



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON SOCIAL ISSUES

# Crimes Amendment (Display of Nazi Symbols) Bill 2021



Report 60

February 2022

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Standing Committee on Social Issues

**Crimes Amendment  
(Display of Nazi Symbols)  
Bill 2021**

Ordered to be printed 22 February 2022

**New South Wales. Parliament. Legislative Council. Standing Committee on Social Issues.  
Report no. 60.**

Crimes Amendment (Display of Nazi Symbols) Bill 2021

“February 2022”.

Chair: Hon. Don Harwin, MLC



A catalogue record for this  
book is available from the  
National Library of Australia

ISBN 978-1-922543-51-6

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## Terms of reference

1. That:
  - (a) the Crimes Amendment (Display of Nazi Symbols) Bill 2021 be referred to the Standing Committee on Social Issues for inquiry and report,
  - (b) the bill be referred to the committee at the conclusion of the mover's second reading speech,
  - (c) the resumption of the second reading debate on the bill not proceed until the tabling of the committee report,
  - (d) the committee report by the first sitting day of 2022.<sup>1</sup>

The terms of reference were referred to the committee by the Legislative Council on 9 November 2021.<sup>2</sup>

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<sup>1</sup> The original reporting date was the first sitting day in 2022 (*Minutes*, NSW Legislative Council, 9 November 2021, pp 2596-2597). The first sitting day in 2022 was later resolved as 22 February 2022 (*Minutes*, NSW Legislative Council, 16 November 2021, p 2713).

<sup>2</sup> *Minutes*, NSW Legislative Council, 9 November 2021, p 2597.

## Committee details

### Committee members

<b>The Hon Don Harwin MLC*</b>	Liberal Party	<i>Chair</i>
<b>The Hon Mark Buttigieg MLC</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>Ms Abigail Boyd MLC</b>	The Greens	
<b>The Hon Scott Farlow MLC**</b>	Liberal Party	
<b>The Hon Shayne Mallard MLC</b>	Liberal Party	
<b>Revd The Hon Fred Nile MLC</b>	Christian Democratic Party	
<b>The Hon Peter Poulos MLC</b>	Liberal Party	
<b>The Hon Walt Secord MLC***</b>	Australian Labor Party	

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\* The Hon Don Harwin MLC replaced the Hon Ben Franklin MLC as a substantive member of the committee from 25 January 2022.

\*\* The Hon Scott Farlow MLC substituted for the Hon Taylor Martin MLC from 17 November 2021 for the duration of the inquiry.

\*\*\* The Hon Walt Secord MLC substituted for the Hon Peter Primrose MLC from 11 November 2021 for the duration of the inquiry.

## Chair's foreword

The Crimes Amendment (Display of Nazi Symbols) Bill 2021 was referred to the Standing Committee on Social Issues for inquiry and report.

The bill seeks to amend the *Crimes Act 1900 No 40* to make it a criminal offence to publicly display, including on private property and on social media, an insignia, emblem, banner or flag of, or associated with, the National Socialist German Workers' Party, the Third Reich (meaning the Nazi state) or Neo-Nazism. The bill states that the public display of the Swastika in connection with Hinduism, Buddhism or Jainism would not constitute an offence. Further, the bill establishes an exemption mechanism whereby the President of the Anti-Discrimination Board can grant exemptions for the use of Nazi symbols which are reasonable and done in good faith for academic, artistic, scientific, research or other purposes in the public interest.

Inquiry participants expressed strong support for the bill's protective objectives, including for individuals and groups in our community who are hurt, offended or intimidated by the public display of Nazi symbols. None of the participants in the inquiry expressed opposition to the objectives of the bill.

However, during the inquiry the committee considered a number of concerns that were raised by stakeholders. One of the key issues was the challenges relating to the practical implementation of the proposed exemption process involving the President of the Anti-Discrimination Board. Stakeholders emphasised the necessity for certain uses of Nazi symbols to be outside the scope of the proposed ban but queried whether the proposed bill establishes a practical or efficient manner of doing so.

In addition, it is significant that the proposed ban would apply to Nazi symbols broadcasted and communicated through social media and other electronic means. Curbing the prevalence of online hate speech and symbols, including Nazi symbols, is an important pursuit. However, stakeholders raised questions about the enforceability of the ban in the online environment and the bill's interaction with federal legislative efforts to protect Australians from online harm and abuse. Lastly, the questions raised during the inquiry regarding the appropriate level of intent required to constitute the proposed offence requires further examination.

For these reasons, the committee agreed that before the Legislative Council proceeds to debate the bill, the committee comments and stakeholders' views expressed in this report should be addressed. In particular, the bill should be amended to take account of the issues they raised in relation to the proposed exemption process by the President of the Anti-Discrimination Board and the prohibition on the public display of Nazi symbols to apply on social media platforms.

On behalf of the committee, I would like to thank all who participated in the inquiry. I would also like to thank committee members for their considered contributions and the secretariat for their assistance.

Finally, I present the report to the House and call on members of the Legislative Council to consider the views of this committee and the stakeholders who provided evidence during this inquiry before the Crimes Amendment (Display of Nazi Symbols) Bill 2021 is brought forward for debate in the House.



The Hon Don Harwin MLC  
**Committee Chair**

## Recommendation

### Recommendation 1

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That before the Legislative Council proceeds to debate the Crimes Amendment (Display of Nazi Symbols) Bill 2021, the committee comments and stakeholders' views expressed in this report should be addressed. In particular, the bill should be amended to take account of the issues they raised in relation to the proposed exemption process by the President of the Anti-Discrimination Board and the prohibition on the public display of Nazi symbols to apply on social media platforms.

## Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 9 November 2021.

The committee received 8 submissions and held one public hearing at Parliament House in Sydney.

The committee also conducted an online questionnaire to enable members of the public to have their say. The committee received responses from 50 individual participants including 48 responses from people who identified as a resident of New South Wales. A summary of these responses is included in the report.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.



# Chapter 1 Overview

This chapter provides an overview of the provisions of the Crimes Amendment (Display of Nazi Symbols) Bill 2021 and its background and purpose.

## Referral of the bill

1.1 The Crimes Amendment (Display of Nazi Symbols) Bill 2021 (hereafter, the bill) was introduced into the Legislative Council on 13 October 2021 by the Hon Walt Secord MLC.<sup>3</sup> The Legislative Council's Selection of Bills Committee recommended that the bill be referred to the Standing Committee on Social Issues.<sup>4</sup> On 9 November 2021, the Legislative Council resolved to refer the bill to the Standing Committee on Social Issues for inquiry and report by the first sitting day of 2022 which was later resolved as 22 February 2022.<sup>5</sup>

## Background and purpose of the bill

1.2 The bill seeks to insert new section 93ZA into Division 8 of Part 3A of the *Crimes Act 1900 No 40* to make it a criminal offence for a person by a public act to display a Nazi symbol except in certain circumstances.<sup>6</sup>

1.3 The Hon Walt Secord MLC explained to the House in his second reading speech that in New South Wales (NSW) and Australia, the public display of Nazi symbols is not presently prohibited. Conversely, for decades many European nations, such as Germany, Austria and France, have had similar laws and Victoria announced in September 2021 an intention to prohibit the public display for Nazi symbols. As such, the NSW Parliament is the first in Australia to formally consider and debate a prohibition on the public display of Nazi symbols.<sup>7</sup>

1.4 The January 2022 parliamentary committee inquiry into serious vilification and hate crimes in the Queensland Parliament recommended the Queensland Government establish a criminal offence that prohibits the display of hate symbols, including those relating to Nazi and ISIS ideology with considered exemptions to the prohibition.<sup>8</sup>

1.5 In his second reading speech, the Hon Walt Secord MLC noted that the bill is 'in response to the rise of Neo-Nazi activity in Australia and its role in inciting hate behaviour and hate crimes'.<sup>9</sup>

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<sup>3</sup> *Minutes*, NSW Legislative Council, 13 October 2021, p 2471.

<sup>4</sup> Selection of Bills Committee, NSW Legislative Council, Report No 52, 9 November 2021, p 2.

<sup>5</sup> *Minutes*, NSW Legislative Council, 9 November 2021, pp 2596-2597; *Minutes*, NSW Legislative Council, 16 November 2021, p 2713.

<sup>6</sup> Crimes Amendment (Display of Nazi Symbols) Bill 2021, cl 2 (proposed subs 93ZA(1)).

<sup>7</sup> Walt Secord, Second reading speech: Crimes Amendment (Display of Nazi Symbols) Bill 2021, 13 October 2021, p 79.

<sup>8</sup> Legal Affairs and Safety Committee, Queensland Legislative Assembly, *Inquiry into serious vilification and hate crimes* (2022).

<sup>9</sup> Walt Secord, Second reading speech: Crimes Amendment (Display of Nazi Symbols) Bill 2021, 13 October 2021, p 79.

- 1.6** Proposed section 93ZA includes several definitions to describe the circumstances whereby such an act may constitute an offence. A 'Nazi symbol' means an insignia, emblem, banner or flag of, or associated with, the National Socialist German Workers' Party, the Third Reich (meaning the Nazi state) or Neo-Nazism. Proposed subsection 93ZA(7) specifically notes that this includes the Nazi flag and the *Hakenkreuz* (the Nazi hooked cross) being the official emblem of the Nazi Party and the Third Reich.<sup>10</sup>
- 1.7** An act may be a 'public act' for the purposes of the proposed offence even if it occurs on private land.<sup>11</sup> A 'public act' is defined to include:
- any form of written or visual public communication, including writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods
  - the wearing or display of clothing, signs or symbols in a way that is observable by the public or other items in a way that is observable by the public
  - the distribution or dissemination of material to the public.<sup>12</sup>
- 1.8** As noted above, the proposed offence does not apply in certain circumstances. First, the offence in proposed subsection 93ZA(1) does not apply to a Swastika used in connection with Hinduism, Buddhism or Jainism.<sup>13</sup>
- 1.9** Secondly, proposed subsection 93ZA(2) provides an exemption clause whereby the proposed offence does not apply if the President of the Anti-Discrimination Board is satisfied the public act is to be done reasonably and in good faith for academic, artistic, scientific, research or other purposes in the public interest and has granted an exemption from the offence.<sup>14</sup>
- 1.10** The Anti-Discrimination Board is a statutory body constituted under the *Anti-Discrimination Act 1977 No 48* (Anti-Discrimination Act). Its five members, including a President, are appointed by the Governor to exercise functions under the Anti-Discrimination Act. Many of the President and Anti-Discrimination Board's functions under the Anti-Discrimination Act are exercised under delegation by staff of Anti-Discrimination NSW in the Department of Communities and Justice.<sup>15</sup>
- 1.11** Proposed subsection 93ZA(3) deems that section 126 of the Anti-Discrimination Act, which provides the details for exemptions granted by the President, applies to an exemption granted under section 93ZA.<sup>16</sup>
- 1.12** Presently, section 93Z of the Crimes Act makes it an offence to publicly threaten or incite violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status. This provision was inserted into the Crimes Act in 2018 and replaced the

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<sup>10</sup> Crimes Amendment (Display of Nazi Symbols) Bill 2021, cl 2 (proposed subs 93ZA(7)).

<sup>11</sup> Crimes Amendment (Display of Nazi Symbols) Bill 2021, cl 2 (proposed para 93ZA(6)(a)).

<sup>12</sup> Crimes Amendment (Display of Nazi Symbols) Bill 2021, cl 2 (proposed subs 93ZA(7)).

<sup>13</sup> Crimes Amendment (Display of Nazi Symbols) Bill 2021, cl 2 (proposed para 93ZA(6)(b)).

<sup>14</sup> Crimes Amendment (Display of Nazi Symbols) Bill 2021, cl 2 (proposed subs 93ZA(2)).

<sup>15</sup> Submission 6, Anti-Discrimination NSW, p 1.

<sup>16</sup> Crimes Amendment (Display of Nazi Symbols) Bill 2021, cl 2 (proposed subs 93ZA(3) and 93ZA(4)).

serious racial, transgender, homosexual and HIV/AIDS vilification provisions.<sup>17</sup> Proposed subsection 93ZA(5) states if a public act is an offence against section 93Z and proposed section 93ZA, the person can only be punished for an offence under one of the sections.<sup>18</sup>

- 1.13** With respect to penalties under the bill, the maximum penalty for an individual is 50 penalty points (currently \$5,500) or imprisonment for six months or both. The maximum penalty for a corporation is 500 penalty points (\$55,000).<sup>19</sup>

### **Current law**

- 1.14** Relevant to the background of the bill is the current racial vilification laws and their hypothetical and actual application to the proposed criminal activity to be captured by the bill. The Hon Walt Secord MLC explained in his second reading speech that the Anti-Discrimination Act makes it unlawful for a person to verbally harass another person or incite hatred or violence on the basis of race or culture. If this conduct occurs, a person can make a complaint to the President of the Anti-Discrimination Board.<sup>20</sup>
- 1.15** Additionally, as noted above, section 93Z of the Crimes Act makes it an offence to publicly threaten or incite violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status. With respect to penalties, the maximum penalty for an individual is 100 penalty points (\$11,000) or imprisonment for three years or both. The maximum penalty for a corporation is 500 penalty points (\$55,000).<sup>21</sup>

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<sup>17</sup> Submission 6, Anti-Discrimination NSW, p 5.

<sup>18</sup> Crimes Amendment (Display of Nazi Symbols) Bill 2021, cl 2 (proposed subs 93ZA(5)).

<sup>19</sup> Crimes Amendment (Display of Nazi Symbols) Bill 2021, cl 2 (proposed subs 93ZA(1)).

<sup>20</sup> Walt Secord, Second reading speech: Crimes Amendment (Display of Nazi Symbols) Bill 2021, 13 October 2021, p 82; *Anti-Discrimination Act 1977 No 48*, ss 87A and 88.

<sup>21</sup> *Crimes Act 1900 No 40*, s 93Z(1).



## Chapter 2 Key Issues

This chapter highlights the key issues identified by stakeholders during this inquiry, including whether the public display of Nazi symbols should be criminalised in New South Wales and whether the measures contained in the bill are an appropriate and effective means of doing so. The chapter also acknowledges specific issues that were raised in regards to provisions of the bill, including the exemption provisions and the bill's application to content on social media platforms.

### Arguments in support of the bill

#### *Brief history of the Swastika/Hakenkreuz*

2.1 Several submissions commented on the history of the Swastika as being one of the oldest and most widespread symbols used across cultures and religions. It was noted that the Swastika has important significance to the Hindu, Jain and Buddhist communities. The Swastika was adopted by the Nazi Party in 1920 as it was perceived to symbolise German and specifically Aryan culture. The Nazi state termed the Swastika as the *Hakenkreuz*, meaning the hooked cross. During World War II and the Holocaust, the Swastika became the most recognisable symbol of Nazi propaganda, and several submissions referred to this 'misappropriation' and 'misuse' of the Swastika by the Nazi state.<sup>22</sup>

#### **Impacts of public displays of Nazi symbols**

##### *Nazi symbols cause offence, distress and intimidation*

2.2 The Australia/Jewish & Israel Affairs Council referred to a statement from the National Criminal Law Committee of the Law Council of Australia that the key aim of a prohibition on the public display of Nazi symbols is to mitigate public offence and distress.<sup>23</sup> Submissions noted that the public display of Nazi symbols can cause offence and distress to:

- the Jewish community
- survivors of the Holocaust and their descendants
- minority groups targeted by the Nazi regime
- ex-service men and women
- Hindu, Jain, and Buddhist religions.

2.3 In its submission to the inquiry, Anti-Discrimination NSW expressed support for the criminalisation of the public display of Nazi symbols for reasons that such symbols are oppressive, hateful and threatening to the Jewish community as well as other minority groups

<sup>22</sup> See, for example, Submission 1, Australian Association of Jewish Holocaust Survivors and Descendants, p 2; Submission 7, NSW Jewish Board of Deputies and Hindu Council of Australia, p 2.

<sup>23</sup> Submission 5, Australia/Israel & Jewish Affairs Council, p 9.

protected under the *Anti-Discrimination Act 1977*, such as people with disabilities and homosexuals, who were also targeted by the Nazi regime.<sup>24</sup>

- 2.4** The Commonwealth eSafety Commissioner also supported the intention of the bill and acknowledged online hate symbols, particularly Nazi symbols, can harm at-risk and marginalised groups.<sup>25</sup>
- 2.5** The Australian Association of Jewish Holocaust Survivors and Descendants and the NSW Association of Jewish Service & Ex-Service Men & Women (NAJEX) explained the impacts of the public display of Nazi symbols on survivors of the Holocaust. The Associations argued that the display of Nazi symbols trivialises the memory of those murdered in the Holocaust, reveals a lack of understanding of the horrific history of these symbols within living memory, highlights a lack of compassion for those who suffered under the Nazi regime and is disrespectful to survivors of the Holocaust and their families.<sup>26</sup>
- 2.6** With regards to the impact on survivors of the Holocaust, Australia has the highest percentage of Holocaust survivors and descendants than any other Jewish community outside Israel.<sup>27</sup> The Australian Association of Jewish Holocaust Survivors and Descendants explained that survivors can experience distress and panic when exposed to triggers that symbolise the Holocaust, including Nazi symbols and in particular the *Hakenkreuz*. Mr Joseph Symon, a Holocaust survivor and a member of the Australian Association of Jewish Holocaust Survivors and Descendants, gave evidence that viewing any information related to Nazi Germany 'brings back very vivid memories: all the suffering and horror'.<sup>28</sup> Further, it is well documented that transgenerational transmission of trauma occurs in the families of Holocaust survivors.<sup>29</sup>
- 2.7** The NAJEX described the *Hakenkreuz* as 'the symbol of one of the most inhuman, hate-based and murderous regimes and ideologies'. The NAJEX noted that the public display of Nazi symbols is an affront to ex-service men and women and their families as well as outrage to the memory of the civilians murdered during World War II and the Holocaust.<sup>30</sup>
- 2.8** A joint submission from the NSW Jewish Board of Deputies and the Hindu Council of Australia (JBD and HCA joint submission) noted that the historic misuse of the Swastika by the Nazi regime and its present misuse, that is when used as a symbol of hatred, racism and dictatorship, causes harm to the Jewish community as well as desecrates the Hindu, Jain and Buddhist

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<sup>24</sup> Submission 6, Anti-Discrimination NSW, p 1.

<sup>25</sup> Correspondence from Ms Julie Inman Grant, eSafety Commissioner, Australian Government, to Chair, 11 February 2022.

<sup>26</sup> See, for example, Submission 1, Australian Association of Jewish Holocaust Survivors and Descendants, pp 5-6; Submission 8, NSW Association of Jewish Service & Ex-Service Men & Women, p 3; Dr Dvir Abramovich, Chair, Anti-Defamation Commission, 3 February 2022, p 15.

<sup>27</sup> Evidence, Mr Peter Wertheim AM, Past President and Honorary Life Deputy, NSW Jewish Board of Deputies and Co-CEO, Executive Council of Australian Jewry, 3 February 2022, p 3.

<sup>28</sup> Evidence, Mr Joseph Symon, Member, Australian Association of Jewish Holocaust Survivors, 3 February 2022, p 24.

<sup>29</sup> See, for example, Submission 1, Australian Association of Jewish Holocaust Survivors and Descendants, p 5; Evidence, Mr Anthony Levin, Immediate Past Vice-president, Australian Association of Jewish Holocaust Survivors and Descendants, 3 February 2022, p 24.

<sup>30</sup> Submission 8, NSW Association of Jewish Service & Ex-Service Men & Women, p 3.

religions.<sup>31</sup> Moreover, the Swastika being a sacred Hindu symbol, Mr Surinder Jain, National Vice President of the Hindu Council of Australia (HCA), stated that the historic and current misuse of the Swastika impedes its peaceful use without invoking fear and intimidation in the community.<sup>32</sup>

***Nazi symbols incite hatred and violence***

**2.9** The JBD and HCA joint submission stated that words, symbols and gestures that incite hatred are a precursor to violence.<sup>33</sup> The NAJEX argued that public displays of Nazi symbols incite violence because of the feelings their display generates.<sup>34</sup> Similarly, the Australian/Israel & Jewish Affairs Council argued that the German National Socialist regime inspires not only the display or spread of Nazi symbols but also to perpetrate incidents inspired by Nazism.<sup>35</sup>

**2.10** Mr David Hudson, Deputy Commissioner of Investigations and Counter-terrorism at NSW Police Force, described the violent, both historic and current, use of Nazi symbols:

I think I speak for our entire organisation when I say that we have no tolerance for Nazi symbols and that the majority of mainstream Australia find it abhorrent and disgraceful. This not only relates to their historical use but also their current use by some of pathologically violent extremist groups, which are used to spread hate and incite hate crimes.<sup>36</sup>

***Nazi symbols go against community expectations and social cohesion***

**2.11** The Australia/Jewish & Israel Affairs Council argued that the Australian community, beyond the Jewish community, has demonstrated its rejection of Nazi symbolism in public discourse and therefore the bill is necessary to ensure the law reflects public sentiment. In its view, the public display of Nazi symbols is a 'red line in public discourse' and for this reason supports the bill.<sup>37</sup>

**2.12** Regarding social cohesion, inquiry participants, such as the NAJEX, argued that the public display of Nazi symbols is 'utterly incompatible' with multicultural values and communal harmony.<sup>38</sup> These organisations considered the bill to be beneficial to the NSW community as a whole because the new criminal offence would be an important step to maintaining a peaceful and harmonious multicultural society.<sup>39</sup>

<sup>31</sup> Submission 7, NSW Jewish Board of Deputies and Hindu Council of Australia, p 2.

<sup>32</sup> Evidence, Mr Surinder Jain, National Vice President, Hindu Council of Australia, 3 February 2022, p 3.

<sup>33</sup> Submission 7, NSW Jewish Board of Deputies and Hindu Council of Australia, p 1.

<sup>34</sup> Submission 8, NSW Association of Jewish Service & Ex-Service Men & Women, p 3.

<sup>35</sup> Submission 5, Australia/Israel & Jewish Affairs Council, p 4.

<sup>36</sup> Evidence, Mr David Hudson, Deputy Commissioner of Investigations and Counter-terrorism, NSW Police Force, 3 February 2022, p 8.

<sup>37</sup> Submission 5, Australia/Israel & Jewish Affairs Council, pp 1 and 6.

<sup>38</sup> Submission 8, NSW Association of Jewish Service & Ex-Service Men & Women, p 3.

<sup>39</sup> See, for example, Submission 7, NSW Jewish Board of Deputies and Hindu Council of Australia, p 5; Evidence, Mr Jain, 3 February 2022, p 3; Evidence, Dr Colin Rubenstein AM, Executive Director, Australia/Israel & Jewish Affairs Council, 3 February 2022, p 21; Evidence, Mr Symon, 3 February 2022, pp 26-27.

- 2.13** The importance of prohibiting the use of hate symbols for democracy and social cohesion was noted in the JBD and HCA joint submission:

If it is not addressed quickly and decisively it can engender a contempt for the rule of law, encourage mob rule and the breakdown of social cohesion and democratic institutions. Normalising hate symbols is the first step towards desensitising people to abhorrent behaviour. It can be the first step to forgetting, enabling, and repeating history.<sup>40</sup>

- 2.14** Inquiry stakeholders noted that another impact on the community is a desensitisation of and normalisation to the public display of symbols that represent hate and genocide – Mr Anthony Levin, Immediate Past Vice-president of the Australian Association of Jewish Holocaust Survivors and Descendants, explained:

... these symbols may have a tendency to normalise their visibility in society, and that is one of the precursors to historical examples of genocide. We know that the normalisation of terms of denigration, symbols of hate and other things which are not exclusive to the Holocaust—they are the early warning signs. We do not want a society in which we tolerate those kinds of things, and I think that it is really incumbent on us to approach it both from that protective viewpoint but also from a deterrent viewpoint...<sup>41</sup>

## Contemporary public displays of Nazi symbols

### *Upward trend in antisemitism*

- 2.15** Some stakeholders observed that there has been a steady increase in the use of Nazi symbols to intimidate the Jewish community and to incite hatred and violence.<sup>42</sup>

- 2.16** Some inquiry participants referred to the Executive Council of Australian Jewry's 2021 Antisemitism Report which highlighted an increase of 35 per cent in the prevalence of antisemitic attacks in Australia in the 2020-2021 period compared to the previous reporting period.<sup>43</sup> The JBD and HCA joint submission provided the details of this rise in antisemitism:

From October 2020 to September 2021, 477 antisemitic incidents were reported to Jewish organisations. 272 incidents consisted of physical assault, verbal abuse/harassment, vandalism, and graffiti and 175 incidents were threats that took place by email, telephone, postal mail, posters, and stickers.<sup>44</sup>

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<sup>40</sup> Submission 7, NSW Jewish Board of Deputies and Hindu Council of Australia, p 1.

<sup>41</sup> Evidence, Mr Levin, 3 February 2022, p 27. See also Evidence, Mr Wertheim, 3 February 2022, pp 4 and 7.

<sup>42</sup> Submission 4, Australian Jewish Association, p 1.

<sup>43</sup> See, for example, Submission 5, Australia/Israel & Jewish Affairs Council, p 3; Submission 7, NSW Jewish Board of Deputies and Hindu Council of Australia, p 2.

<sup>44</sup> Submission 7, NSW Jewish Board of Deputies and Hindu Council of Australia, p 3.

- 2.17** In giving evidence, Mr Peter Wertheim AM, Past President and Honorary Life Deputy, NSW Jewish Board of Deputies and Co-CEO, Executive Council of Australian Jewry, provided further detail about the types of incidents reported:

The report actually from the last two years has detailed how pervasive the display of Nazi symbols has become compared to previous years when it was unheard of. The reports include the flying of Nazi flags in public, the use of Nazi symbols in graffiti in the streets and an increase in advertised Nazi memorabilia and jewellery using the Hakenkreuz as well as SS lightning bolts and sonnenrads—the Nazi sun wheel. The reports also document the occasions when the Hakenkreuz was displayed from private homes in Victoria, New South Wales and Tasmania, when people dress in SS uniforms or when people wearing Hakenkreuz armbands have entered places of business to do their shopping or other business, and the impact of that on desensitising the wider community.<sup>45</sup>

- 2.18** Additionally, several stakeholders noted that there were 31 reported incidents of the Nazi flag being flown in 2020 in NSW.<sup>46</sup> Some stakeholders referred to recent examples of the use of Nazi symbols and imagery in instances where members of the public expressed opposition to governments' responses to the COVID-19 pandemic.<sup>47</sup> It was also noted that some social media content during the COVID-19 pandemic has seemingly attributed certain levels of responsibility to the Jewish community for COVID-19.<sup>48</sup>

*Upward trend in neo-Nazi and far right extreme activity*

- 2.19** The Australian Jewish Association argued that some of those involved in extremist activity have co-opted Nazi symbols for the purposes of membership and propaganda.<sup>49</sup> In giving evidence, Mr Darren Bark, Chief Executive Officer, NSW Jewish Board of Deputies (JBD), stated that 'use of these symbols really embolden and recruit people to those causes'.<sup>50</sup>
- 2.20** The JBD and HCA joint submission also referred to the Executive Council of Australian Jewry's 2021 Antisemitism Report which detailed that extremist racist groups are an increasing threat in Australia. It was reported that these groups hold recruiting, training and group bonding sessions with paraphernalia exhibiting Nazi symbols, icons and flags, and incite physical and polemical attacks against minority groups.<sup>51</sup> In addition, Deputy Commissioner Hudson noted that during the COVID-19 lockdowns, there has been an increase in extremist behaviour, especially in online recruitment and engagement online.<sup>52</sup>

<sup>45</sup> Evidence, Mr Wertheim, 3 February 2022, p 4.

<sup>46</sup> See, for example, Evidence, Mr Darren Bark, Chief Executive Officer, NSW Jewish Board of Deputies, 3 February 2022, p 2; Evidence, Dr Rubenstein, 3 February 2022, p 16.

<sup>47</sup> See, for example, Submission 1, Australian Association of Jewish Holocaust Survivors and Descendants, p 4; Evidence, Dr Rubenstein, 3 February 2022, p 16.

<sup>48</sup> See, for example, Submission 1, Australian Association of Jewish Holocaust Survivors and Descendants, p 5; Submission 4, Australian Jewish Association, p 1.

<sup>49</sup> Submission 5, Australia/Israel & Jewish Affairs Council, p 9.

<sup>50</sup> Evidence, Mr Bark, 3 February 2022, p 6.

<sup>51</sup> See, for example, Submission 5, Australia/Israel & Jewish Affairs Council, p 3; Submission 7, NSW Jewish Board of Deputies and Hindu Council of Australia, p 2.

<sup>52</sup> Evidence, Mr Hudson, 3 February 2022, p 9.

- 2.21** Several inquiry participants argued that a ban on Nazi symbols indicates a strong opposition to extremism, Neo-Nazi groups and radicalisation. In their view, the bill is necessary as an attempt to prevent further momentum being gained to extremism and neo-Nazi ideology in NSW.<sup>53</sup>
- 2.22** It was also observed that the passage of time since the Holocaust minimises the understanding that Nazi symbols represent the enemy power and a genocidal regime.<sup>54</sup> Supporting this view, the NAJEX argued that there is a 'growing historical ignorance as to what Nazi Symbols represent and the hateful and violent message they convey'.<sup>55</sup> As such, the JBD and HCA argued that an express legislative prohibition on Nazi symbols would work towards protecting against this loss of knowledge being exploited and young people being radicalised.<sup>56</sup> Likewise, the Australian Jewish Association stated that it supports the bill because 'it removes the swastika as a rallying symbol for extremists'.<sup>57</sup>
- 2.23** Regarding potential unintended consequences of criminalising the public display of Nazi symbols, Deputy Commissioner Hudson cautioned that this type of ban may push individuals and groups using these symbols underground, making the job of law enforcement more difficult, and that its criminalised status may heighten its attractiveness to some members of the community.<sup>58</sup> In responding to this issue, Mr Levin queried the basis of this concern. In his view, many groups of that kind are already employing techniques to keep their identities anonymous online when mobilising and recruiting and therefore are already not very visible to law enforcement.<sup>59</sup>

*Capacity of the current law to respond to public displays of Nazi symbols*

- 2.24** Some inquiry participants noted that the current criminal law, namely the hate crimes offence in section 93Z of the Crimes Act, is not providing an adequate response to the public use and display of these symbols.<sup>60</sup> The JBD and HCA stated that no charge has been brought under section 93Z of the Crimes Act for incidents of antisemitism.<sup>61</sup>
- 2.25** In giving evidence, Deputy Commissioner Hudson stated that in instances of a public display of Nazi symbols, the police would be presently reliant on section 93Z of the Crimes Act. Deputy Commissioner Hudson informed the committee that two individuals have been charged

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<sup>53</sup> See, for example, Submission 7, NSW Jewish Board of Deputies and Hindu Council of Australia, p 3; Evidence, Dr Abramovich, 3 February 2022, p 17.

<sup>54</sup> See, for example, Submission 7, NSW Jewish Board of Deputies and Hindu Council of Australia, p 3; Evidence, Mr Wertheim, 3 February 2022, p 4; Evidence, Dr Abramovich, 3 February 2022, p 17.

<sup>55</sup> Submission 8, NSW Association of Jewish Service & Ex-Service Men & Women, p 2.

<sup>56</sup> See, for example, Submission 7, NSW Jewish Board of Deputies and Hindu Council of Australia, p 3; Evidence, Mr Wertheim, 3 February 2022, p 4.

<sup>57</sup> Submission 4, Australian Jewish Association, p 1.

<sup>58</sup> Evidence, Mr Hudson, 1 January 2022, p 10.

<sup>59</sup> Evidence, Mr Levin, 3 February 2022, p 25.

<sup>60</sup> See, for example, Submission 7, NSW Jewish Board of Deputies and Hindu Council of Australia, p 3; Submission 8, NSW Association of Jewish Service & Ex-Service Men & Women, p 2.

<sup>61</sup> Submission 7, NSW Jewish Board of Deputies and Hindu Council of Australia, p 3.

under section 93Z of the Crimes Act for conflict in the Hindu and Sikh community in Parramatta and some social media posts inciting people to violence.<sup>62</sup>

- 2.26** Relevant to the limited number of prosecutions under section 93Z is that the Director of Public Prosecutions (DPP) must approve the prosecution prior to the police laying charges. Deputy Commissioner Hudson commented that this can be a barrier to prosecution and consequently the police may charge individuals under other applicable laws that do not require DPP approval. By way of example, Deputy Commissioner Hudson highlighted that the police sought DPP approval to prosecute under section 93Z a further six instances and all were declined.<sup>63</sup>
- 2.27** When asked about the appropriateness of expanding the Anti-Discrimination Act (as opposed to the Crimes Act) to combat the prevalence of the public display of Nazi symbols, Mr Wertheim stated that criminalisation of the conduct sends an important message about the seriousness of the conduct. Further, Mr Wertheim did not consider it appropriate for the Anti-Discrimination Act to be the apparatus to respond to this conduct because the onus should not be placed on the person offended or insulted to take the matter forward.<sup>64</sup>

### Questionnaire responses

- 2.28** With respect to the responses to the online questionnaire conducted by the committee, of the 50 responses 21 supported the bill, 8 responses supported with bill with amendments and 1 response partially supported the bill.
- 2.29** The following are some examples of questionnaire responses of reasons for supporting the ban.
- Nazi symbols are offensive and represent hate, violence, bigotry and genocide.
  - The hate crimes against humanity associated with Nazi symbols are not part of the freedoms that Australians fought for in World War II. The bill will provide safety and security for people who are targets and have experienced such hatred.
  - Extreme political ideas like Nazism have no place in Australian democratic society.
  - The proposed ban is a reasonable restriction under constitutional implied freedom of political communication of hate speech.
  - Removing a symbol of hateful and racist ideology encourages social harmony.<sup>65</sup>

<sup>62</sup> Evidence, Mr Hudson, 3 February 2022, pp 9 and 13.

<sup>63</sup> Evidence, Mr Hudson, 3 February 2022, p 12.

<sup>64</sup> Evidence, Mr Wertheim, 3 February 2022, p 7.

<sup>65</sup> Questionnaire responses, Crimes Amendment (Display of Nazi Symbols) Bill 2021, survey conducted online on Standing Committee on Social Issues webpage.

## Arguments against the bill

**2.30** Among the responses to the questionnaire that did not support the bill, there were some key and common themes raised underpinning opposition to the proposed ban.

- There is a risk of erasing history which is problematic because these symbols can operate as a reminder to not repeat the mistakes of the past.
- The proposed ban is a form of censorship, curtails freedom of speech and is a regulatory overreach. A prohibition on a symbol can be a slippery slope for expanded and tougher censorship.
- The proposed ban encompasses only Nazi symbols and not other types of hate symbols.
- Possible unintended consequences of the ban include that vulnerable members of the community may be targeted by the application of the proposed ban.
- Protecting people from the public display of Nazi symbols weakens public and political discourse.
- The proposed offence contains ambiguous definitions with respect to the ban's scope.
- There are no checks and balances on the decision-making process of the President of the Anti-Discrimination Board with respect to the granting of exemptions (exemptions are discussed further in the next section).
- The public display of Nazi symbols is already addressed by legislation.<sup>66</sup>

**2.31** When asked at the hearing about the view that the bill impinges on the freedom of speech, Mr Levin argued proportionate limits are important in the balancing of competing human rights:

In human rights, there is almost always a competition between certain kinds of rights, and the test that is typically used to adjudicate that competition is one of proportionality... The limits on our freedoms are actually one of the hallmarks of a mature liberal democracy. That is to say—and we are in the territory of negative liberty here—that a person does not have the right to go and incite violence, either by verbal or non-verbal expressions and symbols which may impinge on the rights and freedoms of others... The balance of these rights is written into the Universal Declaration of Human Rights. Look at article 29, which basically says that nations have an obligation not to disseminate racist ideas and to take steps to eradicate notions of racial purity.<sup>67</sup>

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<sup>66</sup> Questionnaire responses, Crimes Amendment (Display of Nazi Symbols) Bill 2021, survey conducted online on Standing Committee on Social Issues webpage.

<sup>67</sup> Evidence, Mr Levin, 3 February 2022, pp 25-26.

## Provisions of the bill

### Exemptions granted by President of Anti-Discrimination Board

- 2.32** The bill proposes that the new offence of the public display of Nazi symbols would not apply if the President of the Anti-Discrimination Board has granted an exemption on the basis of being satisfied that the public act is to be done reasonably and in good faith for:
- academic, artistic, scientific or research purposes in the public interest, or
  - other purposes in the public interest, including discussion or debate about and expositions of any act or matter.<sup>68</sup>
- 2.33** In summary, inquiry participants expressed support for the proposed exemption provision in section 93ZA for the following reasons.
- The peaceful display of the Swastika in connection with Hinduism, Buddhism and Jainism should not be captured by the new criminal offence.<sup>69</sup>
  - There should be permitted use of Nazi symbols for certain academic, education or cultural reasons.<sup>70</sup>
- 2.34** While in support of the bill, Anti-Discrimination NSW emphasised its strong concerns regarding the legal, operational and practical implications of the proposed exemption process and argued that the civil exemption process currently proposed in section 93ZA(2) is 'entirely inappropriate'.<sup>71</sup> These concerns are summarised below.
- The proposed exemption conflates the two separate statutory functions under the Anti-Discrimination Act – first, the granting of exemptions where the applicant seeks to promote equality of opportunity under section 126 of the Anti-Discrimination Act, and secondly, the civil defences available to a respondent to a complaint of unlawful vilification under the Anti-Discrimination Act. This concern is discussed in further detail below.
  - The President of the Anti-Discrimination Board exercises administrative functions. The proposed exemption gives the President a civil process to grant exemptions from criminal prosecution before the conduct has occurred which inappropriately elevates the civil law above the criminal law.
  - In the circumstances where an exemption is granted and the actual display of the material does not accord with the manner of the exemption application, the enforcement of a breach of this kind would be complex as it involves a breach of the terms of an administrative order as well as the commission of a criminal offence.

<sup>68</sup> Submission 6, Anti-Discrimination NSW, p 1; Crimes Amendment (Display of Nazi Symbols) Bill 2021, cl 2 (proposed subs 93ZA(2)).

<sup>69</sup> See, for example, Submission 1, Australian Association of Jewish Holocaust Survivors and Descendants, p 6; Submission 7, NSW Jewish Board of Deputies and Hindu Council of Australia, p 2.

<sup>70</sup> See, for example, Submission 1, Australian Association of Jewish Holocaust Survivors and Descendants, p 6; Submission 5, Australia/Israel & Jewish Affairs Council, p 6.

<sup>71</sup> Submission 6, Anti-Discrimination NSW, p 1.

- The proposed exemption would be impossible to administer because of the large volume of material that would require an exemption. For example, every public documentary, movie, website, news article, book, theatre production, museum exhibit, teaching handout, lecture slide or examination paper containing Nazi symbols or seeking to reproduce photographs including Nazi symbols would require an exemption.<sup>72</sup>

**2.35** Anti-Discrimination NSW offered the following explanation as to how proposed subsection 93ZA(2) conflates the concepts of exemptions and exceptions in the Anti-Discrimination Act. With respect to exemptions, they can be granted by the President under section 126 of the Anti-Discrimination Act when the applicant can show that the proposed action will promote equal opportunity or benefit one of the groups listed in the Anti-Discrimination Act that has experienced discrimination.<sup>73</sup>

**2.36** In contrast, exceptions operate like defences and the onus is on the respondent to prove that the exception applies. As noted above, there are vilification provisions in the Anti-Discrimination Act which make it unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race, homosexuality, transgender status or HIV/AIDS status of the person or members of the group.<sup>74</sup> An exception to the vilification provisions in the Anti-Discrimination Act is when the conduct was a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.<sup>75</sup>

**2.37** The JBD and the HCA agreed that obtaining an exemption from the President of the Anti-Discrimination Board for each and every use of a Nazi symbol is an onerous burden on the applicant and the Board, given the volume of exemptions that would be required for historical footage and for educational and artistic purposes.<sup>76</sup> Likewise, the Australia/Israel & Jewish Affairs Council and Deputy Commissioner Hudson from NSW Police Force queried the efficiency and practicality of the proposed exemption provision.<sup>77</sup>

### **Alternative suggestions to exemptions**

#### *Defence*

**2.38** Anti-Discrimination NSW recommended that the criteria in proposed subsection 93ZA(2) should be contained within the Crimes Act itself as a defence to a charge under proposed subsection 93ZA(1). Therefore, this would be a matter for law enforcement and judicial adjudication rather than the Anti-Discrimination Board.<sup>78</sup>

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<sup>72</sup> Submission 6, Anti-Discrimination NSW, p 2. See also Submission 7, NSW Jewish Board of Deputies and the Hindu Council of Australia, p 4.

<sup>73</sup> Submission 6, Anti-Discrimination NSW, p 4.

<sup>74</sup> *Anti-Discrimination Act 1977*, ss 20C, 38S, 49ZT and 49ZXB.

<sup>75</sup> Submission 6, Anti-Discrimination NSW, p 5.

<sup>76</sup> Submission 7, NSW Jewish Board of Deputies and the Hindu Council of Australia, p 4.

<sup>77</sup> See, for example, Submission 5, Australia/Israel & Jewish Affairs Council, p 6; Evidence, Mr Hudson, 3 February 2022, pp 10-11.

<sup>78</sup> Submission 6, Anti-Discrimination NSW, pp 2-3.

- 2.39** The JBD, the HCA and the Australia/Israel & Jewish Affairs Council agreed with Anti-Discrimination NSW that a defence be available (rather than an exemption process).<sup>79</sup> The JBD and the HCA recommended amending the bill to include a defence for the public display of a Nazi symbol that was used reasonably and in good faith:
- in the performance, exhibition, or distribution of an artistic work, or
  - in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic, educational or scientific purpose or any other genuine purpose in the public interest.<sup>80</sup>

*Lawful excuse*

- 2.40** At the hearing, Deputy Commissioner Hudson recommended that a lawful excuse provision be included in the substantive provision creating the criminal offence as opposed to the exemption provision as currently proposed in the bill or a defence as proposed by other inquiry participants.<sup>81</sup>
- 2.41** Deputy Commissioner Hudson stated that a prosecution must take place for a defendant to have the opportunity to raise a defence, however, a prosecution is not appropriate in all cases. For this reason, Deputy Commissioner Hudson preferred a list of lawful excuses to the proposed criminal offence in subsection 93ZA(1) be included in the bill rather than a defence. This is because consideration of the lawful excuse provision would occur at the time when an officer attends an alleged criminal act, whereas consideration of a defence occurs at the judicial adjudication stage and only after a prosecution has been brought against the alleged defendant.<sup>82</sup>
- 2.42** With respect to what should be a lawful excuse to the proposed criminal offence, Deputy Commissioner Hudson suggested that similarly to the uses stated in the currently drafted exemption provision, the lawful excuses to be included in the bill could be the public display for Nazi symbols for the academic, artistic, scientific, research or other purposes in the public interest.<sup>83</sup>
- 2.43** Similarly, Mr Levin agreed that the bill would be improved by replacing the proposed exemption provisions with a lawful excuse provision. Mr Levin preferred a list of lawful excuses which is inclusive, whereby the parameters of what would constitute a lawful excuse would not be absolutely defined or delimited. Instead, Mr Levin suggested that the list be indicative only because it would be appropriate for the police to have a degree of discretion on whether to prosecute certain conduct.<sup>84</sup>

<sup>79</sup> See, for example, Submission 5, Australia/Israel & Jewish Affairs Council, p 6; Submission 7, NSW Jewish Board of Deputies and the Hindu Council of Australia, p 4.

<sup>80</sup> Submission 7, NSW Jewish Board of Deputies and the Hindu Council of Australia, p 4.

<sup>81</sup> Evidence, Mr Hudson, 3 February 2022, pp 11-13.

<sup>82</sup> Evidence, Mr Hudson, 3 February 2022, pp 11-13.

<sup>83</sup> Evidence, Mr Hudson, 3 February 2022, p 12.

<sup>84</sup> Evidence, Mr Levin, 3 February 2022, p 27.

- 2.44 Along similar lines, a questionnaire response which supported the bill with amendments suggested that the bill should be explicit about the circumstances in which the public display of Nazi symbols would not constitute an offence under proposed subsection 93ZA(1).<sup>85</sup>

### **Intent and knowledge**

- 2.45 One issue that was discussed at the hearing and in some questionnaire responses was the element of intent as part of the proposed criminal offence in section 93ZA. There was discussion about whether conduct should amount to an offence only when the intent behind the public display of a Nazi symbol is to incite hatred or violence. For instance, a questionnaire response recommended that a prohibition on the public display of Nazi symbols should adopt the approach of the racial vilification laws under the Anti-Discrimination Act whereby it is not the act itself which is the focus but rather the intention behind the act, such as, in this case, the use of Nazi symbols to cause fear or hatred.<sup>86</sup>
- 2.46 However, some witnesses at the hearing stated that any display of Nazi symbols that is not for academic, artistic, scientific, research or other purposes in the public interest is done with an intention to incite or promote hatred or violence, or at least glorifies and celebrates Nazi ideology.<sup>87</sup>
- 2.47 In addition, Mr Levin noted that there have been a limited number of prosecutions of antisemitic acts under section 93Z of the Crimes Act which requires an intention to incite violence. With respect to the proposed criminal offence in section 93ZA, Mr Levin expressed a preference for drafting which limits the barriers to launching a prosecution.<sup>88</sup>
- 2.48 On a separate issue but related issue, there was also discussion about the absence in proposed section 93ZA of a stated fault (i.e. intent) element that the prosecution must prove to establish a crime has been committed. One questionnaire response suggested that the criminal offence in proposed subsection 93ZA(1) should be amended so that a person would be guilty only if the person publicly displays a Nazi symbol while *knowing* that it is a Nazi symbol.<sup>89</sup>
- 2.49 Relatedly, with respect to instances where a Nazi symbol is displayed unknowingly or innocently, Deputy Commissioner Hudson stated in evidence that there would be instances of apparent innocent use of a Nazi symbol where the police would not prosecute, such as display by a child, and instances where the police may choose to prosecute which would require the defendant to prove innocent use in court.<sup>90</sup>

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<sup>85</sup> Questionnaire responses, Crimes Amendment (Display of Nazi Symbols) Bill 2021, survey conducted online on Standing Committee on Social Issues webpage.

<sup>86</sup> Questionnaire responses, Crimes Amendment (Display of Nazi Symbols) Bill 2021, survey conducted online on Standing Committee on Social Issues webpage.

<sup>87</sup> See, for example, Evidence, Dr Abramovich, 3 February 2022, pp 18-19; Evidence, Dr Rubenstein, 3 February 2022, p 19.

<sup>88</sup> See, for example, Evidence, Mr Levin, 3 February 2022, p 28; Evidence, Mr Hudson, 3 February 2022, p 9.

<sup>89</sup> Questionnaire responses, Crimes Amendment (Display of Nazi Symbols) Bill 2021, survey conducted online on Standing Committee on Social Issues webpage.

<sup>90</sup> Evidence, Mr Hudson, 3 February 2022, p 13.

## The bill's application to social media

**2.50** As noted in chapter 1, a 'public act' for the purposes of constituting a criminal offence as proposed in section 93ZA includes 'any form of written communication to the public, including... broadcasting and communicating through social media and other electronic means'.<sup>91</sup> The Australia/Israel & Jewish Affairs Council strongly supported the bill's online application to social media as it would provide clear guidelines to platforms about what is lawful in Australia.<sup>92</sup> Several stakeholders highlighted that the bill's application to online communication is critical as there is a high prevalence of hate speech, antisemitism and extremist radicalisation on social media platforms.<sup>93</sup> Stakeholders identified the following as some of the reasons why the bill's application to online communications is necessary.

- The online sphere is rife with antisemitism even on platforms where hate speech is seemingly moderated.
- There is an increase in right-wing extremism and engagement in right-wing activity online.
- Social media platforms fail to appropriately and effectively moderate their content, particularly antisemitic conduct which is partly due to the fact that the International Holocaust Remembrance Alliance definition of antisemitism has not been adopted.
- Some social media platforms do not have policies which ban the use of hate symbols on their platforms.
- A product of social media is echo chambers where micro-targeting results in individuals consuming radicalised and extremist content without any opposing or moderating viewpoints.<sup>94</sup>

**2.51** The challenges that accompany implementing a prohibition of the online public display of Nazi symbols were also discussed. Deputy Commissioner Hudson commented on the issue of the bill's application to historical social media posts and not only to posts made after its possible enactment. He explained that if the bill were to be enacted, each view of a historical social media post which constitutes a public display of a Nazi symbol could be considered a new instance of broadcast or publication.<sup>95</sup>

**2.52** A further challenge identified by stakeholders was the extent to which Nazi symbols are encoded in the online environment. Some examples discussed at the hearing included:

- use of triple parenthesis around a word or name to indicate that the person is Jewish as a digital form as the Star of David

<sup>91</sup> Crimes Amendment (Display of Nazi Symbols) Bill 2021, cl 2 (proposed subs 93ZA(7)).

<sup>92</sup> Submission 5, Australia/Israel & Jewish Affairs Council, p 5.

<sup>93</sup> See, for example, Submission 5, Australia/Israel & Jewish Affairs Council, p 5; Evidence, Dr Abramovich, 3 February 2022, p 15.

<sup>94</sup> See, for example, Submission 5, Australia/Israel & Jewish Affairs Council, p 5; Evidence, Mr Hudson, 3 February 2022, p 9; Dr Rubenstein, 3 February 2022, pp 16-17; Ms Naomi Levin, Senior Policy Analyst, Australia/Israel & Jewish Affairs Council, 3 February 2022, p 16; Evidence, Dr Abramovich, 3 February 2022, pp 18-19.

<sup>95</sup> Evidence, Mr Hudson, 3 February 2022, p 13.

- use of the numbers 1488 and 420 as reference to aspects of Hitler and the Holocaust.<sup>96</sup>

**2.53** Ms Naomi Levin, Senior Policy Analyst at the Australia/Israel & Jewish Affairs Council, stated that the use of these symbols was born out of a desire to avoid blocking filters put in place by social media platform operators which prevent the use of certain offensive language online. This is leading to users becoming increasingly sophisticated and innovative in using coded language to create and use new symbols to portray the same message.<sup>97</sup>

**2.54** Inquiry participants noted the importance of the bill's scope having capacity to capture these types of coded references. In the view of Mr Bark, the current drafting of the bill provides sufficient flexibility to capture innovations in Nazi symbols.<sup>98</sup>

**2.55** In addition, Ms Levin noted the following considerations in applying any prohibition to social media platforms.

- A ban on the public display of Nazi symbols would impact social media platforms differently as they take varied approaches to the publication of Nazi symbols pursuant to their company guidelines.
- The liability of social media platform for posts that include Nazi symbols is a live question in the context of developments in the courts and the Commonwealth Parliament regarding platforms' liability for defamatory content, the outcome of which may have implications for, or be relevant to, the issue of liability of platforms for vilification and hate speech.<sup>99</sup>

### *Interaction with the Online Safety Act 2021 (Cth)*

**2.56** The committee received correspondence from the Commonwealth eSafety Commissioner (Commissioner) regarding the bill's online application.<sup>100</sup> The Commissioner is the independent regulator of online safety established by the *Online Safety Act 2021 (Cth)* (Online Safety Act). The Online Safety Act came into effect in early 2022 and increases the regulatory and enforcement powers of the Commissioner to protect against harm and abuse online and places greater expectations on technology companies' operation of online services.<sup>101</sup>

**2.57** The Commissioner made the following observations and suggestions in relation to the bill's interaction with the Online Safety Act.

- Clarity regarding bill's online scope: The terms 'social media' and 'electronic means' are not defined in the bill nor the Crimes Act. With the objective to promote consistency and

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<sup>96</sup> See, for example, Evidence, Mr Bark, 3 February 2022, p 5; Evidence, Dr Abramovich, 3 February 2022, pp 18-19; Evidence, Mr Levin, 3 February 2022, p 25.

<sup>97</sup> Evidence, Ms Levin, 3 February 2022, p 21.

<sup>98</sup> See, for example, Evidence, Mr Levin, 3 February 2022, p 25; Evidence, Mr Bark, 3 February 2022, p 5.

<sup>99</sup> Answers to questions on notice, Ms Naomi Levin, Senior Policy Analyst, Australia/Israel & Jewish Affairs Council, 11 February 2022, pp 2-3.

<sup>100</sup> Correspondence from Ms Julie Inman Grant, eSafety Commissioner, Australian Government, to Chair, 11 February 2022. See Appendix 1.

<sup>101</sup> eSafety Commissioner, Australian Government, *Online Safety Act 2021: Fact sheet* (January 2022), eSafety, <https://www.esafety.gov.au/about-us/who-we-are/our-legislative-functions>.

coordination of regulatory efforts across jurisdictions, the Commissioner suggested that the definitions of 'social media service', 'relevant electronic service' and 'designated internet service' in the Online Safety Act could be considered for the bill because in the case of the Online Safety Act, these definitions bring clarity to the range of online services captured.

- Removal of online hate symbols: Pursuant to the Online Safety Act, the Commissioner can only remove online hate symbols if they promote, incite or instruct in matters of crime or violence. Therefore, the Commissioner's requirement to understand the context and circumstances of the use of a hate symbol, such as a Nazi symbol, before removing it would remain unchanged should the bill pass.
- Information sharing and coordination between jurisdictions: The Commissioner would welcome the introduction of a process for referrals to and from NSW Police Force to assist in the preservation of evidence and deconfliction if and when required, should the bill pass.<sup>102</sup>

## Committee comment

**2.58** The evidence to this inquiry highlighted three key objectives of the bill. First, criminalising the public display of Nazi symbols serves to protect the individuals and communities in our society who are deeply hurt, offended, intimidated or re-traumatised by the public display of Nazi symbols. Secondly, right-wing extremism is an increasing concern for law enforcement and community safety. Some of these groups adopt Nazi symbols to represent their ideologies and as a rallying and recruitment tool. A ban on the public display of Nazi symbols sends a message of denouncement of these groups and would seek to limit the lawful use of Nazi symbols for the purposes of inciting fear, hatred or violence in line with these ideologies. Lastly, the ban would foster the strengthening of multiculturalism and respect for diversity within our community, as the public display of Nazi symbols is in direct conflict with these important community values. The committee supports these intentions of the bill.

**2.59** The committee recognises the need for certain public displays of Nazi symbols to be removed from any ban's scope. These include academic, artistic, scientific, research or other purposes in the public interest, as well as the peaceful use of the Swastika for cultural and religious purposes. Importantly, the committee acknowledges stakeholders' concerns about the challenges presented by the exemption process in the bill, whereby the President of the Anti-Discrimination Board grants exemptions from the application of the criminal offence when satisfied the public act is to be done reasonably and in good faith for purposes in the public interest. The committee queries the appropriateness and practicality of this exemption process and encourages the House to consider the alternative approaches discussed in this report to permit the public display of Nazi symbols for the above-mentioned legitimate purposes, particularly the proposal to include a lawful excuse provision.

**2.60** The bill's online application was another challenge highlighted by stakeholders. However, the committee did not receive sufficient evidence on the practical implementation and enforcement of the ban to online communications and its implications, particularly in relation to its interaction with Commonwealth laws, to draw conclusions on the current approach as drafted

<sup>102</sup> Correspondence from Ms Julie Inman Grant, eSafety Commissioner, Australian Government, to Chair, 11 February 2022, pp 1-2.

in the bill. The committee endorses further investigation and consideration of these issues, in particular the eSafety Commissioner's comments and suggestions, before the bill is debated in the House.

- 2.61** Lastly, the committee recognises the differing views of stakeholders regarding whether the proposed criminal offence ought to include an element of intent. With the aim of ensuring clarity, the committee encourages further examination of the appropriate level of intent required to constitute the proposed offence.

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### **Recommendation 1**

That before the Legislative Council proceeds to debate the Crimes Amendment (Display of Nazi Symbols) Bill 2021, the committee comments and stakeholders' views expressed in this report should be addressed. In particular, the bill should be amended to take account of the issues they raised in relation to the proposed exemption process by the President of the Anti-Discrimination Board and the prohibition on the public display of Nazi symbols to apply on social media platforms.

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## Appendix 1 Letter from eSafety Commissioner



10 February 2022

Hon Don Harwin MLC

Chair

Standing Committee on Social Issues

New South Wales Parliament

By Email: [Committee.SocialIssues@parliament.nsw.gov.au](mailto:Committee.SocialIssues@parliament.nsw.gov.au)

Dear Chair,

Thank you for your correspondence of 3 February 2022 in relation to the inquiry of the NSW Legislative Council's Standing Committee on Social Issues into the *Crimes Amendment (Display of Nazi Symbols) Bill 2021* (the Bill).

As you know, eSafety is Australia's national independent regulator for online safety.

eSafety supports the intention behind this Bill and recognises the harm that online hate symbols, especially symbols associated with the Nazis, can have, including on at-risk and marginalised groups.

To assist the Committee in its considerations, we welcome the opportunity to provide comments on how this Bill may interact with eSafety's enabling legislation the *Online Safety Act 2021* (Cth) (OSA) as set out below.

1. We note that the cl 7 of the Bill defines 'public act' to include '...broadcasting and communicating through social media and other electronic methods'. We understand that 'social media' and 'electronic methods' are not defined in the *Crimes Act 1914* (NSW). You may wish to consider the definitions in the OSA for social media service, relevant electronic service and designated internet service as these terms provide clarity on a range of online services which are captured by our legislation. It is ideal to align legislative definitions, where possible, to reduce inconsistency and promote coordination of regulatory efforts.
2. eSafety is empowered under part 9 of the OSA to investigate and seek removal of illegal and restricted content, known as the Online Content Scheme. The legal definition for the classes of material we can remove, known as class 1 and class 2 material, is linked to the *National Classification Code* (Classification Code). Relevantly, under the Classification Code we can generally only remove online hate symbols if they 'promote, incite or instruct in matters of crime or violence', though depending on the circumstances it may fall within other aspects of class 1 material. As such, we are not able to automatically seek removal of depictions of swastikas, or other symbol of or associated with the Nazi regime, without understanding the context and circumstances of the image. The passage of the Bill would not change this position.

Should the Bill pass, we would welcome a point of contact that we can liaise with in terms of the best way to receive referrals from NSW Police and vice versa and potentially to ensure preservation of evidence or deconfliction if required.



Finally, we note that that the enabling legislation of the *National Classification Code* is administered by the Department of Department of Infrastructure, Transport, Regional Development and Communications. Their input and co-ordination could be sought as more jurisdictions enact similar legislation, noting one of the objectives of the Classification Code is to have a consistent approach to classification across Australia.

We hope this information will assist you.

We wish you the very best with your inquiry.

Yours faithfully,

Julie Inman Grant  
eSafety Commissioner

## Appendix 2 Submissions

No.	Author
1	Sam Cannuli
2	Australian Association of Jewish Holocaust Survivors and Descendants Inc
3	Dr Eliana Freydel Miller
4	Australian Jewish Association
5	Australia/Israel & Jewish Affairs Council
6	Anti-Discrimination NSW
7	NSW Jewish Board of Deputies and Hindu Council of Australia
8	NSW Association of Jewish Service and Ex-Service Men & Women



## Appendix 3 Witnesses at hearing

Date	Name	Position and Organisation
<b>Thursday 3 February 2022</b> <b>Jubilee Room</b> <b>Parliament House</b> <b>Via videoconference</b>	Mr Peter Wertheim AM	Past President and Honorary Life Deputy, NSW Jewish Board of Deputies and Co-CEO, Executive Council of Australian Jewry
	Mr Darren Bark	Chief Executive Officer, NSW Jewish Board of Deputies
	Mr Surinder Jain	National Vice President, Hindu Council of Australia
	Mr David Hudson	Deputy Commissioner, Investigations and Counter-terrorism, NSW Police Force
	Dr Colin Rubenstein AM	Executive Director, Australia/Israel & Jewish Affairs Council
	Ms Naomi Levin	Senior Policy Analyst, Australia/Israel & Jewish Affairs Council
	Dr Dvir Abramovich	Chair, Anti-Defamation Commission
	Mr Joseph Symon	Member, Australian Association of Jewish Holocaust Survivors and Descendants
	Mr Anthony Levin	Immediate Past Vice-President, Australian Association of Jewish Holocaust Survivors and Descendants



## Appendix 4 Minutes

### Minutes no. 33

Wednesday 17 November 2021  
 Standing Committee on Social Issues  
 Rm 1043 at 1.33 pm

#### 1. Members present

Mr Poulos, *Chair*  
 Mr Buttigieg, *Deputy Chair*  
 Mr Franklin  
 Mr Mallard  
 Mr Martin  
 Revd Mr Nile  
 Mr Secord (*substituting for Mr Primrose*)

#### 2. Apologies

Ms Boyd

#### 3. Draft minutes

Resolved, on the motion of Mr Mallard: That draft minutes no. 32 be confirmed.

#### 4. Correspondence

The committee noted the following correspondence:

##### *Received*

- 11 November 2021 – Letter from the Office of the Hon Mark Buttigieg MLC, Opposition Whip, to the secretariat advising that the Hon Walt Secord MLC will substitute for the Hon Peter Primrose MLC for the duration of the *Crimes Amendment (Display of Nazi Symbols) Bill 2021* inquiry.

#### 5. Inquiry into the Crimes Amendment (Display of Nazi Symbols) Bill 2021

##### 5.1 Terms of reference

The committee noted the following terms of reference referred by the House on 9 November 2021:

1. That:
  - a) the Crimes Amendment (Display of Nazi Symbols) Bill 2021 be referred to the Standing Committee on Social Issues for inquiry and report,
  - b) the bill be referred to the committee at the conclusion of the mover's second reading speech,
  - c) the resumption of the second reading debate on the bill not proceed until the tabling of the committee report,
  - d) the committee report by the first sitting day of 2022.

##### 5.2 Proposed timeline

Resolved, on the motion of Mr Secord: That the committee adopt the following timeline for the administration of the inquiry:

12 January 2022 – closing date for submissions  
 12 January 2022 – closing date for online questionnaire  
 3 February 2022 – hearing, including via webex  
 15 February 2022 – circulation of chair's draft report  
 18 February 2022 – report deliberative  
 22 February 2022 – report tabling.

### 5.3 Stakeholder and witness list

Resolved, on the motion of Rev'd Mr Nile: That the following stakeholders be invited to make a submission and appear as a witness at the hearing:

- Executive Council of Australian Jewry – CEO Peter Wertheim;
- NSW Jewish Board of Deputies CEO Darren Bark;
- NSW Association of Jewish Ex-servicemen and Women – president Roger Selby;
- Australian Association of Jewish Holocaust Survivors and Descendants Dr George Foster;
- Australia-Israel Jewish Affairs Council's Jeremy Jones;
- Anti-Defamation Commission and its Chair, Dvir Abramovich (Melbourne-based)
- Hindu Council of Australia national president Prakash Mehta,
- Hindu Council of Australia NSW president Bhagwat Chauhan, and
- Representative of government.

Resolved, on the motion of Mr Mallard: That Mr Dave Hudson, Deputy Commissioner, Counter Terrorism, NSW Police, be invited to appear as a witness at the hearing.

Resolved, on the motion of Mr Mallard: That members be provided with the opportunity to nominate additional stakeholders to make a submission and/or appear as a witness to give evidence by COB 23 November, and that the committee agree to additional stakeholders by email, unless a meeting of the committee is required to resolve any disagreement.

### 5.4 Post-hearing responses

Resolved, on the motion of Mr Franklin: That any answers to questions on notice, supplementary questions, transcript corrections and clarifications to evidence be provided within 7 days of the receipt of the transcript by the witness.

### 5.5 Online questionnaire

Resolved, on the motion of Rev'd Mr Nile: That the committee conduct an online questionnaire to capture individuals' views with the following questions and preamble:

On 9 November 2021, the NSW Legislative Council's Standing Committee on Social Issues commenced an inquiry into The Crimes Amendment (Display of Nazi Symbols) Bill 2021.

The object of this Bill is to prohibit the public display of a symbol of, or associated with, the National Socialist German Workers' Party, the Third Reich or Neo-Nazism (a Nazi symbol), except in certain circumstances.

Further information about the inquiry, including the terms of reference, can be found on the committee's [website](#).

As part of the inquiry, the committee is seeking public comment on the bill through the following questions. Responses are due by 9 January 2020.

Responses may be used in the committee's report. Names and contact details of respondents will not be published. The questionnaire will take approximately 5 minutes to complete.

1. Please enter your contact details.

Name:

Email address:

Postcode:

2. Are you a resident of NSW? Select one of these options:
  - a. Yes
  - b. No
  
3. Position on the bill:  
 The object of this Bill is to prohibit the public display of a symbol of, or associated with, the National Socialist German Workers' Party, the Third Reich or Neo-Nazism (a Nazi symbol), except in certain circumstances.  
  
 Based on your own understanding and the description above, what is your position on the Crimes Amendment (Display of Nazi Symbols) Bill 2021? Select one of these options:
  - a. Support
  - b. Partially support
  - c. Support with amendments
  - d. Oppose
  
4. *Based on the response selected at question 3, the respondent will be directed to a customised question asking them to explain their position on the bill:*
  - a. Please explain why you support the bill (max 300 words)
  - b. Please explain why you partially support the bill (max 300 words)
  - c. What amendments would you like incorporated? (max 300 words)
  - d. Please explain why you oppose the bill? (max 300 words)
  
5. Do you have any other comments (max 300 words)

Resolved, on the motion of Mr Franklin: That the committee not accept pro formas.

#### **Questionnaire report**

Resolved on the motion of Mr Buttigieg: That the secretariat prepare a summary report of responses to the online questionnaire for publication on the website and use in the report, and that:

- only responses from NSW participants will be analysed in the report
- the committee authorises the secretariat to publish the questionnaire report on the inquiry website unless any member raises an objection to publication via email
- individual responses be kept confidential on tabling.

#### **5.6 Advertising**

All inquiries are advertised via Twitter, Facebook, stakeholder emails and a media release distributed to all media outlets in New South Wales. Facebook posts may be boosted or advertised. The focus of advertising will be to encourage participation in the online questionnaire rather than submissions. Therefore, apart from an email to nominated stakeholders, the submission process will not be publicly advertised.

#### **6. Other business**

Mr Mallard thanked the committee members and inquiry participants for their contribution to the Inquiry into Gay and Transgender hate crimes between 1970 and 2010, and noted the successful inquiry outcomes and government response to the report.

#### **7. Next meeting**

Thursday 3 February 2022 – public hearing.

Stewart Smith  
**Committee Clerk**

**Minutes no. 34**

Thursday 3 February 2022

Standing Committee on Social Issues

Jubilee Room and via videoconference, Sydney, 9.17 am

**1. Members present**

Mr Harwin (*Chair*)

Ms Boyd

Mr Farlow (*substituting for Mr Martin*)

Mr Mallard

Revd Nile

Mr Poulos

Mr Primrose (*substituting for Mr Buttigieg*)

Mr Secord (*substituting for Mr Primrose*)

**2. Deputy Chair**

The Chair called for nominations for Deputy Chair for the duration of the public hearing on 3 February 2022.

Mr Farlow moved: That Reverend Nile be elected Deputy Chair for the duration of the public hearing on 13 September.

There being no further nominations, the Chair declared Reverend Nile elected Deputy Chair.

**3. Change of membership**

The committee noted that Mr Don Harwin replaced Mr Ben Franklin as a substantive member of the committee and was appointed Chair from 25 January 2022.

**4. Substitutions**

The committee noted that Mr Scott Farlow will be substituting for Mr Taylor Martin for the duration of the Crimes Amendment (Display of Nazi Symbols) Bill 2021 inquiry.

**5. Previous minutes**

Resolved, on the motion of Mr Mallard: That draft minutes no. 33 be confirmed.

**6. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 17 November 2021 – Letter from the Office of the Hon Shayne Mallard MLC, Government Whip, to secretariat, regarding substitution of the Hon Taylor Martin MLC for the Hon Scott Farlow MLC for the duration of the Crimes Amendment (Display of Nazi Symbols) Bill 2021 inquiry.
- 15 December 2021 – Letter from the Hon Don Harwin MLC, Leader of the Government in the Legislative Council, to Chair, regarding progress on the finding and recommendations in Report No. 57 'State Records Act 1998 and the Policy Paper on its review'.
- 21 December 2021 – Email from Mr Patrick Wynne, Parliamentary Liaison Officer, NSW Attorney General, to secretariat, advising that Anti-Discrimination Board accepts invitation to lodge submission and declines witness invitation and Department of Communities and Justice declines witness invitation for public hearing for inquiry into Crimes Amendment (Display of Nazi Symbols) Bill 2021.
- 24 December 2021 – Email from Mr Roger Selby, NSW Association of Jewish Ex-servicemen and Women, to secretariat, regarding decline witness invitation for public hearing for inquiry into Crimes Amendment (Display of Nazi Symbols) Bill 2021.

- 13 January 2021 – Email from Ms Tracey Roberts, on behalf of Mr Ray James OAM JP GAICD, State President, NSW RSL, regarding decline witness invitation for public hearing for inquiry into Crimes Amendment (Display of Nazi Symbols) Bill 2021.
- 14 January 2021 – Email from Mr Peter Wayne, Australian Association of Jewish Holocaust Survivors & Descendants, to secretariat, Mr Anthony Levin to replace Mr Peter Wayne as witness for public hearing for public hearing for inquiry into Crimes Amendment (Display of Nazi Symbols) Bill 2021.
- 17 January 2021 – Email from Dr George Foster, President, Australian Association of Jewish Holocaust Survivors & Descendants, to secretariat, Mr Anthony Levin to replace Mr Peter Wayne as witness for public hearing for public hearing for inquiry into Crimes Amendment (Display of Nazi Symbols) Bill 2021.
- 18 January 2022 – Email from Dr George Foster, President, Australian Association of Jewish Holocaust Survivors & Descendants, to secretariat, regarding change of representative to appear as witness for public hearing for public hearing for inquiry into Crimes Amendment (Display of Nazi Symbols) Bill 2021.

**Sent:**

- 17 January 2021 – Email from secretariat to Dr George Foster and Mr Peter Wayne, Australian Association of Jewish Holocaust Survivors & Descendants, confirming Mr Anthony Levin to appear as witness for public hearing for public hearing for inquiry into Crimes Amendment (Display of Nazi Symbols) Bill 2021.

Resolved, on the motion of Reverend Nile: That the committee authorise the publication of correspondence from the Hon Don Harwin MLC, Leader of the Government in the Legislative Council, to Chair, regarding progress on the finding and recommendations in Report No. 57 'State Records Act 1998 and the Policy Paper on its review', dated 15 December 2021.

## 7. Inquiry into the Crimes Amendment (Display of Nazi Symbols Bill) 2021

### 7.1 Public submissions

The committee noted the following submissions nos. 1-8 were published by the committee clerk under the authorisation of the resolution appointing the committee.

### 7.2 Allocation of questioning

Resolved, on the motion of Ms Boyd: That the sequence of questions to be asked during the hearing on 3 February 2022 be determined by the Chair.

### 7.3 Public hearing

The committee proceeded to take evidence in public at 10.15 am.

Witnesses were admitted via video link.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Peter Wertheim AM, Past President and Honorary Life Deputy, NSW Jewish Board of Deputies and Co-CEO, Executive Council of Australian Jewry
- Mr Darren Bark, Chief Executive Officer, NSW Jewish Board of Deputies
- Mr Surinder Jain, National Vice President, Hindu Council of Australia.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr David Hudson, Deputy Commissioner, Investigations and Counter-terrorism, NSW Police Force.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Dr Colin Rubenstein AM, Executive Director, Australia/Israel & Jewish Affairs Council

- Ms Naomi Levin, Senior Policy Analyst, Australia/Israel & Jewish Affairs Council
- Dr Dvir Abramovich, Chair, Anti-Defamation Commission.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Joseph Symon, Member, Australian Association of Jewish Holocaust Survivors and Descendants
- Mr Anthony Levin, Former Vice President, Australian Association of Jewish Holocaust Survivors and Descendants.

Mr Symon tendered the following documents:

- Addendum to opening statement.

The evidence concluded and the witnesses withdrew.

The hearing concluded at 12.43 pm.

#### **7.4 Tendered documents**

Resolved, on the motion of Mr Secord: That the committee accept and publish the following document tendered during the public hearing:

- Mr Joseph Symon, Member, Australian Association of Jewish Holocaust Survivors and Descendants - Addendum to opening statement.

#### **7.5 Report deliberative**

Resolved, on the motion of Ms Boyd: That the report deliberative on 18 February 2022 commence at 3.00 pm.

### **8. Other business**

#### **8.1 Inquiry into State Records Act 1998 and the Policy Paper on its review**

Resolved, on the motion of Ms Boyd: That the committee authorise the publication of correspondence from Adam Lindsay, Executive Director of Sydney Living Museums and the State Archives & Records Authority, to Chair, regarding the Inquiry into the State Records Act 1998 and Policy Paper on its review from, dated 3 February 2022.

#### **8.2 Correspondence to the Commonwealth eSafety Commissioner**

Resolved, on the motion of Ms Boyd: That the Chair write on behalf of the committee to the Commonwealth eSafety Commissioner seeking her advice on the bill.

### **9. Adjournment**

The committee adjourned at 12.57 pm until Friday 18 February 2022, 3.00pm, room 1136 and via Webex (report deliberative for the Nazi symbols inquiry).

Emily Treeby  
**Committee Clerk**

**Draft minutes no. 35**

Friday 18 February 2022

Standing Committee on Social Issues

Via videoconference and room 1136, Parliament House, Sydney at 3.02 pm

**1. Members present**Mr Harwin (*Chair*)Mr Buttigieg (*Deputy Chair*)

Ms Boyd

Mr Farlow (*substituting for Mr Martin*)

Mr Mallard

Revd Nile

Mr Poulos

Mr Secord (*substituting for Mr Primrose*)**2. Previous minutes**

Resolved, on the motion of Revd Nile: That draft minutes no. 34 be confirmed.

**3. Correspondence**

Committee noted the following items of correspondence:

***Received***

- 11 February 2022 – Letter from Ms Julie Inman Grant, eSafety Commissioner, to Chair, regarding advice on the Crimes Amendment (Display of Nazi Symbols) Bill 2021

***Sent:***

- 3 February 2022 – Letter from Chair, to Ms Julie Inman Grant, eSafety Commissioner, regarding advice on the Crimes Amendment (Display of Nazi Symbols) Bill 2021

**4. Inquiry into Crimes Amendment (Display of Nazi Symbols) Bill 2021****4.1 Answers to questions on notice**

Committee noted that the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Ms Naomi Levin, Senior Policy Analyst at the Australia/Israel & Jewish Affairs

**4.2 Transcript of 3 February 2022**

Committee noted correspondence from Mr Anthony Levin, Member & Immediate Past Vice-President, Australian Association of Jewish Holocaust Survivors and Descendants, received 17 February 2022, in relation to clarifications to the transcript of 3 February 2022.

Resolved, on the motion of Revd Nile:

- That the following footnotes be included in the transcript of 3 February 2022 noting the clarifications received Mr Anthony Levin, Member & Immediate Past Vice-President, Australian Association of Jewish Holocaust Survivors and Descendants:
  - Page 28: In correspondence to the committee received 17 February 2022, from Mr Anthony Levin, Member & Immediate Past Vice-President, Australian Association of Jewish Holocaust Survivors and Descendants, requested a clarification to his evidence: 'In the code '1488', 14 is a coded reference to the infamous white supremacist 14 word slogan 'We must secure the existence of our people and a future for white children', while 88 refers to 'Heil Hitler' (H being the 8th letter of the alphabet).'

- Page 31: In correspondence to the committee received 17 February 2022, from Mr Anthony Levin, Member & Immediate Past Vice-President, Australian Association of Jewish Holocaust Survivors and Descendants, requested a clarification to his evidence: 'I note that the submission was in fact made jointly by the Jewish Board of Deputies and the Hindu Council of Australia, but that submission makes reference to the significance of the Hindu, Buddhist and Jain swastika.'
- That the committee authorise the publication of correspondence from Mr Anthony Levin, Member & Immediate Past Vice-President, Australian Association of Jewish Holocaust Survivors and Descendants, dated 17 February 2022, on the committee's webpage.

#### 4.3 Consideration of the Chair's Draft Report

The Chair submitted his draft report entitled Crimes Amendment (Display of Nazi Symbols) Bill 2021, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Secord: That before paragraph 1.4, a new paragraph be inserted to read:

'The January 2022 parliamentary committees inquiry into serious vilification and hate crimes in the Queensland parliament recommended the Queensland government establish a criminal offence that prohibits the display of hate symbols, including those relating to Nazi and ISIS ideology with considered exemptions to the prohibition.'

[FOOTNOTE: Legal Affairs and Safety Committee, Queensland Legislative Assembly, *Inquiry into serious vilification and hate crimes* (2022).]

Mr Secord moved: That the following new committee comment be inserted after paragraph 2.60:

'Lastly, the committee recognises the differing views of stakeholders regarding whether the proposed criminal offence ought to include an element of intent. With the aim of ensuring clarity, the committee encourages further examination of the appropriate level of intent required to constitute the proposed offence.'

Question put.

The committee divided.

Ayes: Mr Harwin, Mr Buttigieg, Ms Boyd, Mr Farlow, Mr Mallard, Mr Poulos, Mr Secord.

Noes: Revd Nile.

Question resolved in the affirmative.

Resolved, on the motion of Mr Farlow: That:

The draft report as amended be the report of the committee and that the committee present the report to the House;

The transcript of evidence, submissions, tabled documents, answers to questions on notice and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions and individual responses to the online questionnaire be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The report to be tabled on 22 February 2022;

The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

**5. Adjournment**

The committee adjourned at 3.33 pm, *Sine die*.

Emily Treeby  
**Committee Clerk**



