

**Submission
No 7**

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

Organisation: NSW Jewish Board of Deputies and Hindu Council of Australia
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NEW SOUTH WALES JEWISH BOARD OF DEPUTIES LTD

The Representative Voice of NSW Jewry

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Hindu
Council of
Australia



12 January 2022

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Standing Committee on Social Issues
Parliament of New South Wales
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Re: Crimes Amendment (Display of Nazi Symbols) Bill 2021

The NSW Jewish Board of Deputies (JBD) and Hindu Council of Australia (HCA) are making a joint submission in order to support the ban of the display of Nazi symbols while ensuring that the display of symbols of religion is protected.

The JBD, the representative peak-body of the Jewish community in NSW welcomes this bill and the opportunity to comment on this important piece of legislation currently before the committee.

The JBD leads, speaks, and advocates on behalf of the NSW Jewish community, including 56 major communal organisations as its constituents and the Jewish people living in NSW.

HCA is a peak body organisation, acting as a representative of the Hindu community in Australia in dealing with federal, state, and local governments, apart from reaching out to other Hindu organisations and institutions. HCA is working for a strong, cohesive, and active Hindu community in Australia, living in harmony with other religious and cultural communities.

The display of Nazi symbols – particularly the Hakenkruz which resembles the Hindu sacred Swastika symbol – is of great concern to the members of the Jewish and Hindu communities of NSW.

Learning from history

Nazi symbols are a reminder of one of the darkest times in humanity, which involved the murder and attempted eradication of the Jewish people from Europe, amongst other targeted groups. By the end of World War Two, six million Jews and approximately 12.5 million other people were killed by the Nazi regime.

As we move further away in time from the events of this dark chapter in history, it is essential that we do not allow the lessons of history to be forgotten, as this brings us one step closer to the events of the past being repeated.

We have learned from history that incitement to hatred through words, symbols and gestures is the precursor to violence. 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.

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It is crucial that we send a message that Nazi symbols, and the beliefs associated with them, remain as abhorrent in contemporary Australia as they were to the Diggers who fought and died for our freedom and to prevent Nazi tyranny from being imposed on the whole world.

Educating people about the Nazi misappropriation of the Hindu, Jain, and Buddhist swastika

The Swastika has immense significance to the Hindu, Jain, and Buddhist communities. Many Hindu homes have a Swastika displayed outside their homes, drawn on the entrance during festivals such as Deepavali.

The misappropriation of the Hindu, Jain, and Buddhist swastika by the Nazi regime and the Nazis' use of it as a symbol of racism, hatred and dictatorship still brings significant harm today. Every misuse of the swastika by those who wish to bring harm to the Jewish community amongst other minority groups is also a desecration of the Hindu, Jain, and Buddhist religions.

Our two communities have agreed to ask for the banning of the Hakenkreuz and have agreed to distinguish the Hindu, Jain, and Buddhist Swastika, a symbol of purity, love, and peace, as being separate from the Hakenkreuz.

We agree with making the offensive display of the Hakenkreuz a criminal offence and with the proposed exemption of the peaceful display of the Swastika by faith communities. However, the understanding of the difference between symbols needs to be broadened further.

Due to the Hindu Swastika having been misappropriated, there is a crucial need for educating Australians on the difference between the two symbols. Education could be included in school curriculums and through Special Religious Education.

Protections against the rise of extremism

The return of antisemitic extremism has presented a significant concern to the Jewish community and to government security agencies in Australia.

Mike Burgess, Director-General of the Australian Security Intelligence Organisation, has noted that almost half the work that his organisation is engaged in is now to counter the rise of politically motivated violence from the authoritarian Right in Australia.

In August 2021, a joint investigation by The Sydney Morning Herald, The Age and 60 Minutes revealed the growing threat of organised neo-Nazis in Australia.

White supremacist extremism and radicalisation is penetrating parts of mainstream Australia, making up 20% of counter-terrorism investigations. The investigation uncovered that teenagers were among those most at risk of becoming radicalised by neo-Nazi groups in Australia.

The Executive Council of Australian Jewry (ECAJ) antisemitism report, which is released every year and tracks the prevalence of antisemitism in Australia, highlights that extremist racist groups are a rising threat to our entire Australian community. These groups hold recruiting sessions, training sessions and group bonding activities. They wear Nazi icons, fly flags with Nazi symbols and engage in Nazi-style group rituals, including the Hitler salute. These groups incite and encourage physical and polemical attacks against minority targets.

A ban on Nazi symbols demonstrates that NSW is taking a strong stance against extremism, Neo-Nazi groups and against radicalisation.

Increasing hate and antisemitism

The JBD, the Australian government and the NSW Government have adopted the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism and its modern examples. Against the IHRA framework, incidents are measured to assess if they are antisemitic in nature. The core definition reads:

Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.

The definition goes on to provide 11 working examples to illustrate contemporary manifestations of antisemitism. The ECAJ, using IHRA as the benchmark in their [Report on Antisemitism in Australia 2021](#), highlights a growth in antisemitic incidents over a twelve-month period. 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. Overall, there has been a 35% increase of incidents from the 2020-2021 period.

The need for new legislation

The JBD and HCA believe that enacting explicit legislation against Nazi symbols will help combat hate and vilification.

As more time passes and fewer people have a personal connection to the war, society becomes less aware that the symbols of Nazi Germany were the symbols of an enemy power and a genocidal regime. ,.

As the passage of time minimises understanding of the true nature of the Holocaust specifically and the Second World War in general, legislation is required to prevent this loss of knowledge from being exploited to recruit young people at risk of radicalisation to commit abhorrent acts. Legislative protections are required to prevent extremist and neo-nazi ideology gaining momentum and to keep the NSW community safe from extremist actions.

In NSW to date, no charge has been brought under section 93Z of the *Crimes Act 1900*, despite increasing incidents of antisemitism.

In 2020 alone, the Nazi flag was displayed 31 times in NSW. These symbols are used by extremist and far-right groups to vilify and intimidate members of the NSW community.

We would welcome the amendment to the Crimes Act to offer further protections in the form of a ban on hate symbols.

Recommendations

If enacted, the Bill will go a long way to assisting in the fight against hate in our State. The JBD and HCA have a track record of working together to combat racial and religious hatred, complementing the work of the NSW Government.

In a partnership between our two organisations, we have decided to give mutual support to the Bill, with the following recommendations agreed upon by all.

Alignment with world's best practice

Nazi symbols are banned in 12 countries worldwide. We recommend that NSW align itself with countries such as Germany, Ukraine, Russia, Austria, and France which have taken this step with long-standing legislation. In these countries exemptions for artistic or educational purposes are granted, while the use of Nazi symbols for the promotion of National Socialism, propaganda or at public events is banned or severely regulated.

Exemptions for use

Under the Amendment in question,

The proposed section makes it clear that the offence does not apply to a swastika used in connection with Hinduism, Buddhism or Jainism. 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 purposes in the public interest and has granted an exemption from the offence.

The requirement to obtain an exemption from the President of the Anti-Discrimination Board (ADB) for each usage is an onerous burden on the President of the ADB, on the ADB's staff, and the applicant. Applications would be required for every use of historical footage, for educational purposes and for artistic purposes and therefore a process of seeking exemption, as the sole defence, is too unwieldy to be fit for purpose.

The JBD and HCA suggest that the Bill be amended by including an additional provision that will allow a charged person to plead as a defence that the symbol was used reasonably and in good faith:

- (a) in the performance, exhibition, or distribution of an artistic work; or
- (b) 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.

It is important to note that this defence should cover the possession of historical items, and as such a museum should not be penalised for compliance of materials that may or may not be used in a display.

The onus will be on the accused to establish the defence to the satisfaction of the court.

Further measures – NSW education curriculum

We note the proposed reforms to anti-vilification laws and related reforms that were recently announced in Victoria. In Victoria, the Legal and Social Issues Committee determined in their inquiry

into anti-vilification protections that they believe that banning Nazi symbolism sends a strong message to the Victorian community that symbols of Nazi ideology are not acceptable.

Further, Victoria's inquiry report highlights that a ban on Nazi icons cannot be done in isolation to be effective but must be a part of a broader effort.

As such, we support the introduction of age-appropriate anti-prejudice education into the NSW education curriculum for English language, History, Science and Civics at key points between years 6 and 10.

Conclusion

We thank the Standing Committee on Social Issues for the opportunity to make a submission in relation to this important issue.

By banning the display of Nazi Symbols, the government will be able to enforce an expectation that these images cannot be used as a rallying point for politically motivated violence and hatred.

Together, we want to ensure the NSW Government has all the necessary tools to ensure that hate cannot manifest to harmful and dangerous actions in our State. The proposed legislation is beneficial not only to the Jewish and Hindu communities, but the broader NSW community as a whole.

A legislative change like this is an important step to maintaining the peaceful, harmonious multicultural society we are proud of in NSW. We look forward to seeing the positive impact it will have on not only our community – but those across our entire state.

Yours sincerely

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