen in violent protests during the COVID (and media provocateurs at play). Of course, some of this behaviour is not necessarily neo-Nazi, but it is ripe for exploitation, violent acts, and recruitment. As intelligence agencies have argued a major threat to civil order comes from neo-Nazis and their provocations amongst confused or angry or alienated citizens are of deep concern as they attempt to attract members. However, legislation alone is not the way to deal with this problem. A range of community strategies should be put into place to help deal with the management of such problems at a local government level.

In fact, the most important strategies against neo-Nazi activity, neglected in such a bill include proactive measures, including:

- a) Vigorous, ongoing, and proactive bipartisan political leadership to prevent the infiltration of neo-Nazis and their fringe sympathizers into the mainstream parties.
- b) Vigorous, ongoing, and proactive bipartisan political leadership to prevent the infiltration of neo-Nazis and their sympathizers into various social protest movements (such as has happened with anti-vaxxers and various freedom movements over the past few years). The current targets of neo-Nazi hatred in Australia are Muslims, people of colour and LGBTQI+ as well as Jews. Contemporary multicultural Australia is threatened by neo-Nazi hate groups and their connections into other grievance groups.
- c) Likewise, it is the responsibility of politicians at all levels of government, to show leadership. Unfortunately, as we know, there has been a tendency to go light on people with views that are on the extreme right, and in some cases, certain politicians have appeared with neo-Nazis. As far as possible, particularly in the Liberal party, these flirtations must be condemned.
- d) Vigorous, ongoing, and proactive work by intelligence agencies, in conjunction with overseas organizations to disrupt neo-Nazi and Islamist activity within the boundaries and protections of Australian legislation. This includes supporting research with academic agencies identifying problematic groups and the development of diversionary strategies and the active countering of hate online.

- e) Vigorous, ongoing, and well-funded public campaigns against neo-Nazi groups, including working with key community organisations and bodies, and local government (a new front for disruption by the radical right), landlords (closing down of facilities such as gyms), and members of the Jewish, Islamic and various other affected groups including the LGBTQI+ /trans communities.
 - f) Vigorous, ongoing, and well-funded activity by appropriate organisations with the mainstream media to ensure denunciation, rather than sensationalising neo-Nazi activity.
 - g) Vigorous, ongoing, and proactive education programs about racism and Nazism, genocide and other related crimes in schools and other parts of the community. Such programs should not just focus on the crimes against European Jewish communities committed by the Nazis and their allies. As Australians, genocidal behaviour against indigenous Australians needs to be acknowledged first and foremost. In putting forward this argument, AJDS argues that there needs to be a move beyond a narrow construction of holocaust education for schools. Australians experience of prejudice and violence is increasingly distant from the Holocaust, but linked to other acts of hate and terror. Such programs should also highlight the dangers of forms of ethno-nationalism such as the crimes against the Armenian people, the Cambodian people, various African genocides and the crimes in the recent ex-Yugoslavia war. This will also have meaning to the diverse Australian community, rather than the experience of Jews alone. In this regard, AJDS agrees with the Executive Council of Australian Jewry in its submission that "[W]e 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." All this requires careful work with the appropriate organisations and of course, long-term funding and strong political leadership.
 - h) There should be a review of which organisations are suitable to undertake working with schools on developing such broad curricula and they should be broad-based rather than ethno-specific.
- 6)** With respect to community engagement with the diverse Muslim community to prevent the spread of terrorist thinking and support for Islamic State or similar groups, likewise, there must be close engagement with a full range of groups in the community and funding made available for long-term activity including work in schools and programs aimed at young adults attracted to ISIS and other groups.
- 7)** While the sale of Holocaust or other artefacts (assuming that Islamic State flags are being traded) is appalling, there is a real danger of the trade being driven underground by banning. We doubt that banning will do anything except put the material under the shop counter or for sale via overseas agents. The commercial dealers in Nazi artefacts are known and unrepentant.
- 8).** The AJDS objects to abolishing sunset clauses as argued in the Explanatory Memorandum under 17. The reason put forward in the Explanatory Memorandum, a desire to drop the sunset clause is due to the "is due to the fact that most organisations have been relisted repeatedly, and reflects the seriousness of terrorist organisation offences", is not sufficient reason for such serious legislation not to undergo regular parliamentary scrutiny, given international controversy over the listing of certain organisations, such as Hamas.

We are available for further discussion of these matters should you wish this to be the case.

Yours sincerely

A solid black rectangular box used to redact the signature of the sender.

Dr Larry Stillman / Harold Zwi

For the AIDS Committee

Attached: Appendix A

Appendix A Iconographic Images: Ripe for confusion.

A Islamic State Flag or Banner. Credo with archaic text and Seal of Mohammed  The image shows the flag of the Islamic State, featuring a black field with white Arabic calligraphy. The top line reads 'لا إله إلا الله' (There is no god but Allah) and the bottom line, enclosed in a white circle, reads 'الله رسول محمد' (Allah, Messenger of Muhammad).	B Wall Art: Home decoration: Seal reproduced  The image shows a framed piece of wall art. It features a dark background with a central, irregularly shaped, light-colored seal. Inside the seal, the Arabic calligraphy 'الله رسول محمد' (Allah, Messenger of Muhammad) is visible in gold or yellow.
C Jihadist flag  The image shows a black flag with white Arabic calligraphy. The text is the Shahada (Islamic declaration of faith), 'لا إله إلا الله محمد رسول الله' (There is no god but Allah, Muhammad is the Messenger of Allah), written in a stylized, flowing script.	D Home decoration  The image shows a living room interior. A large, black tapestry with white Arabic calligraphy (the Shahada) is hanging on the wall. Below the tapestry is a red sofa with several cushions. A small table with a bowl of red flowers is in front of the sofa. A potted plant is visible on the left. Islamic Shahada Kalima Wall Decor Flags Arabic Muslim Calligraphy Tapestry Room ...

E Backback resembling archaic text



F T-shirt with archaizing text



G The Prophet's seal as a personal item



Seal of Prophet Muhammad Silver Men Ring, 925 ...
★★★★★ (104)
AUS\$142.05
FREE delivery



Seal of Prophet Muhammad Green Mena Silver Ri...
★★★★★ (104)
AUS\$213.07
FREE delivery



The Seal Of The Prophet Muhammad - Silver Nec...
★★★★★ (1,86)
AUS\$118.57 ~~AUS\$188.88~~ (31% off)



Islamic Jewelry Seal of Mohammad Prophet 925S...
★★★★★ (11)
AUS\$7.02
FREE delivery