



Western Australia

Criminal Code Amendment (Prohibition on Display of Nazi Symbols or Gesture) Act 2024

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Criminal Code Amendment (Prohibition on Display of Nazi Symbols or Gesture) Act 2024

No. 29 of 2024

An Act to amend *The Criminal Code* and to make a consequential amendment to the *Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021*.

[Assented to 17 September 2024]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Criminal Code Amendment (Prohibition on Display of Nazi Symbols or Gesture) Act 2024*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2 — on a day fixed by proclamation;
- (c) the rest of the Act — on the day after assent day.

Part 2 — *The Criminal Code* amended

3. Act amended

This Part amends *The Criminal Code*.

4. Part II Chapter 11A inserted

At the end of Part II insert:

Chapter 11A — Nazi symbols and salute

80K. Terms used

(1) In this Chapter —

display, of a Nazi symbol —

- (a) in a public place, has the meaning given in section 80N(2); and
- (b) on private property, has the meaning given in section 80N(4);

interested person, in relation to a relevant place, has the meaning given in section 80U(1);

Nazi hakenkreuz has the meaning given in section 80L;

Nazi symbol has the meaning given in section 80M(2);

Nazi symbol removal notice has the meaning given in section 80U(2);

owner, of a place, means —

- (a) if the place comprises, or is on, land that is subject to the *Transfer of Land Act 1893* or the *Land Administration Act 1997* — a proprietor of the land as defined in the *Transfer of Land Act 1893* section 4(1);

- (b) if the place comprises, or is on, land that is subject to the *Registration of Deeds Act 1856* — the holder of an estate or interest in the land that is registered by memorial under that Act;

private property includes a vehicle, vessel or aircraft;

publish means publish to the public or a section of the public;

relevant place, in relation to a Nazi symbol, has the meaning given in section 80U(1);

remove, in relation to a thing marked with a Nazi symbol, includes to modify or cover the thing (including by painting or some other process) so that it no longer displays a Nazi symbol;

senior police officer means a police officer who is, or is acting as, a Commander or an officer of a rank more senior than a Commander.

- (2) For the purposes of this Chapter, a reference to a thing marked with a Nazi symbol does not include a reference to a tattoo or other body marking that comprises or includes a Nazi symbol.

80L. Meaning of Nazi hakenkreuz

A ***Nazi hakenkreuz*** (commonly referred to as a swastika) is a symbol of a cross with the arms bent at right angles in a clockwise direction used in connection with the Nazi Party, the Third Reich, Neo-Nazism or Nazi ideology.

80M. Meaning of Nazi symbol

- (1) In this section —
image includes a depiction or representation.

- (2) A *Nazi symbol* is —
- (a) any of the following —
 - (i) a Nazi hakenkreuz;
 - (ii) the Nazi flag;
 - (iii) the double-sig rune (commonly known as SS bolts);
 - (iv) the Nazi eagle;
 - (v) an image of a person performing the Nazi salute;
- or
- (b) something that so nearly resembles a thing or image referred to in paragraph (a) that it is likely to be mistaken for that thing; or
 - (c) a thing or image prescribed by the regulations.
- (3) Regulations made under subsection (2)(c) —
- (a) must prescribe the thing or image as a graphic representation of the thing or image; and
 - (b) may not prescribe the thing or image by describing a class of things or images.
- (4) A thing or image may only be prescribed under subsection (2)(c) on the recommendation of the Minister.
- (5) The Minister must not make a recommendation under subsection (4) unless satisfied that the thing or image is widely known by the public as being solely or substantially representative of the Nazi Party, the Third Reich, Neo-Nazism or Nazi ideology.

80N. Display of Nazi symbols

- (1) A reference to a person *displaying* a Nazi symbol includes the person —
 - (a) wearing, carrying or otherwise possessing or controlling a Nazi symbol, or a thing marked with a Nazi symbol, in a manner that the Nazi symbol would be visible to another person; or
 - (b) having a tattoo or other body marking that —
 - (i) comprises or includes a Nazi symbol; and
 - (ii) is left uncovered in a manner that the Nazi symbol would be visible to another person.
- (2) A person *displays* a Nazi symbol in the manner described in subsection (1) in a public place if the Nazi symbol, or a thing or person marked with a Nazi symbol, is —
 - (a) physically in the public place; or
 - (b) physically in another place from where the Nazi symbol would be visible to another person in the public place.
- (3) For the purposes of subsections (1) and (2), a Nazi symbol may be displayed regardless of whether —
 - (a) the Nazi symbol is seen by another person; or
 - (b) in the case of subsection (2) — another person is in the public place.
- (4) A person *displays* a Nazi symbol in the manner described in subsection (1) on private property if —
 - (a) the person displays the Nazi symbol while physically on the private property; or

- (b) the Nazi symbol is visible to another person on the private property regardless of whether the Nazi symbol is seen by the other person.

80O. Offence to display Nazi symbol

- (1) A person commits a crime if the person displays a Nazi symbol in a public place.

Penalty for this subsection: imprisonment for 5 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

- (2) A person commits a crime if the person displays a Nazi symbol on private property without the consent of the person who has the management or control of the private property.

Penalty for this subsection: imprisonment for 5 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

- (3) Subsections (1) and (2) do not apply to a person who has not reached 18 years of age.

80P. Offence to make Nazi gesture

- (1) A person commits a crime if —

- (a) the person makes a gesture in a public place; and
- (b) the gesture is a Nazi salute or so nearly resembles a Nazi salute that it is likely to be mistaken for a Nazi salute; and
- (c) the person intends the gesture to be a Nazi salute.

Penalty for this subsection: imprisonment for 5 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

s. 4

- (2) For the purposes of subsection (1), a person makes a gesture in a public place —
- (a) if the person makes the gesture in a way that would be visible to another person in the public place regardless of whether —
 - (i) the gesture is seen by another person; or
 - (ii) another person is in the public place;and
 - (b) whether the person making the gesture is —
 - (i) physically in the public place; or
 - (ii) physically in another place.
- (3) A person commits a crime if —
- (a) the person makes a gesture on private property; and
 - (b) the gesture is a Nazi salute or so nearly resembles a Nazi salute that it is likely to be mistaken for a Nazi salute; and
 - (c) the person intends the gesture to be a Nazi salute; and
 - (d) the person makes the gesture without the consent of the person who has the management or control of the private property.
- Penalty for this subsection: imprisonment for 5 years.
Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.
- (4) Subsections (1) and (3) do not apply to a person who has not reached 18 years of age.

80Q. Offence to apply Nazi symbol to property

- (1) A person commits a crime if the person applies a Nazi symbol —
 - (a) to public property; or
 - (b) to the property of another person without the consent of that other person.

Penalty for this subsection: imprisonment for 5 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24 000.

- (2) For the purposes of subsection (1), a person applies a Nazi symbol to property if the person —
 - (a) draws, writes, paints, plasters, scratches or etches a Nazi symbol on the property; or
 - (b) marks the property with a Nazi symbol; or
 - (c) takes any other action so that a Nazi symbol appears or is displayed on the property.
- (3) Subsection (1) does not apply to a person who has not reached 18 years of age.

80R. Defence to s. 80O or 80P charge

- (1) It is a defence to a charge of an offence under section 80O or 80P to prove that the accused person's conduct was engaged in 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, or any conduct engaged in, for —
 - (i) any genuine academic, artistic, religious or scientific purpose; or

- (ii) any purpose that is in the public interest;
or
 - (c) in making or publishing a fair and accurate report or analysis of any event or matter of public interest.
- (2) For the purposes of subsection (1), an accused person's conduct is not engaged in reasonably or in good faith if the conduct promotes or supports the Nazi Party, the Third Reich, Neo-Nazism or Nazi ideology.

80S. General defences

- (1) It is a defence to a charge of an offence under this Chapter in relation to the display of a Nazi symbol to prove that the accused person did not know, and could not reasonably be expected to have known, that the Nazi symbol was being displayed.
- (2) It is a defence to a charge of an offence under this Chapter in relation to the display or application of a Nazi symbol to prove that the accused person did not know, and could not reasonably be expected to have known, that the symbol was a Nazi symbol.
- (3) It is a defence to a charge under this Chapter to prove that the accused person was acting reasonably and in good faith in opposition to the Nazi Party, the Third Reich, Neo-Nazism or Nazi ideology.

80T. Exceptions

- (1) In this section —
intelligence agency has the meaning given in the *Crimes Act 1914* (Commonwealth) section 15K;
law enforcement agency means —
 - (a) the Police Force of the State; or

- (b) the Police Service of the State; or
 - (c) the Office of the Director of Public Prosecutions of the State; or
 - (d) the Corruption and Crime Commission; or
 - (e) an entity of another State or Territory, the Commonwealth or another country that has functions similar to functions of an entity referred to in paragraph (a), (b), (c) or (d).
- (2) A member or officer of a law enforcement agency or an intelligence agency does not contravene this Chapter if the act that would otherwise constitute an offence occurs in the performance of the official duties of the member or officer and is done in good faith.
- (3) A person does not contravene this Chapter if the act that would otherwise constitute an offence occurs in the course of official duties connected with the administration of the justice system, including the investigation of offences, and is done in good faith.

80U. Issue of Nazi symbol removal notice

- (1) In this section —
- interested person*, in relation to a relevant place, means a person who —
- (a) is a lessee or hirer of the place, whether or not actually occupying the place; or
 - (b) is occupying, or is entitled to possession of, the place;
- relevant place*, in relation to a Nazi symbol or a thing marked with a Nazi symbol, means the place where the Nazi symbol or thing is located.
- (2) If a senior police officer reasonably suspects that a Nazi symbol is being displayed in a public place, the

senior police officer may issue a written notice (a *Nazi symbol removal notice*) to a person requiring the person to remove the Nazi symbol, or a thing marked with the Nazi symbol, from display in the public place.

- (3) The Nazi symbol removal notice must —
- (a) identify the public place where the Nazi symbol, or thing marked with a Nazi symbol, is displayed and, if the Nazi symbol or thing is located in a place other than the public place, the place where the Nazi symbol or thing is located; and
 - (b) be addressed to each of the following persons —
 - (i) each owner of the relevant place, identified by name; and
 - (ii) each other person who is an interested person in relation to the relevant place, without naming the person but explaining the term “interested person”.
- (4) This section does not apply if the Nazi symbol being displayed is, or is part of, a tattoo or other body marking.

80V. Content of Nazi symbol removal notice

A Nazi symbol removal notice must contain —

- (a) a statement to the effect that —
 - (i) the senior police officer issuing the notice reasonably suspects that a Nazi symbol is being displayed in a public place specified in the notice; and
 - (ii) the notice is issued to the person because the person is the owner of, or an interested person in relation to, the

public place or other place where the Nazi symbol or thing marked with a Nazi symbol is located; and

- (iii) within 14 days after the day on which the notice is served, the person must ensure that the Nazi symbol, or a thing marked with the Nazi symbol, is removed so that the Nazi symbol is no longer displayed in the public place specified in the notice;

and

- (b) an explanation of the right of the person to apply to the Commissioner of Police under section 80Y to revoke the notice; and
- (c) an explanation of the effect of section 80ZA.

80W. Service of Nazi symbol removal notice

- (1) A senior police officer must, as soon as practicable after issuing a Nazi symbol removal notice to a person, ensure that the notice is served on the person under this section.
- (2) The Nazi symbol removal notice must be served by a police officer —
 - (a) by personal service; or
 - (b) if, despite reasonable steps being taken, paragraph (a) cannot be complied with — by personal service on a person who appears —
 - (i) to be occupying the relevant place identified in the notice; and
 - (ii) to have reached 18 years of age;

or

- (c) if, despite reasonable steps being taken, neither paragraph (a) nor (b) can be complied with — by attaching the notice to the front entrance, or another part, of the relevant place identified in the notice where it can be easily seen.
- (3) A Nazi symbol removal notice expires if it is not served within 7 days after it is issued.

80X. Duration of Nazi symbol removal notice

- (1) A Nazi symbol removal notice takes effect in relation to a person when the notice is served on the person under section 80W.
- (2) The Nazi symbol removal notice remains in effect until the Nazi symbol, or a thing marked with the Nazi symbol, has been removed in accordance with the notice, unless the notice is revoked sooner under section 80Y(4).

80Y. Revocation of Nazi symbol removal notice

- (1) A person served with a Nazi symbol removal notice may apply to the Commissioner of Police to revoke a Nazi symbol removal notice.
- (2) The application must be made —
 - (a) in writing; and
 - (b) during the period that the Nazi symbol removal notice is in effect.
- (3) The Commissioner of Police must determine the application within 72 hours after the application is made.

- (4) The Commissioner of Police must revoke a Nazi symbol removal notice if satisfied —
 - (a) the requirements under section 80U(2) for issuing the notice were not met; or
 - (b) the person is not the owner of, or an interested person in, the relevant place identified in the notice; or
 - (c) the Nazi symbol to which the notice relates is no longer displayed in the public place specified in the notice.
- (5) The Commissioner of Police may act under subsection (4) on an application under subsection (1) or on the Commissioner's own initiative.
- (6) The Commissioner of Police must, as soon as practicable after revoking a Nazi symbol removal notice on an application under subsection (1), ensure that written notice of the revocation is served, by a method authorised by the regulations, on the applicant.

80Z. Offence to hinder compliance with Nazi symbol removal notice

- (1) A person who does anything intending to prevent, obstruct or delay the authorised removal of a Nazi symbol, or a thing marked with a Nazi symbol, in accordance with a Nazi symbol removal notice commits an offence.

Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000.

s. 4

- (2) For the purposes of subsection (1), the authorised removal of a Nazi symbol, or a thing marked with a Nazi symbol, means the removal by a person who —
- (a) is, or is acting for or on the instructions of, a person on whom the Nazi symbol removal notice was served; or
 - (b) is acting under section 80ZA(4).

80ZA. Police powers relating to Nazi symbol removal notice

- (1) This section applies if —
- (a) a Nazi symbol removal notice is served on 1 or more persons (each a *relevant person*) in respect of a Nazi symbol being displayed in a public place; and
 - (b) within 14 days (or a longer period allowed under subsection (2)) after the notice is served (the *time allowed*), the Nazi symbol, or a thing marked with the Nazi symbol, has not been removed in accordance with the requirements of the notice.
- (2) The Commissioner of Police may extend the time allowed —
- (a) on the Commissioner’s own initiative; or
 - (b) on an application made by a relevant person to the Commissioner before the time allowed elapses.
- (3) The Commissioner of Police may cause the Nazi symbol, or a thing marked with the Nazi symbol, to be removed.
- (4) Subsection (3) authorises police officers and agents of the Commissioner of Police, without warrant or further

notice, in order to do anything for the purposes of that subsection —

- (a) to enter the relevant place identified in the Nazi symbol removal notice and secure it; and
 - (b) to use any force and employ any equipment reasonably necessary.
- (5) The Commissioner of Police may recover from a relevant person who is the owner of the relevant place identified in the Nazi symbol removal notice the costs incurred by the Commissioner under this section in a court of competent jurisdiction as a debt due to the State.

80ZB. Correcting mistakes in Nazi symbol removal notice

- (1) A senior police officer may correct a Nazi symbol removal notice if the notice contains —
- (a) a clerical mistake; or
 - (b) a mistake arising from an accidental slip or omission; or
 - (c) a material mistake in the description of any person, thing or matter referred to in the notice.
- (2) The senior police officer must, as soon as practicable after a Nazi symbol removal notice is corrected under this section —
- (a) ensure that each person who has been served with the notice is notified of the correction by service of the corrected notice in the same manner as the notice was originally served under section 80W; and
 - (b) make a record of the particulars of the correction of the notice.

- (3) A Nazi symbol removal notice corrected under this section has the same validity and effect as if the mistake had not been made.

80ZC. Delegation by Commissioner of Police

- (1) The Commissioner of Police may delegate the Commissioner's functions under section 80Y or 80ZA to a senior police officer (the *delegated officer*).
- (2) The delegation must be in writing signed by the Commissioner of Police.
- (3) When the delegated officer is performing the Commissioner of Police's functions under section 80Y or 80ZA, the officer is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (4) A senior police officer who issues a Nazi symbol removal notice must not perform the Commissioner of Police's functions under section 80Y or 80ZA as a delegated officer in relation to the notice.
- (5) Nothing in this section limits the ability of the Commissioner of Police to perform a function through an officer or agent.

80ZD. Forfeiture of unlawful material

A court that convicts a person of an offence against this Chapter may make an order for the forfeiture to the State, or the destruction or disposal, of any Nazi symbol or thing marked with a Nazi symbol in respect of which the offence was committed.

80ZE. No compensation under this Chapter

The provisions of this Chapter do not entitle a person to compensation in respect of anything done in connection with —

- (a) a Nazi symbol removal notice; or
- (b) an order of a court under this Chapter.

80ZF. Exclusion of rule in s. 24

The operation of the rule in section 24 is excluded in relation to an offence against this Chapter.

Part 3 — Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021 amended

5. Act amended

This Part amends the *Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021*.

6. Section 24 amended

Delete section 24(2) and insert:

(2) Subsection (1) applies —

- (a) whether the thing or person marked with insignia of an identified organisation is —
 - (i) physically in the public place; or
 - (ii) physically in some other place from where the insignia would be visible to another person in the public place;and
- (b) regardless of whether —
 - (i) the insignia is seen by another person; or
 - (ii) another person is in the public place.

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