

ACL Submission to Inquiry into the Criminal Code Amendment (Prohibition of Nazi Symbols) Bill 2023 (Cth)

SUBMISSION:

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AUSTRALIAN CHRISTIAN LOBBY

About Australian Christian Lobby

Australian Christian Lobby's vision is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With around 250,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

acl.org.au

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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600



Legcon.sen@aph.gov.au

18 April 2023

Dear Committee Secretary,

On behalf of the Australian Christian Lobby (ACL), I welcome the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee's (Committee's) [Inquiry](#) into (Inquiry) the [Criminal Code Amendment \(Prohibition of Nazi Symbols\) Bill 2023 \(Cth\)](#) (Bill).

The ACL is generally supportive of the aims of the proponents of the draft Bill namely to condemn the evils of the Nazi ideology. Our submissions recommend that the Government make amendments to the Bill, to expressly exclude the possibility of it unintentionally capturing the public display of any genuine Christian or other faith symbols which may be confused as or appropriated as Nazi symbols.

For the record, we also wish to emphasise that such legislation should never be used as a template in future for banning any public displays of Christian (or other religious) symbols.

We would be very willing to meet with the Committee to discuss these submissions.

Yours Sincerely,

Wendy Francis
Acting CEO

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EXECUTIVE SUMMARY

The ACL condemns the evil of Nazi ideology. The ACL also recognises the intent behind the draft Bill, to also express condemnation of this ideology and is generally supportive of its aims.

We are concerned that the Bill's wording could unintentionally capture the public display of any genuine Christian symbols which may be confused as or appropriated as Nazi symbols. We suggest that the draft Bill be amended to expressly exclude that possibility.

We submit that such legislation should never be used as a template in future for banning any public displays of Christian (or other religious) symbols.

Recommendations:

To mitigate any possibility of the above matters occurring, the ACL recommends that:

1. section 81.1(3)(b) be expanded to also except displays for a genuine *religious* purpose; and
2. an additional section similar to section 81.1(4) be inserted which specifies that to avoid doubt, the display of any traditional symbols in connection to Christianity (and perhaps also Judaism) such as a Christian cross do not constitute the display of a Nazi symbol.
3. that the term Nazi symbols be closely defined.

Our submissions are discussed in more detail below.

SUBMISSIONS

1. The ACL is generally supportive of the aims of the draft Bill.

The ACL recognises the intent behind the draft Bill, namely the underlying concern of the promotion of Nazi ideology by the public displays of Nazi symbols. The ACL agrees with the Explanatory Memorandum that Nazi ideology is characterised by genocide, mass murder, and other forms of persecution.¹ This includes genocide against the Jewish people, who are inherently connected to the Christian faith of the supporters which ACL represents. ACL is fundamentally opposed to Nazi ideology. Such an ideology has no place in the Christian faith or Australian society. As such, the ACL is generally supportive of the aims of the draft Bill.

2. The Bill's wording could unintentionally capture the public display of any genuine Christian symbols which may be confused as or appropriated as Nazi symbols. We suggest that the draft Bill be amended to expressly exclude that possibility.

Clause 81.1(1) of the Bill is broadly drafted. Its offence provision covers the public display of essentially anything characterised as a 'Nazi symbol'. Subsection (2) does confirm that this "includes, but is not limited to, giving the Nazi salute", which is clearly associated with Nazi ideology. However, the Bill does not list any other examples. The Explanatory Memorandum confirms that 'Nazi symbol' is not a defined term but is given its ordinary meaning to ensure that the full range of symbols associated with Nazi ideology and the Nazi party are captured by the prohibition. It does however, provide some indications of what other symbols may be captured, by setting out a list of specific symbols included in the Bill's scope.² These include the Hakenkreuz – the Nazi swastika or hooked cross; the Double Sig rune (SS lightning bolt) that were used by the SchutzStaffel (SS); the Totenkopf (Death's head) used

¹ See page 2 of the Explanatory Memorandum: [This link](#). ACL notes that communist ideology has also had such destructive consequences on the peoples of Russia, Eastern Europe, China, Cambodia etc. Perhaps the Bill should also consider banning the hammer and sickle?

² See page 3 of the Explanatory Memorandum: [This link](#).

ACL Submission to Inquiry into the Criminal Code Amendment (Prohibition of Nazi Symbols) Bill 2023 (Cth)

by the Nazi SS from 1934 to 1945; the Sonnenrad (Black sun/wheel); the Broken Sun Cross, or Sun Cross Swastika; the unstylised Celtic Cross; the Algiz rune; the Tyr rune; and the Othala/Odal rune.

We are not experts in, nor even particularly familiar with, the historical or popular use of such symbols. However, we generally do not see any issue with these symbols falling into the scope of ‘Nazi symbols’.

We understand, however, that ‘the unstylised Celtic Cross’ apparently had Christian origins and is similar to some Celtic crosses used today. According to the Anti-Defamation League,³ the Celtic Cross, as typically depicted, is a traditional Christian symbol used for religious purposes. It is a very common symbol primarily used by non-extremists. Most renditions of the traditional Celtic Cross feature an elongated vertical axis (often accompanied by Celtic knotwork) that resembles that of other Christian crosses. However, some sources also depict a known ‘Celtic wheel cross’ variant with a shorter vertical axis.⁴ Apparently, the traditional Celtic cross was adopted by a variety of extremist movements after World War II, who generally use a version of the Celtic Cross which consists of a ‘short’ square cross interlocking with or surrounded by a circle. This appears to be very similar to the traditional ‘Celtic wheel cross’ variant.⁵ Some extremist groups apparently also “occasionally use” the traditional version of the Celtic cross.⁶ As such, while there generally seems to be a distinction between versions of the Celtic Cross used in Christian contexts and those used as Nazi symbols, there might be some overlap or confusion. There also seems potential that some extremist groups might continue to appropriate traditional versions of the Celtic Cross, which could mean that it becomes increasingly recognised as a Nazi symbol in some contexts in future. At this stage, the ‘occasional’ use of the traditional Celtic cross by some extremist groups seems unlikely to us to mean that it falls into the sort of Nazi Symbols “commonly associated with the Nazi party” and intended to be captured by the draft Bill.⁷ However, the apparent overlap and similarity between the Christian and Nazi versions of the Celtic cross still suggests to us some potential for Christian symbols to be confused as or appropriated as Nazi symbols.

While clause 81.1(1)(b) of the Bill requires a person to *know* that a symbol being displayed is a Nazi symbol to establish an offence, and while there are exceptions for people with “a reasonable excuse” or displays made “for a genuine scientific, educational or artistic purpose”, there is no similar exception for *religious* purposes. None of the existing exceptions expressly cover religious purposes either. The ‘reasonable excuse’ exception will apparently cover circumstances where a Nazi symbol is displayed to the public in good faith (which seems it could perhaps apply to religious displays, but not necessarily), and the latter exception just covers displays at places like museums or movie sets.⁸

Section 81.1(4) does of course clarify that the display of a swastika specifically in connection with Buddhism, Hinduism or Jainism does not constitute the display of a Nazi symbol (a known example of Nazi appropriation of a religious symbol). As the Explanatory Memorandum points out, this is to make it “clear that religious symbols that are sometimes confused with Nazi symbols are not captured by the prohibition”.⁹ However, the exception is limited *only* to displays of swastikas in connection with Buddhism, Hinduism or Jainism. It does not cover symbols connected to other religions like Christianity.

Given all of these factors, there is potential for the Bill to unintentionally capture the public display of any genuine Christian symbols which may also be confused as or appropriated as Nazi symbols. For example, if any Christian symbols do become popularly used as Nazi symbols, a person might be aware

³ See website of the Anti-Defamation League: <https://www.adl.org/resources/hate-symbol/celtic-cross>.

⁴ See, for example, this Wikipedia article: https://en.wikipedia.org/wiki/Celtic_cross.

⁵ See, for example, this Wikipedia article: https://en.wikipedia.org/wiki/Celtic_cross.

⁶ See website of the Anti-Defamation League: <https://www.adl.org/resources/hate-symbol/celtic-cross>.

⁷ See the Second Reading speech of the Bill on page 29 of this document: [This link](#).

⁸ See page 4 of the Explanatory Memorandum: [This link](#).

⁹ See page 5 of the Explanatory Memorandum: [This link](#).

ACL Submission to Inquiry into the Criminal Code Amendment (Prohibition of Nazi Symbols) Bill 2023 (Cth)

of this fact but still choose to publicly display such a symbol for genuine religious purposes. Such an action could fall within the scope of the draft Bill, given that the relevant fault element of the offence provision is ‘knowledge’ that a symbol is a Nazi symbol (rather than, for example, actual intent to promote Nazi ideology in displaying it).¹⁰

To mitigate any possibility of this occurring, we recommend that:

- section 81.1(3)(b) be expanded to also except displays for a genuine *religious* purpose; and
- an additional section similar to section 81.1(4) be inserted which specifies that to avoid doubt, the display of any traditional symbols in connection to Christianity (and perhaps also Judaism) such as a Christian cross do not constitute the display of a Nazi symbol.

Given that Nazism is not a recognised religion itself and given that most extremist groups apparently do not appropriate traditional Christian symbols, we do not consider that this would impede the intent or effect of the Bill. It would help to clarify that the Bill does not intend to capture the public display of any genuine Christian symbols. As the Explanatory Memorandum confirms,¹¹ the Bill has been drafted with an intent to “ensure that the legislation does not unintentionally criminalise actions that are unrelated to the promotion of Nazi ideology”. Public displays of religious symbols would undoubtedly fall within this category of actions, they just have not been expressly covered in the wording of the draft Bill and the specified exception provisions. As such, in our view, these recommendations are modest and consistent with the Bill’s existing provisions.

3. The term Nazi symbols should be defined

ACL also submits that the term Nazi symbols should be defined in the Bill. It is respectfully not wise drafting in relation to the creation of a criminal offence to ban something without defining it. While there is some explanation in the Explanatory Memorandum, the law should be so clear that “one who runs can read” it.¹²

4. For the record, we wish to emphasise our view that such legislation should never be used as a template in future for banning any public displays of Christian (or other religious) symbols.

It seems clear that the draft Bill does not intend to prohibit the public display of any Christian symbols, nor characterise any religion as hateful ideology similar in any way to Nazism. However, we are aware that in recent years, some uninformed anti faith groups have sought to publicly connect Christian views and groups to hate and extremism. This is egregiously wrong. It is the Bible believing Christian Church that opposed Nazism.¹³ The Christian Gospel affirms the equality of all¹⁴ and that all are able to be redeemed by God’s love In Christ.¹⁵ Genuine Christianity is Christ’s love in action in a troubled world.

We therefore submit that legislation such as the draft Bill should *never* be used as a template in future for banning any public displays of Christian (or other religious) symbols. The Government should never ban the public display of any religious symbols. This would be an overreach stepping far beyond the rationale for banning symbols linked to genuinely hateful Nazi ideology.

¹⁰ See page 3 of the Explanatory Memorandum: [This link](#).

¹¹ See page 2 of the Explanatory Memorandum: [This link](#).

¹² See Habakkuk 2:2. This is a clear drafting principle.

¹³ <https://www.britannica.com/biography/Dietrich-Bonhoeffer>

¹⁴ Romans 3:23 All have sinned and come short of the glory of God.

¹⁵ Galatians 3:28 there is neither Jew nor Greek, there is neither slave nor free, there is no male and female but you all are one in Christ Jesus.