

Submission to Senate Standing Committee on Legal and Constitutional Affairs

April 8, 2023

I would like to thank the committee for the opportunity to provide a submission in relation to The Criminal Code Amendment (Prohibition of Nazi Symbols) Bill 2023.

I acknowledge that Nazi symbols and displays are offensive and represent an ideology and mindset that have no place in Australia.

However I believe that Australia as a democracy should be wary of limiting speech offensive or not, I believe this bill could have unforeseen consequences if enacted with its current exclusions, for example “artistic purposes” as an exclusion is not as effective if the burden of proving that defence is on the defendant as is in the act which would mean a defendant would need to prove in court their artistic reasoning which would in my view limit the exclusion to only those brave enough or with enough money to afford a defence thus limiting the rights of certain Australians.

I believe it would also make it more difficult for those in the gaming industry who want to run a company here that would want to produce a game that is set in World War 2 or those in the film industry trying to make a movie about WW2.

I would be in favour of the bill if it was changed to make the prosecutor/state prove the mens rea of the defendant as this would explicitly protect the exclusions as provided in the act and protect the rights of Australians while still proving a pathway for the state to prosecute speech without it applying the presumption of guilt to all defendants.

Thanks.