

**Legislative Council—No 23**

As introduced and read a first time, 15 June 2022

South Australia

**Summary Offences (Nazi Symbol Prohibition)  
Amendment Bill 2022**

A BILL FOR

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

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**The Parliament of South Australia enacts as follows:**

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Summary Offences (Nazi Symbol Prohibition) Amendment Act 2022*.

### Part 2—Amendment of *Summary Offences Act 1953*

#### 2—Insertion of Part 7AA

After Part 7 insert:

#### **Part 7AA—Public display of Nazi symbols**

##### **35A—Definitions**

(1) In this Part—

**body modification** means body scarification, body branding or body implantation (all within the meaning of Part 4);

**Government school** and **non-Government school** have the same meanings as in the *Education and Children's Services Act 2019*;

**hakenkreuz**—see subsection (2);

**intelligence agency** means—

- (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—

- (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;

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

- (a) a hakenkreuz;
- (b) a symbol that so nearly resembles a hakenkreuz that it is likely to be mistaken for a hakenkreuz;
- (c) any other symbol prescribed by the regulations;

10 **post-secondary education institution** means an institution which is supported directly or indirectly by Government funds providing post-secondary education including but not limited to a TAFE institute, an autonomous college and a university;

**public place** means—

- 15 (a) any public highway, road, street, bridge, footway, footpath, court, alley passage or thoroughfare, notwithstanding that that public highway, road, street, bridge, footway, footpath, court, alley passage or thoroughfare may be formed on private property; or
- 20 (b) any park, garden, reserve or other place of public recreation and resort; or
- (c) any railway station, platform or carriage; or
- (d) any wharf, pier or jetty; or
- (e) any passenger ship or boat plying for hire; or
- 25 (f) any public vehicle plying for hire; or
- (g) any church or chapel open to the public or any other building where divine service is being publicly held; or
- (h) any Government school or the land or premises in connexion therewith; or
- 30 (i) any public hall, theatre or room while members of the public are in attendance at, or are assembling for or departing from, a public entertainment or meeting therein; or
- (j) any market; or
- (k) any auction room or mart or place while a sale by auction is there proceeding; or
- 35 (l) any licensed premises within the meaning of the *Liquor Licensing Act 1997*.

40 (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 (commonly referred to as a swastika).

**35B—Public display of Nazi symbols**

- (1) A person must not intentionally display a Nazi symbol if—
- (a) the person knows, or ought reasonably to know, that the symbol is associated with Nazi ideology; and
  - (b) the display—
    - (i) occurs in a public place, a non-Government school, or a post-secondary institution; or
    - (ii) occurs in sight of a person who is in a public place, a non-Government school, or a post-secondary institution.

Maximum penalty: \$20 000 or imprisonment for 12 months.

- (2) A person does not contravene subsection (1) if the display was engaged in for a legitimate public purpose.
- (3) For the purposes of subsection (2), a display will only be taken to be for a **legitimate public purpose** if the display was in the public interest having regard to the following:
- (a) whether the display was for a genuine academic, artistic, religious or scientific purpose;
  - (b) whether the display was for a genuine cultural or educational purpose;
  - (c) whether the display was for the purpose of making or publishing a fair and accurate report of any event or matter of public interest;
  - (d) whether the display was in opposition to fascism, Nazism, neo-Nazism or other related ideologies.
- (4) However, a display will not be taken to be for a legitimate public purpose where the display 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) It is a defence to prosecution for an offence against subsection (1) for the defendant to prove that the Nazi symbol is displayed on the person's body by means of a tattoo or body modification which was in place prior to the date on which this Part came into operation.
- (6) A law enforcement officer or a member of an intelligence agency does not contravene subsection (1) if the display occurs in the performance of the officer's or member's duties and is done in good faith.
- (7) A person does not contravene subsection (1) if the display 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.

- (8) A prosecution of a minor for an offence against subsection (1) must not be commenced without the written consent of the Director of Public Prosecutions.

**35C—Direction to remove Nazi symbol from public display**

- 5 (1) A police officer may give a direction to a person to remove from display a Nazi symbol if the police officer reasonably believes the person is committing an offence against section 35B by displaying the Nazi symbol.
- 10 (2) A police officer may give a direction to a person to remove from display a Nazi symbol if—
- (a) the person is the owner or occupier of a property on which the Nazi symbol is being displayed; and
- (b) the police officer reasonably believes an offence is being committed against section 35B by the display of that Nazi symbol.
- 15 (3) A direction under subsection (1) or (2)—
- (a) may be given orally or in writing; and
- (b) must include the period within which it is to be complied with.
- 20 (4) If a direction cannot be given in person, a police officer may leave the written direction under subsection (1) or (2)—
- (a) at the property on which the Nazi symbol is being displayed; or
- (b) if the display is in or on a vehicle, by affixing or placing the direction on that vehicle in a conspicuous manner.
- 25 (5) A person must not, without reasonable excuse, contravene a direction given to the person under subsection (1) or (2).

Maximum penalty: \$1 250