

CLAUSE NOTES

Police Offences Amendment (Nazi Symbol and Gesture Prohibition) Bill 2022

- Clause 1** **Short Title**
Specifies the name of the proposed Act.
- Clause 2** **Commencement**
The Act commences on a day to be Proclaimed.
- Clause 3** **Principal Act**
Provides that the Principal Act that is being amended is the *Police Offences Act 1935* (the Act).
- Clause 4** **Section 6C and 6D inserted (Display of Nazi symbols prohibited, &c.; and Performance of Nazi gestures, &c. prohibited)**
This clause inserts new sections 6C and 6D in Division 1.

In relation to new section 6C, new subsection 6C(1) provides a new offence, that 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.

The offence attracts a maximum fine of up to 20 penalty units or imprisonment for a maximum of 3 months, or if further offences are committed within 6 months, the maximum penalty is a fine up to 40 penalty units or imprisonment for up to 6 months.

New subsection 6C(2) provides that the display of a swastika in connection with Buddhism, Hinduism or Jainism does not constitute the display of a Nazi symbol.

New subsection 6C(3) provides a non-exhaustive list of what constitutes a 'legitimate public purpose'.

This includes where displayed reasonably and in good faith for a genuine academic, artistic, religious, scientific cultural, educational, legal or law enforcement purpose; for the purpose of opposing, or demonstrating against, fascism, Nazism, neo-Nazism or other similar or related ideologies or beliefs; is included in the making or publishing of a fair and accurate report, of any event or matter, that is in the public interest; or is displayed for another purpose that is in the public interest.

New subsection 6C(4) provides for a defence in relation to permanent tattoos or other permanent body modifications.

New subsection 6C(5) is a directions power and provides that a police officer may direct a person to remove a Nazi symbol, or affix a written direction to the item or the property on which the symbol is displayed. This is in addition to any other action the officer may take under any other Act, such as an application for a search warrant.

It is an offence not to comply with a direction within the period specified in the direction, without a reasonable excuse, with a maximum penalty of a fine of 10 penalty units.

New subsection 6C(7) provides that where a person has failed to comply with a direction, a search without a warrant can be exercised.

New subsection 6C(8) provides that certain particulars set out in a complaint against the offence are in the absence of evidence to the contrary, prima facie evidence.

New subsection 6C(9) provides that on conviction of a person, any object to which the offence relates that is lawfully in the possession of the Crown is forfeited to the Crown.

New subsection 6C(10) provides that *Nazi symbol* means a symbol associated with Nazis or with Nazi ideology; or a symbol that so nearly resembles a symbol that it is likely to be confused with, or mistaken for, such a symbol or gesture; and a depiction, or recording of a Nazi gesture within the meaning provided in new section 6D (or a depiction or recording that so nearly resembles such a gesture that it is likely to be confused with the gesture).

New subsection 6C(9) also provides a non-exhaustive meaning of *public act* in relation to the display of a symbol, which includes any form of communication of the symbol to the public, the placement of the symbol in a location observable by the public and the distribution or dissemination of the symbol, or of an object containing the symbol to the public.

In relation to new section 6D, new subsection 6D(1) provides a new offence, that a person must not perform a Nazi gesture if the person knows, or ought to know, that the gesture is a Nazi gesture; and the gesture is performed by the person in a public place; or in a place where, if another person were in a public place, the gesture would be visible to the other person.

The offence attracts a maximum fine of up to 20 penalty units or imprisonment for a maximum of 3 months, or if further offences are committed within 6 months, the maximum penalty is a fine up to 40 penalty units or imprisonment for up to 6 months.

New subsection 6D(2) provides for a defence where the defendant proves that the performance of the gesture was reasonable, and performed in good

faith for a genuine academic, artistic, religious, scientific, cultural, educational, legal or law enforcement purpose.

New subsection 6D(3) provides that certain particulars set out in a complaint against the offence are in the absence of evidence to the contrary, prima facie evidence.

New subsection 62(4) provides a definition of *Nazi gesture* which includes the gesture known as the Nazi salute, a gesture prescribed for the purposes of this definition (which means prescribed in regulations that will be subject to scrutiny of Parliament); and a gesture that so nearly resembles a Nazi salute or a prescribed gesture, or a gesture that it is likely to be confused with, or mistaken for, such a gesture.

Clause 5 Section 55 amended (Arrest)

This clause amends section 55(2D) of the Principal Act to include references to offences under section 6C or 6D. This means that a police officer may, without warrant, arrest any person whom the police officer has reasonable grounds for believing has committed an offence under the new sections.

Clause 6 Repeal of Act

This automatically repeals the amending legislation after the first anniversary of this Act commencing. The provisions that the amending legislation inserts into the Principal Act still remain in force after the repeal of the Amending Act.