

DRAFT SECOND READING SPEECH

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Police Offences Amendment (Nazi Symbol and Gestures Prohibition) Bill 2023

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Mr Speaker, I move that the Bill now be read a second time.

Mr Speaker, I would like to begin by stating that this is an extremely important Bill that furthers our Government's commitment to create a safe and inclusive Tasmania for all members of our community.

The Police Offences Amendment (Nazi Symbol and Gesture Prohibition) Bill 2023 (the Bill) inserts two new offences in the *Police Offences Act 1935* (the Police Offences Act).

Nazi Symbols

The first offence provides 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.

Our Government is strongly opposed to the deliberate use of such symbols that promote hate and cause fear in our community.

As Members would be aware, there has been a distressing rise in reported antisemitic behaviour in Australia in recent years, including some instances here in Tasmania.

Mr Speaker, Nazi symbols can be used to promote hate, not only against Jewish people, but also other minority groups. This Bill will help promote a safer and more inclusive Tasmania, and ensure our laws appropriately reflect community expectations.

I was pleased to receive supportive submissions from sectors of the community affected by these hate symbols and, in particular, I would like to thank the Hobart Hebrew Congregation and Equality Tasmania.

I would like to read from the Hobart Hebrew Congregation's submission, which particularly highlights the need for this Bill:

Nazi symbols are a reminder of one of the darkest times in humanity, the murder and attempted eradication of the Jewish people from Europe, amongst other targeted groups. By the end of World War Two, six million Jews (1.5 million of whom were children)

and approximately 12.5 million other people were killed by the Nazi regime. As we move further away in time from the events of this dark chapter in history, it is essential that we do not allow the lessons of history to be forgotten, and the events of the past to be repeated.

We have learned from history that the promotion of hatred through words, symbols and gestures is the precursor to violence and if it is not addressed quickly and decisively it can engender a contempt for the rule of law, mob rule and the breakdown of social cohesion and democratic institutions.

Normalising hate symbols is the first step towards a desensitisation of people to abhorrent behaviour. It can be the first step to forgetting, enabling, and repeating history. It is therefore crucial to make clear that Nazi symbols, and the beliefs associated with them, remain abhorrent in contemporary Australia.

Mr Speaker, the general intent of the Bill is to assist in denouncing vilification and extremism in Tasmania, support a culturally and linguistically diverse community, and add to our legislative frameworks which promote a safe environment for all members of our community.

Importantly, the Bill acknowledges and protects the continued use of the ancient swastika in the Buddhist, Hindu, Jain and other communities. The Bill, therefore, explicitly states that the display of a swastika in connection with Buddhism, Hinduism or Jainism is not a display of a Nazi symbol in contravention of the Police Offences Act.

The Bill also protects other legitimate public purposes for display, including other religious, cultural, academic and educational purposes. Such purposes are important so that the atrocities of the Holocaust are never forgotten.

Mr Speaker, following consultation, the Bill clarifies the offence does not apply to the display of symbols used in opposition to Nazism and similar fascist ideologies, such as the use of the Pink Triangle by the LGBTQI+ community.

In developing this legislation, the Government has also considered the approaches to banning Nazi symbols taken in Victoria and New South Wales.

As previously stated, the new offence is that a person must not, by a public act and without legitimate public purpose, display a Nazi symbol if the person knows, or ought to know, that the symbol is a Nazi symbol.

This requirement was clarified after consultation, providing both the appropriate means to enforce the offence, while allowing for the fact that a person's knowledge is subjective. For example, some people may not be in a position where they ought to know a symbol is a Nazi symbol, and the Bill now allows for that.

Mr Speaker, 'Nazi symbol' is defined as a symbol associated with the Nazis or with Nazi ideology. Similar to New South Wales, the Bill's definition is broad in order to respond to Nazi symbols generally, and not just the swastika as the most common symbol used. We do not want to be prescriptive, so that Nazi sympathisers simply move to the use of other symbols that are not specifically identified.

Following consultation, and similar to the Victorian legislation, the Bill now clarifies it also captures a symbol that so nearly resembles a Nazi symbol that it is likely to be confused with or mistaken for that symbol.

Following consultation, and similar to existing offences, it has been clarified that a court can take notice of the particulars in the complaint as evidence, in the absence of evidence to the contrary. Police will always seek to charge a person clearly in contravention of the law. A person who is charged and wishes to claim a symbol is not a Nazi symbol, or that their activity had a legitimate public purpose, must produce some evidence of that fact.

The Bill provides that 'public act' in relation to the display of a symbol includes:

- any form of communication of a symbol to the public;
- any 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.

Mr Speaker, the online environment is unfortunately used by some people to promote hate. To ensure that the Bill is effective and contemporary, the offence provision applies to public acts, including any form of communication to the public. This would include publicly accessible social media and websites.

The Bill also provides a non-exhaustive list of what constitutes a 'legitimate public purpose', and this includes:

- a display done reasonably and in good faith for a genuine academic, artistic, religious, scientific, cultural, educational or law enforcement purpose;
- a symbol that is displayed on an object or contained in a document that is produced for one of those purposes;
- a symbol that 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
- a symbol that is displayed for another purpose that is in the public interest.

These exceptions appropriately protect a range of activities, including appropriate historical representations in museums and other settings.

Mr Speaker, as I have mentioned, the Bill was updated after consultation so that legitimate public purpose includes where the display is in opposition to fascism, Nazism, neo-Nazism or other related ideologies. This includes protection for matters that may not be thought of as Nazi symbols, such as the pink triangle which was once used in Nazi concentration camps and is now reclaimed in opposition to such shame, as a positive symbol of self-identity by the LGBTQI+ community.

I would like to acknowledge that the LGBTQI+ community can experience discrimination and hate in the name of Nazi ideology and through the public display of Nazi symbols. Many community members are aware of the historic violence and atrocities against LGBTQI+ people that is represented by Nazi symbols such as the swastika, and I am pleased that the Bill's prohibition will have a positive impact on the community's sense of safety and inclusion here in Tasmania.

Mr Speaker, the penalty for a person convicted of committing the offence of displaying a Nazi symbol is liable to a maximum penalty not exceeding 20 penalty units, or imprisonment for a term not exceeding three months. Similar to other offences in the Police Offences Act, repeat offending is considered serious. If the person has previously been convicted of the offence within a period of six months, the person is liable to a penalty not exceeding 40 penalty units, or imprisonment not exceeding six months.

The Bill provides police officers with appropriate powers to enforce the offence provision where the police officer has reasonable grounds to believe the person is contravening or has contravened the offence provision.

A police officer may also give a direction to a person to remove from display, a Nazi symbol within a specified period if the police officer reasonably believes the person is contravening or has contravened the offence. A person must not, without reasonable excuse, fail to comply with a direction, with a maximum penalty of 10 penalty units for non-compliance.

If a direction cannot be given in person, a police officer may leave the written direction at the property on which the Nazi symbol is being displayed.

If a police officer has reasonable grounds to believe that a person is contravening, or has contravened a direction, the police officer may, using such force, means and assistance as is reasonably necessary, search the person or a relevant vehicle or property, and seize a Nazi symbol. The use of such measures is consistent with police powers available for similar offending.

Importantly, these provisions also provide a mechanism for a police officer to remove a Nazi symbol from public display, where a person is not complying with a direction.

Mr Speaker, these provisions reach an appropriate balance of achieving the intention of the Bill to prohibit display of Nazi symbols, while providing appropriate safeguards. Further, the Bill does not limit existing police powers from being used where appropriate, such as applying for search warrants.

The Bill does not prohibit the possession of Nazi symbols, or sale of Nazi memorabilia, or goods that display a Nazi symbol. However, unless there is a legitimate public purpose for the display of goods for sale, vendors will need to cover any such items in order not to contravene the offence provision.

Further, in response to concerns that the offence may be excessively restrictive for a person who may have a tattoo of a Nazi symbol, the Bill now provides that tattoos and other forms of permanent body modification are a defence. This approach is consistent with the Victorian legislation which also excludes tattoos from the equivalent offence.

Nazi Salute

Following consultation on the draft Bill, there was a disturbing demonstration in Victoria where the Nazi salute was used. To prevent this kind of conduct occurring here in Tasmania, the Bill now also prohibits the use of the Nazi salute.

Mr Speaker, there is absolutely no place in our community for Nazi salutes – known as gestures in the Bill - and the appalling message they send.

That is why the Bill includes a new offence in the Police Offences Act prohibiting the use of Nazi gestures in public places, or within view of public places.

This offence has the same test of knowledge as the Nazi symbol offence. It also includes exemptions that can be raised as a defence, similar to the exemptions for displaying a Nazi symbol.

A 'Nazi gesture' is defined as:

- (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.

Concerns have been raised by some stakeholders that offenders may modify the Nazi salute slightly in an attempt to avoid prosecution. For that reason, the new offence includes a gesture that is so similar to a Nazi salute that it is likely to be mistaken for a Nazi salute. This issue has arisen in the United States of America and some European countries where similar offences exist.

Equally in those jurisdictions, Nazi sympathisers have adapted by using other Nazi gestures to avoid prosecution. For that reason, the Bill provides for the prescription of additional Nazi gestures, if the need arises.

As the new offence is about performing a gesture rather than possessing a symbol for display, there is no need for a directions or search power for police, for this offence.

Mr Speaker, similar to the penalty on which we consulted for Nazi symbols, the penalty for a person convicted of committing the offence of performing a Nazi gesture is liable to a maximum penalty not exceeding 20 penalty units, or imprisonment for a term not exceeding three months and if the person has previously been convicted of the offence within six months, the person is liable to a penalty not exceeding 40 penalty units, or imprisonment not exceeding six months.

The Bill also defines Nazi symbols to include depictions and recordings of Nazi gestures, as defined. This means that the offence of displaying a depiction or recording of a Nazi gesture to the public is an offence, and subject to the same framework as the display of symbols.

Importantly, this offence adopts the same test of knowledge as the Nazi symbol offence. Legal stakeholders overwhelmingly supported the adoption of the 'knows or ought to have known' test which is consistent with other similar offences in the Police Offences Act and the *Criminal Code Act 1924*. The benefit of this approach is that it provides more certainty about the application of the offence in the Tasmanian context and supports the application of existing Tasmanian case law.

The drafting of the new offence requires that a court must be subjectively satisfied that the circumstances of the offender or offending are such that the offender 'knows or ought to have known' they are using a Nazi salute.

In circumstances similar to the recent demonstrations by Nazi sympathisers in Victoria, that a person 'knows or ought to have known' that they were using the Nazi salute will be readily and obviously apparent due to the surrounding circumstances of the offending.

As the Nazi salute by nature is a fixed gesture performed in a certain way, rather than a momentary action like waving, the addition of the 'know or ought to have known' test is a necessary safeguard to ensure that the offence is charged in appropriate circumstances, and protects against the potential for other innocuous activities to be captured.

The Bill also makes it abundantly clear that police powers are not limited by the provisions relating to the new offences. For example, the police powers under the *Search Warrants Act 1997* can be used in relation to the new offences contained in the Bill.

The Bill also amends the Police Offences Act to allow a police officer to arrest a person found committing the offence, or where an officer has reasonable grounds to believe a person has committed the offence.

I would like to thank everyone who considered the Bill and made a submission in all its versions. I would also like to acknowledge the support of the Hobart Hebrew Congregation and the Executive Council of the Australian Jewry, along with many other stakeholders and contributors to the Bill. These important contributions especially from legal stakeholders, have strengthened the Bill and the safeguards it provides.

The Bill is to commence on a day to be proclaimed. This will ensure that necessary education and training, prior to the commencement of the new offences, can be provided to those impacted.

Mr Speaker, I commend the Bill to the House.