

TASMANIA

**POLICE OFFENCES AMENDMENT (NAZI
SYMBOL AND GESTURE PROHIBITION) BILL
2023**

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**POLICE OFFENCES AMENDMENT (NAZI
SYMBOL AND GESTURE PROHIBITION) BILL
2023**

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

An Act to amend the *Police Offences Act 1935*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

*This Act may be cited as the *Police Offences
Amendment (Nazi Symbol and Gesture
Prohibition) Act 2023*.*

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

In this Act, the *Police Offences Act 1935** is referred to as the Principal Act.

*No. 44 of 1935

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4. Sections 6C and 6D inserted

After section 6B of the Principal Act, the following sections are inserted in Division I:

6C. Display of Nazi symbols prohibited, &c.

- (1) A person must not, by a public act and without a legitimate public purpose, display a Nazi symbol if the person knows, or ought to know, that the symbol is a Nazi symbol.

Penalty: In the case of –

- (a) an offence to which paragraph (b) does not apply – a fine not exceeding 20 penalty units or imprisonment for a term not exceeding 3 months; or
- (b) a second or subsequent offence committed by the person within a 6-month period – a fine not exceeding 40 penalty units or imprisonment for a term not exceeding 6 months.
- (2) For the avoidance of doubt, the display of a swastika in connection with Buddhism, Hinduism or Jainism does not

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constitute the display of a Nazi symbol for the purposes of subsection (1).

- (3) For the purposes of subsection (1), the display of a Nazi symbol for a legitimate public purpose includes where the symbol –
- (a) is displayed reasonably and in good faith for a genuine academic, artistic, religious, scientific, cultural, educational, legal or law enforcement purpose; and
 - (b) is displayed reasonably and in good faith for the purpose of opposing, or demonstrating against, fascism, Nazism, neo-Nazism or other similar or related ideologies or beliefs; and
 - (c) is displayed on an object, or contained in a document, that is produced for a genuine academic, artistic, religious, scientific, cultural, educational, legal or law enforcement purpose; and
 - (d) is included in the making or publishing of a fair and accurate report, of an event or matter, that is in the public interest; and
 - (e) is displayed for another purpose that is in the public interest.

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- (4) It is a defence in proceedings for an offence under subsection (1) if the defendant proves that the Nazi symbol to which the offence relates has been permanently tattooed or marked on, or permanently affixed to, the person's body by means of a body modification procedure within the meaning of section 35A.
- (5) If a police officer has reasonable grounds to believe that a person is contravening, or has contravened, subsection (1), the police officer may, in addition to any other action the officer may take under any other Act –
 - (a) direct the person to remove the relevant Nazi symbol from display; or
 - (b) in a conspicuous place on the object, or on the property, on which the relevant Nazi symbol is displayed, affix a written direction to remove the Nazi symbol from display if –
 - (i) it is not reasonable in the circumstances for the police officer to give a direction to the person under paragraph (a); or

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- (ii) the police officer is unable to ascertain which person is responsible for the display of the Nazi symbol.

- (6) A person to whom a direction is given under subsection (5)(a), or on whose object or property a written direction is affixed in accordance with subsection (5)(b), must not fail to comply, without reasonable excuse, with the direction within the period specified in the direction.

Penalty: Fine not exceeding 10 penalty units.

- (7) If a police officer has reasonable grounds to believe that a person has failed to comply with a direction as required under subsection (6), the police officer, using such force, means and assistance as is reasonably necessary, may do any one or more of the following:
 - (a) detain and search that person, including any clothing on the person and any object or clothing in the possession of the person;
 - (b) stop and detain any vehicle –
 - (i) in respect of which the direction was given; or

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- (ii) that the police officer believes, on reasonable grounds, contains an object in respect of which the direction was given; or
 - (iii) in, or on, which the person is or was at the time at which the direction was given;
 - (c) search a vehicle referred to in paragraph (b) and any object found in or on such a vehicle;
 - (d) search any premises –
 - (i) in respect of which the direction was given; or
 - (ii) in, or on, which the person is or was located at the time at which the direction was given;
 - (e) seize any object, found during a search under this subsection, that in the police officer's opinion is an object that is, or displays, a Nazi symbol.
- (8) In any proceedings for an offence against this section, particulars in a complaint in respect of the offence that state –

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- (a) that a symbol is a Nazi symbol are, in the absence of evidence to the contrary, prima facie evidence that the symbol is a Nazi symbol; and
 - (b) that a public act was without a legitimate public purpose are, in the absence of evidence to the contrary, prima facie evidence that the act was without legitimate public purpose.
- (9) On conviction of a person of an offence against subsection (1), any object to which the offence relates that is lawfully in the possession of the Crown is forfeited to the Crown.
- (10) In this section –

Nazi symbol includes –

- (a) a symbol associated with the Nazis or with Nazi ideology; and
- (b) a symbol that so nearly resembles a symbol referred to in paragraph (a) that it is likely to be confused with, or mistaken for, such a symbol; and

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- (c) a depiction, or recording, of a Nazi gesture within the meaning of section 6D; and
- (d) the depiction, or recording, of a gesture that so nearly resembles a gesture referred to in paragraph (c) that it is likely to be confused with, or mistaken for, such a gesture;

public act, in relation to the display of a Nazi symbol, includes –

- (a) any form of communication of the symbol to the public; and
- (b) the placement of the symbol in a location observable by the public; and
- (c) the distribution or dissemination of the symbol, or of an object containing the symbol, to the public.

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6D. Performance of Nazi gestures, &c., prohibited

- (1) A person must not perform a Nazi gesture if –
- (a) the person knows, or ought to know, that the gesture is a Nazi gesture; and
 - (b) the gesture is performed by the person –
 - (i) in a public place; or
 - (ii) in a place where, if another person were in a public place, the gesture would be visible to the other person.

Penalty: In the case of –

- (a) an offence to which paragraph (b) does not apply – a fine not exceeding 20 penalty units or imprisonment for a term not exceeding 3 months; or
- (b) a second or subsequent offence committed by the person within a 6-month period – a fine not exceeding 40 penalty

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units or imprisonment for
a term not exceeding 6
months.

- (2) It is a defence in proceedings for an offence under subsection (1) if the defendant proves that the performance of the Nazi gesture was reasonable, and performed in good faith, for a genuine academic, artistic, religious, scientific, cultural, educational, legal or law enforcement purpose.
- (3) In any proceedings for an offence against this section, particulars in a complaint in respect of the offence that state that a gesture is a Nazi gesture are, in the absence of evidence to the contrary, prima facie evidence that the gesture is a Nazi gesture.
- (4) In this section –
- Nazi gesture* includes –
- (a) the gesture known as the Nazi salute; and
 - (b) a gesture prescribed for the purposes of this definition; and
 - (c) a gesture that so nearly resembles a gesture referred to in paragraph (a) or (b) that it is likely to be confused with, or mistaken for, such a gesture.

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5. Section 55 amended (Arrest)

Section 55(2D) of the Principal Act is amended by omitting “section 6A(14) or (15),” and substituting “section 6A(14) or (15), section 6C, section 6D,”.

6. Repeal

This Act is repealed on the first anniversary of the day on which it commenced.