

House of Assembly—No 120

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South Australia

**Summary Offences (Nazi Salute and Symbols
Prohibition) Amendment Bill 2023**

A BILL FOR

An Act to amend the *Summary Offences Act 1953*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement

Part 2—Amendment of *Summary Offences Act 1953*

- 3 Insertion of Part 6A
 - Part 6A—Nazi salute or symbols
 - 32A Interpretation
 - 32B Prohibition on use of Nazi salute or Nazi symbols
 - 32C Direction to remove Nazi symbol from public display

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Summary Offences (Nazi Salute and Symbols Prohibition) Amendment Act 2023*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

Part 2—Amendment of *Summary Offences Act 1953*

3—Insertion of Part 6A

- 10 After Part 6 insert:

Part 6A—Nazi salute or symbols

32A—Interpretation

- (1) In this Part—

intelligence agency means—

- 15 (a) the Australian Security Intelligence Organisation; or
- (b) the Australian Secret Intelligence Service; or
- (c) the Australian Signals Directorate; or
- (d) the Office of National Intelligence;

law enforcement officer means—

- 20 (a) a police officer or a member of the police force or police service of any other State or of the Northern Territory; or
- (b) a member of the Australian Federal Police; or

- (c) a member of staff of the Australian Crime Commission established by the *Australian Crime Commission Act 2002* of the Commonwealth;

Nazi salute means—

- 5 (a) a salute consisting of raising an outstretched right arm with the palm down (whether or not accompanied by any spoken words); or

Note—

10 This salute is commonly referred to as the Hitler salute, or Hitler greeting, and was generally used in Nazi Germany as a way to pay homage to Adolf Hitler.

- (b) a gesture that so nearly resembles the salute referred to in paragraph (a) that it is likely to be mistaken for that salute;

Nazi symbol—each of the following is a Nazi symbol:

- 15 (a) the hakenkreuz;
- (b) an image of a Nazi salute;
- (c) any symbol prescribed by the regulations to be a Nazi symbol (being a symbol that is associated with the Nazis, or with Nazi ideology);
- 20 (d) any other symbol associated with the Nazis, or with Nazi ideology;
- (e) a symbol that so nearly resembles a symbol referred to in a preceding paragraph that it is likely to be mistaken for such a symbol;

25 ***prohibited act*** means—

- (a) performing a Nazi salute; or
- (b) publishing a Nazi symbol;

publishing a Nazi symbol—a person publishes a Nazi symbol if they—

- 30 (a) include the symbol in a publicly viewable post on a website, social media platform or other electronic platform; or
- (b) publish the symbol in a book, newspaper, magazine or other written publication; or
- 35 (c) distribute the symbol in a book, newspaper, magazine or other written publication; or
- (d) broadcast the symbol (whether by television or other means); or
- (e) display the symbol in a public place, or in a manner observable by a person in a public place; or

Example—

Wearing an item of clothing on which a hakenkreuz is displayed.

- (f) engage in any other act of a kind prescribed by the regulations.

- (2) For the purposes of this Part, a reference to a *hakenkreuz* will be taken to be a reference to a symbol of a cross with the arms bent at right angles in a clockwise direction.

Note—

The hakenkreuz, or hooked or crooked cross, was used in Nazi Germany as the symbol of the Nazi Party. It is also often referred to as a swastika in that context, but should not be equated with the use of the swastika by practitioners of the Buddhist, Jain or Hindu religions.

- (3) For the purposes of this Part, *publishing a Nazi symbol* does not include the distribution or dissemination of any matter by a person to the public if the person does not know, and could not reasonably be expected to know, the content of the matter.

32B—Prohibition on use of Nazi salute or Nazi symbols

- (1) A person who engages in a prohibited act is guilty of an offence.
Maximum penalty: \$20 000 or imprisonment for 12 months.
- (2) A person does not contravene subsection (1) if the prohibited act was engaged in for a legitimate public purpose.
- (3) For the purposes of subsection (2), an act will only be taken to be for a *legitimate public purpose* if the act was in the public interest having regard to the following:
- (a) whether the act was for a genuine academic, artistic, religious or scientific purpose;
 - (b) whether the act was for a genuine cultural or educational purpose;
 - (c) whether the act was for the purpose of making or publishing a fair and accurate report of any event or matter of public interest;
 - (d) whether the act was in opposition to fascism, Nazism, neo-Nazism or other related ideologies.
- (4) However, an act will be taken not to be for a legitimate public purpose where the act is for a purpose that a reasonable person would understand to be directly or indirectly encouraging, glorifying, promoting or condoning fascism, Nazism, neo-Nazism or other related ideologies.
- (5) A law enforcement officer or a member of an intelligence agency does not contravene subsection (1) if the prohibited act occurs in the performance of the officer's or member's duties and is done in good faith.

(6) A person does not contravene subsection (1) if the prohibited act occurs in the course of official duties connected with the administration of the justice system, including the investigation or prosecution of offences, and is done in good faith.

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(7) If a person is found guilty of an offence under subsection (1) the court may, in addition to imposing a penalty for the offence, make an order requiring the defendant to pay the reasonable costs and expenses of any action taken for the purposes of removing any relevant Nazi symbols from display.

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32C—Direction to remove Nazi symbol from public display

(1) A police officer may give a direction to a person (including, to avoid doubt, to an owner or occupier of premises) to remove from display a Nazi symbol if the police officer reasonably believes the display constitutes an offence against section 32B.

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(2) A direction under subsection (1)—

(a) may be given orally or in writing; and

(b) must specify the period within which it is to be complied with.

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(3) A person must not, without reasonable excuse, contravene a direction under subsection (1).

Maximum penalty: \$1 250.