



for

tabled, by leave,

Mr Tudhope

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S. West

Clerk of the Parliaments

9/8/2022

CRIMES AMENDMENT (PROHIBITION ON DISPLAY OF NAZI SYMBOLS) BILL 2022

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Crimes Amendment (Prohibition on Display of Nazi Symbols) Bill 2022 (Government Bill) gives effect to the NSW Government's commitment in March 2022 to introduce a new Bill to criminalise the public display of Nazi symbols without a reasonable excuse.

This commitment followed careful consideration by the Government of a report in February 2022 by the Legislative Council's Standing Committee on Social Issues (the Committee) into a Private Member's Bill, the Crimes Amendment (Display of Nazi Symbols) Bill 2021 (PMB).

The Government Bill will respond to reports of rising incidents of anti-Semitic and far-right extremist activities in NSW. Its purposes are to protect our community from the harm caused by displaying Nazi symbols, denounce such hateful conduct and promote social cohesion.

There are already a number of protections against vilifying conduct in NSW. For example, it is an offence under section 93Z of the *Crimes Act 1900* to intentionally or recklessly threaten or incite violence on grounds of race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status. However, it is currently not an offence to publicly display a Nazi symbol, without anything more. The Government Bill will fill these gaps.

Other nations, such as Germany, Austria and France, have long criminalised the public display of Nazi symbols. In May 2022 the Summary Offences Amendment (Nazi Symbol Prohibition) Bill 2022 was introduced to the Victorian Parliament and the Queensland Government announced its intention to legislate this year to make it a criminal offence to display symbols promoting hatred and causing fear, including but not limited to Nazi symbols.

The Committee's Inquiry was informed by stakeholder submissions and evidence given before the Committee.

In its report tabled 22 February 2022, the Committee identified three important reasons for criminalising the display of Nazi symbols. Those reasons are:

- a. **To protect individuals and communities from hateful conduct:** The Committee received submissions and evidence concerning the profound offence and distress caused by viewing the Hakenkreuz and other Nazi symbols, felt not only by members of the Jewish community, but also by other groups targeted by Nazis, such as people with disabilities and the LGBTQIA+ community, by ex-service personnel, and by members of the Hindu, Buddhist and Jain religions, who revere the swastika as a sacred symbol.
- b. **To send a message of denunciation to those who would support this hateful conduct:** The display of the Hakenkreuz in particular was said to trivialise the memories of the millions of people murdered in the Holocaust and to invoke fear and panic in some members of the Jewish community, particularly the descendants of Holocaust survivors. Participants to the inquiry also gave evidence that the display of symbols that incite hatred can be a precursor to violence; and
- c. **To foster the strengthening of multiculturalism and respect for diversity:** Participants gave evidence about the incompatibility of the display of Nazi symbols with modern Australian community values and social cohesion, including multiculturalism and communal harmony. It was submitted by some participants that the normalisation of

symbols of hate and genocide may be precursors to the breakdown of social cohesion and democratic institutions

However, the Committee recommended that the Bill should be amended before being debated in the Legislative Council.

In response to the Committee's report, the Government committed to introduce a Bill to criminalise the public display of Nazi symbols without a reasonable excuse, through a legislative vehicle that would overcome the risks and shortcomings of the Private Member's Bill identified by the Committee and stakeholders.

Objectives: What is the policy's objective couched in terms of the public interest?

The object of the policy is to criminalise knowingly displaying a Nazi symbol, by public act and without reasonable excuse, by creating a new offence in the *Crimes Act 1900* with a maximum penalty of 12 months imprisonment and/or a fine of 100 penalty units for individuals, or a fine of 500 penalty units for corporations.

The Government Bill provides broad, non-exhaustive exceptions to ensure the new offence only captures blame-worthy conduct. The Government Bill provides that a person does not commit an offence if a Nazi symbol is displayed reasonably and in good faith for an academic, artistic or educational purpose, or another purpose in the public interest.

Importantly, in recognition of feedback received from stakeholders, the Government Bill makes clear that the display of a swastika in connection to Buddhism, Hinduism and Jainism does not constitute the display of a Nazi symbol. For these communities, the swastika is an ancient symbol of peace, prosperity and auspiciousness.

Options: What alternative policies and mechanisms were considered in advance of the bill?

Reform of the *Crimes Act 1900* can only be achieved through legislative amendment.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The Government Bill differs from the PMB in key respects, including the Government Bill:

- doubling the maximum penalties provided under the PMB for individuals;
- deliberately not defining the term 'Nazi symbol' to ensure the offence is broad enough to capture all relevant traditional, well-known symbols associated with the Nazi regime, such as the Hakenkreuz or the Nazi flag, as well as less common symbols, newer symbols adopted by neo-Nazi groups and to adapt to changing extremist practices;
- adopting the same definition of 'public act' as in section 93Z, for consistency;
- providing that a person only commits an offence if they *knowingly* display a Nazi symbol. While any display of a Nazi symbol may cause harm and distress to others, a person should not be punished for this conduct if they do so without knowledge that they are displaying a Nazi symbol.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The new offence will commence on the date of assent.

Once the offence takes effect, it will be the responsibility of the NSW Police Force and prosecutors to investigate, charge and prosecute offences before the Local Court.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

This policy development and drafting of the Bill was also informed by the eight stakeholder submissions received by Committee's inquiry into the PMB, including from:

- the Australian Association of Jewish Holocaust Survivors and Descendants Inc;
- the Australian Jewish Association;
- the Australia Israel & Jewish Affairs Council;
- Anti-Discrimination NSW;
- the NSW Jewish Board of Deputies and the Hindu Council of Australia (jointly); and
- the NSW Association of Jewish Service and Ex-Service Men & Women.

Correspondence was received by the Committee from the Commonwealth eSafety Commissioner. The Committee also heard evidence from Mr David Hudson, Deputy Commissioner, Investigations and Counter-terrorism, NSW Police Force.

Each of these stakeholders were invited to comment on a draft of the Government Bill, as well as the following stakeholders:

- the Local Court; the District Court; the Supreme Court; the Children's Court;
- Legal Aid NSW;
- the Office of the Director of Public Prosecutions;
- the Public Defenders' Office;
- the Department of Premier and Cabinet;
- the NSW Police Force;
- Anti-Discrimination NSW;
- the Law Society of New South Wales;
- the New South Wales Bar Association;
- Aboriginal Legal Service (NSW/ACT) Limited;
- the NSW Council for Civil Liberties; and
- Global Diverse Connections and Federation of Indian Associations of NSW (jointly).

We thank these stakeholders for contributing to this important work.