



AUSTRALIAN JEWISH DEMOCRATIC SOCIETY

a progressive voice among jews, a jewish voice among progressives

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Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Parliament House
Canberra ACT 2600
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17 April 2023

Dear Committee Secretary,

Re: Criminal Code Amendment (Prohibition of Nazi Symbols) Bill 2023

We write in response to the invitation of the committee for the Australian Jewish Democratic Society to make a submission.

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. But the AJDS has also opposed the formal adoption of the IHRA working definition of antisemitism by Australian Universities because of the flawed nature of the IHRA Document.

The AJDS believes that the proposal to outlaw Nazi symbols, with the intention of reducing the public space available to neo-Nazis, is deeply problematic for the following reasons:

- 1) Problems in defining when and where it is inappropriate to display a Nazi symbol. For example, even if the legislation exempts satire or humour as expressed in public, in the media (cartoons), or the arts (performance), or political activity, neo-Nazis could make the claim that they too are engaged in satirical or legitimate political expression.
- 2) Use of Nazi symbols in anti-Israel demonstrations, or in criticism of Israel is offensive. Indeed, many people in the Jewish community consider it to be an expression of antisemitism. But it

is not an expression of support for Nazism or a neo-Nazi agenda. The bill may unintentionally act to criticize not only neo-Nazi activity, but critics of Israel itself. As the Tim Anderson and NTEU case has demonstrated, proving intent to cause hatred or offense by use of the Swastika is difficult, and as well, the bar for limiting free speech is extremely high, offensive as Anderson's activity has been¹.

- 3) There should be an exemption for the display of the Swastika when engaged in anti-Nazi protest (as in the Victorian legislation), as well as media reporting (print and virtual), or in publishing². However, the issue of the publishing or display of neo-Nazi material or more sensationalist Nazi-interest material dealing with WWII with Swastika-themed covers or content can be problematic and demands careful consideration in any legislation.
- 4) What of trade and display of such material? How is 'genuine scientific, educational or artistic purpose'³ as to be defined here?
- 5) Problems in defining what is or is not a physical or virtual Nazi symbol or image. Aside from the obvious exemption of the Swastika as displayed by Buddhists, Hindus, and Jains, there are a host of new symbols involved with neo-Nazi groups and displayed by them (various finger and hand signals), other signs (forms of crosses etc).
- 6) There are a host of traditional symbols associated with various Nazi World War II allies or groups active in the ex-Yugoslavia wars in Europe, for example neo-Nazi Serbian and others that still appear in community settings, or as graffiti or pulled out at sporting events (Novak Djokovic's father with Russian and Serbian symbolic flags or shirts). What about SS symbols (the lightning bolts) which are also used by the band Kiss? Banning one physical symbol will only result in the quick invention and distribution of another.
- 7) Problems in banning hand signals and salutes. The Nazi Salute (Hitlergruß) is only one form of support for Nazism. There is also the Italian or Roman fascist salute, the 'ok' signal, the Serbian 3-finger salute and others. Banning one hand signal will result in the use of another, or the invention of a new signal.
- 8) If hand and physical signals such as Swastikas are to be banned, what about neo-Nazi skinhead music and events, where there is a mix of symbols, signalling, and lyrics, by both bands and audiences?⁴
- 9) The great difficulty of pursuing Nazi symbols (images) online and closing down individual or group social media posts. We are aware of some successes, for example by the Online Hate Prevention Institute in closing down Stormfront's servers⁵, but there are thousands of groups and millions of posts which are impossible to track and shut down as problems with Facebook have shown and under new management, Twitter is unlikely to take the matter seriously. Further, hate groups now have their encrypted and private channels on such offshore services as Telegram.

¹ <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2022/1265.html>

² Summary Offences Amendment (Nazi Symbol Prohibition) Act 2022 No. 29 of 2022, 41 K 2 (b)

³ Draft Amendments Criminal Code Act 1995 81.1 3(b) and (d).

⁴ <https://www.abc.net.au/news/2019-10-08/white-supremacist-neo-nazi-concert-in-melbourne-to-go-ahead/11582120>

⁵ <https://ohpi.org.au/>

- 10) A possible deliberate strategy of neo-Nazis to play the system and engage in offensive activity precisely to get publicity and present themselves as martyrs to the cause of free speech.

Thus, while the intention to ban Nazi symbols is laudable, it can be an empty gesture coupled with the difficulties of enforcement.

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

- 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).
- c) Vigorous, ongoing, and proactive work by intelligence agencies, in conjunction with overseas organizations to disrupt neo-Nazi activity within the boundaries and protections of Australian legislation. This includes supporting research with academic agencies identifying problematic groups (eg. alienated white rural males) and the development of diversionary strategies.
- d) 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+ communities.
- e) Vigorous, ongoing, and well-funded activity by appropriate organisations with the mainstream media to ensure denunciation, rather than sensationalising neo-Nazi activity.
- f) Vigorous, ongoing, and proactive education programs about racism and Nazism, genocide and other related crimes in schools. As Australians, genocidal behaviour against indigenous Australians needs to be acknowledged first and foremost.
- g) Such educational programs should not just focus on the crimes against European Jewish communities committed by the Nazis. 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.
- h) There are instances of Hitler salutes, verballing, and graffiti in schools, but they should not be dealt with under the brute force of law. Rather they need to be dealt with as internal pastoral and disciplinary issues, in conjunction with suitable organisations, including Human Rights bodies.
- i) We also need to be aware that 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.

- j) 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.

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

Yours sincerely

Dr Larry Stillman / Harold Zwier

For the AJDS Committee