

Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Criminal Code Amendment (Prohibition of Nazi Symbols) Bill 2023

The Australia/Israel & Jewish Affairs Council (AIJAC) wholeheartedly supports the Criminal Code Amendment (Prohibition of Nazi Symbols) Bill 2023, which would heavily penalise the knowing display of Nazi symbols, including the Nazi salute, outside of scientific, educational, artistic, religious, journalistic or other appropriate contexts.

AIJAC has long supported state legislation to ban the display of Nazi symbols, including the Nazi salute, the first recommendation in its submissions to the Legal and Social Issues Committee's inquiry into extremism in Victoria in mid-2022.¹ AIJAC also made a submission to the NSW Parliament's Standing Committee on Social Issues inquiry into Crimes Amendment (Display of Nazi Symbols) Bill 2021 supporting similar state legislation.²

Already, a majority of states have legislation banning the display of Nazi symbols.³ The Criminal Code Amendment (Prohibition of Nazi Symbols) Bill 2023 would not only have a chilling and deterrent effect on the public display of right-wing extremist hatred if adequately enforced, but would also serve as a concrete national statement that such displays are socially unacceptable and help further marginalise the thankfully tiny minority of open racist extremists in this country, thereby strengthening Australia's multicultural harmony.

As the Explanatory Memorandum of the bill states:

The public display of Nazi symbols is abhorrent to the Australian way of life and has no part in our political discourse. All Australians are diminished by the sharing and glorification of an ideology which is characterised by genocide, mass murder and other forms of persecution. Australians are entitled to feel proud that, together with allies around the globe, we as a nation fought against the Nazi threat over the course of the Second World War. Prohibiting the display of Nazi symbols is a mechanism that aligns with our values and our heritage as Australians.⁴

¹ AIJAC, "Submission from the Australia/Israel & Jewish Affairs Council (AIJAC) to the Inquiry into Extremism in Victoria", p.2, https://aijac.org.au/wp-content/uploads/2022/06/019_Australia_Israel_Jewish_Affairs_Council.pdf.

² AIJAC, "Submission to the NSW Parliament's Standing Committee on Social Issues inquiry into Crimes Amendment (Display of Nazi Symbols) Bill 2021", <https://aijac.org.au/submissions/submission-to-the-nsw-parliaments-standing-committee-on-social-issues-inquiry-into-crimes-amendment-display-of-nazi-symbols-bill-2021/>.

³ Gillespie, E (2023) "Queensland to ban Nazi swastika tattoos as part of crackdown on hate symbols", *The Guardian* (Mar. 16), <https://www.theguardian.com/australia-news/2023/mar/16/queensland-to-ban-nazi-swastika-tattoos-as-part-of-crackdown-on-hate-symbols>.

⁴ Explanatory Memorandum, p. 2, https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1373_ems_91232319-cf16-4b2f-abc6-14280601b1bb/upload_pdf/EM_23S010.pdf;fileType=application%2Fpdf.

Responding to potential criticisms of the bill

Critics of the Criminal Code Amendment (Prohibition of Nazi Symbols) Bill 2023 have argued that banning Nazi symbols would not only be an ineffective means of combatting extremism, but may also potentially be counterproductive. Furthermore, it is argued, because any symbol or gesture can be appropriated by hateful extremists, the Government would be forever playing catch-up as racists adopted new means of signaling their cause.⁵ These criticisms, however, do not really address what AIJAC views as the purpose of the bill.

In the first place, AIJAC itself in its submission to the NSW Parliament's Standing Committee on Social Issues inquiry into Crimes Amendment (Display of Nazi Symbols) Bill 2021 noted that banning Nazi symbols and gestures will not actually decrease right-wing extremism, as is clear from the case of Germany, and was only one of many necessary tools, including education:

While AIJAC is entirely supportive of a ban on the public display of Nazi symbols, our organisation cautions that it is just one of a suite of measures needed to act against right-wing extremism. Other jurisdictions that have existing bans on the public display of Nazi symbols, have not seen the disappearance of acts or expressions of right-wing extremism... It is clear from the contemporary experience in Germany, that a ban on Nazi and other extremist symbol is one tool that can be employed against far-right groups, but this measure alone cannot mitigate the rise of right-wing extremism.⁶

The purpose of this bill, however, is specifically to deter and, if deterrence fails, punish the public display of gestures and symbols associated with Nazi Germany, which a year in prison or a fine of nearly \$30,000 would likely do. Nazi gestures and symbols are universally recognised messages of hate and intimidation. That hate groups adopt otherwise innocuous gestures is not relevant to the average Australian, who would be very unlikely to recognise such symbols or feel threatened by them. Unlike the Nazi salute or swastika, such gestures are more about in-group signaling and trolling the few experts that understand what's happening. As Josh Roose, an extremism expert and associate professor at Deakin University, told *Guardian Australia*, you can't ban everything, so "the baseline is drawing a big line around the actions of the Nazi in the second world war [and] outlawing that."⁷

A segment of the population will always hold abhorrent racial beliefs regardless of any educational or legislative policy, and the purpose of this bill is to marginalise and punish such people for the open display of such beliefs in the form of a Nazi salute or similar symbol in such a way that intimidates other Australian citizens. It is neither possible nor desirable for the Government to build re-education camps or otherwise punish citizens for their internal beliefs, no matter how noxious. Ideological extremism is a matter to be

⁵ Khalil, L (2023) "Banning the Nazi salute opens a Pandora's box", *Sydney Morning Herald* (Mar. 29), <https://www.smh.com.au/national/banning-the-nazi-salute-opens-a-pandora-s-box-20230328-p5cvxk.html>.

⁶ See note 2.

⁷ Ore, A (2023) "Victoria to ban Nazi salute after 'disgusting' scenes at anti-trans protest", *Guardian Australia* (Mar. 20), <https://www.theguardian.com/australia-news/2023/mar/20/victoria-to-ban-nazi-salute-after-anti-trans-protest-melbourne-australia>.

managed in perpetuity, and this bill will enable the Government to do precisely that more effectively by imprisoning or fining violators.

AIJAC has previously highlighted how Australian racist groups like Thomas Sewell's National Socialist Network (NSN) do not currently pose a security threat, but do still intimidate Australia's multicultural communities by displaying Nazi symbols and giving the Nazi salute.⁸ This bill rightly focusses on the public display of these Nazi symbols and gestures, and it is specifically that public display that must be addressed in order to quickly lock up, financially penalise or otherwise drive from public view members of the NSN and likeminded individuals.

Conclusion

The Criminal Code Amendment (Prohibition of Nazi Symbols) Bill 2023, if properly enforced, will put a stark choice before Nazi provocateurs: either keep your beliefs to yourselves or risk severe fines or jail time. The neo-Nazi milieu in Australia is not known for its wealth or general social and occupational functionality, so such punishment will likely deter displays such as the one that took place in Victoria in late March to a large degree. And if it does not, those individuals, of which there are extremely few, will be imprisoned or fined under the law.

While critics are correct that this amendment will not halt right-wing extremist beliefs, it will help marginalise or punish public manifestations of neo-Nazism. No bill or policy can ever realistically destroy a belief system, but beliefs themselves are not a problem for liberal democracies, only actions based upon them. AIJAC therefore fully supports the proposed amendment as a key tool, one of many, in marginalising racist extremists across Australia by punishing the public display of Nazi gestures and symbols.

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⁸ Lobel, O (2022) "Understanding the security threat from violent extremists" (Jul. 8), <https://aijac.org.au/fresh-air/understanding-the-security-threat-from-violent-extremists/>.