

Criminal Code Amendment (Prohibition on Display of Nazi Symbols or Gesture) Bill 2024

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Western Australia

LEGISLATIVE ASSEMBLY

**Criminal Code Amendment (Prohibition on
Display of Nazi Symbols or Gesture) Bill 2024**

A Bill for

An Act to amend *The Criminal Code* and to make a consequential amendment to the *Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021*.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Criminal Code Amendment (Prohibition on Display of Nazi Symbols or Gesture) Act 2024*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2 — on a day fixed by proclamation;
- (c) the rest of the Act — on the day after assent day.

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Part 2 — *The Criminal Code* amended

3. Act amended

This Part amends *The Criminal Code*.

4. Part II Chapter 11A inserted

At the end of Part II insert:

Chapter 11A — Nazi symbols and salute

80K. Terms used

(1) In this Chapter —

display, of a Nazi symbol —

(a) in a public place, has the meaning given in section 80N(2); and

(b) on private property, has the meaning given in section 80N(4);

interested person, in relation to a relevant place, has the meaning given in section 80U(1);

Nazi hakenkreuz has the meaning given in section 80L;

Nazi symbol has the meaning given in section 80M(2);

Nazi symbol removal notice has the meaning given in section 80U(2);

owner, of a place, means —

(a) if the place comprises, or is on, land that is subject to the *Transfer of Land Act 1893* or the *Land Administration Act 1997* — a proprietor of the land as defined in the *Transfer of Land Act 1893* section 4(1);

(b) if the place comprises, or is on, land that is subject to the *Registration of Deeds*

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1 *Act 1856* — the holder of an estate or interest in
2 the land that is registered by memorial under
3 that Act;

4 *private property* includes a vehicle, vessel or aircraft;

5 *publish* means publish to the public or a section of the
6 public;

7 *relevant place*, in relation to a Nazi symbol, has the
8 meaning given in section 80U(1);

9 *remove*, in relation to a thing marked with a Nazi
10 symbol, includes to modify or cover the thing
11 (including by painting or some other process) so that it
12 no longer displays a Nazi symbol;

13 *senior police officer* means a police officer who is, or
14 is acting as, a Commander or an officer of a rank more
15 senior than a Commander.

16 (2) For the purposes of this Chapter, a reference to a thing
17 marked with a Nazi symbol does not include a
18 reference to a tattoo or other body marking that
19 comprises or includes a Nazi symbol.

20 **80L. Meaning of Nazi hakenkreuz**

21 A *Nazi hakenkreuz* (commonly referred to as a
22 swastika) is a symbol of a cross with the arms bent at
23 right angles in a clockwise direction used in connection
24 with the Nazi Party, the Third Reich, Neo-Nazism or
25 Nazi ideology.

26 **80M. Meaning of Nazi symbol**

27 (1) In this section —
28 *image* includes a depiction or representation.

29 (2) A *Nazi symbol* is —
30 (a) any of the following —
31 (i) a Nazi hakenkreuz;

- 1 (ii) the Nazi flag;
2 (iii) the double-sig rune (commonly known
3 as SS bolts);
4 (iv) the Nazi eagle;
5 (v) an image of a person performing the
6 Nazi salute;
7 or
8 (b) something that so nearly resembles a thing or
9 image referred to in paragraph (a) that it is
10 likely to be mistaken for that thing; or
11 (c) a thing or image prescribed by the regulations.
- 12 (3) Regulations made under subsection (2)(c) —
13 (a) must prescribe the thing or image as a graphic
14 representation of the thing or image; and
15 (b) may not prescribe the thing or image by
16 describing a class of things or images.
- 17 (4) A thing or image may only be prescribed under
18 subsection (2)(c) on the recommendation of the
19 Minister.
- 20 (5) The Minister must not make a recommendation under
21 subsection (4) unless satisfied that the thing or image is
22 widely known by the public as being solely or
23 substantially representative of the Nazi Party, the Third
24 Reich, Neo-Nazism or Nazi ideology.
- 25 **80N. Display of Nazi symbols**
- 26 (1) A reference to a person *displaying* a Nazi symbol
27 includes the person —
28 (a) wearing, carrying or otherwise possessing or
29 controlling a Nazi symbol, or a thing marked
30 with a Nazi symbol, in a manner that the Nazi
31 symbol would be visible to another person; or

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- 1 (b) having a tattoo or other body marking that —
2 (i) comprises or includes a Nazi symbol;
3 and
4 (ii) is left uncovered in a manner that the
5 Nazi symbol would be visible to another
6 person.
- 7 (2) A person *displays* a Nazi symbol in the manner
8 described in subsection (1) in a public place if the Nazi
9 symbol, or a thing or person marked with a Nazi
10 symbol, is —
11 (a) physically in the public place; or
12 (b) physically in another place from where the Nazi
13 symbol would be visible to another person in
14 the public place.
- 15 (3) For the purposes of subsections (1) and (2), a Nazi
16 symbol may be displayed regardless of whether —
17 (a) the Nazi symbol is seen by another person; or
18 (b) in the case of subsection (2) — another person
19 is in the public place.
- 20 (4) A person *displays* a Nazi symbol in the manner
21 described in subsection (1) on private property if —
22 (a) the person displays the Nazi symbol while
23 physically on the private property; or
24 (b) the Nazi symbol is visible to another person on
25 the private property regardless of whether the
26 Nazi symbol is seen by the other person.

27 **800. Offence to display Nazi symbol**

- 28 (1) A person commits a crime if the person displays a Nazi
29 symbol in a public place.
30 Penalty for this subsection: imprisonment for 5 years.

1 Summary conviction penalty: imprisonment for 2 years
2 and a fine of \$24 000.

3 (2) A person commits a crime if the person displays a Nazi
4 symbol on private property without the consent of the
5 person who has the management or control of the
6 private property.

7 Penalty for this subsection: imprisonment for 5 years.

8 Summary conviction penalty: imprisonment for 2 years
9 and a fine of \$24 000.

10 (3) Subsections (1) and (2) do not apply to a person who
11 has not reached 18 years of age.

12 **80P. Offence to make Nazi gesture**

13 (1) A person commits a crime if —

14 (a) the person makes a gesture in a public place;
15 and

16 (b) the gesture is a Nazi salute or so nearly
17 resembles a Nazi salute that it is likely to be
18 mistaken for a Nazi salute; and

19 (c) the person intends the gesture to be a Nazi
20 salute.

21 Penalty for this subsection: imprisonment for 5 years.

22 Summary conviction penalty: imprisonment for 2 years
23 and a fine of \$24 000.

24 (2) For the purposes of subsection (1), a person makes a
25 gesture in a public place —

26 (a) if the person makes the gesture in a way that
27 would be visible to another person in the public
28 place regardless of whether —

29 (i) the gesture is seen by another person; or

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- 1 (ii) another person is in the public place;
2 and
3 (b) whether the person making the gesture is —
4 (i) physically in the public place; or
5 (ii) physically in another place.
- 6 (3) A person commits a crime if —
7 (a) the person makes a gesture on private property;
8 and
9 (b) the gesture is a Nazi salute or so nearly
10 resembles a Nazi salute that it is likely to be
11 mistaken for a Nazi salute; and
12 (c) the person intends the gesture to be a Nazi
13 salute; and
14 (d) the person makes the gesture without the
15 consent of the person who has the management
16 or control of the private property.
- 17 Penalty for this subsection: imprisonment for 5 years.
18 Summary conviction penalty: imprisonment for 2 years
19 and a fine of \$24 000.
- 20 (4) Subsections (1) and (3) do not apply to a person who
21 has not reached 18 years of age.

22 **80Q. Offence to apply Nazi symbol to property**

- 23 (1) A person commits a crime if the person applies a Nazi
24 symbol —
25 (a) to public property; or
26 (b) to the property of another person without the
27 consent of that other person.
- 28 Penalty for this subsection: imprisonment for 5 years.
29 Summary conviction penalty: imprisonment for 2 years
30 and a fine of \$24 000.

- 1 (2) For the purposes of subsection (1), a person applies a
2 Nazi symbol to property if the person —
3 (a) draws, writes, paints, plasters, scratches or
4 etches a Nazi symbol on the property; or
5 (b) marks the property with a Nazi symbol; or
6 (c) takes any other action so that a Nazi symbol
7 appears or is displayed on the property.
- 8 (3) Subsection (1) does not apply to a person who has not
9 reached 18 years of age.

10 **80R. Defence to s. 80O or 80P charge**

- 11 (1) It is a defence to a charge of an offence under
12 section 80O or 80P to prove that the accused person’s
13 conduct was engaged in reasonably and in good
14 faith —
15 (a) in the performance, exhibition or distribution of
16 an artistic work; or
17 (b) in the course of any statement, publication,
18 discussion or debate made or held, or any
19 conduct engaged in, for —
20 (i) any genuine academic, artistic, religious
21 or scientific purpose; or
22 (ii) any purpose that is in the public interest;
23 or
24 (c) in making or publishing a fair and accurate
25 report or analysis of any event or matter of
26 public interest.
- 27 (2) For the purposes of subsection (1), an accused person’s
28 conduct is not engaged in reasonably or in good faith if
29 the conduct promotes or supports the Nazi Party, the
30 Third Reich, Neo-Nazism or Nazi ideology.

1 **80S. General defences**

- 2 (1) It is a defence to a charge of an offence under this
3 Chapter in relation to the display of a Nazi symbol to
4 prove that the accused person did not know, and could
5 not reasonably be expected to have known, that the
6 Nazi symbol was being displayed.
- 7 (2) It is a defence to a charge of an offence under this
8 Chapter in relation to the display or application of a
9 Nazi symbol to prove that the accused person did not
10 know, and could not reasonably be expected to have
11 known, that the symbol was a Nazi symbol.
- 12 (3) It is a defence to a charge under this Chapter to prove
13 that the accused person was acting reasonably and in
14 good faith in opposition to the Nazi Party, the Third
15 Reich, Neo-Nazism or Nazi ideology.

16 **80T. Exceptions**

- 17 (1) In this section —
18 *intelligence agency* has the meaning given in the
19 *Crimes Act 1914* (Commonwealth) section 15K;
20 *law enforcement agency* means —
21 (a) the Police Force of the State; or
22 (b) the Police Service of the State; or
23 (c) the Office of the Director of Public
24 Prosecutions of the State; or
25 (d) the Corruption and Crime Commission; or
26 (e) an entity of another State or Territory, the
27 Commonwealth or another country that has
28 functions similar to functions of an entity
29 referred to in paragraph (a), (b), (c) or (d).
- 30 (2) A member or officer of a law enforcement agency or
31 an intelligence agency does not contravene this Chapter

1 if the act that would otherwise constitute an offence
2 occurs in the performance of the official duties of the
3 member or officer and is done in good faith.

4 (3) A person does not contravene this Chapter if the act
5 that would otherwise constitute an offence occurs in
6 the course of official duties connected with the
7 administration of the justice system, including the
8 investigation of offences, and is done in good faith.

9 **80U. Issue of Nazi symbol removal notice**

10 (1) In this section —
11 *interested person*, in relation to a relevant place, means
12 a person who —

13 (a) is a lessee or hirer of the place, whether or not
14 actually occupying the place; or

15 (b) is occupying, or is entitled to possession of, the
16 place;

17 *relevant place*, in relation to a Nazi symbol or a thing
18 marked with a Nazi symbol, means the place where the
19 Nazi symbol or thing is located.

20 (2) If a senior police officer reasonably suspects that a
21 Nazi symbol is being displayed in a public place, the
22 senior police officer may issue a written notice (a *Nazi*
23 *symbol removal notice*) to a person requiring the
24 person to remove the Nazi symbol, or a thing marked
25 with the Nazi symbol, from display in the public place.

26 (3) The Nazi symbol removal notice must —

27 (a) identify the public place where the Nazi
28 symbol, or thing marked with a Nazi symbol, is
29 displayed and, if the Nazi symbol or thing is
30 located in a place other than the public place,
31 the place where the Nazi symbol or thing is
32 located; and

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- 1 (b) be addressed to each of the following
2 persons —
- 3 (i) each owner of the relevant place,
4 identified by name; and
- 5 (ii) each other person who is an interested
6 person in relation to the relevant place,
7 without naming the person but
8 explaining the term “interested person”.
- 9 (4) This section does not apply if the Nazi symbol being
10 displayed is, or is part of, a tattoo or other body
11 marking.

12 **80V. Content of Nazi symbol removal notice**

13 A Nazi symbol removal notice must contain —

- 14 (a) a statement to the effect that —
- 15 (i) the senior police officer issuing the
16 notice reasonably suspects that a Nazi
17 symbol is being displayed in a public
18 place specified in the notice; and
- 19 (ii) the notice is issued to the person
20 because the person is the owner of, or
21 an interested person in relation to, the
22 public place or other place where the
23 Nazi symbol or thing marked with a
24 Nazi symbol is located; and
- 25 (iii) within 14 days after the day on which
26 the notice is served, the person must
27 ensure that the Nazi symbol, or a thing
28 marked with the Nazi symbol, is
29 removed so that the Nazi symbol is no
30 longer displayed in the public place
31 specified in the notice;
- 32 and

- 1 (b) an explanation of the right of the person to
2 apply to the Commissioner of Police under
3 section 80Y to revoke the notice; and
4 (c) an explanation of the effect of section 80ZA.

5 **80W. Service of Nazi symbol removal notice**

- 6 (1) A senior police officer must, as soon as practicable
7 after issuing a Nazi symbol removal notice to a person,
8 ensure that the notice is served on the person under this
9 section.
- 10 (2) The Nazi symbol removal notice must be served by a
11 police officer —
- 12 (a) by personal service; or
13 (b) if, despite reasonable steps being taken,
14 paragraph (a) cannot be complied with — by
15 personal service on a person who appears —
- 16 (i) to be occupying the relevant place
17 identified in the notice; and
18 (ii) to have reached 18 years of age;
19 or
- 20 (c) if, despite reasonable steps being taken, neither
21 paragraph (a) nor (b) can be complied with —
22 by attaching the notice to the front entrance, or
23 another part, of the relevant place identified in
24 the notice where it can be easily seen.
- 25 (3) A Nazi symbol removal notice expires if it is not
26 served within 7 days after it is issued.

27 **80X. Duration of Nazi symbol removal notice**

- 28 (1) A Nazi symbol removal notice takes effect in relation
29 to a person when the notice is served on the person
30 under section 80W.

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- 1 (2) The Nazi symbol removal notice remains in effect until
2 the Nazi symbol, or a thing marked with the Nazi
3 symbol, has been removed in accordance with the
4 notice, unless the notice is revoked sooner under
5 section 80Y(4).

6 **80Y. Revocation of Nazi symbol removal notice**

- 7 (1) A person served with a Nazi symbol removal notice
8 may apply to the Commissioner of Police to revoke a
9 Nazi symbol removal notice.
- 10 (2) The application must be made —
11 (a) in writing; and
12 (b) during the period that the Nazi symbol removal
13 notice is in effect.
- 14 (3) The Commissioner of Police must determine the
15 application within 72 hours after the application is
16 made.
- 17 (4) The Commissioner of Police must revoke a Nazi
18 symbol removal notice if satisfied —
19 (a) the requirements under section 80U(2) for
20 issuing the notice were not met; or
21 (b) the person is not the owner of, or an interested
22 person in, the relevant place identified in the
23 notice; or
24 (c) the Nazi symbol to which the notice relates is
25 no longer displayed in the public place
26 specified in the notice.
- 27 (5) The Commissioner of Police may act under
28 subsection (4) on an application under subsection (1) or
29 on the Commissioner's own initiative.
- 30 (6) The Commissioner of Police must, as soon as
31 practicable after revoking a Nazi symbol removal

1 notice on an application under subsection (1), ensure
2 that written notice of the revocation is served, by a
3 method authorised by the regulations, on the applicant.

4 **80Z. Offence to hinder compliance with Nazi symbol**
5 **removal notice**

6 (1) A person who does anything intending to prevent,
7 obstruct or delay the authorised removal of a Nazi
8 symbol, or a thing marked with a Nazi symbol, in
9 accordance with a Nazi symbol removal notice
10 commits an offence.

11 Penalty for this subsection: imprisonment for
12 12 months and a fine of \$12 000.

13 (2) For the purposes of subsection (1), the authorised
14 removal of a Nazi symbol, or a thing marked with a
15 Nazi symbol, means the removal by a person who —

16 (a) is, or is acting for or on the instructions of, a
17 person on whom the Nazi symbol removal
18 notice was served; or

19 (b) is acting under section 80ZA(4).

20 **80ZA. Police powers relating to Nazi symbol removal**
21 **notice**

22 (1) This section applies if —

23 (a) a Nazi symbol removal notice is served on 1 or
24 more persons (each a *relevant person*) in
25 respect of a Nazi symbol being displayed in a
26 public place; and

27 (b) within 14 days (or a longer period allowed
28 under subsection (2)) after the notice is served
29 (the *time allowed*), the Nazi symbol, or a thing
30 marked with the Nazi symbol, has not been
31 removed in accordance with the requirements
32 of the notice.

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- 1 (2) The Commissioner of Police may extend the time
2 allowed —
- 3 (a) on the Commissioner’s own initiative; or
4 (b) on an application made by a relevant person to
5 the Commissioner before the time allowed
6 elapses.
- 7 (3) The Commissioner of Police may cause the Nazi
8 symbol, or a thing marked with the Nazi symbol, to be
9 removed.
- 10 (4) Subsection (3) authorises police officers and agents of
11 the Commissioner of Police, without warrant or further
12 notice, in order to do anything for the purposes of that
13 subsection —
- 14 (a) to enter the relevant place identified in the Nazi
15 symbol removal notice and secure it; and
16 (b) to use any force and employ any equipment
17 reasonably necessary.
- 18 (5) The Commissioner of Police may recover from a
19 relevant person who is the owner of the relevant place
20 identified in the Nazi symbol removal notice the costs
21 incurred by the Commissioner under this section in a
22 court of competent jurisdiction as a debt due to the
23 State.
- 24 **80ZB. Correcting mistakes in Nazi symbol removal notice**
- 25 (1) A senior police officer may correct a Nazi symbol
26 removal notice if the notice contains —
- 27 (a) a clerical mistake; or
28 (b) a mistake arising from an accidental slip or
29 omission; or
30 (c) a material mistake in the description of any
31 person, thing or matter referred to in the notice.

- 1 (2) The senior police officer must, as soon as practicable
2 after a Nazi symbol removal notice is corrected under
3 this section —
- 4 (a) ensure that each person who has been served
5 with the notice is notified of the correction by
6 service of the corrected notice in the same
7 manner as the notice was originally served
8 under section 80W; and
- 9 (b) make a record of the particulars of the
10 correction of the notice.
- 11 (3) A Nazi symbol removal notice corrected under this
12 section has the same validity and effect as if the
13 mistake had not been made.

14 **80ZC. Delegation by Commissioner of Police**

- 15 (1) The Commissioner of Police may delegate the
16 Commissioner’s functions under section 80Y or 80ZA
17 to a senior police officer (the *delegated officer*).
- 18 (2) The delegation must be in writing signed by the
19 Commissioner of Police.
- 20 (3) When the delegated officer is performing the
21 Commissioner of Police’s functions under section 80Y
22 or 80ZA, the officer is taken to do so in accordance
23 with the terms of the delegation unless the contrary is
24 shown.
- 25 (4) A senior police officer who issues a Nazi symbol
26 removal notice must not perform the Commissioner of
27 Police’s functions under section 80Y or 80ZA as a
28 delegated officer in relation to the notice.
- 29 (5) Nothing in this section limits the ability of the
30 Commissioner of Police to perform a function through
31 an officer or agent.

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1 **80ZD. Forfeiture of unlawful material**

2 A court that convicts a person of an offence against this
3 Chapter may make an order for the forfeiture to the
4 State, or the destruction or disposal, of any Nazi
5 symbol or thing marked with a Nazi symbol in respect
6 of which the offence was committed.

7 **80ZE. No compensation under this Chapter**

8 The provisions of this Chapter do not entitle a person
9 to compensation in respect of anything done in
10 connection with —

- 11 (a) a Nazi symbol removal notice; or
12 (b) an order of a court under this Chapter.

13 **80ZF. Exclusion of rule in s. 24**

14 The operation of the rule in section 24 is excluded in
15 relation to an offence against this Chapter.
16

1 **Part 3 — Criminal Law (Unlawful Consorting and**
2 **Prohibited Insignia) Act 2021 amended**

3 **5. Act amended**

4 This Part amends the *Criminal Law (Unlawful Consorting and*
5 *Prohibited Insignia) Act 2021*.

6 **6. Section 24 amended**

7 Delete section 24(2) and insert:
8

9 (2) Subsection (1) applies —

10 (a) whether the thing or person marked with
11 insignia of an identified organisation is —

12 (i) physically in the public place; or

13 (ii) physically in some other place from
14 where the insignia would be visible to
15 another person in the public place;

16 and

17 (b) regardless of whether —

18 (i) the insignia is seen by another person;
19 or

20 (ii) another person is in the public place.
21

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