



**SOUTH-EAST MONASH
LEGAL SERVICE** INC.

ADVOCACY COMMUNITY EMPATHY

SUBMISSION

Prepared by South-East Monash Legal Service Inc. for the
Department of Justice and Community Safety in relation to the legislative
ban on the Nazi salute in Victoria

Date submitted: 30 June 2023

Our organisation

Established in 1973, South-East Monash Legal Service ('SMLS') is a community legal centre that provides free legal advice, assistance, information and education to people experiencing disadvantage in our community within the City of Greater Dandenong, the City of Casey and the Shire of Cardinia.

SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court, the Children's Court and provides legal representation at courts and tribunals such as the Victorian Civil and Administrative Tribunal, Fair Work Commission, Federal Circuit Court, Family Court and Victims of Crime Assistance Tribunal. For most of the 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree.

SMLS has an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in. SMLS also has a significant policy, advocacy, and law reform program, contributing to reforms in family violence laws and practices, access to civil procedure reforms, employment law, sexual assault and victims of crime, youth law, gambling and electronic gaming machines and other legal topics relevant to our service delivery and the needs of our community.

Acknowledgement of Country

SMLS wishes to acknowledge the traditional custodians of this lands upon which our office are located, the Wurundjeri and the Boon Wurrung peoples. We pay our respects to the Elders past, present and emerging.

We acknowledge the people, traditions, culture and strength of Aboriginal and Torres Strait Islander peoples, and the fight for survival, justice and country that has taken place across Victoria and Australia.

We sincerely thank the Traditional Custodians for caring for Country for thousands of generations. SMLS recognises the ongoing impact of colonisation, dispossession and racism experienced by Aboriginal peoples. As a Community Legal Centre, we acknowledge the violence of Australian law and its ongoing role in processes of colonisation. We recognise that sovereignty was never ceded, and that this always was and always will be Aboriginal land.

Terms of Reference/Consultation Questions

- 1) Should any gestures or symbols associated with Nazi ideology other than the Nazi salute be banned? If so, which ones and why?
- 2) Are these gestures or symbols used in any other contexts (that is, not in connection with Nazi ideology) which may need to be considered when drafting the offence?
- 3) In what circumstances should performance or display of the Nazi salute be allowed?
- 4) Would it be appropriate to model exceptions to the Nazi salute offence on those used for the Nazi symbol offence?
- 5) Are there any other exceptions that should be included for performance or display of a Nazi salute?
- 6) Would the exceptions need to be expanded if the offence was broader (i.e. if it included other Nazi symbols or gestures)?
- 7) Are additional powers, beyond the existing powers of arrest, necessary to effectively enforce a ban on the public performance or display of the Nazi salute?
If so, what powers are required to enforce the offence?
- 8) Would different powers be required if the offence was broader (i.e. if it included other Nazi symbols or gestures)?

Acronyms

CLC	Community Legal Centre
ICCPR	International Covenant of Civil & Political Rights
SMLS	South-East Monash Legal Service Inc.
MALS	Melbourne Activist Legal Supports
UNHRC	United Nations Human Rights Council

Endorsements

None

Summary of Recommendations

1. For cautions to be considered as a first option when Victoria Police are considering youth

2. Funding for CLCs to provide school-based education to make young people aware of their legal rights and responsibilities

3. Investment in programs that provide training teachers, social workers and mental health experts with guidance and training on how to identify and respond to violent extremism

4. We recommend increased accountability and transparency on police to ensure police are tailoring the exercise of their broad discretion appropriate to the young person's age and stage of development.

5. If ban legislated then a narrow approach preferred to ensure it is clear the conduct the offence covers

Introduction

SMLS thanks the Department of Justice and Community Safety for the opportunity to provide feedback in relation to the legislative ban on the Nazi salute in Victoria. Many of the questions posed are outside of the scope of SMLS services. We have only provided comments where we were confident that our expertise was a valuable contribution to the subjects raised.

This submission is informed by SMLS' long-standing experiences of engaging with young people, a cohort we are wary of that a new criminal offence may impact due to existing issues associated with the over-criminalisation of certain cohorts in the justice system. SMLS is concerned that in circumstances where our young clients are already experiencing other forms of disadvantage, the current climate further exacerbates the risk of having a negative interaction with the justice system. Now more than ever, there is an urgent need for young people to access legal education, free legal assistance and have their lived experience inform government decision-making on an ongoing basis.

To empower young people to participate fully in civic, political, social, and economic life, we see the importance of:

- community legal education
- access to free legal assistance
- early intervention and resolution of legal matters
- diverting young people from the criminal justice system
- improving young people's confidence in the justice system; and
- Facilitating youth participation in government decision-making through law reform and advocacy.

SMLS and the broader community legal sector are well-placed for contributing to improving the lives of young people through its vital role in community legal education, free and accessible legal assistance, community engagement and advocacy.

SMLS delivers several programs specifically tailored to the needs of young people for legal education and assistance.

Through our work, we have observed that young people may experience unique disadvantages attributable to their age. Young people tend to be low-income earners, may not be well-informed of their legal rights and responsibilities, may have minimal or underdeveloped skills to self-advocate, are vulnerable to exploitation and may not readily access legal assistance.

Age-based disadvantage may be compounded by other layers of disadvantage as experienced by the clients we see at SMLS. Many of the young people we see may be from migrant families where English may also be a second language; may have a disability, including mental health issues; experience drug and alcohol dependency; and have past experience of trauma.

These experiences of disadvantage hamper opportunities for young people to fully participate in social, political, economic and civic life. Moreover, these disadvantage place young people at risk of having a negative interaction with the justice system - whether as an offender, a victim of a crime or other forms of exploitation. Young people are also at risk of allowing their legal problems to escalate if unprompted to receive legal assistance.

The immense disruptions to young people's education, employment and daily life brought on by COVID-19 and the government restrictions has further exacerbated these risks.

SMLS acknowledges how deeply offensive the display of nazi symbols is and recognises the need for an urgent response to the rise of neo-Nazis in Victoria, particularly in light of the hateful neo-Nazi demonstration at an anti-trans protest on the steps of state Parliament in March this year. We also acknowledge the symbolic objective of the proposed legislating to send a signal to neo-Nazi's of the public condemnation of the associated ideologies. However, it is unclear how effective this legislative ban will be in addressing far-right extremism and SMLS is of the position that other measures should be first undertaken to protect LGBTQ+ rights.

In principle, SMLS is cautious of any proposals to introduce new offences due to issues associated with the overcriminalisation of certain cohorts within our justice system, including young people, Aboriginal and Torres Strait Islander peoples, people with a disability, people experiencing alcohol and other drug issues and people of colour. We are of the view that violent far-right hate will not be solved by creating a new criminal offence alone.

In our minds, any expansion of the criminal justice should be carefully and thoroughly considered and serve to fill an existing gap, not duplicate existing measures. For example, it is already open to police to utilise existing move on powers to respond to circumstances such as the neo-Nazi anti-trans protest in March. Far-right extremism is a global issue and Victoria can play its part in protecting people at-risk of falling prey to extremism by shifting its focus towards preventive measures instead of punishment.

Prior to the Victorian COVID-19 lockdowns, a 2015 Victorian Parliament report said "young people wrestling with issues such as social isolation, family breakdown, mental health, concerns or identity challenges can be particularly vulnerable. Lonely, confused, frustrated by a lack of purpose and belonging and feeling a sense of emptiness in life, some people seek to fill the gap by turning to crime, criminal gangs, or substance abuse. Others may be susceptible and vulnerable to extremist ideologies which offer false promises and rewards that appear to fill this gap. These vulnerable individuals are often deliberately targeted by extremists in Australia or overseas." It is worth acknowledging when this statement was made and how since then the pandemic has further exacerbated the risk that young people may have with the criminal justice system. SMLS is of the view that these young individuals should not be further at-risk of a \$22,000 fine or a prison sentence.

SMLS believes more funding should be allocated to education to address the root causes of far-right extremism, preventing radicalisation and targeting individuals that could be a target to be recruited as a member of an extremist group. Further, SMLS is of the opinion that primary prevention programs should be a focus of the Victorian Government such as training for teachers, social workers, and mental health experts so they are empowered to identify extremism. Finally, if the legislative ban is adopted then, SMLS favours a narrow approach.

Concerns with the proposed ban

1. Unintended impacts on youth: preventive approaches preferred

SMLS is concerned about the unintended consequences it may have on Victorian young people who if found guilty of intentionally displaying the Nazi symbol in public will face penalties of up to almost \$22,000, 12 months' imprisonment or both. The Committee for a recent Inquiry into extremism in Victoria received evidence that "young people are more vulnerable to recruitment and radicalisation to extremism."¹ This was further emphasised by a Swinburne University's far-right mapping project that stated "a key concern that extremist groups are increasingly recruiting young people, with reports that platforms such as Instagram, TikTok and Twitter are proving to be fruitful sites".²

As Liberty Victoria highlights "the expansion of the criminal law is not an appropriate or effective way to achieve these objectives. There is a risk that the law will have unintended consequences which undermine its objectives."³ That is why we think there needs to be a shift away from punishment and towards preventive measures so young people understand the risks of doing the nazi salute and know where to seek help if needed. We believe a more complex response is needed to address the rise of far-right extremism in Victoria.

We agree with Liberty Victoria that the focus in tackling far-right extremism "should not be on expansion of executive power and censorship; it should be on education and addressing the root causes of why some people are attracted to such ideologies in the first place, including social isolation, growing economic insecurity and mistrust in government and the media. The proposed prohibition of the hakenkreuz is a band-aid solution to a much deeper societal problem resulting the re-emergence of right-wing extremism.

As a recent Victorian Inquiry in Extremism stated "the impacts of racism, Islamophobia, antisemitism and homophobia on affected communities in Victoria are whole-of-society issues" it should therefore not purely be reactionary measure but proactive measures too.

¹ https://new.parliament.vic.gov.au/49e932/contentassets/bc54c5064f8a44f3a536e0856690aaf1/lclsic-59-12_extremism-in-victoria.pdf

² Ibid.

³ <https://libertyvictoria.org.au/sites/default/files/230417%20LV%20Submission%20-%20Prohibition%20of%20Nazi%20Symbols.pdf>

SMLS supports research that shows how primary prevention, secondary intervention and tertiary intervention can work to help deradicalisation efforts.⁴ Swinburne's Associate Professor Christine Agius and Professor Kay Cook's report *Mapping right-wing extremism in Victoria* highlights the below three measures to address extremism.

- **Primary prevention programs:** are focused on community resilience by educating about the risk of violent extremism. These programs are preventative in nature. They provide training to teachers, social workers, and mental health experts in order to equip them to identify and counter shifts towards violent extremism. Furthermore, primary prevention programs also enable positive cross-cultural relationships and interactions in communities and educational institutions.⁵
- **Secondary interventions:** target individuals in danger of becoming a member of a violent extremist group or potential promoters and supporters of a violent extremist cause. Measures include creating relationships between individuals and religious leaders as to create a pathway away from violent extremism through exploring challenges to identity and belief; provision of mental health and social support to address underlying issues of family violence, health problems and/or drug and alcohol abuse.⁶
- **Tertiary interventions:** are aimed at individuals who are already a part of violent extremist networks and thus have moved beyond the scope of secondary intervention. Tertiary intervention efforts encourage behavioural and psychological change in individuals that reject violent responses.⁷

SMLS is of the view that primary prevention programs should be a focus of the Victorian Government. As SMLS highlighted through our previous submission, we see value in our programs by “educating young people on their legal rights and responsibilities. In some instances, young people do not even realise that their issue is legal in nature or that they can and should seek help from a lawyer. Our community engagement work with young people not only seeks to increase knowledge of the law, but also aims to demystify the justice system and encourage help-seeking behaviour. As an example of a preventative community development program, SMLS has been delivering Sporting Change. The program contributes to young people engaging constructively in their community and in society by using sport to teach young people about the law. The program also increases access to justice for young people through an integrated school lawyer based within the school environment. Sporting Change seeks to encourage positive interactions with the justice system by integrating legal education and sport-based engagement strategies. It also seeks to build an understanding among young people about the role of law in society, and how it impacts the ways in which we engage in our community. The integrated school lawyer provides increased access to justice, assisting young people with issues such as family violence, consent laws and criminal law. Given that students study full time and largely do not drive, there are otherwise significant barriers to accessing existing legal services. Early intervention of legal

⁴ Mapping right-wing extremism in Victoria: <https://apo.org.au/sites/default/files/resource-files/2020-12/apo-nid307612.pdf>

⁵ Ibid

⁶ Ibid

⁷ Ibid

problems reduces the need for more complex and intensive intervention to resolve the problem at a later stage. Facing a legal issue can also severely disrupt the young person’s engagement at school. School lawyer programs report improved relationships between students with family and peers, and increased attendance at school.”⁸

Additionally, to further enhance the criminal justice system, we reiterate our recommendations that there be independent handling of complaints against police.

Recommendation: For cautions to be considered as a first option when Victoria Police are considering youth
Recommendation: Funding for CLCs to provide school-based education to make young people aware of their legal rights and responsibilities
Recommendation: Investment in programs that provide training teachers, social workers and mental health experts with guidance and training on how to identify and respond to violent extremism
Recommendation: We recommend increased accountability and transparency on police to ensure police are tailoring the exercise of their broad discretion appropriate to the young person’s age and stage of development, including independent handling of complaints against police.

2. Concerns with additional police powers

We oppose police being delegated new powers such as the proposed search and seize powers as we are of the position that Victoria Police and PSOs already have move on powers that could be used under the *Summary Offences Act 1966* if counter hateful protests take place in Victoria again.

We see value instead in investing in further training and support to Victoria Police so they can be empowered to use their existing powers to effectively respond to neo-Nazi activity.

In the recent case of the opposing rallies on Parliament steps on 18 March 2023 it is Melbourne Activist Legal Supports (MALS) also highlighted that beyond move on powers that Victoria Police also were not powerless to act in fact they had specific obligations to act.

MALS highlighted that “Victoria Police have obligations under the Charter of Human Rights and Responsibilities Act (2006) to protect the rights to peaceful assembly and freedom of association (Section 16), as well as obligations to uphold Article 21 of the International Covenant of Civil & Political Rights (ICCPR). Importantly, both assemblies

⁸ [146.-springvale-monash-legal-service-inc_redacted.pdf \(parliament.vic.gov.au\)](#)

and counter-demonstrations (when one assembly takes place to express opposition to another) fall within the scope of the protection of Article 21. Police must, in principle, take a content-neutral approach to counter-demonstrations and these approaches must not be based on the identity of the participants or their relationship with the authorities. The recognition of the right of peaceful assembly imposes an obligation on police to respect and ensure its exercise without discrimination (see UNHRC General comment No. 37 (2020) on the right of peaceful assembly (paragraphs 8,-9, 21, 25-26).”

As Liberty Victoria has recently observed in relation to increased surveillance powers granted to government agencies (including the power to modify and delete data on personal computers with limited oversight), in Australia there is a lack of a Federal human rights framework to ensure that the granting of additional powers is justified and that the exercise of those powers by the executive is proportionate. Further in their submission on the Anti-Vilification Protections the Human Rights Law Centre said the right to freedom of expression is an essential component of a democratic society and should be limited only to the extent that can be justified by an open and democratic society.⁹

Additionally the Inquiry into Extremism in Victoria noted “rather than simply a law enforcement issue, combating extremism requires the whole of society” further stating while “governments and law enforcement can and should play a role in the process of countering extremism”¹⁰ but “communities need to be supported with resources to ensure they have the capacity to effectively participate”.¹¹ This should include further guidance on police powers that currently exist.

3. Support for a narrow approach

While SMLS have concerns in relation to the bill, should the legislation be introduced, we would prefer to see any new offences have a narrow and very clearly-defined scope. It must be made clear that the offences are intended to target and stamp out violent neo-Nazi activity to ensure it does not result in any perverse consequences such as the over-criminalising young people.

Recommendation: If ban legislated then a narrow approach preferred to ensure it is clear the conduct the offence covers
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⁹ [Submission+-+Stopping+hate+in+its+tracks+-+30+January+2020.pdf \(squarespace.com\)](https://www.submission.vic.gov.au/49e932/contentassets/bc54c5064f8a44f3a536e0856690aaf1/lclsic-59-12_extremism-in-victoria.pdf)

¹⁰ https://new.parliament.vic.gov.au/49e932/contentassets/bc54c5064f8a44f3a536e0856690aaf1/lclsic-59-12_extremism-in-victoria.pdf

¹¹ https://new.parliament.vic.gov.au/49e932/contentassets/bc54c5064f8a44f3a536e0856690aaf1/lclsic-59-12_extremism-in-victoria.pdf