



Submission to the Parliamentary Joint Committee on Intelligence and Security

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

July 2023

We acknowledge the Traditional Custodians of Country throughout Australia and their continuing connection to the land and sea. We pay our respects to all Aboriginal and Torres Strait Islander peoples, their cultures and to their elders past, present and emerging.

Introduction & Overview

About IGEA

The Interactive Games & Entertainment Association (IGEA) welcomes the opportunity to express to the Parliamentary Joint Committee on Intelligence and Security our concerns with the proposed *Counter-Terrorism Legislation Amendment (Prohibited hate symbols and Other Measures) Bill 2023* ('the Bill'). These changes are welcome to combat hate, violence, and extremism. However, we have some concerns regarding the proposed reforms and the potential for unintended impacts on the interactive games and entertainment industry, being that it may stifle the use of 'prohibited hate symbols' in creative, context-appropriate settings.

IGEA is the industry association representing and advocating for the video games industry in Australia, including the developers, publishers and distributors of video games, as well as the makers of the most popular gaming platforms, consoles and devices. IGEA also organises the annual Games Connect Asia Pacific (GCAP) conference for Australian game developers and the Australian Game Developer Awards (AGDAs) that celebrate the best Australian-made games each year. IGEA has over a hundred members, from emerging independent studios to some of the largest technology companies in the world.

The importance of video games and the video games industry in Australia

Video games are a beloved Australian activity and provide great benefits for Australian game players, the wider community and the economy. Video game developers and publishers are the innovators, creators and business leaders that are reimagining entertainment and transforming how we learn and play. Two in three Australians play games, mainly for enjoyment and relaxation, and games are increasingly being used for serious and educational purposes, including by governments. Video games provide a digital outlet for Australian art, culture, stories and voices, and Australian-made video games are among Australia's most successful and valuable cultural exports. Our medium also brings kids into STEM and helps to build technology skills that will feed Australia's workforce needs.

The video game industry is a major contributor to the Australian digital economy. According to our data, video games are worth around \$4.21 billion a year in Australia,¹ while Australian-made games brought in \$284 million in largely export revenue last year.² Moreover, because the video game sector uniquely sits at the intersection of entertainment, the arts and technology, video game companies hire a wide range of artistic, technical and professional roles and are thus a wellspring of high-quality sustainable careers, and are an engine for growth in the Australian national economy. Indeed, Australian game developers are internationally renowned and ours has the potential to be one of Australia's most important growth industries of the future, as well as an integral component of the Government's vision for Australia to be a top 20 digital economy and society by 2030.

The vibrant Australian video game development industry has been embraced by the Australian Government and by all state and territory governments. Canberra has recognised the economic, social and cultural importance of video games and we are grateful for the strong support for our industry from across the political spectrum. We thank the Australian

¹ [Australians subscribe to video game growth - IGEA](#)

² <https://igea.net/2022/12/australian-game-development-industry-records-job-boom>

Government for celebrating video games in its recent National Cultural Policy by providing ongoing funding for Screen Australia to support video game development, and for introducing the Digital Games Tax Offset - a great bipartisan success story - which has recently passed both houses of parliament. We also thank the states and territories, each of which now provide grants or rebates (and often both) to support their fast-growing local video game development industries.

Our industry prioritises the importance of providing a fun and safe gaming experience for our players. Our industry implements world-leading parental settings and controls that allow individuals and parents to prevent, restrict and monitor gameplay. These controls are effortless to set up and there is extensive guidance available online. While classification already provides consumer advice around games with particular themes, the industry has a world-leading approach to safer online environments. The video games industry has a commitment to online safety and uses safety technology, skilled human oversight, and codes of conduct to ensure players are in safe environments.

Display of Prohibited Hate Symbols: Artistic Exemptions & Video Games

IGEA welcomes the introduction of the counter-terrorism legislation amendment and the prohibition of symbols in contexts meant to incite hate, extremism, and terrorism. The video games industry promotes safety and inclusion, and our industry is well aligned to support, and heavily invests in measures to prevent the proliferation of hate speech, extremism, and terrorism.

Our submission will discuss relevant parts of the Bill that have the potential to impact on video games and will then provide an analysis of, and our recommendations for, the Bill. Our submission will focus on the Bill's newly created offence for the public display of prohibited symbols rather than the use of carriage services for violent extremist material.

Outline of the Bill

Public Display of Prohibited Symbols

Under the Bill, a new section 80.2H would create a new offence for the public display of prohibited symbols. A symbol is displayed in public if it is capable of being seen by a member of the public. This includes a film, video, or television program. An example is given in the Bill that this would include public display on a website. As such, we expect that the Bill's measures will apply to online video game platforms and video game content.

To commit an offence, the following must be satisfied:

- 1) A person causes a thing to be displayed in a public space.
- 2) The thing is a prohibited symbol.
- 3) 80.2H(3), (4) or (7) applies (related to disseminating ideas of racial superiority, hatred, advocacy of hatred, or offending, insulting, humiliating or intimidating a person of a particular group).
- 4) Subsection (9) does not apply, which, outlines that the display of prohibited symbols for the purpose that is religious, academic, educational, artistic, literary or scientific purposes.

Other Offences

The Bill will also introduce a new offence for the trading of prohibited symbols. A person commits this offence if the person trades in goods that have prohibited symbols and the person knows that the symbol is associated with Nazi ideology. However, this does not apply where the goods that are traded are intended to serve a religious, academic, educational, artistic, literary, or scientific purpose, the trading is not considered to be contrary to the public interest.

To address extremist recruitment through the internet, the Bill creates a new offence for using a carriage service for violent extremist material or possessing such material by access or obtainment using a carriage service. As this covers the general online environment, this would include online video games and gaming platforms.

Defences

For the purposes of the proposed new offence of the public display of prohibited symbols, an offence is committed if after being given a direction to do so, a person fails to cease displaying a symbol in public. However, a defence under a new section 80.2M is available where the display was genuinely engaged for a religious, academic, educational, artistic, literary or scientific purpose and not contrary to the public interest. A new section 474.45D introduces a defence in respect of the proposed new offence of using a carriage service for violent extremist material. This offence does not apply to conduct that relates to the development, performance, exhibition or distribution, in good faith, of an artistic work.

Analysis

Ultimately, the Bill creates offences for displaying prohibited hate symbols, however an offence is not made where a symbol is displayed or used for artistic purposes. Read together with new paragraph 80.2H(1)(d), new paragraph 80.2H(9)(a) would have the effect that the offence in new subsection 80.2H(1) does not apply if a reasonable person would consider that a person caused a prohibited symbol to be displayed in a public place for a religious, academic, educational, artistic, literary or scientific purpose that is not contrary to the public interest. Whilst this caveat like mechanism is appreciated and crucial, it may not go far enough to protect artistic mediums such as digital games and interactive entertainment.

Whilst video games would arguably be subject to this artistic exemption, this is not made explicit and we are concerned that video games displaying prohibited hate symbols in context appropriate scenarios, such as in a World War II setting in video games, will not be protected by this subsection. In theory, this prohibition may affect many popular video game franchises that are based on World War II. These games may include war themed story lines, game play, and characters including Nazis, depicted in their historical uniform and heraldry featuring Nazi symbols. Under the proposed reforms, such video games could potentially be considered an act of displaying a hate symbol with no certainty that the artistic exemption applies.

Further, the explanatory memorandum states that the offence is not intended to capture content that has been classified under the *Classification (Publication, Films and Computer Games) Act 1995* ('Classification Act'),³ such as classifiable video games, where a public display

³ Explanatory Memorandum Page 29 [56].

satisfies a new subsection 80.2H(9) or where a defence applies. Again, however, this is not explicitly provided for in the Bill. To ensure that video games with context-appropriate displays of prohibited hate symbols are not unnecessarily covered by this legislation, it is necessary to make explicit that such content will not be the basis for an offence.

Similarly, while video games may be covered by artistic “defences” integrated in offence-making provisions, permission for artistic use of prohibited symbols is not made explicit. We are concerned that this uncertainty will stifle innovation and creativity. It is unreasonable and restricting for our industry to rely on a defence, rather than relying on a permitting rule, when designing video games based on historical events. Instead, the onus should be on law enforcement and regulators to prove that an offence has occurred, not on the video game company to demonstrate that a defence applies. The display of any prohibited hate symbols in such scenarios as described above clearly is not an endorsement or incitement of violence, but rather a display of the symbol for historical accuracy and artistic/creative purposes only. We note that contextually appropriate display of prohibited hate symbols in video games is a highly specific occurrence, further justifying the need to exclude this from the amendments.

We note that video game platforms are already subject to several relevant regulatory mechanisms under the *Online Safety Act 2021*, including the Basic Online Safety Expectations⁴ and the newly registered Industry Codes.⁵ We note that these regulatory mechanisms refer to illegal or restricted online content, which may already cover the symbols or materials referred to in the Bill.⁶

Further, we note that the Bill does not outline where responsibility falls in the context of video game platforms, where several parties including studios and publishers are responsible for the public availability of games. Further, the Bill does not clarify whether platforms are considered responsible for public displays of prohibited symbols on video game platforms where they are shared by users through in-game communication environments. Our industry already employs numerous safety mechanisms to discourage unsafe behavior and therefore clarity is required to ensure displays of prohibited hate symbols in in-game communication or on video game platforms is not necessarily the responsibility of the platform and rather the individual.

Ultimately, whilst we support the introduction of the amendments to ensure the prevention of hate speech, terrorism, and extremism, we are concerned that video games will be unnecessarily and inappropriately caught under the amendments.

Recommendations

If the Committee recommends that the Bill be supported:

- We recommend that the artistic defences under 80.2H, 474.45D and 80.2J(4) be retained, and that an additional section be added specifically providing that the use of the symbol is explicitly permitted in artistic circumstances.
- We recommend the interpretation of ‘artistic’ should be strengthened to expressly include interactive entertainment such as video games to remove any doubt and uncertainty that they are covered by the exemption. We recommend that this be

⁴ [Basic Online Safety Expectations | eSafety Commissioner](#)

⁵ [Industry codes | eSafety Commissioner](#)

⁶ [Illegal and restricted online content | eSafety Commissioner](#)

implemented through making specific references, either in the text of the Bill, supporting notes in the text, or in the explanatory memorandum, that the artistic exemption element of the offence includes depictions in media for entertainment purposes such as video games.

- We recommend that the Bill clarify where liability falls amongst parties responsible for the public availability of video games and consider that video game platforms are not held wholly responsible for third party displays of prohibited hate symbols through in-game communication.
- Finally, we recommend that the Committee consider an explicit general exemption for content classifiable under the *Classification Act*, which is currently only referred to in the Explanatory Memorandum.

Any questions?

For more information on any issues raised in this submission, please contact IGEA's Policy Officer, Sarah Deeb via sarah@igea.net

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