



Charles Sturt  
University

Counter-Terrorism Legislation Amendment  
(Prohibited Hate Symbols and Other  
Measures) Bill 2023

Joint Submission by the  
Threats to Australian  
Domestic Security team

Australian Graduate School of  
Policing and Security

Faculty of Business, Justice, and Behavioural  
Sciences  
Charles Sturt University

# Terms of Reference

## **Review of the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023**

**The Parliamentary Joint Committee on Intelligence and Security has commenced a review into the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023. The Bill would amend the Criminal Code Act 1995 to:**

- **create offences for publicly displaying prohibited Nazi or Islamic State symbols, and trading in items bearing these symbols**
- **create offences for using a carriage service to deal with violent extremist material**
- **strengthen the offence of advocating terrorism in section 80.2C, and**
- **remove the sunset requirement for terrorist organisation listings, so that listings would operate until a decision is made to proactively de-list an organisation.**

## Joint Submission to the Parliamentary Joint Committee on Intelligence and Security by the Threats to Australian Domestic Security team, Charles Sturt University

The Threats to Australian Domestic Security team welcomes the invitation to make a submission to the Review of the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023.

This team sits within the Charles Sturt University-funded [Contemporary Threats to Australian Security](#) research group. It is a multidisciplinary team, with members from criminology, policing, terrorism and security studies, international relations, criminal justice, and law.

We thank the PJCIS for the opportunity to make a submission to the review. We do so jointly as members of the Australian Graduate School of Policing and Security at Charles Sturt University. We are solely responsible for the content and views contained herein, which are not necessarily reflective or representative of the University.

Regards,

### DR KRISTY CAMPION

Senior Lecturer in Terrorism  
and Security Studies  
Australian Graduate School of  
Policing and Security  
Faculty of Business, Justice,  
and Behavioural Studies  
Charles Sturt University

### PROFESSOR MARK NOLAN

Director of the Centre for Law  
and Justice  
Australian Graduate School of  
Policing and Security  
Faculty of Business, Justice,  
and Behavioural Studies  
Charles Sturt University

### DR RUTH DELAFORCE

Lecturer in Criminology and  
Policing  
Australian Graduate School of  
Policing and Security Faculty  
of Business, Justice, and  
Behavioural Studies  
Charles Sturt University

### DR DOUGLAS ALLAN

Acting Head of School  
School of Policing Studies  
Faculty of Business, Justice,  
and Behavioural Studies  
Charles Sturt University

### SAMANTHA JONES

Doctoral candidate  
Australian Graduate School of  
Policing and Security  
Faculty of Business, Justice,  
and Behavioural Studies  
Charles Sturt University

21 July 2021

Australian Graduate School of Policing and Security  
Faculty of Business, Justice and Behavioural Sciences  
Charles Sturt University, Australia

## Contributor details:

### DR KRISTY CAMPION

Kristy Campion is Senior Lecturer and Discipline Lead of Terrorism and Security Studies at the Australian Graduate School of Policing and Security, Charles Sturt University (Australia). She researches terrorism and extremism in Western democratic contexts, focusing on transhistorical and transnational threat natures, ideological systems underpinning political violence, right- and left-wing threats, and strategic evolution. Her research has been published in leading journals, such as *Perspectives on Terrorism*, *Terrorism and Political Violence*, and *Critical Studies on Terrorism*. She wrote the first comprehensive history of terrorism in Australia, *Chasing Shadows: the untold and deadly story of terrorism in Australia*. See her research [here](#).

### PROFESSOR MARK NOLAN

Professor Mark Nolan is the Director of the Centre for Law and Justice at the Australian Graduate School of Policing and Security at Charles Sturt University. Mark is an interdisciplinary legal scholar with qualifications in law, honours and doctoral training in social psychology, and a Master's of Asia Pacific Studies majoring in Thai language. Mark has made individual and joint submissions to parliamentary inquiries on counter-terrorism law and federal criminal law since 9/11. He is the Deputy Research Director of the Contemporary Threats to Australian Security (CTAS) group at Charles Sturt University, where he leads the Threats to Australian Domestic Security group. See his research [here](#).

### DR RUTH DELAFORCE

Dr Ruth Delaforce is a Lecturer in Criminology and Policing at Charles Sturt University, with specific interests in the military-crime nexus, intelligence and investigative processes, formal and informal policing, and state security arrangements. Her background includes employment in the federal public sector, private sector, and law enforcement, in policy and operational roles. See her research [here](#).

### DR DOUGLAS ALLAN

Dr Douglas Allan is the Associate Head of School of the Australian Graduate School of Policing and Security at Charles Sturt University. He also lectures in the Fraud and Financial Crime degree, and the Anti-Money Laundering degree. Douglas has a background in law enforcement and public sector fraud investigations having worked in New Zealand, Scotland, and England. As a criminological researcher, Douglas focuses primarily on financial crime with a particular interest in the acquisition of criminogenic knowledge and criminal planning. He has applied this expertise to terrorism and security matters to illuminate perpetrator decision-making. See his research [here](#).

### SAMANTHA JONES

Samantha Jones is an Adjunct Associate Lecturer at Charles Sturt University in Terrorism, Intelligence, and Criminology with the Australian Graduate School of Policing and Security. Her Doctoral research expertise has focused on terrorism and terrorist cell profiling domestically and internationally. Samantha's research focuses on the culmination of numerous disciplines to develop an evolutionary profile on terrorist cells to formulate a strategic response in counter-terrorism. She has lectured and tutored in terrorism, intelligence, and criminology studies to postgraduate students, consulted for specialist audiences and industry, and engaged in media. While she primarily lectures in the Master of Intelligence, Terrorism and Security Studies degree, she also provides specialist assistance on serial homicide in Australia. See her research [here](#).

## Submission by Dr Kristy Campion

The following statement by Dr Kristy Campion represents her expert opinion and is not necessarily reflective or representative of the University, nor co-authors within this joint submission.

### Regarding

- **create offences for publicly displaying prohibited Nazi or Islamic State symbols, and trading in items bearing these symbols**

This submission supports the creation of offences for the public display of prohibited Nazi or Islamic State symbols. It further supports in principle some considerations raised in Submission 46 by Professor Katharine Gelber and Submission 44 by Dr Brendan Walker-Munro. This does not address the trading in items bearing these symbols.

Symbols play a significant – if underappreciated – role in violent extremism. Symbols are essential to the communication strategies of violent extremists, claiming their fair share of the “oxygen of publicity” (Thatcher, 1985), and serving as a medium to communicate ideas, represent an organisation, and hold connotative and denotative means (Matusitz, 2015). This means that symbols can represent a national flag so much as they can express an ideology, idea or abstraction. They can communicate a universal meaning beyond the written language, functioning as shortcuts to communication. Symbols exist in a variable space: we create new meanings using symbols, and at times those meanings stand in contest to more broadly accepted meanings. This often occurs in extremist subcultures. A noteworthy example of this was the “okay” hand symbol used by the Christchurch terrorist Brenton Tarrant during his trial – this was simultaneously an innocuous diver’s gesture and an expression of white supremacy.

Within terrorism and security studies, symbols form a routine part of the communication strategy of violent extremists. Terrorists typically exploit symbolic violence against indiscriminate targets in pursuit of political, ideological, or religious causes, and moreover, many groups and individuals also “feel the need to be identified within symbolic systems” (Oppedisano, 2020). Symbols, in such a way, allow the individual a sense of association with a broader movement or group, a sense of unity or collectivism with people they have never – and may never – meet. In such a way, Oppedisano writes, symbols carry axiological meaning, conferring the weight of values and value judgements. Because of this, symbols may also serve as a visual expression of ideology and consequently of identity (Campion & Phillips, 2023).

This expressiveness is important for both violent extremists and their targets and victims. For violent extremists, the visual expression of symbols may be understood as an expression of identity, which in the extreme right is often framed as superior to others. This, in conjunction with implicit meaning associated with the symbol as an ideological community, becomes an entitative expression. That is to say, they are able to communicate who they believe does and does not belong in a community, lay entitlement and claim to public spaces, represent their values, and convey their beliefs. Violent extremists derive a sense of belonging from such public displays, feeling part of an exclusive, entitative community. While such public displays contain multilayered meanings, there is often the implied message: that they are powerful, united, and here to stay.

For the victims of such violent extremism, the use of symbols communicates a different message: one of enduring threat and indignity. For example, the use of the Islamic State flag in the Australian context conveys threat and persecution to the Yazidi community in Australia. The United Nations has stated that they have “clear and convincing evidence that genocide was committed by ISIL [Islamic State] against the Yazidi as a religious group” (United Nations, 2021). Thousands were killed, while others were enslaved and subject to continuing and brutal abuse. This violence, moreover, was streamed around the world by and glorified by Islamic State and its supporters. To such targeted communities in Australia, the use of Islamic State symbols is injurious. As a democratic society, we have a responsibility to ensure the safety and welfare of victims of such violence, including their safety from intimidation and threat.

Along that same vein, the public (and sympathetic) display of Nazi symbols is an indignity to the broader Australian population, in addition to groups specifically targeted by the Nazi regime, such as Jews, homosexuals, the disabled, the Roma, and so on. During World War II, Australia lost 34,000 service personnel in the fight against global fascism, and another 31,000 were prisoners of war (Higgins, 2012). At the time, Australia had a population of 700,000 people, of which nearly 500,000 were involved in the war effort on the

home front and abroad. Many Australians lost family members in the conflict or struggled with the seen and unseen injuries of returned service personnel.

Specific sections of the population were more targeted within Nazi ideology than others. Jewish people were particularly threatened during World War II, and the cruelties and indignities of the Holocaust were felt across the globe. Nor is this simply a historical memory: Australia's contemporary neo-Nazi organisations continue to target Australian Jewish communities, praise violence against them, and advocate for their destruction (Campion, 2019). With right-wing terrorist attacks targeting the Jewish community around the world – take for example the Pittsburgh synagogue attack in 2018, the Poway synagogue attack in 2019, the Halle synagogue attack in 2019, and many more – neo-Nazism continues to pose a threat to life with respect to Jewish communities. The ideologically sympathetic and public display of Nazi symbols by neo-Nazis is therefore incongruent with their right to life and dignity, free from threat and persecution.

The creation of an offence for publicly displaying Nazi or Islamic State symbols registers an important commitment that: a) these ideologies are incompatible with Australia's democratic values and principles; b) acknowledges the threat (implied or otherwise) communicated by the use of these symbols to the Australian community or subsections thereof; and c) reinforces the position that the victims and targets of violent extremism should be able to live freely and safely in Australia without being subject to public threat as communicated by such symbols.

#### Regarding

- **create offences for using a carriage service to deal with violent extremist material**

This submission supports the creation of an offence for using a carriage service to access, transmit, or solicit violent extremist material, provided the defences detailed in subsection 474.45D are adequate.

Carriage services are part of the routine for Australian citizens and for those engaged in violent extremism. This varies in severity. It can range from people engaged with violent extremism using encrypted messaging applications to share, promote, or otherwise disseminate terrorist propaganda – such as Brenton Tarrant's *The Great Replacement* and associated livestream (which 1.5 million users attempted to upload to Facebook in the 24 hours following the attack, with 300,000 doing so successfully) (Ghosh, 2019). This can take the form of sharing artwork, such as the Right Wing Art Squad sharing homemade cartoons and graphics celebrating the Christchurch terrorist attacker (Campion, 2020), through to lengthier written diatribes supporting the perpetrators and vilifying the victims. The dissemination of ideological content online has been found to enhance the spread of extremist ideology, which in turn influences recruitment and mobilises support (Youngblood, 2020). Carriage services, especially those with encrypted messaging applications, are one such theatre for that dissemination.

The most severe case of a carriage service used in association with an attempted act of terror (on the public record) occurred in 2017 with the Etihad bomb plot. In this instance, an Islamic State commander in Raqqa, Tarek Khayat, had maintained contact with two of his brothers who lived in Australia via an encrypted messaging application (R v Khaled Khayat; R v Mahmoud Khayat, 2019). Initially, the app was used to share photos of the Australian brothers supporting Islamic State – photos of them performing the IS salute, wearing headscarves with IS symbols, and so on. This escalated on 13 April 2017, when Tarek sent his brothers a photo of a package he was sending them. Over the course of weeks, via the encrypted app, Tarek guided his brothers on how to use the materials in the package to construct an improvised explosive device (IED), which was then concealed within a meat grinder. They intended to conceal the IED within the baggage of an unsuspecting third brother as he flew from Sydney to Lebanon (Campion, 2022; Zammit, 2020). Had the plot been successful, the IED would have detonated in the sky and potentially killed 400 passengers. The use of an encrypted mobile phone application was essential to this plot.

Beyond acts of a preparatory nature, carriage services can also form part of the plot itself, by photographing and transmitting real-time attack content to online communities. However, it must also be remembered that terrorists can (and have) coerced their victims into using their personal mobile devices to transmit content on their behalf. This occurred during the Lindt Café Siege in 2014, perpetrated by Man Haron Monis. He dictated social media posts to his hostages at gunpoint, to convey his demands (Campion, 2022). The digital nativity of contemporary violent extremists, and their use of carriage service enabled platforms, has become a mainstay of the current security landscape.



**Regarding** • **strengthen the offence of advocating terrorism in section 80.2C**

This submission supports the strengthening of the offence of advocating terrorism and the repeal of the definition of *advocates*, and supports the substitute listed under Schedule 3, 2 Subsection 80.2C (3).

Criminalising the provision of instruction on a terrorism act would be an important step towards confronting online ecosystems where the dissemination of instructional material is prolific, often for guiding or inspiring attacks. This issue of instructional dissemination is hardly new, and in fact has long been part of the extreme right-wing strategy of leaderless resistance. In the 1980s, right-wing extremist and Ku Klux Klansman Louis Beam penned the concept of Leaderless Resistance, in what the Southern Poverty Law Center describes as work which ultimately guided “the white supremacist movement into the computer age” (SPLC, 2023). The concept was that formal hierarchical terror organisations were an ideal of the past, being too susceptible to infiltration and disruption by law enforcement. Instead, Beam (1983) advocated a leaderless resistance model – a system of independent cells and individuals with no central direction, communication, or control. These cells would react and respond via normal communication channels, as Beam suggests:

“those...truly committed to the cause of freedom will act when they feel the time is ripe, or will take their cue from others who precede them” (1983, p. 5)

This highlights the importance of advocacy to the leaderless resistance strategy of terrorism, whereupon the followers know when to act when either they see someone else act, or when they feel the moment is right based on their interpretation of events “allowing for a planned response that will make variations” (Beam, 1983, p. 5). For example, the successful attack of one right-wing terrorist may (and often is) followed by another. Increasingly, the release of manifestos – whose content span ideological and instructional material – occurs in conjunction with such attacks and is magnified by such attacks and subsequent media coverage.

The sharing of instructional materials is almost routine in the extreme right. The book of a prominent US neo-Nazi, James Mason, called *Siege*, was penned in the eighties, and its instructional material is still consumed by right-wing extremists today (Mason, 2015), disseminated by the now-defunct IronMarch forum. It occurred with the verbose manifesto, *2083*, by the Oslo terrorist Anders Breivik, in association with his terrorist attack in 2011. It provided detailed instructions on acquiring capability for attacks (such as firearms and explosives), and attack planning. This manifesto was consumed by the Christchurch terrorist Brenton Tarrant, who emulated some of the instructions (Macklin & Bjørgo, 2021). The manifesto of the Halle terrorist, Stephan Balliet, titled *A short pre-action report*, was only eleven pages but was entirely focused on providing instructional comments on his weapons, equipment, objectives, and planning (Balliet, 2019).

There are several prominent Telegram channels where instructional material is shared prolifically – the most well-known is Terrorwave Refined. These online ecosystems form an integral part of the dark marketing of terrorist attacks, where right-wing terrorists share instructional advice on tactics and strategies, firearms, etc., hoping to inspire other individuals or groups to follow suit. This is not a vain hope – there have been accounts in the past of right-wing terrorists citing their predecessors as inspirations for the nature and direction of their violence. One example is the El Paso terrorist, Patrick Crusius, citing Tarrant in his *The Inconvenient Truth* manifesto (Crusius, 2019). The expansion of subsection 80.2C(3)(b) therefore empowers authorities to better respond to the dissemination of instructional material.

While it is currently an offence to counsel, promote, encourage, or urge the doing of a terrorist act or offence, the proposed strengthening of the definition of *advocates* is also a welcome change. The proposed substitute definition, which criminalises the praising of terrorism acts (where it may lead to engagement in an act), targets a common practice in online and offline extremist ecosystems. These ecosystems often praise acts of terrorism and their perpetrators, creating a normative environment in which the moral legitimacy of violence is reinforced. In extremist ideologies, violence is often seen as not only morally legitimate and defensible, but obligatory to achieve the desired socio-political outcome. The proposed change in legislation should better equip authorities to respond to indications of violent extremism earlier.

## References

- Balliet, S. (2019). *A short pre-action report*. Self-published.  
Beam, L. (1997 [1983]). Leaderless Resistance. *Terrorism and Political Violence*, 1-7.  
Crusius, P. (2019). *The Inconvenient Truth*. Self-published.

- Campion, K. (2019). A "Lunatic Fringe"? The Persistence of Right Wing Extremism in Australia. *Perspectives on Terrorism*, 13(2).
- Campion, K. (2020). Women in the Extreme and Radical Right: Forms of Participation and their Implications [Special Issue: Global Rise of the Extreme Right]. *Social Sciences*, 9(149).  
<https://www.mdpi.com/2076-0760/9/9/149>
- Campion, K. (2022). *Chasing shadows: the untold and deadly story of terrorism in Australia*. Allen and Unwin.
- Campion, K., & Phillips, J. (2023). The exclusivist claims of Pacific ecofascists: Visual environmental communication by far right groups in Australia and New Zealand. In F. Bernhard (Ed.), *Visualising far right environments*. Manchester University Press.
- Ghosh, S. (2019). Facebook, facing huge criticism over live streaming, says it removed 1.5 million videos of the New Zealand shooting in 24 hours. *Business Insider*. <https://www.businessinsider.com/facebook-removed-15-million-videos-of-the-new-zealand-mosque-shootings-in-24-hours-2019-3>
- Higgins, M. (2012). *AUSTRALIANS AT WAR*. Australian Bureau of Statistics.
- R v Khaled Khayat; R v Mahmoud Khayat (2019). (No 14) NSWSC 1817. <https://jade.io/article/695280>
- SPLC. (2023). Extremist Files: Louis Beam. Southern Poverty Law Centre.  
<https://www.splcenter.org/fighting-hate/extremist-files/individual/louis-beam>
- Macklin, G., & Bjørgo, T. (2021). Breivik's Long Shadow? The Impact of the July 22, 2011 Attacks on the Modus Operandi of Extreme-right Lone Actor Terrorists. *Perspectives on Terrorism*, 15(3).  
<https://www.universiteitleiden.nl/binaries/content/assets/customsites/perspectives-on-terrorism/2021/issue-3/macklin-and-bjorgo.pdf>
- Mason, J. (2015). *Siege* (2 ed.). Ironmarch.org.
- Matusitz, J. A. (2015). *Symbolism in terrorism: motivation, communication, and behavior*. Rowman & Littlefield.
- Oppedisano, F. O. (2020). Visual Aspects of the Symbols of Terrorism. Identity, Representations, and Visual Statues. Proceedings of the 2nd International and Interdisciplinary Conference on Image and Imagination, Cham.
- Thatcher, M. (1985). Speech to American Bar Association. Margaret Thatcher Foundation.  
<https://www.margaretthatcher.org/document/106096>
- United Nations. (10 May 2021). *ISIL/Da'esh Committed Genocide of Yazidi, War Crimes against Unarmed Cadets, Military Personnel in Iraq, Investigative Team Head Tells Security Council*
- Youngblood, M. (2020). Extremist ideology as a complex contagion: the spread of far-right radicalization in the United States between 2005 and 2017. *Humanities and Social Sciences Communications*, 7(1), 49. <https://doi.org/10.1057/s41599-020-00546-3>
- Zammit, A. (2020). Operation Silves: Inside the 2017 Islamic State Sydney Plane Plot. *CTC Sentinel*.  
<https://ctc.westpoint.edu/operation-silves-inside-the-2017-islamic-state-sydney-plane-plot>



## Submission by Professor Mark Nolan

The following statement by Professor Mark Nolan represents his expert opinion and is not necessarily reflective or representative of the University, nor co-authors within this joint submission.

### Regarding

- **remove the sunseting requirement for terrorist organisation listings, so that listings would operate until a decision is made to proactively de-list an organisation**

It is intriguing that the Attorney-General, in his 2<sup>nd</sup> reading speech for the Bill, notes the horror of recent Nazi salute gestures being made in front of the Victorian parliament, though these proposed new offences are not criminalising such gestures; leaving live the issue of when and how such gestures can and will be legally regulated under Federal or State and Territory law.

The broad definitions of “displayed in a public place” are welcome and the detailed meaning of “trades” would seem useful in the sense that, in federal drug law, a broad definition of “imports” is also recommended to implicate those blameworthy within a chain of handling and at the time of likely law enforcement apprehension.

As is a common legislative trend in drafting Federal offences, the fault elements for the offence created by s 80.2H are not specified in the bill’s drafting nor referred to in the Explanatory Memorandum. These appear categorisable as conduct crimes to which the fault element of intention applies. For completion, I wonder if absolute liability needs to be said to attach also to the s 80.2H (1)(b) element of “the thing is a prohibited symbol” as defined in s 80.2E(d), lest some argue that a fault element needs to attach to the likelihood of something being confused with or mistaken for the prohibited symbol. The physical elements of the offence to which the drafting clearly does attach absolute liability rightly confirm that no fault elements need be proved for those matters in subsections (3), (4), (7) or (9). In fact, the reasonable person test in subsection (3) and (7), and other likelihood requirements, is a form of objectivity required in such an offence.

The defences in s 80.2H(10) and also in s 80.2H(9) are appropriate, mirror some of the apt defences noted in the Abhorrent Violent Material legislation, and, to provide defendants with greater protection, are not reverse onus provisions but are defences and circumstances that must be excluded by arguments made by the prosecutor and not the defence (see the note at the end of subsection (10) about the defendant bearing only a s 13.3(3) evidential burden and the comment made by the Attorney-General in his 2<sup>nd</sup> reading speech).

In terms of the s 80.2J offence of trading in prohibited symbols, I make the same comment as above and wonder if s 80.2J(1)(b) needs to also have absolute liability attach to it for caution and consistency. However, the introduction of explicit knowledge or recklessness fault elements not seen in the s 80.2H offence but seen in s 80.2J(1)(c) is curious. This provides defendants with a chance to further defeat prosecution if it cannot be proved that an explicit fault element of knowledge or recklessness attaches to the trader’s views on association between the prohibited symbol and either Nazi or global jihadist ideology. If this extra pairing of an explicit fault element with the physical element was thought important for the trading offence under s 80.2J, I am unclear why it was also not thought to be needed for the display offence in s 80.2H. There is no mention of this difference in the Attorney-General’s 2<sup>nd</sup> reading speech. Some may find this a welcome inclusion if it weakens likely prosecution, but it may lead to some evidentiary concerns in some cases for the prosecutor.

My comments about defences are the same for the s 80.2J offence as they were for the s 80.2H offence.

The s 80.2K direction to cease to display prohibited symbols is akin to directions possible under Abhorrent Violent Material legislation. It may also provide warranted immediate or timely (within a “reasonable time”) protection for victims of the impact of the display. It also provides the prosecutor with an evidentiary benefit, and the defendant some pre-charging warning, before a s 80.2H offence may be charged. I suppose the extra offences possible when someone does not decide to cease to display a prohibited symbol (see s 80.2M) is a form a blameworthiness that can be added to the original display actions. What can be expected here is that defendants charged with, say, both a s 80.2H offence and a s 80.2M offence may argue a form of duplicity and overlapping blameworthiness here, which may also be relevant to federal sentencing decisions.

### Regarding

- **create offences for using a carriage service to deal with violent extremist material**

Whilst supporting the use of carriage service offences to address offensive and violent extremist behaviour online, my main comment here is overlap with existing offence provisions in the *Criminal Code* (Cth) aimed at regulating similar forms of blameworthiness. This includes potential overlap with existing Federal cybercrimes such as offences defined already in sections 474.14 and 474.17 in particular. I wonder these and other existing cybercrime offences already enable achievement of the stated aims given by the Attorney-General in his 2<sup>nd</sup> reading speech: “While it is presently a crime to possess material that is connected with a terrorist act it is not a crime to possess violent extremist material where, for example, planning for an attack is not underway.”

Perhaps the most intriguing aspect of the new provisions added under Subdivision HA of Division 474 of the *Criminal Code* (Cth) is their similarity to the provisions inserted after the Christchurch attacks in relation to regulating “abhorrent violent material”. Here we meet another attempt at the definition of material, this time “violent extremist material”. My comment here is that there is similarity yet difference between this new proposed Subdivision HA and what was introduced, in haste, to provide definitional support in the Abhorrent Violent Material regulatory regime in Subdivision H of the *Criminal Code* (Cth) (e.g., in the definitions in s 474.31). I wonder if some redrafting of both Subdivisions, also with reference to Part 10.6 Subdivision C of the *Criminal Code* (Cth) may provide some efficiencies and uniformity of approach in this important area of online regulation. . Why not link the use of prohibited symbols in the context of other actions online into the existing Subdivision H regime in some way as it has already defined a range of related carriage service offences, though, as I have noted in prior writing (Nolan and Dalla-Pozza, 2022), not in an unproblematic way?

### Regarding

- **strengthen the offence of advocating terrorism in section 80.2C**

I note that the concept of “advocates” is one of the two ways in which organisations may be listed as proscribed terrorist organisations, so strengthening via further definition of that concept for the purpose of the section 80.2C offence also elaborates the concept of “advocates” in ways that provide even more sensitivity in relation to advocacy for the purpose of listing decisions as well. This elaboration is welcome.

### Regarding

- **remove the sunseting requirement for terrorist organisation listings, so that listings would operate until a decision is made to proactively de-list an organisation**

As noted by the Attorney-General in his 2<sup>nd</sup> reading speech for the Bill, “some of the 41 organisations listed since 2002 have been relisted as many as eight times”. The proposed amendments would significantly reduce the workload of the PJCIS and others without risking inappropriate listing over time. The proposed provisions would allow for important safeguards, including petitioning of the AFP Minister to revoke at any time a listing instrument. That ability to petition the AFP Minister to de-list an organisation under s 102.1(17), alongside an own-motion power for the PJCIS to commence a revocation consideration, in addition to the obligation placed upon the AFP Minister to take steps to remove any listed organisation that no longer meets the listing threshold, are three strong ways in which any negative implications of removing sunseting requirements for listed terrorist organisation are countered. These amendments do not interfere with the sound processes for tabling relevant PJCIS reviews in Parliament.

### References

Nolan, M. & Dalla-Pozza, D. (2022) ‘Clumsy and flawed in many respects’: Australia’s abhorrent violent material legislation’ in S. Leitch and P Pickering (eds), *Rethinking Social Media and Extremism*. ANU Press. <https://press-files.anu.edu.au/downloads/press/n10054/pdf/ch06.pdf>

## Submission by Dr Ruth Delaforce

The following statement by Dr Ruth Delaforce is representative of her expert opinion and is not necessarily reflective or representative of the University, nor co-authors within this joint submission.

### Regarding - create offences for publicly displaying prohibited Nazi or Islamic State symbols, and trading in items bearing these symbols

This section addresses the proposed amendment to the *Criminal Code Act 1995* on the creation of offences regarding trading in items bearing specific symbols (the proposed new section 80.2J). The following discussion focuses on the prohibition of trade in items bearing the symbols of Nazi Hakenkreuz (hooked cross) and the Nazi double sig rune (Schutzstaffel insignia). It is noted that the proposed amendments and criminalisation of possession of these items reflects the approach of several European states and is an important strategy in prohibiting symbols used to promote hate crime. Three matters are raised for consideration in the prohibition on the trade of items bearing symbols of the Nazi Hakenkreuz and Nazi double sig rune.

Firstly, it is unclear whether the focus on 'trade' in prohibiting such items is sufficiently targeted at individuals and groups in the community who ascribe to neo-Nazi ideologies. While it is noted in the Explanatory Memorandum that "The Australian Security Intelligence Organisation (ASIO) has advised that Nationalist and Racist Violent Extremists (NRVE), including neo-Nazis, adopt specific imagery and terminology ... in recruitment and radicalisation" there is no clear indication on where such items are being accessed. There appears to be limited comprehensive, publicly available information on the extent of Australia's formal and informal market in Nazi militaria. One media report referred to "a few auction houses" in Australia that still sold such militaria, with an auction house interviewee referring to less than 40 'interested buyers' (Elias, 2023).

Research undertaken in the United States, Lapland, Finland, and the Channel Islands indicates that much authentic World War II militaria (including 'dark heritage' items) has increased in value and tends to be collected by males over the age of 50, who are able to afford expensive items (Carr 2014; Herva et al., 2016; Monnin 2020). The aforementioned research indicates that such items are often not on public display and, in one study, the collecting community tended to self-police, demonstrating an awareness of the stigma attached to the 'dark heritage' items (Grant, 2019; Monnin 2020, p. 109). The focus on 'trade' in the proposed legislative changes is problematic for private collectors in Australia who may have bought or inherited items with Nazi insignia. One option that could be effective in removing such items from the formal and informal market is a 'buy-back' scheme for collectors, that might reflect current amnesty arrangements on prohibited firearms. Locating the returned items in museums would allow for a public display to also include the stories of victims. As Carr (2014) notes, collections comprising only "German militaria (and) Nazi objects" exclude the voices of their victims, "giving the impression that (the victims) were not present or not persecuted"(p.77).

A second matter is that there is limited discussion in the two reading speeches on government intentions for engagement with online sales platforms regarding trade of the prohibited items. Monnin (2020, p. 107) refers to European states undertaking "lawsuits and court orders against eBay and Yahoo to desist from selling Nazi memorabilia on their websites". As recently as January 2023, it was reported that another online sales platform (Amazon) was advertising neo-Nazi products distributed by third-party sellers (Barr, 2023). The disruption of trade in such items would require active surveillance by the online sales platforms, which is still challenging.

A third matter is that the proposed legislation does not refer to the creation or production of prohibited items. A study undertaken in the United States indicates that much World War II militaria in circulation are 'fakes' and not authentic (Monnin, 2020). Grant (2019) notes that "neo-Nazis can just as easily make their own flags and emblems for far less money than purchasing original items at auction". Carr (2014) similarly notes that, in the Channel Islands, such items are "now too expensive", particularly for younger people. While the proposed legislation refers to the 'possession' of extremist material – for example, obtained or accessed by a carriage service (474.45C) – it is not clear whether the creation or production of, for example, a meme, leaflets or armbands that include the prohibited Nazi symbols, might be captured within the legislation.

In conclusion, while prohibiting such items is important in addressing violent extremism, there are potential gaps in the prosecution and enforcement strategy. It is proposed that there should be consideration of mechanisms to address what has been, until now, a licit market in Nazi militaria, and also engagement with

online sales platforms. Further, that consideration be given to how the production of such items could be addressed in the proposed legislation.

### References

- Barr, K. (2023, January 13). 'Amazon removes some Nazi paraphernalia from site after Jewish group claims it monetizes hate.' *Gizmodo*. <https://gizmodo.com/amazon-amazon-prime-nazi-paraphernalia-1849984744>
- Carr, G. (2014). Militaria: Collecting the Debris of War: 1940 to The Present Day. *Legacies of Occupation: Heritage, Memory and Archaeology in the Channel Islands*, 21-82.
- Elias, M. (2023, January 18). 'The market for Nazi memorabilia in Australia persists. What do we know about the buyers?' *The Feed*. SBS News. <https://www.sbs.com.au/news/the-feed/article/the-market-for-nazi-memorabilia-in-australia-persists-what-do-we-know-about-the-buyers/gyia39k87>
- Grant, D. (2019, November 27). 'The market for disturbing Nazi artifacts is growing. Who is buying them and why?' *Artnet News*. <https://news.artnet.com/market/market-nazi-art-1714905>
- Herva, V. P., Koskinen-Koivisto, E., Seitsonen, O., & Thomas, S. (2016). 'I have better stuff at home': treasure hunting and private collecting of World War II artefacts in Finnish Lapland. *World Archaeology*, 48(2), 267-281.
- Monnin, Q. (2020). *Collective Memory: American Perception as a Result of World War II Memorabilia Collecting*. Bowling Green State University. [https://etd.ohiolink.edu/apexprod/rws\\_etd/send\\_file/send?accession=bgsu1587402522418034&disposition=inline](https://etd.ohiolink.edu/apexprod/rws_etd/send_file/send?accession=bgsu1587402522418034&disposition=inline)

## Submission by Samantha Jones

The following statement by Samantha Jones represents her expert opinion and is not necessarily reflective or representative of the University, nor co-authors within this joint submission.

**Regarding** • **create offences for publicly displaying prohibited Nazi or Islamic State symbols, and trading in items bearing these symbols**

This submission supports the creation of offences for the public displaying of Nazi symbols.

To understand the Swastika and its ability to be highly recognised, it is necessary to understand its origins and original meaning. The Swastika can be seen throughout different cultures from as far back as 2,500 B.C. and has been utilised by cultures in Bulgaria, Iran, Egypt, and Italy. It has appeared on ancient carvings and its origins can be traced back as a religious symbol in Hinduism, Jainism, and Buddhism (Assasi, 2013). In Buddhism, the Swastika is known as *yung drung* and is a significant representation of eternity, while in the Chinese and Japanese cultures it is a representation of the whole of creation and prosperity (Zidan, 2020). It was also represented in Greek artefacts back in the 8<sup>th</sup> century B.C. (Assasi, 2013). The significance of the symbol has been represented in astrology whereby the Swastika is identified in the stars and is known as 'the chariot of Mithra' (Assasi, 2013). The word Swastika has been derived from Sanskrit, meaning 'object of well-being' and symbolises 'good luck'. It has also been known as grammadion, croix gammee, Hakenkreuz and fylfot (Freed & Freed, 1980). It is evident that the Swastika's original meaning was that of positivity. However, in 1921, Adolf Hitler unveiled the reinvented Swastika as a symbolic representation of the Third Reich and a symbol of Aryan purity and supremacy. Since this time, the Swastika has been detached from its original symbolism and has largely been associated with the atrocities of World War II and neo-Nazism (Zidan, 2020).

From 1921, the Swastika has been used in numerous propaganda campaigns from Hitler's army through to contemporary neo-Nazi groups on an international scale with the Swastika notoriously being used as a tool to provide an identifier of an organisation and a means of suggestive messaging (Welch, 2004). Behind the Swastika is the element of simulation and suggestion whereby organisations tactically influence people by highlighting common issues that are present within society at the time (Cooter, 2006). This can range from the economy, religious factors, and societal developments within one's country (Cooter, 2006). This is because at any given time there are people within society who believe that the government is not providing adequate care to specific groups of people. As such, the suggestive messaging can spark an identifier within the person viewing the propaganda and the organisation itself (Cooter, 2006). Once the propaganda has sparked interest in people to consider more about an organisation, the symbol of the Swastika is used as a tool for people and/or organisations to rally around while also creating a sense of unity and belonging – holding members together with a tangible and symbolic tool (Mundorf & Chen, 2006).

It is necessary to consider that there are numerous variations of the Swastika seen throughout different cultures and periods (Mundorf & Chen, 2006). As such, while making the Swastika that neo-Nazis identify with illegal, consideration needs to be taken that although it may become illegal to display the Swastika, it does not stop neo-Nazis from using one of the other variations of the Swastika which are widely seen throughout different cultures and history and with such similarity that if such variations were utilised by organisations, there would likely be little to no confusion about what they represent (George, 1996). Further to this, the banning of the Swastika makes way for the utilisation of other well-known symbols that are currently used within neo-Nazi organisations i.e., SS Bolts, Totenkopf, Odin's Cross, 88 (Heil Hitler – H is the 8<sup>th</sup> letter of the alphabet), 4/20 (Hitler's birthday), and the Nazi Eagle.

Having such symbols associated with an offence that includes monetary fines and/or imprisonment has the capacity to be used to reflect that the government has found right-wing groups a threat and can develop traction off the utilisation of "outlawed" symbols (Weiss, 1994). As a result, this can create new symbolic meaning surrounding the groups that use such symbols, giving them validity and making them more lethal in the eyes of the greater population as they do not conform to the rules and norms of the current governed society (Weiss, 1994). Germany has banned the Swastika and SS bolts (a three-year jail term can apply); the Nazi salute and "Heil Hitler" are also banned in public (Stegbauer, 2007). However, the symbols can be used and displayed in



civic education, countering anti-constitutional activities, art, science, research, education, and the coverage of historic and current events (Stegbauer, 2007).

However, such bans have created several grey areas in legislation while also raising the argument by neo-Nazis of infringing on their civil liberties (Stegbauer, 2007). In addition, while the Swastika and SS bolts may be banned, Germany's neo-Nazi population is growing in strength, violent attitudes, and funding (Breland, 2023). The National Socialist Underground, which is active in Germany, was responsible for at least 10 murders between 2000–2007 of people who historically would be targets i.e., people of Jewish faith and minorities, and who continue to be targets today (Jordans, 2021; Breland, 2023). Regardless of the banning of the Swastika, it has provided new development of symbols within Germany and internationally by neo-Nazis and has inspired and revived a developed argument to the wider population on the importance of backing the neo-Nazi campaign (McGowan, 2006).

Furthermore, banning the Swastika symbol could make it more widely known when used and generate significant media attention (Altheide, 1987; George, 1996). Terrorist organisations are generally well versed in communication and understand the importance of media coverage (Stein & Martin, 1962; Herman, 1987; Altheide, 1987). They engage in recurrent rhetorical forms that the media believes could gain traction which in turn provides the coverage that organisations seek to benefit their cause (Schmid & Graaf, 1982). Given today's high-speed technology and abundance of secure chatrooms, informing other organisations, updating clothing, memorabilia, and propaganda can be conducted quickly during the construction and displaying of new symbols. It may even have a beneficial development for neo-Nazis as they are provided with an opportunity to not only gain media coverage on the new symbol but are able to reinvent and reimpose their stance and ideology, ultimately making way for a new order and a bigger threat. The laws covering the ban of symbols will need to consider that in terms of education, history, culture, art, and science, the symbols are an important tool in understanding specific areas, while also being an active symbol in many religious practices. The challenge is to make the law narrow enough to aim at the intended target while remaining broad enough not to limit genuine teachings and religious practices. Further to this, as a strategic response it would be beneficial to begin educating wider society on the original origin and meaning of the Swastika to bring it back in line with prosperity and peace and remove its current association with neo-Nazism.

## References

- Altheide, D. L. (1987). Format and symbols in TV coverage of terrorism in the United States and Great Britain. *International Studies Quarterly*, 31(2), 161-176.
- Assasi, R. (2013). Swastika: The forgotten constellation representing the chariot of mithras. *Anthropological Notebooks*, 19.
- Breland, A. (2023). Surviving Germany's neo-Nazi resurgence. *The New Republic*. Retrieved from: <https://newrepublic.com/article/171675/surviving-germanys-neo-nazi-resurgence>
- Cooter, A. B. (2006). Neo-Nazi normalization: The skinhead movement and integration into normative structures. *Sociological Inquiry*, 76(2), 145-165.
- Freed, S. A., & Freed, R. S. (1980). Swastika: A new symbolic interpretation. *Rice Institute Pamphlet-Rice University Studies*, 66(1).
- George, J. (1996). Neo-Nazis in Europe and the United States: Motivations, media, and the future. *The European Legacy*, 1(4), 1658-1663.
- Herman, E. S. (1987). U.S sponsorship of international terrorism: An overview. *Crime and Social Justice*, 27(28), 1-31.
- Jordans, F. (2021). Germany records rise in neo-Nazis, far-right extremists in pandemic-hit 2020. *Los Angeles Times*. Retrieved from: <https://www.latimes.com/world-nation/story/2021-06-16/far-right-extremists-rise-germany-2020>
- McGowan, L. (2006). Much more than a phantom menace! Assessing the character, level and threat of neo-Nazi violence in Germany, 1977-2003. *Journal of Contemporary European Studies*, 14(2), 255-272.
- Mundorf, J., & Chen, G. (2006). Transculturation of visual signs: A case analysis of the Swastika. *Intercultural Communication Studies*, 15(2), 33-47.
- Schmid, A. P., & Graaf, J. D. (1982). *Violence as communication: Insurgent terrorism and the Western news Media*. Beverly Hills, CA: Sage.



- Stegbauer, A. (2007). The ban of the right-wing extremist symbols according to section 86a of the German Criminal Code. *German Law Journal*, 8(2), 173-184.
- Stein, H. D., & Martin, J. M. (1962). "Swastika offenders": Variations in etiology, behavior and psycho-social characteristics. *Social Problems*, 10(1), 56-70.
- Welch, D. (Nazi propaganda and the Volksgemeinschaft: Constructing a people's community. *Journal of Contemporary History*, 39(2), 213-238.
- Weiss, D. E. (1994). Striking a difficult balance: combating the threat of neo-Nazism in Germany while preserving individual liberties. *Vand. J. Transnat'L.*, 27, 899.
- Zidan, B. (2020). The concept and utilization of Swastika 'Hooked Cross' on Islamic artefacts. *Journal of the General Union of Arab Archaeologists*, 5(1), 29-51.

## Submission by Dr Douglas Allan

The following statement by Dr Douglas Allan represents his expert opinion and is not necessarily reflective or representative of the University, nor co-authors within this joint submission.

**Regarding**

- create offences for publicly displaying prohibited Nazi or Islamic State symbols, and trading in items bearing these symbols**

The reasonable person, as referred to in the proposed wording found at section 80.2H (3), is subject to recurring debate. Given this is essentially an objective test, one that purports to be based upon the norms present within society, we should keep in mind that what may be viewed as reasonable in one community, might well be seen as unreasonable in the next; this also obviously varies with the passing of time, exposure to similar behaviours, and the experience of those assessing the actions of others. As a result, any implementation of the reasonable person test could result in bias creeping into an assessment and while this is a known issue, there is still the potential that any such assessment may fail to identify that a person's actions may actually be reasonable within a specific setting. As we seek to apply this test to the creation, possession, and or dissemination of prohibited symbols, it is worth keeping in mind that the prolonged portrayal of such symbols in mainstream media, film and television means that such paraphernalia is less confronting than it may have been in the past, at least within some communities.