

**Submission
No 5**

INQUIRY INTO CRIMES AMENDMENT (DISPLAY OF NAZI SYMBOLS) BILL 2021

Organisation: Australia Israel & Jewish Affairs Council

Date Received: 11 January 2022



Submission to the NSW Parliament’s Standing Committee on Social Issues inquiry into Crimes Amendment (Display of Nazi Symbols) Bill 2021

EXECUTIVE SUMMARY

In our western society, the swastika is tainted. The Nazi movement’s violent crimes against humanity gave the Hakenkreuz a meaning that can’t be concealed or erased.¹

Displaying or disseminating symbols that were used by the Nazis is a red line in public discourse. It is for this simple reason that the Australia/Israel & Jewish Affairs Council (AIJAC) supports the *Crimes Amendment (Display of Nazi Symbols) Bill 2021*.

¹ Skidmore, J (2017) “How Nazis twisted the swastika into a symbol of hate”, *The Conversation* (Sept. 1), <https://theconversation.com/how-nazis-twisted-the-swastika-into-a-symbol-of-hate-83020>.

In his Second Reading Speech, the Hon. Walt Secord quotes AIJAC's Director of International and Community Affairs Jeremy Jones who says: "We are in full agreement with the intent and appreciate the thoughtful framing of legislation on a complex issue." ²

It is worth noting that AIJAC also supports the Victorian Government's announcement it will legislate to ban the public display of the swastika, in addition to other measures to strengthen Victoria's anti-racism laws³.

In this submission, AIJAC will:

- (1) Indicate that legislating to ban Nazi symbols in NSW will bring the law into line with mainstream public opinion.
- (2) Explore the use of Nazi symbols on social media and the need for this amendment to be used as a tool to fight antisemitism online.
- (3) Demonstrate that a swastika ban is only one tool to limit the activities of the far-right in NSW. This ban *alone* cannot mitigate the rising popularity of neo-Nazi views in NSW.

² NSW Parliament, *Parliamentary Debates*, Legislative Council, 13 October 2021 (Walt Secord, Shadow Minister for Police, Shadow Minister for Counter Terrorism)

³ "AIJAC welcomes Victorian Government racial vilification announcement" (2021), AIJAC Online, (Sept. 2), <https://aijac.org.au/media-release/aijac-welcomes-victorian-government-racial-vilification-announcement/>

INTRODUCTION

AIJAC would like to record its thanks to the Hon. Walt Secord for his introduction of a thoughtful amendment, the Crimes Amendment (Display of Nazi Symbols) Bill 2021, that deserves the serious and sympathetic consideration of the New South Wales' Parliament. AIJAC also thanks the members of NSW Parliament's Standing Committee on Social Issues for the opportunity to present this submission.

AIJAC supports a ban on Nazi symbols for the reasons listed in Mr Secord's Second Reading Speech. He has accurately reflected the views of the majority of the Jewish community in his address to NSW Parliament. AIJAC also agrees with Mr Secord's efforts to head off those who argue displaying Nazi symbols is essential to free expression. AIJAC supports the statement that: "To pre-empt those who try to claim that a ban on Nazi symbols is somehow a restriction on civil liberties, I respectfully submit that we have gone way past that flimsy argument when we are discussing the symbol of a regime that murdered millions and against which thousands of Australians gave their lives to stop its insidious spread"⁴.

The Executive Council of Australian Jewry's 2021 Antisemitism Report records numerous incidents of assault and harassment by individuals drawing on Nazi tropes. To refer to just a few, there were two incidents of physical assault against Jewish people outside synagogues in Brisbane by men who shouted "Heil Hitler" and gave Nazi salutes. In Melbourne and Sydney, Jewish observers reported others making Nazi salutes and shouting Nazi-related abuse at them. In Canberra, a Jewish year 9 student was told "[you] should have been in the gas chambers". These incidents are in addition to many recorded examples of Nazi symbols being graffitied on public and private buildings from Perth to Hobart⁵.

⁴ NSW Parliament, *Parliamentary Debates*, Legislative Council, 13 October 2021 (Walt Secord, Shadow Minister for Police, Shadow Minister for Counter Terrorism)

⁵ Nathan, J (2021) *Executive Council of Australian Jewry's 2021 Antisemitism Report*, ECAJ, <https://www.ecaj.org.au/the-ecaj-2021-antisemitism-report/>.

It is clear that the antisemitism that resulted in the decimation of the European Jewish community in the 1930s and 1940s remains prevalent today. It is also clear that the German National Socialist regime continues to inspire Australian not just to display or spread the symbols of that regime, but to perpetrate incidents inspired by the Nazis.

For this reason, this submission will address the following points:

- (1) To indicate that legislating to ban Nazi symbols in NSW will bring the law into line with mainstream public opinion.
- (2) To explore the use of Nazi symbols on social media and the need for this amendment to be used as a tool to also fight antisemitism online.
- (3) To demonstrate that a swastika ban is only one tool to curtail the activities of the far-right in NSW. This ban *alone* cannot mitigate the rising popularity of neo-Nazi views in NSW.

PART 1 – NAZI SYMBOLS IN AUSTRALIAN PUBLIC DISCOURSE

A public incident from November 2020 demonstrates that Nazi symbols are completely rejected by mainstream Australia. As such, the move to ban the display of Nazi symbols in public will be a logical move to ensure the law in NSW reflects overwhelming public opinion.

Celebrity chef and social media influencer Pete Evans, a NSW resident, posted an image on social media that featured the *sonnenrad*, or black sun. The *sonnenrad* is an ancient European symbol that was appropriated by the Nazis. According to the ADL's Hate Symbols Database, "In Nazi Germany, the Nazi Party, the SA and the SS all used *sonnenrad* symbology at times, which has led neo-Nazis and other modern white supremacists to adopt such images".⁶ While Evans had been skating on thin ice with many of his supporters due to his belief in and dissemination of conspiracy theories, his decision to publish a Nazi symbol saw Channel 10, Pan Macmillan, Coles and Woolworths end commercial arrangements with him⁷. It is welcome that these major corporate organisations refused to accept Evans' belated explanation that apparently he did not know the cartoon he posted incorporated the Nazi symbol. It demonstrates clearly that there is zero tolerance for Nazi symbols in public discourse in Australia.

Writing in the wake of this situation, UNSW visual communication expert Dr Rebecca Green explained: "Symbols are powerful things and should always be used with care. There is good reason why they have been described as being many times more powerful than words and shown to be frighteningly effective. Where written or spoken words make us think more logically, symbols can evoke an emotional response."⁸

⁶"Sonnenrad", *ADL's Hate Symbols Database*, <https://www.adl.org/education/references/hate-symbols/sonnenrad>.

⁷Meade, A (2020) "Pete Evans dumped by Channel 10, Coles and Woolworths after posting neo-Nazi symbols", *The Guardian Australia*, (Nov. 17) <https://www.theguardian.com/australia-news/2020/nov/17/pete-evans-dumped-by-channel-ten-coles-and-woolworths-after-posting-neo-nazi-symbol>

⁸ Green, R (2020) "Yes, Pete Evans, symbols can be very dangerous", *UNSW Newsroom*, (Nov. 19) <https://newsroom.unsw.edu.au/news/social-affairs/yes-pete-evans-symbols-can-be-very-dangerous>.

For the Australian Jewish community, particularly those who are or who descend from survivors of the Holocaust, there is a clear and obvious appetite to ban the public display of Nazi symbols. Mr Secord has put this on the record in his Second Reading Speech. However, the Evans incident clearly indicates that mainstream Australia, beyond the Jewish community, rejects Nazi symbolism in public discourse. As such, this amendment is necessary to ensure the law of NSW reflects public opinion.

As this amendment provides, there does need to be space for exemptions to apply for certain academic, educational, or cultural reasons. While AIJAC acknowledges an exemption has been written into this amendment by way of application to the President of the NSW Anti-Discrimination Board, AIJAC would query the efficiency of operating exemptions in this way. AIJAC would respectfully raise the possibility that exemptions for limited and necessary academic, education or cultural reasons be written into the amendment itself.

PART 2 – NAZI SYMBOLS ON SOCIAL MEDIA

The draft amendment states that “a person who, by public act, displays a Nazi symbol is guilty of an offence” with “public act” defined as “any form of written or visual communication to the public, including ... broadcasting or communicating through social media and other electronic methods”. This is an essential inclusion and AIJAC commends the drafters for recognising that the online dissemination of Nazi symbols must be seen as a “public act” and treated in the same way as, for example, graffiti.

There is absolutely no doubt that the internet is rife with antisemitism of all kinds, including the hateful dissemination of Nazi symbols. During the May conflict between Israel and Hamas, 17,000 tweets included variations of the phrase “Hitler was right”⁹. At the same time, US-based ADL recorded a doubling of reported incidents of offline antisemitism¹⁰. In the UK, a report on online antisemitism found antisemitic messaging on every online platform the researchers considered. It also found that on social media platforms that were relatively well moderated, such as Facebook, extreme antisemitism was harder to find, but conspiratorial antisemitism remained in larger quantities¹¹. This indicates that even on those platforms that claim to be acting against hate speech – such as Meta, owner of Facebook and Instagram – antisemitic content is still readily disseminated¹².

The Commonwealth is currently putting in place a range of new online safety measures, including through the *Online Safety Act 2021*, and the *Online Safety (Basic Online Safety Expectations) Determination 2021*. This will assist Australia’s eSafety Commissioner and law enforcement agencies to act against those who are inspiring or promoting violent extremism online, even if they are doing so via encrypted apps or anonymously¹³. However,

⁹ “2021 Online Antisemitism Report Card” (2021) ADL, <https://www.adl.org/resources/reports/2021-online-antisemitism-report-card#the-landscape-of-online-antisemitism>.

¹⁰ *ibid*

¹¹ Mulhall J (ed) (2021) “Antisemitism in the Digital Age”, *Amadeu Antonio Foundation, Expo Foundation, HOPE not Hate*, <https://hopenothate.org.uk/wp-content/uploads/2021/10/google-report-2021-10-v21Oct.pdf>.

¹² “Community Standards Enforcement Report, Third Quarter 2021” (2021) Meta, <https://about.fb.com/news/2021/11/community-standards-enforcement-report-q3-2021/>.

¹³ “Online Safety Act 2021: Factsheet”, (July 2021) eSafety Commissioner, <https://www.esafety.gov.au/sites/default/files/2021-07/Online%20Safety%20Act%20-%20Fact%20sheet.pdf>.

the *Online Safety Act 2021* and the accompanying Determination do not directly define hateful content.

A law that prohibits the public dissemination of Nazi symbols on social media, such as this one, provides clear guidelines to social media companies as to what is and is not lawful in Australia. Another useful mechanism that could help social media companies to remove antisemitic content from social media is for the NSW Government and Opposition to encourage social media platforms to do what they have done and adopt the International Holocaust Remembrance Alliance's Working Definition of Antisemitism. This would allow moderators to better understand what constitutes antisemitism. So far, regrettably, the social media companies have shown a reluctance to practically adopt this definition¹⁴.

¹⁴ Goldfeder, M (2021) "Tackling antisemitism on social media: Adopt IHRA's definition – opinion" (Oct 21), <https://www.jpost.com/opinion/tackling-antisemitism-on-social-media-adopt-ihras-definition-opinion-682777>.

PART 3 – BANNING NAZI SYMBOLS AS A COUNTER-EXTREMISM MEASURE

As outlined in Mr Secord’s Second Reading Speech, both Federal and NSW law enforcement authorities have publicly documented the rise in right-wing extremism (also referred to as ideologically motivated extremism). Some of the individuals and organisations involved in extremist rhetoric and behaviour have certainly co-opted Nazi symbols for membership or propaganda purposes¹⁵.

However, Richard Wilson, co-chair of the National Criminal Law Committee of the Law Council of Australia, has noted that banning the public display of extremist symbols is more about mitigating public offence and distress, than it is about limiting terrorism and extending security measures. “I think there is a big difference between public display of offensive messages and private possession of something. Someone may be a Nazi enthusiast and have a room full of Nazi memorabilia and they’re entitled to do that but not to advocate violence against Jews”.¹⁶ Mr Wilson goes on to explain that it is the intent, rather than the mere act of possession, that remains the focus of legal and law enforcement experts.

For this reason, while AIJAC is entirely supportive of a ban on the public display of Nazi symbols, our organisation cautions that it is just one of a suite of measures needed to act against right-wing extremism. Other jurisdictions that have existing bans on the public display of Nazi symbols, have not seen the disappearance of acts or expressions of right-wing extremism. This submission will consider Germany as a case study to illustrate this argument.

¹⁵ See for example, McKenzie, N and Tozer, J (2021) *Neo-Nazis go bush: Grampians gathering highlights rise of Australia’s far-right* (Jan. 27) <https://www.smh.com.au/politics/federal/neo-nazis-go-bush-grampians-gathering-highlights-rise-of-australia-s-far-right-20210127-p56xbf.html>.

¹⁶ Commonwealth of Australia (2021), *Parliamentary Joint Committee on Intelligence and Security Inquiry into Extremist Movements and Radicalism in Australia: Official Hansard* (Apr. 30), pp3-6.

Section 86a of the German Criminal Code bans the dissemination of unconstitutional symbols, including Nazi symbols. Section 130 of Germany's Criminal Code bans the dissemination of any material that incites hatred or calls for violence, as well as banning the public approval, denial or downplaying of acts committed under the Nazis.¹⁷ Despite this, Germany has recently experienced a rise in far-right extremism. In 2020, German Interior Minister Horst Seehofer reported that Germany's greatest security concern was rising far-right extremism. German authorities reported that there had also been infiltration into German's military and law enforcement by far-right extremists.¹⁸

Concerns about rising right-wing extremism in Germany are not new. In 2005, German District Court judge Andreas Stegbauer noted that there had been a noticeable rise in both right-wing extremist activity and offences under section 86a of Germany's Criminal Code. He concluded that while the ban on displaying particular symbols was an "indispensable instrument ... the limited range of [section 86a] emphasises the fact that a political and social problem cannot be solved only by means of criminal law"¹⁹.

Stegbauer's point was unfortunately illustrated by two recent deadly terrorist attacks by men inspired by the far-right in Germany. In February 2020, a 43-year-old man acted alone in murdering nine people at two shisha bars in Hanau. He also murdered his mother and later turned the gun on himself²⁰. The previous year, a man with extreme racist philosophies, tried to attack a synagogue in the German city of Halle on Yom Kippur, the Jewish Day of Atonement. After failing to break into the synagogue, he shot dead two passers-by²¹. While both these men acted alone, rather than as part of a far-right

¹⁷ Federal Republic of Germany, *German Criminal Code (English translation)*, https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html.

¹⁸ Bundesamt für Verfassungsschutz (German Office for the Protection of the Constitution), 2019 Annual Report on the Protection of the Constitution (Facts and Trends). Federal Ministry of the Interior, Building and Community, July 2020; <https://www.verfassungsschutz.de/en/public-relations/publications/annual-reports/annual-report-2019-summary>

¹⁹ Stegbauer, A (2005) "The Ban of Right-Wing Extremist Symbols According to Section 86a of the German Criminal Code", *German Law Journal*, vol.8, no.2, pp173-184.

²⁰ "Germany: Hanau attacker acted alone, investigations find" (2021) *DW* (Dec. 16), <https://www.dw.com/en/germany-hanau-attacker-acted-alone-investigators-find/a-60145369>

²¹ "Halle synagogue attack: German far-right gunman jailed for life" (2020) *BBC* (Dec. 21) <https://www.bbc.com/news/world-europe-55395682>.

organisation, their acts were almost certainly driven by collectives that gather in open society and online²².

Michael Blume, Commissioner for Combating Antisemitism in the German state of Baden-Württemberg, has explained that despite the existence of section 86a, Germany needs to be much tougher in dealing with far-right groups. He adds that recently emerged populist protest movements – he lists France’s *Gilets Jaune*, Germany’s *Querdenken* and US-based QAnon – must be taken seriously because of their potential to morph into dangerous movements, as was seen at the January 6 US Capitol riot.

“I don’t believe in the efficacy of appeasement: not in the face of conspiracy theories and the movements they spawn. Confrontation is the only effective policy, especially in the era of online radicalisation”²³.

Looking beyond legal tools, a focus on education remains important as well. Since 2012, Holocaust education has been mandated for NSW secondary school students as part of the study of world history²⁴. In addition to a ban on the public display of Nazi symbols, it is essential that work continues to ensure that all NSW students understand the implications of hate speech when taken to its extreme. As the living memory fades 77 years after the end of the Holocaust, the importance of teaching young Australians about the true intentions of the Nazis and the destruction they wrought, remains. Effective Holocaust education can assist in demonstrating to young Australians why the Nazis’ ideology and methods have no place in the 21st century.

It is clear from the contemporary experience in Germany, that a ban on Nazi and other extremist symbol is one tool that can be employed against far-right groups, but this

²² Petit, S (2021) “Michael Blume: ‘There are around 20% latent antisemites and 5% active antisemites in Germany’, *K. Jews, Europe and the 21st Century* (June 30), <https://k-larevue.com/en/michael-blume-there-are-around-20-latent-anti-semite-and-5-active-anti-semite-in-germany/>.

²³ *ibid*

²⁴ Patty, A (2012) “Study of Holocaust mandated for schools”, *The Sydney Morning Herald* (Dec.8), <https://www.smh.com.au/education/study-of-holocaust-mandated-for-schools-20121207-2b10k.html>.

measure alone cannot mitigate the rise of right-wing extremism. This is a matter that legislators in NSW, and around Australia, must consider.

CONCLUSION

In this submission, AIJAC has recommended that the NSW Government and Opposition further combat hate speech in our community by campaigning for social media companies to adopt the International Holocaust Remembrance Alliance’s working definition of antisemitism as a tool to determine when to remove hateful content from their platforms, and for the NSW Parliament to consider other measures, including high quality Holocaust education, to protect the community from far-right extremists and not assume a ban on the public display of Nazi symbols is, in itself, a panacea.

AIJAC reiterates its support for this amendment and commends Mr Secord for presenting it for consideration. Banning the public display of Nazi symbols would be yet another step towards creating a safer and more cohesive and harmonious society for all in New South Wales.

SUBMITTED BY

Dr Colin Rubenstein AM
Executive Director, AIJAC

RESEARCH BY

Naomi Levin
Senior Policy Analyst, AIJAC