

# Criminal Code (Prohibited Symbols) Regulation 2024

Explanatory notes for SL 2024 No. 39

Made under the

*Criminal Code Act 1899*

## General Outline

### Short title

*Criminal Code (Prohibited Symbols) Regulation 2024*

### Authorising law

Sections 52C and 708 of the *Criminal Code Act 1899*

Section 17 of the *Acts Interpretation Act 1954*

### Policy objectives and the reasons for them

On 31 January 2022, the then Legal Affairs and Safety Committee (LASC) tabled its report *Inquiry into serious vilification and hate crimes* (Report No. 22, 57th Parliament) (the LASC Report).

Recommendation 16 of the LASC Report was that the Government establish a criminal offence that prohibits the display of hate symbols, including those relating to Nazi and Islamic State of Iraq or Syria ideology, with considered exceptions to the prohibition. The Government supported the recommendation, acknowledging that the public display of hate symbols can cause great distress to all Queenslanders, particularly members of those groups who have been historically persecuted.

On 12 October 2023, the *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023* (Amendment Act) was passed by the Legislative Assembly. The Amendment Act was given assent on 19 October 2023.

On 8 December 2023, the uncommenced provisions of the Amendment Act were proclaimed fixing 29 April 2024 as the day for commencement of all remaining provisions of the Amendment Act.

Under section 17(1) and (2) of the *Acts Interpretation Act 1954*, a power to make a regulation that is contained in an uncommenced Act may be exercised before the empowering provision commences.

Upon commencement of the remaining provisions of the Amendment Act on 29 April 2024, section 52C (Prohibited symbols) and section 52D (Display, distribution or publication of prohibited symbols) will be inserted into the Criminal Code. These provisions give effect to Recommendation 16 of the LASC Report.

Section 52C of the Criminal Code will enable a regulation to be made to prescribe a symbol or image as a prohibited symbol for the purposes of the offence in new section 52D of the Criminal Code.

Section 52C(3) of the Criminal Code will provide that the Minister responsible for the administration of the Criminal Code may only recommend that a regulation be made if satisfied that the symbol or image is (a) widely known by the public as being solely or substantially representative of an ideology of extreme prejudice against a *relevant group*; or (b) is widely known by members of a *relevant group* as being solely or substantially representative of an ideology of extreme prejudice against that group.

*Relevant group* is defined to mean a group of persons who identify with each other on the basis of an attribute or characteristic that is, or is based on, the race, religion, sexuality, sex characteristics or gender identity of the persons.

Before making the recommendation, the Minister will also be required to consult with the chairperson of the Crime and Corruption Commission, the Human Rights Commissioner under the *Anti-Discrimination Act 1991* (the Queensland Human Rights Commissioner) and the commissioner of the Queensland Police Service under the *Police Service Administration Act 1990* (the Police Commissioner).

The Regulation will prescribe the Nazi Hakenkreuz as a prohibited symbol.

The Nazi Hakenkreuz is a widely recognised symbol of Nazi ideology and its beliefs which are based in extreme prejudice. This is demonstrated by the vast atrocities committed by the Nazi regime of Germany in furtherance of its beliefs against various groups of people in Europe during the 20<sup>th</sup> century. Included amongst the victims of the actions of the Nazi regime were Jewish people, Roma people, homosexual people and people with disabilities.

The historical events which took place under Nazi rule during this period are well known.

The connection of Nazi ideology and its beliefs to the Nazi Hakenkreuz is widely known by the public. Given the notorious historical events were targeted against certain groups of people, the Nazi Hakenkreuz is also widely known by members of those groups as being representative of an ideology of extreme prejudice against those groups.

## **Achievement of policy objectives**

Prescribing the Nazi Hakenkreuz as a prohibited symbol will criminalise the display, distribution or publication of that symbol where it might reasonably be expected to cause a member of the public to feel menaced, harassed or offended. Criminalising these acts will serve to protect relevant groups from the harm caused by the display of the symbol.

## **Consistency with policy objectives of authorising law**

The Regulation is consistent with the policy objectives of the Amendment Act.

## **Inconsistency with policy objectives of other legislation**

The Regulation is not inconsistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

While no cost impacts are anticipated to implement the Regulation, any costs arising from the proposal will be met from existing agency resources.

## **Consistency with fundamental legislative principles**

The Regulation is consistent with fundamental legislative principles set out in the *Legislative Standards Act 1992*.

## **Consultation**

As will be required under section 52C(4) of the Criminal Code, the chairperson of the Crime and Corruption Commission (CCC), the Queensland Human Rights Commissioner and the Acting Police Commissioner have all been consulted. The Regulation was supported by the chairperson of the CCC and the Queensland Human Rights Commissioner. No issues with the Regulation were raised by the Acting Police Commissioner.

Targeted consultation was undertaken with key community and legal stakeholders. Feedback received from stakeholders indicated support for the Regulation.