

# **AIJAC statement in response to questions from Abigail Boyd MLC during the NSW Parliament's Standing Committee on Social Issues proceedings on the Crimes Amendment (Display of Nazi Symbols) Bill 2021.**

During the NSW Parliament's Standing Committee on Social Issues' proceeding on the *Crimes Amendment (Display of Nazi Symbols) Act 2021*, Abigail Boyd MLC asked AIJAC a series of questions on the applicability of this amendment to social media. This additional statement to the Committee provides responses to Ms Boyd's questions.

The *Crimes Amendment (Display of Nazi Symbols) Act 2021* seeks to make it an offence to display a Nazi symbol by a public act. The definition of "public act" includes a public broadcast or other form of communication through social media and other electronic methods.

AIJAC makes the following points in response to Ms Boyd:

- (1) AIJAC notes that s93Z of the *Crimes Act 1900*, which deals with matters of incitement to violence on various grounds, defines "public act" in a similar way to include social media posts. AIJAC respectfully suggests that the committee seek legal advice on the operation of this definition in s93Z to assist in its deliberations on the matters that Ms Boyd has raised.
- (2) During proceedings, Ms Boyd asked AIJAC what would happen if someone posted a Nazi flag on Facebook. Different social media channels treat the publication of Nazi symbols differently. The proposed new laws would not greatly impact Twitter or TikTok users, where posting Nazi symbols already breaches these companies' own guidelines. What this means, is that users can report content that displays a Nazi symbol and Twitter and TikTok, if they correctly and consistently apply their own guidelines, will remove it. Facebook's hate speech framework is a little less clear and YouTube's hate speech policy appears to allow the publication of Nazi symbols. (See appendix 1 for more detail)

In direct answer to Ms Boyd's question, if a person in NSW saw a Nazi flag published on Facebook, the first step would be to report it to Facebook itself, because by Meta's own admission "we don't allow hate speech on Facebook"<sup>1</sup>. If Facebook

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<sup>1</sup> Facebook, *Transparency Center: Hate Speech*, <https://transparency.fb.com/en-gb/policies/community-standards/hate-speech/>.

chooses not to remove the Nazi flag, this matter will then need to be referred to NSW Police for consideration.

- (3) Ms Boyd also asked questions that went to the issue of criminal liability for posts that include Nazi symbols. The issue of liability for Facebook, and other social media companies, received significant public attention as a result of the High Court case *Fairfax Media Publications v Voller (2021)*<sup>2</sup>. While this case looked at the law around defamation, not vilification, it may be instructive to the committee.

The High Court found that in the case of defamation, the owner of a social media page was liable as the publisher. Practically, this means that the owner of a Facebook page or group is liable for any defamatory material published on that page or group, rather than the individual who posted it.

In response, the Commonwealth has released an exposure draft of the *Social Media (Anti-Trolling) Bill 2021* to clarify who the “publisher” of a social media comment is, specifically in the case of defamation. This Bill goes to a number of issues of relevance: it proposes protecting page-owners from liability for defamation if they did not themselves make the comment; and it considers these matters with an Australian focus, i.e. defamatory comments have to have been made in Australia, and only Australian page owners are protected under this Bill<sup>3</sup>.

It needs to be reiterated that the High Court case and the Bill specifically address defamation, not vilification. However, if the committee were considering additional provisions in this amendment to make this area, in Ms Boyd’s words, “a bit tighter”, AIJAC would recommend the committee consider *Fairfax Media Publications v Voller (2021)* and the *Social Media (Anti-Trolling) Bill 2021* for guidance.

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<sup>2</sup> High Court of Australia (2021) *Fairfax Media Publications v Voller*, (Sept 8), HCA 27, <https://eresources.hcourt.gov.au/showCase/2021/HCA/27>.

<sup>3</sup> Attorney General’s Department (2021) *Explanatory Paper: Social Media (Anti-Trolling) Bill 2021*, <https://www.ag.gov.au/system/files/2021-11/explanatory-paper-social-media-anti-trolling-bill-2021.PDF>

# Appendix 1

## Facebook (Meta)

Facebook's hate speech framework does not explicitly ban the publication of Nazi symbols. But it has two statements that are applicable in this context. Facebook users breach Facebook guidelines if they post Holocaust denial or Holocaust distortion. Facebook's hate speech framework also does not allow content that mocks the concept, events or victims of hate crimes<sup>4</sup>. While the Holocaust is not specifically referenced, it is likely it would fall into this category.

## Twitter

Twitter's Hateful Conduct Policy does explicitly reference "hateful imagery", including Nazi swastikas. This policy specifies that: "Media depicting hateful imagery is not permitted within live video, account bio, profile or header images. All other instances must be marked as sensitive media"<sup>5</sup>.

## TikTok

TikTok's Community Guidelines do not explicitly ban the use of Nazi symbols but they do not allow users to post any content that promotes or supports "dangerous individuals and/or organisations", nor post content that contains symbols or logos that represent "dangerous individuals and/or organisations". In a separate section of the guidelines, TikTok also does not allow posts that contain symbols, logos etc related to a "hateful ideology"<sup>6</sup>

## YouTube

YouTube's Hate Speech Policy does not ban the display of Nazi symbols or similar. It does say that content that denies "that a well-documented, violent event took place" violates its hate speech policy. It is also a violation to share content on YouTube that praises or glorifies violence against individuals or groups based on a number of categories, including race and religion<sup>7</sup>.

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<sup>4</sup> Facebook, *Transparency Center: Hate Speech*, <https://transparency.fb.com/en-gb/policies/community-standards/hate-speech/>.

<sup>5</sup> Twitter, *Hateful Conduct Policy*, <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>.

<sup>6</sup> TikTok, *Community Guidelines*, <https://www.tiktok.com/community-guidelines?lang=en>

<sup>7</sup> YouTube *Hate Speech Policy*, [https://support.google.com/youtube/answer/2801939?hl=en&ref\\_topic=9282436#zippy=%2Cother-types-of-content-that-violates-this-policy](https://support.google.com/youtube/answer/2801939?hl=en&ref_topic=9282436#zippy=%2Cother-types-of-content-that-violates-this-policy).