

**The Representative
Organisation of
Australian Jewry**

Level 2, 80 William Street
Sydney NSW 2000

Address all correspondence to:
PO Box 1114, Edgecliff NSW 2027

Tel (+61 2) 8353 8500
Fax (+61 2) 9361 5888
Web: www.ecaj.org.au
E-mail info@ecaj.org.au

PRESIDENT

Jillian Segal AO

DEPUTY PRESIDENT

Robert M Goot AO, SC

HON. TREASURER

Peter Wise AM

HON. SECRETARY

Daniel Aghion KC

Co-CEOs

Peter Wertheim AM
Alex Ryvchin

VICE PRESIDENTS

David Ossip (NSW)
Daniel Aghion KC (VIC)
Geoff Midalia (WA)
Jason Steinberg (QLD)
Annetay Henderson-Sapir (SA)
Jeff Schneider (TAS)
Karen Tatz (ACT)

IMM. PAST PRESIDENT

Anton Block

CONSTITUENTS

NSW Jewish Board of Deputies
Jewish Community Council
of Victoria Inc
Jewish Community Council of
Western Australia Inc
Queensland Jewish Board of
Deputies
Jewish Community Council
of South Australia
Hobart Hebrew Congregation
ACT Jewish Community Inc

AFFILIATES

Australasian Union of Jewish
Students
Australian Federation of WIZO
Union for Progressive Judaism
Federation of Jewish Aged
Care Services
Maccabi Australia Inc
National Council of Jewish Women
B'nai B'rith of Australia/ NZ
Jewish National Fund of Australia
Joint Distribution Committee Australia

OBSERVERS

Council of Progressive Rabbis
Federation of Australian Jewish
Ex-Service Associations
New Zealand Jewish Council
Zionist Federation of Australia
Council of Orthodox Synagogues of
Australia



3 May 2023

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

Email: legcon.sen@aph.gov.au

Dear Committee Secretary

**Re: Inquiry into Criminal Code Amendment (Prohibition of Nazi Symbols)
Bill 2023 (“the Bill”)**

I refer to your email earlier today as follows:

The Online Hate Prevention Institute recommended that the bill be amended so as to make it an offense for a person to publicly display a symbol ‘in a manner that glorifies or promotes a Nazi or Neo-Nazi group, movement, or ideology’ (Online Hate Prevention Institute, Submission 22, p. 3). Please provide your views on the impacts such a change would likely have on the proposed bill.

Whilst we agree that the expression “Nazi” should include neo-Nazi groups and ideology, we cannot support the addition of the words proposed by the Online Hate Prevention Institute (OHPI).

The Bill in its current form would require a prosecutor to prove that the accused person, at the time of the alleged offence, “*knows that the symbol is a Nazi symbol*” (clause 81.1(1)(b)). This closely follows the model adopted in the equivalent NSW legislation under which a prosecutor would need to prove that the accused person has “*knowingly*” displayed a Nazi symbol (*Crimes Act 1900* (NSW), ss. 93ZA(1)).

In our view, if a person publicly displays a symbol knowing that it is a Nazi symbol, then that in itself should be sufficient to attract criminal liability, unless one or more of the relevant exceptions or defences apply. There would be no justification in our view for a prosecutor to have to carry the additional evidentiary burden of proving, to the criminal standard, the motive for, or purpose of, the display, as OHPI’s proposal would require. In our view, this would set the evidentiary bar too high.

As stated in our submission, we prefer the approach adopted in the relevant Queensland Bill which is currently under consideration in that State. That is, a prosecutor would need to prove that there was a public display of a symbol by the accused person that was done “*in a way that might reasonably be expected to cause a member of the public to feel menaced, harassed or offended.*” (*Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023* (Qld), Part 3, Amendment of Criminal Code, clause 12. Proposed new ss. 52D(1) of the *Criminal Code* (Qld)). Further, “*it is irrelevant whether or not a member of the public has seen the prohibited symbol because of the distribution, publication or display*” (*Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023* (Qld), Part 3, Amendment of Criminal Code, clause 12. Proposed new ss. 52D(5)(b) of the *Criminal Code* (Qld)).

Our second preference concerning this issue would be the approach adopted in the current Tasmanian Bill. That is, if a person publicly displays a Nazi symbol or publicly performs a Nazi gesture, the mental element would be made out if the prosecutor proves that “*the person knows, or ought to know*”, that the symbol is a Nazi symbol or the gesture is a Nazi gesture (*Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of ss. 6C(1) and 6D(1)(a) to *Police Offences Act 1935* (Tas)). This formulation allows expressly for the imputed rather than actual knowledge of an accused person to be relied on by the prosecutor.

For further detail, please see section 9 of our submission, and our Recommendation 4.

Yours sincerely

Peter Wertheim AM
co-CEO