



18 April 2023

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

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Dear Committee Secretary

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

The Executive Council of Australian Jewry (ECAJ) makes the following submission to the above-named Inquiry. The ECAJ is the peak, elected, representative body of the Australian Jewish community. This Submission is also made on behalf of the ECAJ’s [Constituent and Affiliate organisations](#) throughout Australia. We consent to this submission being made public.

Executive summary

The public display of Nazi symbols in support of Nazi ideology was for decades after World War II a rarity in Australia. Yet in recent years there has been a sustained proliferation of Nazi symbols and gestures in the public sphere including, but not limited to, displays online. The negative impacts have included threats and menace conveyed to communities who are targeted by Nazi hate-ideology, and an undermining of their sense of security, and of social cohesion. Legislation to ban the public display of Nazi symbols and gestures has been enacted in NSW and Victoria, and Bills are currently under consideration in Queensland and Tasmania, in addition to the current Federal Bill. They take different forms and treat particular issues differently. Australia has struggled to come up with a best practice model law. Laws in overseas countries, which have had their own particular historical experiences of the evils of Nazi tyranny, are of some, but limited, relevance in Australia. In this submission we consider how the Bill defines “Nazi symbol”, “public act”, “Nazi gesture” and the mental element of the offence, as well as specific issues such as the constitutional head of power, the display of Nazi symbols via body tattoos, the advertising and sale of Nazi memorabilia, defences, police powers and penalties. We compare the Bill’s treatment of these issues with the way these matters have been addressed by the States, and make recommendations concerning each issue. We also address the need for any legislation to be complemented by appropriate measures in school education.

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1. The proliferation of displays of Nazi symbols and gestures in public

Beginning in the latter half of 2016, organised groups with an overtly neo-Nazi agenda rose to prominence on the far right of politics in Australia. The ECAJ's *Annual Report on Antisemitism in Australia 2017* provides a detailed picture of the various neo-Nazi and other far-right groups, and their principal figures, at that time.¹

The reasons for this development are complex and outside the terms of reference of this Inquiry. They were dealt with in detail in the ECAJ's submission to the Inquiry into matters relating to extremist movements and radicalism in Australia, conducted by the Parliamentary Joint Committee on Intelligence and Security in 2021.

Accompanying the emergence of these groups was a noticeable spike in the number of incidents involving the public display of Nazi symbols and gestures in different parts of Australia. These incidents involved something qualitatively different to, and more brazen than, the perennial anonymous appearance of Nazi symbols in graffiti or in comments posted online.

2017

The Annual Report on Antisemitism in Australia published by the Executive Council of Australian Jewry (ECAJ) in 2017 gave details of a spate of “*sightings of people wearing Nazi insignia and symbols on their clothing or body while out and about in the public space*”, as well as posters and stickers that had appeared on at least one university campus and high school in 2017. Examples included:

- *A male was seen wearing a t-shirt with a Nazi swastika on the back and the words “Sieg Heil” and “Faggots” on the front, in Daylesford during Victoria’s ChillOut festival (March 2017).*
- *Man spotted wearing a Nazi swastika armband in Melbourne suburbs: Clayton (c February), Clayton Woolworths store (4 April 2017), Clayton (18 April), Chadstone (13 April 2017), Corinda (10 May 2017), Huntingdale Station, (16 May 2017).*
- *Woman with Nazi eagle and swastika on her t-shirt, on a train near Melbourne (23 May 2017).*
- *Two men were spotted wearing t-shirts which were Nazi flags, the t-shirts were red and had the white circle with the swastika inside them, in a shopping centre in Adelaide (10 September 2017).²*

The Report noted that the display of Nazi symbols in these everyday settings had a propensity to “normalise” hate symbols and messages, and to condition the community into acquiescing in the public expression of Nazi themes.

Further examples of the display of Nazi symbols in public settings have been recorded in the ECAJ's antisemitism reports in each subsequent year. The following is a selection of such incidents.

¹ Julie Nathan, [Report on Antisemitism in Australia 2017](#), Executive Council of Australian Jewry, 26 November 2017, p.99. More recent ECAJ Antisemitism Reports have tracked the splintering and other changes that have occurred within those groups, and their overlapping personnel, including at the leadership level.

² *Ibid*, p.94

2018³

- Swastika shirts, SS tattoos Spotted in Elsternwick, Melbourne, a male wearing a t-shirt with the Iron Eagle and a swastika on it, and a female wearing a Nazi Deaths-head on her t-shirt, both were heavily tattooed with “SS”, swastikas and Nazi symbols, on 13 December 2017.
- Man on a tram seen wearing jeans with the words “Death to all who take” above the Jewish Star of David, in Melbourne, on 22 February 2018.
- A man was spotted wearing a Nazi armband on his arm, as well as a Confederate flag cloth badge on his jacket, and a Soviet Union communist badge on his hat, in Moorabbin, Melbourne, on 28 September 2018.
- In November 2017 a gym in regional Victoria displayed a 'White Pride World Wide' Celtic cross emblem.
- A US-based company in Australia under the name “Proud Boys Australia” sold t-shirts with images of the Nazi Sun Wheel, an antisemitic caricature and other images, as well as hoodies, a coffee mugs, bags, and stickers bearing Nazi symbols and antisemitic images.
- An electrical company in Brisbane promoted neo-Nazi, white supremacist, and antisemitic images and words on its company website. Its logo includes an alt-Right figure with an “SS” badge on its collar, standing in front of the gates of Auschwitz with the words “Arbeit” from “Arbeit Mach Frei” (“Work Makes Free”) and a crematorium smokestack. The company had been a sponsor of the neo-Nazi website “The Daily Stormer” until its demise.

2019

The number of antisemitic graffiti incidents doubled over previous years. The messages included in much of the graffiti called for the murder of Jews (eg “Kill the Jews” or “Gas the Kikes”) or supported Hitler and Nazism (“Sieg Heil” and display of symbols such as Nazi swastikas, SS bolts, crossed out Stars of David) or denied the Holocaust.⁴

In February 2019, NSW police investigated the appearance of a series of Nazi swastikas on a mural in Bondi Beach and a shop in Bondi Junction, areas in Sydney's east with a high proportion of Jewish residents.⁵

Racist graffiti was painted on the back walls and doors of buildings housing Asian restaurants in the middle-class Sydney suburb of Epping in March 2019. The graffiti used neo-Nazi themes and symbols, including images of swastikas, the Nazi eagle, Stars of David crossed out, and the texts “Adolf Hitler,” “SS,” “Sieg Heil,” “Skinhead,” “White Power,” “1488” (symbolising the 14 words of the white supremacist creed and the words “Heil Hitler”), “B&H” (Blood and Honour), “KKK” and “6,000,000 Lies.”⁶

³ Extracted from Julie Nathan, [Report on Antisemitism in Australia 2018](#), Executive Council of Australian Jewry, 25 November 2018, pp. 98-99.

⁴ Julie Nathan, [Report on Antisemitism in Australia 2019](#), Executive Council of Australian Jewry, 24 November 2019, p. 7.

⁵ [Police investigating swastika symbols on mural and shop in Sydney's Bondi](#), *SBS News*, 19 February 2019.

⁶ Ally Foster, [Sick messages and symbols graffitied onto Thai restaurant](#), *News.com*, 29 March 2019.

The main part of the graffiti named the targets of the hatred: "Gooks fuck off," "Niggers go home," "Pakis go home," "Watch out Jews," "Fuck Jewish Scum," "Kill Jews" and (to emphasise the latter, it was repeated) "Kill the Jews."⁷ The message is clear. People of African, east Asian and south Asian background are to go back, either voluntarily or forcibly, to their countries of origin or ancestral lands, but Jews are to be treated differently — instead of being deported, Jews are to be killed.⁸ The overt intent was to advocate lethal violence and genocide against Jewish people.

During the 2019 Federal election campaign, several Jewish candidates had their election posters defaced with antisemitic graffiti including Nazi symbols.⁹

2020

The ECAJ's Annual Report on Antisemitism in Australia in 2020 noted a significant rise in the number of incidents involving the public display of Nazi symbols and also in the public sale of Nazi memorabilia.

“Incidents included the flying of Nazi flags in public, swastika graffiti in the streets, and advertised trade in jewellery composed of Nazi swastikas and sonnenrads (sun wheels), and Nazi symbols used in artwork.”¹⁰

The report also documented occasions when the Nazi swastika was displayed from private homes in Victoria, NSW and Tasmania, or when people dressed in SS uniforms and swastika armbands entered places of business to do their shopping. The following examples are extracted from the ECAJ's 2020 Antisemitism Report:¹¹

- Nazi flags were publicly displayed in 2020 in:
 - Beulah, regional Victoria, 13 Jan., above a house
 - Wagga Wagga, regional NSW, 17 Feb., from top of light tower at a sports oval
 - Perth, regional Tasmania, 23 Feb. painted flags, on house windows
 - Kyabram, regional Victoria, 12 April, on Telstra phone tower (1 swastika flag on top, 2 Chinese flags on side, with 'Covid' written on flags)
 - Newtown, Sydney, in 18 April, at a window in a house
 - Gladstone, Qld, 11 July, draped over car windscreen
- The Nazi swastika was publicly displayed:
 - Red neon swastika, over a metre high, on a fence, in Darwin, NT, 31 Jan. 2020
 - Swastikas and SS bolts on gate and gate posts, Cooktown, Qld, 6 Aug. 2020
- Swastikas or Nazi symbols were displayed on clothing or on the body:
 - Nazi uniforms, with swastikas and Nazi eagles, worn by 4 people into Coles store, Woodend, regional Victoria, 26 Oct. 2019 (offending staff and customers)

⁷ *Ibid.*

⁸ Julie Nathan, [Report on Antisemitism in Australia 2019](#), Executive Council of Australian Jewry, 24 November 2019, p. 252.

⁹ *Ibid.*, pp. 46, 47, 63, 198, 225-228, 254-255

¹⁰ Julie Nathan, [Report on Antisemitism in Australia 2020](#), Executive Council of Australian Jewry, 29 November 2020, p.7.

¹¹ *Ibid.*, pp. 89-92.

- Swastika armband worn, Woolworths, Clarinda, Melbourne, 2 Feb. 2020
 - Swastika armband worn, Karkarook Park, Melbourne, 29 May 2020
 - Swastika painted on face, Maroubra, Sydney, 16 June 2020
 - Vehicle registration plate of “NAZI” spotted on Gold Coast, Qld (9 July 2020).
 - “Reinhard Heydrich” and “88” on a t-shirt, bank in Leichardt, Sydney 28 Sep. 2020
 - Face-mask with Nazi swastika and Nazi eagle, for sale in a shop, Bondi, Sydney, 21 Sep. 2020.
- The ECAJ report also recorded at least 10 incidents in various States involving the giving of the Nazi salute, often accompanied by the yelling of antisemitic obscenities, at or near Jewish community venues or directed at people wearing Jewish religious clothing.¹²
 - Finally, in December 2020, a car driven by a Melbourne P-plate driver displayed the Nazi swastika while crossing the busy Westgate Bridge.¹³

The following year, Walt Secord MLC introduced for the first time a Bill into the NSW parliament that would ban the display of Nazi symbols. Mr Secord stated that 31 incidents of displays of Nazi flags were reported to the police between June 2018 and April 2020.¹⁴

2021

The year saw a continuation of the proliferation of Nazi and other antisemitic symbols online and in graffiti.¹⁵ In addition:

- Over the Australia Day long weekend in January 2021, a group of 38 men associated with the neo-Nazi group, National Socialist Network, wearing army fatigues or black t-shirts bearing Celtic-style symbols, and chanting white supremacist slogans, camped in the Grampian mountains in Victoria, carried out a Ku Klux Klan style burning of a wooden cross, and intimidated local residents and other tourists by marching in force through a local town and meeting the stares of onlookers with Hitler-salutes.¹⁶
- In early February 2021, a man was seen wearing a swastika armband taped to his left arm at the Moorabin Wholesale Farmers Fresh market, in Melbourne’s southeast. A few days later another man brandished a Nazi armband in peak-hour traffic while crossing a busy road from a bus stop.¹⁷

¹² *Ibid*, pp. 36, 39, 40, 41 and 42.

¹³ Jack Paynter, [Fury as Melbourne P-plater displays Nazi swastika on West Gate Bridge](#), *News.com*, 27 December 2020.

¹⁴ Walt Secord MLC, [Second reading speech on Crimes Amendment \(Display Of Nazi Symbols\) Bill 2021](#), *Legislative Council Hansard*, 13 October 2021, p.79.

¹⁵ Julie Nathan, [Report on Antisemitism in Australia 2021](#), Executive Council of Australian Jewry, 12 December 2021, pp. 42-48.

¹⁶ Nick McKenzie and Joel Tozer, [Neo-Nazis go bush: Grampians gathering highlights rise of Australia’s far right](#), *Sydney Morning Herald*, 27 January 2021.

¹⁷ Rohan Smith, [New picture emerges of Melbourne man wearing swastika armband](#), *News.com*, 9 February 2021.

- A large red Nazi swastika sticker was displayed on the side window of a 4WD vehicle and seen at the McDonald's drive-thru in Bendigo, west of Melbourne, on 17 April 2021.¹⁸
- A commuter at a train station in Melbourne was photographed wearing a hat with a large Nazi swastika on it.¹⁹
- In May 2021, the Nazi slogan "blood and soil" and two swastikas, were spray-painted on a train carriage at the Clapham rail yard at Moorooka in Queensland.²⁰
- At the end of October 2021, on the Jewish Sabbath, a Nazi flag was flown over the Brisbane Synagogue from a window of the neighbouring Uni Lodge student accommodation building on Margaret Street in the CBD of Brisbane.²¹

2022

The following is an abridged list of incidents involving the public display of Nazi symbols and/or gestures in 2022.²²

- Sticker of the "Schutzstaffel" symbol ("SS" lightning bolts) on rear window of a vehicle driving on Bussell Highway, south west Western Australia (29 Jan. 2022).
- Graffiti of a Nazi swastika depicted on the face of Dr Monique Ryan's election poster in the Kooyong area, Melbourne (2 April 2022).
- Graffiti of a Nazi swastika depicted on the forehead of an election poster of Josh Frydenberg, federal Liberal MP for Kooyong and federal Treasurer, who is Jewish, the Kooyong area, Melbourne (4 April 2022).
- Graffiti of a Nazi swastika on election poster of the Greens candidate outside the home of a Jewish resident in Carnegie, Melbourne (6 April 2022).
- Posters (double-sided) by National Socialist Movement (NSM) - one side composed of "Australia Awaken" and a Nazi swastika, the other side composed of "Every Aspect of Scott Morrison's Cabinet is Jewish" - attached to a pole outside a synagogue, and also distributed in letterboxes around the suburb, Gold Coast, Queensland, (1 May 2022).
- Stickers composed of "Vote 1 Kosher Kim" with two yellow Stars of David with the word "Jude" (Jew) inside and another sticker "Shoah your Support" (Shoah is Hebrew for Holocaust) on election posters of a candidate, Kim Rubenstein, who is Jewish, Canberra (1 May 2022).

¹⁸ Alex Chapman, [Anti-Defamation Commission chairman slams 'disgusting' Nazi sticker on Victorian man's car](#), *Seven News*, 23 April 2021.

¹⁹ *Ibid.*

²⁰ Felicity Caldwell, [Calls to ban the Nazi swastika in Queensland after train vandalism](#), *Brisbane Times*, 13 May 2021.

²¹ Matt Dennien, [Nazi flag seized after act of 'pure evil' over Brisbane Synagogue](#), *Brisbane Times*, 30 October 2021.

²² Extracted from Julie Nathan, [Report on Antisemitism in Australia 2022](#), Executive Council of Australian Jewry, 12 December 2022, pp. 44, 58-59, 64-68,

- Sticker of the Odal/Othala rune, a Nazi symbol, on the rear window of a vehicle driving on Loftus St, Perth (10 May 2022).
- Stickers, one type composed of a black Nazi swastika, the other type had “You censor the truth” inside the black Nazi swastika, were plastered on the exterior of the Beth Weizmann Community Centre, other Jewish venues, on fences, telegraph poles, light poles, tram shelters, bus stops, and on multiple buildings, in the Caulfield area, Melbourne (12 May 2022).
- A banner of Nationalist Socialist Network reading, “nat-soc.net”, held up on an overpass, Moore Park, Sydney (26 May 2022).
- Members of National Socialist Network gathered in a park, held their flag up and made Nazi salutes, Mosman, Sydney (18 June 2022).
- A group of seven National Socialist Network members, dressed in black and masked, performed Nazi salutes, while one took a photo of them, outside the Adelaide Holocaust Museum, Adelaide (27 Aug. 2022).
- Banner composed of “Belial Bzar”, a Star of David and “Demon Flesh” at a protest attended by neo-Nazis, Moonee Ponds, Melbourne (30 Sep. 2022).
- At a soccer match in Sydney on 1 October 2022, a number of people in the audience who were supporters of Sydney United 58 (a soccer team founded in 1958 by Croatian immigrants) raised their right arms in the fascist salute (which is identical to the Nazi salute) and sang “*Za Dom Spremni*” (for homeland - ready), the anthem of the Nazi-allied Ustasha movement which formed the puppet government of Croatia during World War II. A number of Ustasha ‘U’ symbols were displayed in the crowd. The pre-match Welcome to Country was marred by booing and chanting that continued during the Australian national anthem.²³

2023

On 18 March 2023 a pair of rival demonstrations in the Melbourne CBD between pro- and anti-transgender activists was gate-crashed by a group of neo-Nazis from the National Socialist Network (NSN). Implying that the anti-transgender demonstrators were not hateful enough, the NSN group were dressed in black, many with black face masks to hide their identities, and performed multiple Nazi salutes outside the Victorian parliament. They held a sign that read: “Destroy Paedo Freaks.”²⁴ This incident followed a news report on the same date that the Australian Army had launched an urgent investigation after discovering that serving members of the Australian Defence Forces, as well as members of state police forces, have links to neo-Nazi groups which are seeking access to weapons and training. The Queensland Police also launched an inquiry into connections between two serving police and alleged white supremacists.²⁵

²³ [Sydney United to track down fascist fans](#), *Yahoo News*, 3 October 2022

²⁴ [Neo-Nazi group marches into pro and anti-transgender protest in Melbourne’s CBD](#), *Herald Sun*, 20 March 2023.

²⁵ Nick McKenzie, [Soldiers of hate: Army investigates neo-Nazis in its ranks](#), *Sydney Morning Herald*, 18 March 2023.

2. Impact

We have already noted how the display of Nazi symbols in everyday settings, such as the wearing of swastika armbands in supermarkets or on a public street, have a propensity to “normalise” hate symbols and messages, to desensitise the wider community to hate gestures and to condition the community into acquiescing in the public expression of Nazi themes.

Nazism is not merely an abstract or theoretical ideology. It has a concrete history - the history of the Third Reich in Germany - that is drenched in human blood and misery. Whilst the 20th century witnessed many examples of state-sanctioned mass murder, Nazism was something extraordinary. The laws on race and citizenship which the Nazi regime began to impose on taking power in Germany in 1933, and which were codified by the Nuremberg Laws of 1935, invoked the twisted pseudo-science of eugenics to make antisemitism and false doctrines of racial superiority the law. These falsehoods were the evil rationale for the Nazis’ wars of aggression in Europe, and for the systematic, industrial-scale genocide of so-called “inferior races”, which claimed the lives of 6 million Jews (including 1.5 million Jewish children), and millions of Roma, Serbs and other Slavic groups, and LGBTIQ+ people among others.

Given this history, the public display of Nazi symbols and gestures goes well beyond the realm of ideas and freedom of expression. Such displays are, and are usually intended to be, acts of menace and intimidation. They convey hatred for individuals and groups and for the values of personal freedom, justice and democracy of our entire society. Placing Nazi signs, carrying a Nazi flag or performing Nazi salutes on or in the vicinity of a synagogue, mosque or temple or a Holocaust museum is not an expression of an idea, but a naked threat and a promotion of hatred and violence. It is also a calculated insult to Australian service men and women who gave their lives or were wounded or suffered imprisonment during World War II in order to defeat Nazi tyranny, and to their families.

Nazism plays on ignorance, fear and prejudice in order to set apart, scapegoat and demonise one or more parts of a society in the eyes of the rest of that society. This is directly contrary to a foundational principle of liberal democracy, namely the inviolability of the life and dignity of each human being. Nazism is incapable of conceiving of, and treating, each person in all of their unique individuality, and instead treats each member of a demonised group as an impersonal, abstract “other”. “Othering” is the starting point of dehumanisation. Dehumanisation is the starting point of treating others unjustly, even murderously. This is the mechanism by which Nazis hope to set different parts of society against one another in a “race war”, and thereby to win power.

The public display of Nazi symbols and gestures with impunity is therefore an objective threat to our way of life and to the freedom, safety and security of all Australians, especially those who are members of groups and communities who have historically been the targets of Nazi policies of genocide, mass murder and other forms of persecution. We believe that legislative action to combat this menace is fully justified.

3. International practice

A small number of countries, including those which historically suffered most at the hands of Nazi tyranny, have banned the public display of Nazi and other hate symbols. These countries include Germany,²⁶ Austria, France, Lithuania, Latvia, Poland, Ukraine, Brazil and Israel.

Most countries which have introduced banning legislation provide exemptions or exclusions for the display of certain symbols when the purpose is clearly not to promote hatred. For example, the swastika in certain formats has for centuries been a religious and cultural symbol in several eastern and European traditions. Similarly, the use of Nazi symbols to educate the public about the appalling history of Nazism or for other genuine academic, research, scientific or artistic purposes, or other purposes in the public interest, is not proscribed.

Certain countries also proscribe performing Nazi gestures in public. The German *Criminal Code* bans the Nazi salute and the declaration of “Heil Hitler” in public spaces. The maximum penalty is six months imprisonment. In Austria the anti-Nazi *Prohibition Act* also bans giving the straight-arm salute in public. There are similar laws in the Czech Republic where proof of an intention to promote an extremist ideology is also required. The maximum penalty is five years’ imprisonment. Slovakia has something closer to a strict liability offence, carrying only a fine. Switzerland and Sweden classify the giving of the Nazi salute as a hate crime, usually carrying a fine. In Switzerland proof of an intention to promote a racist ideology to others is also required.²⁷

4. Constitutional question

Neither the Bill nor the Explanatory Memorandum indicate which head of power in the Constitution is relied on. Presumably, the Bill relies on the external affairs power in section 51(xxix) of the Constitution and Australia’s obligations as a party to the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD).²⁸ Under paragraph (a) of article 4 of the ICERD, States parties are obliged to “*declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred*”. In our view, this provision would be sufficient to ground the proscription of the public display of Nazi symbols, because Nazism is the archetype of an ideology “*based on racial superiority or hatred*”.

However, at the time of ratifying the ICERD in 1975, Australia lodged a declaration with the UN depository in the following terms:

"The Government of Australia ... declares that Australia is not at present in a position specifically to treat as offences all the matters covered by article 4 (a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the

²⁶ Section 86a of the German *Criminal Code* outlaws "use of symbols of unconstitutional organizations" outside the contexts of "art or science, research or teaching". The law does not name the individual symbols to be outlawed, and there is no official exhaustive list. The law has been used primarily to outlaw Nazi, Communist, and Islamist extremist symbols.

²⁷ Alexander Sehmer, [In which countries is it illegal to perform the Nazi salute?](#), *The Independent*, 20 July 2015.

²⁸ *United Nations Treaty Series*, vol. 660, p. 195. Entry into force: 4 January 1969.

*first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4 (a)."*²⁹

In our view the declaration does not amount to a reservation in international law, as its terms purport to postpone, rather than “*to exclude or to modify the legal effect of*”³⁰ article 4(a) with respect to Australia. Accordingly, although the declaration remains in effect, it does not appear in terms to operate as a bar to Australia enacting legislation in accordance with article 4(a), especially having regard to the statement of intention in its final sentence. Given the proliferation of Nazi symbols on public display in Australia in recent years, as detailed in section 1 of this submission, it would be hard to conceive of a more “*suitable moment*” than the present for the enactment of legislation to proscribe this form of “*dissemination of ideas based on racial superiority or hatred*”.

For the same reason, now is also a suitable moment for Australia to withdraw the declaration altogether, in order to put the parliament’s power to enact the Bill, or legislation like it, beyond argument. In the 48 years since the declaration was lodged, much has changed in Australia, including Australia’s successful evolution into a multicultural and multi-racial society. The declaration has long outlived its relevance, and in our view should be withdrawn.

5. “Nazi symbol”

The expression “Nazi symbol” is not defined in the Bill, but that is not a criticism. Any banning legislation that is introduced needs to be flexible enough to accommodate the constant evolution of new hate symbols by neo-Nazi groups, as well as the symbols of political movements, such as the Ustasha movement, that were historically allied to the Nazi regime in Germany. Some well-known Nazi symbols are listed in paragraph 8 of the Explanatory Memorandum to the Bill, but the list is not intended to be exhaustive. (A more comprehensive compendium of symbols, including ‘code words’, that have been developed as Nazi symbols in recent years by neo-Nazi groups can be found in the ECAJ’s Annual Report on Antisemitism in Australia in 2020³¹). Because “Nazi symbol” is not defined in the Bill, the expression would apply to any symbol which, taken in context, a court may determine to be a Nazi symbol.

This is similar to the approach taken in NSW, where it is an offence to display, without a reasonable excuse, a “Nazi symbol”.³² “Nazi symbol” is not defined, and the behaviour proscribed by the NSW legislation is therefore not limited to the display of traditional Nazi symbols such as the hakenkreuz (Nazi swastika) or symbols resembling them. The question of whether a symbol is a Nazi symbol in the circumstances of any particular case is left to the court to decide on the evidence.

²⁹ *United Nations Treaty Collection*, Status of ICERD by country:
https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=en#EndDec
(accessed 5 April 2023).

³⁰ As required by article 2(d) *Vienna Convention on the Law of Treaties*, *United Nations Treaty Series*, vol. 1155, p. 331. Entry into force: 27 January 1980.

³¹ Julie Nathan, [Report on Antisemitism in Australia 2020](#), Executive Council of Australian Jewry, 29 November 2020, pp. 103-105.

³² *Crimes Act 1900* (NSW), s.93ZA.

In contrast, in Victoria the relevant legislation makes it a criminal offense for a person to intentionally display a Nazi symbol in public,³³ but defines “Nazi symbol” only as the hakenkreuz, or any symbol that so nearly resembles the hakenkreuz that it is likely to be confused with or mistaken for it.³⁴ The display of other well-known Nazi symbols is therefore not presently proscribed by the Victorian legislation.

In Tasmania, a Bill has been introduced that would proscribe the display of a Nazi symbol by a public act and without a legitimate public purpose.³⁵ The Tasmanian Bill includes a definition of “Nazi symbol”, but it is much broader than the definition in the Victorian legislation, and it is an inclusive rather than an exhaustive definition:

Nazi symbol includes –

- (a) a symbol associated with the Nazis or with Nazi ideology; and*
- (b) a symbol that so nearly resembles a symbol referred to in paragraph (a) that it is likely to be confused with, or mistaken for, such a symbol or gesture; and*
- (c) a depiction, or recording, of a Nazi gesture within the meaning of section 6D; and*
- (d) the depiction, or recording, of a gesture that so nearly resembles a gesture referred to in paragraph (b) that it is likely to be confused with, or mistaken for, such a gesture.³⁶*

Under a Queensland Bill that was recently introduced, “a person who publicly distributes, publishes or publicly displays a prohibited symbol in a way that might reasonably be expected to cause a member of the public to feel menaced, harassed or offended, commits an offence, unless the person has a reasonable excuse.”³⁷ The provision defines the expression “prohibited symbol” as:

“a symbol or image—

- (a) prescribed by regulation for this section; or*
- (b) that so nearly resembles a symbol referred to in paragraph (a) that it is likely to be confused with or mistaken for that symbol.”*

Before any such regulation can be made, the relevant Minister (the Queensland Attorney-General) must be satisfied that:

“the symbol or image—

- (a) is widely known by the public as being solely or substantially representative of an ideology of extreme prejudice against a relevant group; or*
- (b) is widely known by members of a relevant group as being solely or substantially representative of an ideology of extreme prejudice against that group.”*

³³ *Summary Offences Act 1966* (Vic), s.41K

³⁴ *Summary Offences Act 1966* (Vic), s.41J

³⁵ *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of s.6C to *Police Offences Act 1935* (Tas).

³⁶ *Ibid*, subsection 6C(10).

³⁷ *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023* (Qld), Part 3, Amendment of Criminal Code, clause 12. Proposed new section 52D of the *Criminal Code* (Qld).

The effect of these provisions would be to impose limits on the scope and application of the ban on displaying Nazi hate symbols, which are limits that do not exist in NSW and are not contemplated in the Bill or in the Tasmanian Bill.

We do not recommend the restricted definition of a Nazi symbol that applies in Victoria or is contemplated in Queensland. In our view, the optimum approach to defining a Nazi symbol is that which has been adopted in the Tasmanian Bill, because it provides both a reasonable certainty of meaning, and the flexibility to allow the courts to determine the relevant facts in any given case, and to apply the offences to symbols associated with Nazi ideology and any new symbols that neo-Nazi groups might develop. We would also accept the approach adopted by the Bill and by the NSW legislation, which in effect leave it to a court to determine whether the use of a symbol, taken in context, makes it a Nazi symbol.

6. Body tattoos

The Bill does not make any specific provision with regard to the display of a Nazi symbol in the form of a body tattoo. It would therefore be left to a court to determine whether, in the circumstances of a particular case involving a display of a Nazi symbol in the form of a body tattoo, the offence has been committed, or alternatively whether a defence of “reasonable excuse” has been made out.

The position is the same under the relevant NSW legislation and under the Queensland Bill. In a joint media statement on 29 March 2023 the Queensland Premier and the Attorney-General announced that the new ‘Prohibited symbols’ offence “*is intended to capture a broad range of circumstances, including the public display of tattoos*”, even though there is no specific mention of tattoos in the Queensland Bill.³⁸

In Victoria there is an exception,³⁹ and in Tasmania a defence,⁴⁰ that would exclude criminal liability for the display of a Nazi symbol that is permanently tattooed on the defendant’s body or that has been a made a permanent part of the defendant’s body by some other process. In our view, any such exclusion or defence is misconceived. The display of a Nazi symbol on a body, for example at a beach with families and young children, could be just as sinister and menacing in its impact as any other form of public display of that symbol. It is the display in public, not the possession, of a tattoo depicting a Nazi symbol that is in question. There seems to us to be no good reason to protect the public display of a Nazi symbol simply because of the means by which it is displayed. On this matter, we prefer the approach taken by the Bill and by the NSW legislation and the Queensland Bill, which leave the matter to a court to determine.

7. Nazi gestures

Gestures such as the giving of the Nazi salute are another means of promoting Nazi ideology, communicating its creed of racial discrimination and hatred, and conveying its message of threat and menace. This was illustrated all too clearly during the recent incident described at the end of section 1 of this submission when a group of neo-Nazis performed multiple Nazi salutes outside

³⁸ [Tougher hate crime and serious vilification laws for Queensland](#), 29 March 2023.

³⁹ *Summary Offences Act 1966* (Vic), ss.41K(3)

⁴⁰ *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of ss. 6C(4) to *Police Offences Act 1935* (Tas).

the Victorian parliament. Another example was the performance of the fascist salute by supporters of the Nazi-allied Ustasha movement at a soccer match in Sydney in October 2022 (see section 1 of this submission). We believe that the proscription of such behaviour is therefore entirely appropriate and in keeping with article 4(a) of the ICERD. As detailed in section 3 of this submission, performing Nazi gestures in public is currently banned in several countries in Europe.

The Bill seeks to proscribe Nazi gestures by providing expressly that “*giving the Nazi salute*” is a form of behaviour that constitutes a display of a Nazi symbol and leaves open the possibility⁴¹ that other Nazi gestures⁴² might also be caught.

In NSW, the offence of displaying a Nazi symbol by a public act⁴³ defines a “public act” as including “*conduct (including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia) observable by the public*”.⁴⁴ However, that does not necessarily mean that the giving of a Nazi salute, for example, would constitute a Nazi symbol. The expression “public act” refers to *how* something is communicated, rather than to *what* is communicated.

The relevant Victorian legislation clearly does *not* currently proscribe Nazi gestures. On 20 March 2023 Victorian Attorney-General Jaclyn Symes confirmed that the Victorian government will expand current legislation banning the Nazi swastika to include the salute.⁴⁵

The Tasmanian Bill deals with the performance of Nazi gestures as a separate offence to the offence of displaying a Nazi symbol. It defines a Nazi gesture as the Nazi salute or a gesture that resembles the Nazi salute, and allows for other gestures (or gestures resembling them) to be deemed by regulation to fall within the definition.⁴⁶

In the Queensland Bill, Nazi gestures are not included in the definition of “prohibited symbol” or in the provisions which would proscribe the public distribution, publication or display of a prohibited symbol. Actions and gestures are included in the provisions that would proscribe serious vilification, but those provisions would require proof beyond reasonable doubt of “incitement”. Similar provisions in other States have been shown to establish an almost impossibly high evidentiary bar against a successful prosecution, and were repealed in NSW in 2018.⁴⁷

On balance, we prefer the approach adopted in the Tasmanian Bill, because it would capture gestures that resembles the Nazi salute, and because we believe that conceptually it makes more sense to treat the performance of a Nazi salute or other gesture as a separate offence to the public

⁴¹ The Bill, Clause 81.1(2).

⁴² One contemporary example is the “quenelle”, a straight-arm salute pointing downward. In August 2017, the Swiss Federal Supreme Court confirmed the conviction of three Geneva men for performing the quenelle in front of a synagogue, while partially masked and in military uniform, finding that performing the gesture had been antisemitic. The men incurred a suspended monetary penalty for violating a Swiss law prohibiting acts of public racism: [Swiss court judges ‘quenelle’ gesture to be racist](#), *Swissinfo*, 3 August 2017 (accessed 10.4.2023).

⁴³ *Crimes Act 1900* (NSW), s.93ZA.

⁴⁴ *Crimes Act 1900* (NSW), s.93Z.

⁴⁵ Broede Carmody and Lachlan Abbott, [Victoria to ban Nazi salutes after far-right rally](#), *The Age*, 20 March 2023.

⁴⁶ *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of s. 6D to *Police Offences Act 1935* (Tas).

⁴⁷ *Crimes Amendment (Publicly Threatening and Inciting Violence) Act 2018* (NSW), Schedule 2. Assented to 27.6.2018. Date of commencement, 13.8.2018

display of a Nazi symbol. We would also accept the approach adopted by the Bill, which would allow a court to find that the offence applies to other Nazi-style gestures, including new gestures which neo-Nazis might develop, without the need to promulgate a new regulation.

8. Advertising or offer of sale of Nazi memorabilia to the general public

The Explanatory Memorandum to the Bill states in paragraph 7:

“Public display is intended to capture any form of communication of symbols to the public or in a public place. It is not intended to capture the presence of Nazi memorabilia or symbols in a private dwelling, where the symbol is not on public display.”

This would appear to suggest that the display of memorabilia bearing Nazi symbols in advertising or in some other publicly accessible form, including online, in the course of offering such memorabilia for sale to the general public would be proscribed by the Bill. If that is a correct interpretation, we fully support it.

The NSW legislation defines “public act” to include “*the distribution or dissemination of any matter to the public*”.⁴⁸ This would appear to capture the display of memorabilia bearing Nazi symbols in any public advertising or offering of such memorabilia for sale. The Victorian legislation appears to leave it to a court to determine whether such circumstances would constitute a display of a Nazi symbol that “*occurs in sight of a person who is in a public place*”,⁴⁹ and thus be proscribed. The Tasmanian Bill has a definition of “public act” in broad terms similar to the definition in the NSW legislation.⁵⁰ The Queensland Bill would leave it to a court to determine in any particular case whether the public advertising or offering for sale of memorabilia bearing Nazi symbols “*might reasonably be expected to cause a member of the public to feel menaced, harassed or offended*”, or alternatively whether it would be covered by the “*reasonable excuse*” exception.⁵¹

9. Mens rea - the mental element

The Bill would proscribe the public display of a Nazi symbol by a person who “*knows that the symbol is a Nazi symbol*”.⁵² The onus would be on a prosecutor to prove, to the criminal standard, the state of knowledge of the defendant. The prosecutor would thus be required to adduce evidence of the full circumstances in which the display of the Nazi symbol occurred, including evidence of all relevant aspects of the defendant’s conduct.

The position in NSW is similar, although not expressed in identical terms. The mental element of the offence is that a person “*knowingly*” displays a Nazi symbol.⁵³

⁴⁸ *Crimes Act 1900* (NSW), ss.93Z(5).

⁴⁹ *Summary Offences Act 1966* (Vic), ss.41K(1)(b)(ii).

⁵⁰ *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of ss. 6C(10) to *Police Offences Act 1935* (Tas).

⁵¹ *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023* (Qld), Part 3, Amendment of Criminal Code, clause 12. Proposed new subsection 52D(1) of the *Criminal Code* (Qld).

⁵² The Bill, clause 81.1(1)(b).

⁵³ *Crimes Act 1900* (NSW), ss. 93ZA(1).

In Victoria, the prosecutor is required to prove two mental elements, namely (i) that the accused person displayed the symbol “*intentionally*” and (ii) that “*the person knows, or ought reasonably to know, that the symbol is associated with Nazi ideology*”.⁵⁴

Under the Tasmanian Bill, if a person publicly displays a Nazi symbol or publicly performs a Nazi gesture, the mental element would be made out if a prosecutor proves that “*the person knows, or ought to know*”, that the symbol is a Nazi symbol or the gesture is a Nazi gesture.⁵⁵

The Queensland Bill does not seem to require proof of a mental element *per se*. Instead, a prosecutor would have to prove that the public distribution, publication or display of a prohibited symbol was done “*in a way that might reasonably be expected to cause a member of the public to feel menaced, harassed or offended*.”⁵⁶ Further, “*it is irrelevant whether or not a member of the public has seen the prohibited symbol because of the distribution, publication or display*”.⁵⁷

In our view, the Queensland Bill provides the best model of how the requisite mental element, or an alternative to a mental element, should be defined. The mischief caused by the public display of Nazi symbols and performance of Nazi gestures is its negative impact, or propensity to negatively impact, upon members of the public, and this mischief is addressed directly by the Queensland Bill.

However, if the inclusion of a classical mental element is thought to be necessary, we believe that the formulation used in Tasmanian Bill should be adopted, as it allows expressly for the imputed rather than actual knowledge of an accused person to be relied on by a prosecutor.

The Victorian legislation, which requires proof of two mental elements, sets the bar too high in our view and should not be followed in this regard.

10. An exception or defence for bona fide use of religious symbols

The most widely known Nazi symbol, the swastika, was misappropriated by the German Nazi party from other cultures. The symbol, and the name ‘swastika’, have been in use on the Indian sub-continent for at least 2,500 years.⁵⁸ The swastika remains a sacred symbol of divinity and spirituality in Indian religions, including Hinduism, Buddhism, and Jainism. It signifies auspiciousness, good luck and prosperity. For example, followers of these religions, including in Australia, often have a swastika depicted on the entrance of their homes during festivals such as Diwali, also known as Deepawali or the Festival of Lights, which celebrates the spiritual victory of light over darkness, good over evil, and knowledge over ignorance. It was only in the early twentieth century that the swastika was first used as a symbol of international antisemitism.⁵⁹

⁵⁴ *Summary Offences Act 1966* (Vic), ss. 41K(1)(a).

⁵⁵ *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).

⁵⁶ *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).

⁵⁷ *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).

⁵⁸ Heinrich Zimmer, *Myths and Symbols in Indian Art and Civilization*, Princeton University Press, 2017.

⁵⁹ It was first used in this way by the far-right Romanian politician A. C. Cuza prior to World War I ([National Jewish Monthly, Volumes 55-56](#), B'nai B'rith, 1940, p181), and was later copied by the German Nazi party.

It is therefore entirely appropriate in our view that any legislation that proscribes the public display of Nazi symbols should provide that the bona fide display of a swastika in connection with Buddhism, Hinduism or Jainism does not constitute the display of a Nazi symbol, and that an explanatory note with illustrative examples is added (as is the case in the Victorian legislation). Our only criticism of the Bill in this respect is that the relevant provision⁶⁰ does not include the qualifier “bona fide”, or “genuine”. Judging by their past record, it would not be beneath neo-Nazis to feign belief in an eastern religion as a way of avoiding criminal liability for publicly displaying a swastika. We would make the same criticism of the relevant legislation in NSW,⁶¹ and in the Tasmanian Bill.⁶² We support the use of the qualifier “genuine” in the relevant provision of the Queensland Bill.⁶³

It is a tragedy for followers of eastern religions that one of their sacred symbols, which for much of recorded human history has signified something positive and wholesome, has over the last 100 years become indelibly associated by much of the rest of humanity with the vile record of Nazi crimes. We would support including an element in school curricula to educate young Australians about the difference between the hakenkreuz and the ancient religious swastika.

11. Other exceptions and defences

The Bill,⁶⁴ the NSW legislation,⁶⁵ the Victorian legislation,⁶⁶ the Tasmanian Bill⁶⁷ and the Queensland Bill⁶⁸ each provide exceptions or defences, so as to exclude a person from being held liable for actions that are unrelated to the promotion of Nazi ideology. In addition to the use of religious symbols, the prohibition will not apply if the display of a Nazi symbol is genuinely done for any one or more of a range of purposes that are in the public interest, such as a legitimate scientific, educational, artistic or journalistic purpose.

Although the abovementioned provisions are expressed in somewhat different ways, in each case a defendant bears the evidential burden of making out the exception or defence.

In NSW and Victoria, the evidentiary burden for a defendant is increased by the use of the qualifying words “reasonably and in good faith”. In the Tasmanian Bill, the qualifying words are “in good faith” (ie without being added to the word “reasonably”). In the Queensland Bill a defendant who relies on one of the excepted purposes to avoid liability for the conduct must prove that the conduct “*was, in the circumstances, reasonable for that purpose*”.

⁶⁰ Proposed subsection 81.1(4).

⁶¹ *Crimes Act 1900* (NSW), subsection 93ZA(2)

⁶² *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of ss. 6C(2) to *Police Offences Act 1935* (Tas). However, the exception for “a legitimate public purpose”, including a “religious” purpose does include the qualifier “genuine”: Proposed insertion of ss. 6C(3)(b).

⁶³ *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(2)(a)(i) of the *Criminal Code* (Qld).

⁶⁴ Proposed subsection 81.1(3).

⁶⁵ *Crimes Act 1900* (NSW), subsection 93ZA(1) and (3).

⁶⁶ *Summary Offences Act 1966* (Vic), ss. 41K(2).

⁶⁷ *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of ss. 6C(3) and 6D(2) to *Police Offences Act 1935* (Tas).

⁶⁸ *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) and (2) of the *Criminal Code* (Qld).

The exceptions provided for in the Bill (in ss.81.1(3)) do not include any qualifying words. As these exceptions appear to be closest to the NSW legislation, we would recommend that the equivalent provision in the Bill be amended to include the same qualifying words, namely “reasonably and in good faith”, as appear in the NSW legislation.

12. Police powers

The Bill does not include any provisions to empower police to take action to bring an end to the public display of a Nazi symbol or gesture, beyond charging and arresting an offender. Both the Victorian legislation⁶⁹ and the Tasmanian Bill⁷⁰ set out a series of police and court powers to assist in enforcement, including powers to give directions for the removal of a relevant Nazi symbol from display, the power to carry out the removal if the direction is not obeyed, powers to stop, search and detain people and vehicles and to search premises, and powers to seize objects found during a search that the police consider to be a Nazi symbol or a display of a Nazi symbol. We would recommend that similar provisions be added to the Bill.

13. Penalties

The Bill provides for a maximum penalty for a convicted person of imprisonment for 12 months or 100 penalty units.⁷¹ In NSW, where the offence is similarly defined, the maximum penalty for a convicted person is imprisonment for 12 months or 100 penalty units *or both*.⁷² (The penalty is 500 units for a corporation). In Victoria, the maximum penalty is 120 penalty units or imprisonment for 12 months *or both*.⁷³ In the Queensland Bill, the maximum penalty is 70 penalty units or 6 months imprisonment.⁷⁴ In the Tasmanian Bill, the penalties, both for the public display of Nazi symbols and the public performance of Nazi gestures, are 20 penalty units or imprisonment for a term not exceeding 3 months, for a first offence and double for a second or subsequent offence.⁷⁵

We would recommend that the penalty provisions of the Bill be amended by adding the word “*or both*” after the words “*imprisonment for 12 months or 100 penalty units*”, so as to more closely align the penalty provisions of the Bill with the law currently in force in NSW and Victoria.

14. Legislation should be complemented by education

Counteracting any form of extremism, including neo-Nazism, through legislative means alone will not in our view address the underlying problem, namely the propagation of the kinds of prejudice, conspiracy fantasies and other falsehoods which fuel extremism and extremist violence, and the grooming and recruitment of alienated young people by extremist groups to be used as foot-soldiers for these purposes. Whilst legislation sets society’s standards, and in that sense serves an educative purpose, those standards need to be entrenched in the ethos, culture and operations of government and civil society institutions more broadly.

⁶⁹ *Summary Offences Act 1966* (Vic), ss. 41L and s.41M.

⁷⁰ *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of ss. 6C(5) – (9) to *Police Offences Act 1935* (Tas).

⁷¹ Section 81.1(1).

⁷² *Crimes Act 1900* (NSW), subsection 93ZA(1).

⁷³ *Summary Offences Act 1966* (Vic), ss. 41K(1).

⁷⁴ *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).

⁷⁵ *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of ss. 6C(1)(a) and (b) and 6D(1)(a) and (b) to *Police Offences Act 1935* (Tas).

Racial, religious and other forms of prejudice seem to take root at a very young age, as has been reported in several high profile incidents, one involving the harassment of a child as young as 5 years old.⁷⁶ These incidents have demonstrated how pervasive these negative influences are, and highlighted the destructive nexus between racist and other prejudiced attitudes and language, and acts of violence, even in young children. Inoculation of students against prejudice and extremism thus needs to begin in early primary school.

We have no doubt that schools and educators in Australia generally impart good values to children in their care, and teach them the importance of mutual respect and to balance individual freedoms, rights and responsibilities in an appropriate way. The difficulty arises when the good work done by schools is undone by other influences, especially hate-content on social media and peer-group pressure exercised via social media.

Most educators currently seek to inculcate critical thinking and educate against prejudice generally, but we believe that a critical part of the message will be lost unless anti-Jewish, anti-Indigenous, anti-Muslim, anti-Hindu, anti-Asian and anti-LGBTIQ+ prejudice and other commonly-encountered forms of prejudice in Australia are expressly addressed. Generic human rights and citizenship education are not sufficient. The focus needs to be on identifying and counter-acting specific forms of racism and bigotry, and equipping students from an early age with the intellectual, psychological and ethical tools to reject them, with the aim of preventing younger people from embarking on a pathway to extremism.

We recognise that much good work continues to be done through Holocaust education and programs such as Click against Hate, but these engage mainly older students whose opinions may already have crystallised.

We believe that curricula across the disciplines from K-12 should be adapted to include:

- in primary school, the development of a respectful understanding and de-stigmatising of difference (eg race, religion, disability)
- from Year 7 in high school, addressing specific forms of racism and bigotry eg anti-Jewish, anti-Indigenous, anti-Muslim, anti-Hindu, anti-Asian, anti-LGBTIQ+; and teaching students to self-reflect about their own prejudices
- from Year 10, focusing on the destructive effects of racism and bigotry both in Australia and in other parts of the world, both historically and in contemporary society
- in Years 11-12, reinforcing those themes in more depth in optional subjects.

Relevant high school subjects in which anti-prejudice content could be incorporated into the curriculum include History, English, GRE, SRE, Legal Studies, Biology, Geography, Civics and Citizenship.

⁷⁶ Adam Carey, '[Jewish boys taunted in shocking cases of antisemitic bullying at Melbourne schools](#)', *The Age*, 3 October 2019.

Because influences outside the school, especially via social media, can undo much of the positive learning which students acquire at school, positive learning needs to be supplemented and reinforced by other external positive influences.

This could take the form of experiential learning, building on current programs such as student visits to a Holocaust Museum; organised meetings between students from different schools who have diverse cultural and religious backgrounds; student visits to institutions (lay and religious) of organisations representing diverse cultural and religious communities; and ‘open forum’ sessions where they can ask questions and engage in discussion with leaders of those communities, including youth leaders.

Some of the above activities could be organised outside working hours, so that parents and other family members could be invited to accompany students during external visits and share in the discussion, so that the learning experience is consolidated within the family unit.

We recognise that these proposals are primarily matters falling within the responsibility of State and Territory Departments of Education. From our discussions with representatives of Departments of Education in NSW and Victoria, we believe that thinking is already starting to develop along the lines we are proposing.

The problems that these proposals seek to address are not limited by State or Territory borders and therefore require a consistent response across Australia.

That is why we ask that anti-prejudice education become a standing item on the agenda of the Education Council where best-practice ideas can be refined and shared. To the extent that these ideas involve adding glosses to the curriculum, the Australian Curriculum and Assessment Authority, and State and Territory Curriculum authorities also need to be consulted.

Whilst these may be difficult ideas to put into operation, the role of education in depriving extremist groups of future human fodder cannot be overstated. Legislation alone cannot solve the problem.

15. Conclusion

We thank the Committee for the opportunity to comment on the Bill and wish it well in its deliberations.

Yours sincerely

Peter Wertheim AM
co-CEO

[Summary of Recommendations follows on next page]

Summary of Recommendations

- 1. Australia should withdraw its declaration in relation to article 4(a) of the *International Convention on the Elimination of All Forms of Racial Discrimination*.** (See section 4 of this submission).
- 2. The Bill should adopt the definitions of “Nazi symbol” and “Nazi gesture” set out in the *Police Offences Amendment (Nazi Symbol Prohibition) Act 2023* (Tas), clause 4, proposed insertion of ss. 6C(10) and ss. 6D(3) to *Police Offences Act 1935* (Tas). The Bill should adopt the definition of “public act” set out in s.93Z of the *Crimes Act 1900* (NSW).** (See sections 5, 7 and 8 of this submission).
- 3. The public display of a body tattoo or other body marking in the form of a Nazi symbol should also be expressly proscribed** (see section 6 of this submission), **as should the display of Nazi symbols in the public advertising and sale of Nazi memorabilia** (see section 8 of this submission).
- 4. The Bill should be amended so as not to require a prosecutor to prove a mental element *per se*. Instead, a prosecutor should have to prove that the public display of a Nazi symbol was done “in a way that might reasonably be expected to cause a member of the public to feel menaced, harassed or offended.” Further, it should be provided that “it is irrelevant whether or not a member of the public has seen the symbol because of the display”.** (See section 9 of this submission).
- 5. The words “bona fide” should be added immediately prior to the words “display of a swastika in connection with Buddhism, Hinduism or Jainism” in proposed subsection 81.1(4) of the Bill.** (See section 10 of this submission).
- 6. The words “the person acts reasonably and in good faith and” should be added immediately after the words “Subsection (1) does not apply if” in subsection 81.1(3) of the Bill”.** (See section 11 of this submission).
- 7. The Bill should include extra provisions to empower police to take action to bring an end to the public display of a Nazi symbol or gesture, beyond charging and arresting an offender, including powers to give directions for the removal of a Nazi symbol from display, the power to carry out the removal if the direction is not obeyed, powers to stop, search and detain people and vehicles and to search premises, and powers to seize objects found during a search that the police consider to be a Nazi symbol or a display of a Nazi symbol.** (See section 12 of this submission).
- 8. The penalty provisions of the Bill should be amended by adding the word “or both” after the words “imprisonment for 12 months or 100 penalty units”.** (See section 13 of this submission).
- 9. Federal and State legislation against the promotion of hatred must be complemented by enhancements to the education system so as to inoculate students against prejudice and extremism beginning in early primary school.** (See specific proposals in section 14 of this submission).