

**CRIMINAL CODE AMENDMENT
(PROHIBITION ON DISPLAY OF NAZI SYMBOLS OR GESTURE) BILL 2024**

Introduction and First Reading

Bill introduced, on motion by **Mr J.R. Quigley (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR J.R. QUIGLEY (Butler — Attorney General) [12.40 pm]: I move —

That the bill be now read a second time.

Nazi symbols are deeply offensive and inflammatory hate symbols associated with extreme right-wing authoritarianism, extremism, genocide and racial hatred. Although they are closely associated with anti-Semitism, the Nazi salute and Nazi symbols have often been used in vilifying and intimidating vulnerable groups within our community, including Aboriginal and Torres Strait Islander people, religious communities and LGBTQIA+ support groups. For instance, neo-Nazi protesters performed the Nazi salute outside the Victorian Parliament in March last year in an attempt to intimidate transgender rights supporters. Earlier this month, the ABC reported that a resident of Melbourne was shaken to find graffitied across her driveway Islamophobic and xenophobic slurs, which included multiple Nazi hakenkreuz, simply for having a “Free Palestine” sticker on her car. Last week, and closer to home, a fellow member of the Western Australian Parliament reported that their suburban neighbours’ property had been defaced with anti-Semitic graffiti, including the swastika. Such incidents are, unfortunately, not isolated and appear to have grown in frequency throughout Australia, particularly since the war in Gaza. This bill will take a strong stand against such vilification and will deprive extremists of the potent hate symbols they use to intimidate the public, causing division and fear.

The bill will amend the Criminal Code to make it a crime to publicly display or graffiti Nazi symbols and to perform the Nazi salute in public. It will also create a Nazi symbol removal scheme to alleviate the harm caused by the display of Nazi symbols by removing them promptly.

Nazi symbols will be defined to mean the Nazi hakenkreuz, which is colloquially known as the swastika; the Nazi flag; the double-sig rune, which is commonly known as the SS bolts; the Nazi eagle; and depictions of the Nazi salute. Importantly, a swastika would be considered a Nazi hakenkreuz only if it was used in connection with the Nazi Party, the Third Reich, neo-Nazism or Nazi ideology. It is not intended that public displays used in connection with Buddhism, Hinduism or Jainism, for instance, be captured by the proposed new laws.

The bill will provide for other Nazi symbols to be prescribed if the Attorney General is satisfied that the symbol is widely known as being solely or substantially representative of the Nazi Party, the Third Reich, neo-Nazism or Nazi ideology. This will enable other items based on Nazi symbolism to be prohibited, should they be employed by hate movements in the future.

Two key types of crimes involving the use of Nazi symbols are in this bill: the display of Nazi symbols, “display offences”, and the application of Nazi symbols without consent, “graffiti offences”.

In relation to display offences, the bill will make it unlawful to display a Nazi symbol in a public place. For the purposes of such crimes, the person will be taken to display the Nazi symbol if the person wears, carries or otherwise possesses or controls a Nazi symbol in a manner that would be visible to another person. Importantly, it will also include the display of a tattoo that comprises a Nazi symbol and is left uncovered in a manner that would be visible to another person. It would be unlawful to display a Nazi symbol in a private place if it would be visible to someone from a public place. For instance, a person will not evade the prohibition simply by flying a Nazi flag prominently on their front lawn instead of on the public pavement. The maximum penalty for this offence will be imprisonment for five years, or imprisonment for two years and a fine of \$24 000 upon summary conviction. Significantly, the penalty recognises the harm caused by the use of such hate symbols and the community’s denunciation of it.

This bill will also prohibit the application of Nazi symbols to public property or to the property of another person without the consent of that person. This is aligned with the offence of damaging property by graffiti in the Graffiti Vandalism Act 2016, but it will impose a higher maximum penalty of five years’ imprisonment if the person is convicted on indictment, or two years’ imprisonment and a fine of \$24 000 upon summary conviction. The availability of a penalty that is higher than that available for a simple offence under the Graffiti Vandalism Act 2016 recognises the greater harm caused when the notorious hate symbols are used to vandalise property and cause fear.

The bill will also make it a crime to perform the Nazi salute in a way that would be visible to another person in a public place, regardless of whether the person performing the Nazi salute is physically in that public place. This offence will recognise that the Nazi salute is not only a means of causing fear and vilifying others, but also

a potentially powerful tool in recruiting people who are attracted by the sense of belonging to a collective that may be projected by the synchronised performance of the Nazi salute. As a safeguard to avoid inadvertently capturing innocent gestures, the offence will apply if it is established that the person intended the gesture to be a Nazi salute. This will mean that a person who stretches an arm out momentarily to hail a taxi, for instance, would not be captured by the offence.

Other safeguards that will apply more generally include the defence that may apply to the display offences, which is that the person's conduct is engaged in reasonably and in good faith for a genuine artistic, academic, religious or scientific purpose, or a purpose that is in the public interest. A defence may also apply if the conduct is engaged in to make a fair and accurate report or analysis of an event or matter in the public interest. The bill also provides for a defence if the person is acting reasonably and in good faith in opposition to the Nazi Party, the Third Reich, neo-Nazism or Nazi ideology.

The bill provides for the timely removal of Nazi symbols from public display through the use of notices issued by police. If a senior police officer reasonably suspects that a Nazi symbol is being publicly displayed, that officer may issue a Nazi symbol removal notice, addressed to the owner, lessee or occupier of the place where the Nazi symbol is located, requiring the symbol to be removed within 14 days. The requirement to remove the Nazi symbol does not necessarily mean that it will have to be physically taken away. For instance, if SS bolts are painted on a fence, it may be sufficient to paint the fence rather than replace it altogether.

The display of the Nazi symbols and the performance of the Nazi salute in public are abhorrent to our community. This bill will align Western Australia with other Australian jurisdictions that have passed legislation in recent times. It will send a clear message to all that the use of hate symbols and gestures to spread fear and/or division in our multicultural society is completely unacceptable and will not be tolerated by the Cook Labor government.

I commend the bill to the house.

Debate adjourned, on motion by **Ms L. Mettam (Leader of the Liberal Party)**.