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# War Memorial Legislation Amendment (Increased Penalties) Bill 2007

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## WAR MEMORIAL LEGISLATION AMENDMENT (INCREASED PENALTIES) BILL 2007

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### Second Reading

**The Hon. TONY KELLY** (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, and Vice-President of the Executive Council) [5.56 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

The Government is pleased to introduce the War Memorial Legislation Amendment (Increased Penalties) Bill 2007. The bill proposes amendments to the Summary Offences Act 1988, the Anzac Memorial (Building) Act 1923 and the Anzac Memorial (Building) By-laws 1937 to double the maximum penalties for anyone who defaces, vandalises, deliberately damages or behaves inappropriately around a war memorial. Following amendments made to the bill in the lower House proposing further amendments to the Summary Offences Act 1988 the bill now also enables a court to direct an offender who damaged or desecrated a war memorial to perform community service work.

The bill forms the legislative plank of the Government's "Respecting our Diggers" policy to ensure ongoing respect for our war veterans and places of remembrance. The bill honours the Government's pre-election promise to double penalties for criminal or inappropriate activity around war memorials. Those changes come on top of the serious sanctions that already exist for criminal behaviour in and around war memorials. Depending on the seriousness of the conduct, such behaviour can already be dealt with by general criminal provisions including malicious damage under section 195 of the Crimes Act, which carries a maximum penalty of five years imprisonment, and offensive conduct under section 4 of the Summary Offences Act, which carries a maximum penalty of six penalty units or three months imprisonment.

This bill sends another clear message that war memorials are sacrosanct and vandalism or destruction of these monuments will not be tolerated. War memorials honour those that have fought for our country, many of whom made the ultimate sacrifice. They are a physical reminder of the bravery of individuals as well as the immense loss suffered by many of their loved ones. This bill reinforces the seriousness of the defacing or damaging of war memorials by doubling the maximum penalty for such offences. The bill also emphasises the importance of offenders making tangible reparation in the community by carrying out community service work. I seek leave to incorporate the balance of the second reading speech in *Hansard*.

### Leave granted.

I turn now to the detail of the bill.

Item [1] of Schedule 1 increases the maximum penalty under 8(2) of the Summary Offences Act 1988 for a person who wilfully damages or defaces any protected place, including a war memorial, from 20 penalty units (currently \$2,200) to 40 penalty units (currently \$4,400).

Item [2] of Schedule 1 increases the maximum penalty under section 8(3) of the Summary Offences Act 1988 for a person who commits any nuisance or any offensive or indecent act in or on any war memorial, from 10 penalty units (currently \$1,100) to 20 penalty units (currently \$2,200).

Item [3] of Schedule 1 enables the court, instead of imposing a fine on a person under this section, to make an order under section 8(1) of the Crimes (Sentencing Procedure) Act 1999 or section 5(1) of the Children (Community Service Orders) Act 1987 directing the person to perform community service work.

Item [1] of Schedule 2 amends section 9(3) of the Anzac Memorial (Building) Act 1923 to provide that the by-

laws may create an offence punishable by a penalty not exceeding 40 penalty units (currently \$4,400). This amendment doubles the penalty currently provided for in the Act which is 20 penalty units (currently \$2,200).

Item [2] of Schedule 2 enables the court, instead of imposing a fine on a person under this section, to make an order under section 8(1) of the Crimes (Sentencing Procedure) Act 1999 or section 5(1) of the Children (Community Service Orders) Act 1987 directing the person to perform community service work.

Item [3] of Schedule 2 (previously referred to as item [2] of Schedule 2) amends section 11 (1) of the Anzac Memorial (Building) Act 1923 which currently provides that a person convicted of an offence under the bylaws may be ordered to pay an amount not exceeding 20 penalty units (currently \$2,200) as the cost of, a contribution to the cost of, the repair or restoration of any damage caused by the action that resulted in the conviction. Schedule 2 [2] increases the maximum amount that a person may be ordered to pay to 40 penalty units (currently \$4,400).

Item [1] of Schedule 3 amends by-laws 10, 11 and 13-15 of the Anzac Memorial (Building) By-laws 1937 which set out offences relating to the conduct of persons within the dedicated area and prohibiting persons from entering the memorial building during the hours that the Memorial Building is closed. Item [1] of Schedule 3 increases the penalty for such offences from 10 penalty units (currently \$1,100) to 20 penalty units (currently \$2,200).

Item [2] of Schedule 3 increases the maximum penalty for a person who damages or impairs or does anything likely to damage or impair the Memorial Building under the by-laws from 20 penalty units (currently \$2,200) to 40 penalty units (currently \$4,400).

The amendments contained in this bill will dramatically increase the penalties for any damage to or inappropriate activity around a war memorial anywhere in New South Wales and enable a court to order an offender to perform community service work as punishment for damaging or desecrating a war memorial. I am sure these amendments will be welcomed by all members.

I commend this bill to the House.

**The Hon. CHARLIE LYNN** [6.01 p.m.]: The Opposition supports the War Memorial Legislation Amendment (Increased Penalties) Bill 2007 but foreshadows that it will move a number of amendments in Committee. The purpose of the bill is to amend the Summary Offences Act 1988, the Anzac Memorial (Building) Act 1923, and the Anzac Memorial (Building) By-laws 1937. These amendments will double the maximum penalty for offences under the Summary Offences Act 1988 relating to protected places, including war memorials; double the maximum penalty for offences under the Anzac Memorial (Building) By-laws 1937; and double the maximum amount that a person who has been convicted of an offence under those by-laws may be ordered to pay for the repair or restoration of damage caused by the commission of the offence.

Before detailing other aspects of the bill I have to ask why people would want to desecrate or deface a war memorial in the first place. In Sydney we have the magnificent Anzac Memorial in Hyde Park and we have the Cenotaph in Martin Place. However, the Cenotaph is an empty tomb. At the conclusion of all Australia's battles, in particular, World War I and World War II, our war dead were buried in cemeteries on foreign shores. The Australian War Graves Commission does a magnificent job in maintaining those cemeteries. I am pleased to say that increasing numbers of Australians are visiting those sacred places in France, in the South-West Pacific area and so on, and when they visit those places they are solemnly reminded of the price that people paid for the peace, prosperity and freedom we have in Australia today.

Why would any Australian want to deface a war memorial? This legislation will increase the penalties, which will act as a deterrent, but I believe we should think more deeply about why people choose to deface war memorials. I firmly believe that in many cases it is due to ignorance of what the memorial or the Cenotaph stands for in the first place. I do not think there is a town in Australia that does not have some sort of war memorial in which a local community has invested, raised funds for and built. Memorials are a unique feature of every Australian country town. Some memorials are very small, some are striking and some are the centrepiece of the town. When the town clock was built in my home town of Orbost it was dedicated as a memorial to those who had fallen. I remember the excitement on the day that it was officially opened in the early 1960s or late 1950s, or whenever it was.

War memorials, which are part of the pride of a town, honour those who left to fight for our country and never returned. In my view people deface war memorials out of ignorance; they do not know what they are doing. If people knew more about what our war memorials and the Cenotaph stood for they would treat them as sacred places and not subject them to graffiti or deface them in other ways. People are ignorant because they have not learnt anything about Australian history. They have gone through our education system and have not learnt enough about Australian history and virtually nothing about our military history. Some people say, "I learnt a bit about this and a bit about that", but all they learnt was a bit about everything. Generally speaking, Australian military history is probably of more interest to schoolteachers and usually does not form part of a school's curriculum.

I believe that the study of Australian military history should be part of our educational curriculum at the primary, secondary and tertiary levels so that people have a complete understanding of the wars in which we fought. That should not occur in order to glorify war or to tell people how great we are; it should occur to enable people to learn about the sacrifices we made and to ensure that the lessons learned in the wars that were fought are never repeated. Those who experience the horror of war do not want to experience those horrors again. I will relate for the benefit of honourable members a small part of our history that is not known.

The 39th Infantry Battalion and the 144th Japanese Regiment fought against one another during the horrors of the Kokoda campaign. Many years later, after communicating with one other, they decided to meet as fellow warriors or comrades in arms. One year Australian soldiers and their wives would travel to Japan and meet with Japanese soldiers from the 144th Regiment and their wives, have dinner and get to know one another, and the following year the Japanese and their wives would come to Australia and the same thing would happen, which was a wonderful gesture. The young men in the 39th Infantry Battalion did that because, according to their ideology, they thought it was right for their respective countries. They had experienced the horrors of war and they never wanted their children or their grandchildren to experience it. They thought that this active reconciliation would be their gesture towards peace.

I remember attending the funeral of Colonel Ralph Honner—the hero of Kokoda if ever there was one—which was held at North Sydney. The church was packed with all his comrades and others who knew him or knew of him. Just before the service an old Japanese gentleman came walking down the aisle towards the coffin, which was located at the front of the church and bowed before it. Everyone was a bit taken aback by that. Outside the church at the end of the service we asked him who he was and where he was from. He said that he was from the 144th Japanese Regiment. The soldiers in that regiment had heard that a fellow warrior had passed away and he was sent to represent the battalion and to pay his final respects.

When people know about our war history they have respect for those who served in those wars. When they know that the Cenotaph and war memorials represent a massive loss of Australian life in foreign countries—soldiers fighting for our democracy and for our beliefs—they will have great respect for them. If people were educated and knew about and understood our history we would not have to impose penalties on those who currently deface our war memorials because they would not do it. Our education system and our arts community have both failed us. The arts community has talked a great deal about taxpayer support for the production of movies and documentaries in Australia.

They have never produced movies. There are no movies on Australian achievements in the Pacific War. There are no movies on El Alamein, Tobruk, Kokoda, Milne Bay, Lae and Finchaven. A couple of years ago some of our trendy arts people spent \$4 million of taxpayers' money on a film called *Turtle Beach* filmed in Malaysia. The movie never rated; it offended Malaysia, caused an international incident and then disappeared. That was \$4 million of taxpayers' money down the gurgler to satisfy some lefty trying to be creative living off taxpayers' money. Funding is provided for things such as *Rats in the Ranks*—I suppose those stories need to be told as well!

**The Hon. Matthew Mason-Cox:** They need to be exposed, rats in the ranks.

**The Hon. CHARLIE LYNN:** They do indeed. A sizable amount of taxpayers' funds are available and they should be used in our arts industry to tell our Australian story. I am talking about our Australian pioneering history, our indigenous history and our military history. Documentaries need to be supported, movies need to be produced, books need to be written.

**The Hon. Rick Colless:** History needs to be recorded.

**The Hon. CHARLIE LYNN:** It needs to be recorded. Recently I was at Kingscliff RSL, which is only a small club.

**The Hon. Helen Westwood:** Tell us your story.

**The Hon. CHARLIE LYNN:** You do not agree with that?

**The Hon. Helen Westwood:** Tell us your history.

**The Hon. CHARLIE LYNN:** My history? I do the best I can.

**The PRESIDENT:** Order! I ask members to cease interjecting on the Hon. Charlie Lynn.

**The Hon. CHARLIE LYNN:** Last week I was at Kingscliff RSL to see a wonderful project initiated by a young lady that involved a school adopting a digger, a veteran. This particular school adopted a veteran in his eighties and produced a documentary about him. They interviewed him and brought him to the school, where he told his story. It was an absolutely wonderful initiative. The young people at the school became really involved in it and the digger loved it because he was able to tell his story and have it recorded. I intend to speak to the Minister for Education and Training about this. Who knows what we would learn if every school in Australia adopted a digger

to tell his story? Who knows what stories are bottled up in people's minds? These people are getting on; we need to do this urgently. What a wonderful way to record some of our great history. We must look at getting this information into our education system.

The bill intends to double the maximum penalties for offences under the Act. The Minister claimed that the bill forms the legislative plank of the Government respecting our diggers policy to ensure ongoing respect for our war veterans in places of remembrance. The Government promised these changes in response to the Coalition's announcement on 23 July 2007 with the introduction of the National Symbols Protection Bill 2007 and the strengthening of the Summary Offences Act. The Government proposes to increase penalties under the Summary Offences Act 1988 to 40 penalty points, which is equivalent to about \$4,400 for anyone who wilfully defaces any protected place, including a war memorial. The Coalition's policy was to increase the penalty to 100 penalty units, that is, \$11,000. I foreshadow that I will move amendments to that effect in the Committee stage.

This bill will amend the Summary Offences Act to increase the penalty for a person who commits any nuisance for any offence or indecent act in or on any war memorial to 20 penalty points, that is, \$2,200. Again, the Coalition policy would increase the penalty to 100 penalty units, that is, \$11,000. I foreshadow that I will move an amendment to that effect. Section 9(3) of the Anzac Memorial (Building) Act 1923 increases any maximum penalty under the Act to 40 penalty units. The increased penalties in this bill are in line with community expectation and consistent with the Coalition's election policy. Although the changes make worthwhile amendments to the Anzac Memorial (Building) Act 1923 and the Anzac Memorial (Building) By-Laws 1937, they do not go as far as the Coalition's election policy, which sought to put these sites on par with Aboriginal sites protected under the National Parks and Wildlife Act 1974.

The Coalition's National Symbols Protection Bill sought to amend the Summary Offences Act 1988 by making it an offence to prevent the display or possession of the national flag or to seek to remove our national flag from a person without his or her permission. It was proposed that 20 penalty points would apply to that offence. It is a serious weakness in this bill that an Aboriginal sacred site is deemed to be more important than a cenotaph or war memorial: in fact, it is \$6,600 less important. That is a disgrace. I am not saying that one is any less important than the other, but the Government is saying that. It is important that a cenotaph or war memorial be treated the same as an Aboriginal sacred site. The amendments I foreshadow will ensure that happens. We are not asking for any more or any less, but the penalties should be at least equal.

The Coalition bill would also require all public buildings in New South Wales that receive funding from the New South Wales Government, including local councils buildings, to display the Australian national flag. We have had instances, unheard of until recent times, of people burning our flag in public. One young fellow did just that during the Cronulla riots. However, and this reinforces my point, rather than slamming this bloke the RSL leadership accepted the fact that the kid did not know what the flag stood for. They invited him to walk the Kokoda track, which he did in April this year under the leadership of John Nelder. The walk was featured on *Compass*. Within approximately a day and a half on the track the kid understood the significance of the flag to Australians, and that turned his life around. I like to think that the kid is now a role model in his Islamic society because he understands. Having this sort of information in our education system would go a long way towards getting people to pause and think before they undertake destructive or irreverent actions.

The Coalition's bill would amend the Summary Offences Act 1988 to increase the penalties for the desecration of shrines, monuments and statues, which includes war memorials, to match those provided for the desecration of Aboriginal sites under the National Parks and Wildlife Act. Again, the increased penalty was from the previous amount of \$2,200 for an offence of wilful damage or defacing to a proposed penalty of 100 penalty units, or \$11,000. I ask Government members and crossbench members to honour this bill by ensuring that Anzac war memorials and cenotaphs have equal status with Aboriginal sacred sites.

**The Hon. LYNDA VOLTZ** [6.18 p.m.]: The provisions put forward in this bill will double the maximum financial penalties for people who damage or desecrate war memorials, which means that offenders will face potential fines of up to 40 penalty units—\$4,400—for vandalising a war memorial. For more serious offences of this nature offenders actually can be imprisoned for up to five years if they are charged with malicious damage under section 195 of the Crimes Act 1900. The Government has put forward also a further amendment to this bill that will enable courts to order an offender to perform community service as an alternative to imposing a fine. This is the crux of this bill. People can be made to pay, but it means nothing, even if the amount is \$4,000, \$11,000 or \$20,000. We want people to understand the gravity of the crime they have committed. Community service is the best way of doing that.

I will provide the House with examples of the recent cases I could find relating to vandalism of war memorials. The first relates to an occasion when 12 graffiti tags were sprayed onto the walls of the Anzac Memorial in Sydney's Hyde Park. The remarks of the New South Wales RSL President, Don Rowe, are reported as follows in relation to that act of vandalism:

He said the graffiti did not contain any anti-war or anti-political slogans, leading him to believe the offenders were simply ignorant to the significance of the building.

"It makes one feel the person who did it had no knowledge or respect at all for those that paid the supreme sacrifice which the war memorial pays tribute to," he said.

"It makes me very disappointed and very sad that someone had a total disregard for the significance of the war memorial."

Young people needed to be better educated about significance of the war memorial, Mr Rowe said.

This is also the attitude that has been adopted by the Hon. Charlie Lynn in the past. In a speech in this House in March 2005 the Hon. Charlie Lynn said:

Last week there was a graffiti attack on the Australian War Memorial. It was not prompted by anti-war sentiments; it was simply a mindless act. People do not understand the significance of that building. The Kokoda Track Memorial Walkway at Concord is often vandalised. We cannot blame the kids for these attacks because they do not appreciate the significance of our memorials. We should blame the educators, the filmmakers who have not produced movies or documentaries about Kokoda and the authors who have not written books on the subject. That is starting to happen now. We must give our young people something to believe in.

New South Wales RSL President, Don Rowe, also said that five young girls who were arrested over the defacing of the Bathurst Carillon War Memorial should be taught a lesson in Australian history. Again and again we come back to the theme of education to teach people the significance of war memorials. The Hon. Charlie Lynn cited a very good example in his speech in this debate. He referred to the young boy who had burnt the Australian flag and who had taken on the Kokoda Trail and educated about the significance of the Australian flag to Australia.

War memorials have a great significance to Australia for a number of reasons, but if for no other reason than that they pay respect to the grieving process after World War I, when almost a whole generation of men were killed; to the million men and women who served in World War II; to the 39,000 soldiers who died in World War II; to the 30,000 who were detained as prisoners of war; even to the Creado, the Timorese guerrillas who assisted Australian soldiers in Timor; to the soldiers who served in Milne Bay and Long Tan; and to the 300 soldiers who still lie in the Korean war fields—all of whom we do not hear enough about. We have heard a lot about Kokoda but we do not hear a lot about other battlefields.

War memorial sites make us remember. We want kids to know that it is wrong to deface them. The size of fines will make no difference to that situation, but community service will. We know that kids who vandalise these sites have done the wrong thing, so we should teach them that they have done the wrong thing. Most of the examples I found related to kids or people who had put graffiti tags on war memorial sites. There are much stronger penalties for people who desecrate war memorial sites and commit real acts of malicious damage under section 195 of the Crimes Act. At the end of the day we want kids to understand our history, we want them to understand the significance of war memorials to us, and we want to educate them about that. Money will make no difference, but community service will.

**Ms SYLVIA HALE** [6.23 p.m.]: I participate in debate on the War Memorial Legislation Amendment (Increased Penalties) Bill 2007 on behalf of the Greens. The Greens believe that sites that are sacred to the community should be protected from deliberate damage or destruction. We support effective action to reduce further the small number of incidents of people defacing, vandalising or deliberately damaging war memorials. However, the Greens do not support this bill because, as the member who preceded me in this debate pointed out, it does not introduce effective measures to reduce such incidents. Instead, the bill is just the latest example of this Government, urged on at times by a rabid Opposition, allowing the criminal law to be based on the opinions of tabloid commentators and journalists rather than on the evidence of what is in the best interests of the community.

Having reached that conclusion, I refer members to the report on this bill by the Legislation Review Committee of this Parliament, which raises serious concerns about the bill's proposal to double the maximum penalties for offences of defacing war memorials. It expresses particular concern about the ability of certain people to pay the increased maximum fines and how that may disadvantage them if they are sent to prison by default because of their inability to pay the fines. The committee notes that the bill may, therefore, unduly trespasses on personal rights and liberties.

In raising those concerns the committee, which comprises members of this Parliament, referred in some detail to statistics and research published by the New South Wales Bureau of Crime Statistics and Research on malicious damage to property offences in New South Wales and trends in recorded incidents of graffiti in New South Wales. The bureau's statistics reveal that the most frequent places where graffiti incidents take place are residential premises, accounting for 22 per cent of the incidents, followed by business or commercial premises, accounting for 17 per cent of the incidents, and lastly outdoors or public places, accounting for 12 per cent of the incidents. Over two-thirds of the persons identified for graffiti offending were under the age of 18 years. Over half of all identified persons were young males. Given the high prevalence of malicious damage incidents and the low probability of being detected and prosecuted, the bureau found:

it is unlikely that imposing more severe penalties would serve as a deterrent for many offenders. Instead, the literature suggests that malicious damage would be best addressed by improving prevention methods within the community. These measures could include structural designs that reduce opportunities to commit malicious damage, such as improved lighting and greater opportunities for natural surveillance, or physical barriers that prevent the defacing of walls and fences, such as protective coatings/material or vegetation.

Rapid restoration of damage may also discourage opportunistic offending. The Legislation Review Committee noted the potential incapacity of certain people, such as young people, to pay the proposed increased maximum amounts or penalty of \$2,200 or \$4,400, the low deterrence and the likely impact of imprisonment arising from their inability to pay, which also potentially conflicts with the Young Offenders Act 1997 with regard to cautions, warnings and conferencing.

The committee also noted that the increased penalty units are disproportionate to the penalty units for damaging non-protected places and, as such, may constitute an undue trespass on personal rights and liberties. The committee referred to the Parliament the question of whether the doubling of penalty units is an undue trespass on personal rights and liberties in the light of the bureau's research and findings. The committee suggested that the Parliament consider whether the more effective option is to make amendments to enable offenders to participate in the restoration or repair of the damage inflicted, rather than doubling the penalty units and maximum amounts. I believe that accords with the point made by the previous speaker, the Hon. Lynda Voltz.

To say the least the Greens are disappointed that neither the Government nor the Opposition chose to address these issues in their agreement in principle speeches in support of the bill in the Legislative Assembly. That illustrates the extent to which these sorts of crime and punishment bills have thrown out any notion of evidence-based law making, and how enslaved both the Labor and the Liberal parties have become to the ill-informed scaremongering of the tabloid commentariat. Allowing the law-making processes to be debased to that level is something of which the Government and the Opposition should be ashamed—and they should be ashamed. The Greens oppose this bill.

**The Hon. Matthew Mason-Cox:** You are un-Australian.

**Ms SYLVIA HALE:** That is ludicrous. The Greens oppose the bill.

*[The President left the chair at 6.29 p.m. The House resumed at 8.00 p.m.]*

**Ms SYLVIA HALE** [8.00 p.m.]: Before the dinner break I spent the majority of my speech in relation to the War Memorial Legislation Amendment (Increased Penalties) Bill 2007—a bill that seeks to double the penalties for any vandalism to war memorials—quoting sections of the report of the Legislation Review Committee. When I did so there were vociferous interjections from members of the Opposition, who called into question the bona fides and qualifications of the committee members and demanded to know what right they had to comment on the bill. I took advantage of the dinner break to confirm the membership of the Legislation Review Committee. I point out that it is a joint statutory committee. The legislation enabling the committee to be set up was assented to on 24 November 1987, so it is almost 20 years old. The membership of the committee is particularly interesting. In response to my pointing out what the committee had to say, the Hon. Matthew Mason-Cox interjected that I was un-Australian and, therefore, by implication that the committee members who published that report on the Act were also un-Australian.

**The Hon. Matthew Mason-Cox:** Don't put words in my mouth. That is your inference, not mine.

**Ms SYLVIA HALE:** The members of the Legislation Review Committee are Chair, Alan Shearan, the member for Londonderry; Deputy Chair, Paul Pearce, the member for Coogee; the Hon. Amanda Fazio, a member of this House; Judy Hopwood, the Liberal member for Hornsby; Lylea McMahon, the Labor member for Shellharbour; the Hon. Robyn Parker, another member of this House and a member of the Liberal Party; the Hon. Roy Smith, a member of the Shooters Party; and Russell Turner, the member for Orange and a member of The Nationals. Obviously, the Legislation Review Committee is a joint statutory committee that encompasses a range of views. Its function is to consider any bill introduced into Parliament and to report to both Houses of Parliament as to whether any such bill, by express words or otherwise, trespasses unduly on personal rights and liberties.

**The Hon. Charlie Lynn:** Did they mention war memorials? That is what this bill is about.

**Ms SYLVIA HALE:** This bill is about—

**The PRESIDENT:** Order! The Hon. Charlie Lynn will cease interjecting, or he may have an early evening.

**Ms SYLVIA HALE:** The purpose of the Legislation Review Committee's report was to comment on the implications of the bill for members of the public, the people who were likely to be affected by it. The committee pointed out that merely doubling the penalties would, first, not be effective in catching more people, since so many people—

**The Hon. Charlie Lynn:** That is because there are no police.

**Ms SYLVIA HALE:** No, there are two aspects: first, how infrequently war memorials are vandalised and, secondly, how ineffective the doubling of penalties for graffiti or vandalism of memorials would be. Indeed, that was the substance of the remarks of the Hon. Charlie Lynn when he said, "This is often due to a misunderstanding of their importance. The really important thing is to educate the community about their significance." The Hon. Lynda Voltz reflected those views in her contribution.

I take exception to the remarks by the Hon. Matthew Mason-Cox, who said merely because I repeated the statistics from the Bureau of Crime Statistics and Research and repeated the comments of the Legislation Review Committee that I was un-Australian. I have never seen anyone who so encapsulates the adage that was made famous by Dr Johnson in 1775 that "patriotism is the last refuge of a scoundrel". Indeed, that is what it is. Ambrose Bierce subsequently amended the maxim with, "I beg to submit, that it is the first" that is, the first refuge of a scoundrel. Later, H. L. Mencken jumped in with, "But there is something even worse: it is the first, last and middle range of fools." That really sums up the Hon. Matthew Mason-Cox.

**The Hon. Charlie Lynn:** Point of order: There is another great saying, "If you've got nothing to say, say it." I remind Ms Sylvia Hale of that.

**The PRESIDENT:** Order! There is no point of order.

**Ms SYLVIA HALE:** Before these entertaining interjections by the Hon. Matthew Mason-Cox, sooled on by the Hon. Marie Ficarra—

**The Hon. Rick Colless:** Point of order: As members well know, interjections are disorderly at all times. Ms Sylvia Hale is legitimising interjections by acknowledging them. I suggest that you call her to order and advise her that interjections are disorderly at all times and therefore they are not part of the debate.

**The PRESIDENT:** Order! I remind Ms Sylvia Hale and members who are interjecting that interjections are disorderly at all times.

**Ms SYLVIA HALE:** I would certainly like that interjection to be recorded, and I acknowledge it. The Greens oppose the bill, not because we support the damaging, defacing or destruction of war memorials, indeed the reverse. We oppose the bill because we think the issue deserves to be taken seriously and any legislative response, if needed, should be based on the evidence of what is likely to be most effective course of action. War memorials should not be used as cheap, political tokens for each side to appear more hardline than the other. In fact, the bill had its genesis in the lead-up to the last State election when the Opposition came out with a policy and the Government said, "Me too, me too."

The legislation went through the lower House in May, sat there until 10 days before a Federal election, and out it came again as both sides beat the law and order drum and said, "Me too, me too. I am a more hairy-chested patriot than any of you." I would like to make one final point about this bill. It is noticeable that while the Government introduced this bill to protect certain community sacred sites, over the past couple of years it introduced significant amendments to the Environmental Planning and Assessment Act to reduce protections for Aboriginal sacred sites. The Greens believe that sites that are sacred to a community should be protected, whether they are war memorials or sites of significance to Aboriginal people or to other sections of the community. In recent years the individual responsible for the greatest amount of damage and destruction of Aboriginal sacred sites in this State is the Minister for Planning. The Government should consider paying the same sort of respect for Aboriginal sacred sites that it is demanding that the rest of the community pays to war memorials.

**The Hon. MARIE FICARRA** [8.11 p.m.]: The War Memorial Legislation Amendment (Increased Penalties) Bill 2007 amends the Summary Offences Act 1988, the Anzac Memorial (Building) Act 1923 and the Anzac Memorial (Building) By-laws 1937 to increase penalties for offences relating to war memorials under the Summary Offences Act 1988. The Government proposes to increase penalties under the Summary Offences Act 1988 to \$4,400 for anyone who wilfully defaces any protected place, including a war memorial. I wholeheartedly support this bill. The provisions in this bill are additional to any educational or awareness programs about the importance of our Australian heritage and our war history. All those programs should continue, but we must impose penalties that are in line with the importance of the offence that is being committed. I believe that a \$4,400 fine is just a pittance.

Heading into the last State election the Coalition's policy was to increase the penalty to \$11,000. Unfortunately, amendments to that effect were defeated in the other place but I am glad that the Hon. Charlie Lynn foreshadowed that he will move those amendments in Committee. I fully support those amendments. The bill will also amend the Summary Offences Act to increase the penalty to \$2,200 for a person who commits any nuisance, any offence, or any indecent act in or on any war memorial. Again, the Coalition's policy would have increased the penalty to \$11,000, but those amendments were defeated in the other place. However, as I said earlier, the Hon. Charlie Lynn will move those amendments in Committee.

Schedule 2 increases any maximum penalty under section 9 part 3 of the Anzac Memorial (Building) Act 1923 to 40 penalty units. This bill will also double the penalty to \$4,400 for a person who damages, impairs or does anything likely to damage or impair the Anzac Memorial Building, and it will increase the penalty to \$2,200 for offences relating to the conduct of persons within the dedicated area, or prohibit persons from entering the Anzac Memorial Building during the hours that the building is closed. The Coalition supports this initiative as the increased penalties in this bill are in line with community expectations and are consistent with the Coalition's election policy. No-one should apologise for this increase in penalties.

This minimal increase in penalties will ensure that members of society show respect for war veterans who are incredibly saddened when they visit a war memorial in their suburb or in Martin Place on a day that is most sacred to them and find that it has been desecrated. That is disgusting. The original Anzacs forged values that make us who we are, reminding us that there are some truths by which we live that are worth defending. Australians honoured the Anzac spirit of sacrifice forged in Turkey in 1915 and have saluted the 100,000 war dead. War memorials are an important part of our society. They recognise the suffering and sacrifice of generations of Australians who gave their lives in times of conflict, and they stand as a reminder of the price paid for peace.

Throughout history Australia has rightfully honoured the service of our veterans. In the face of such overwhelming community support for our service men and women it is disappointing that the actions of a few—and they are just a few—have damaged the feelings of war veterans and their families who wish to commemorate the bravery of our fallen in protecting this great nation. Our memorials are an enduring reminder that we owe our freedoms and democracy to men and women, past and present, who served and died in the defence of our nation. Local communities acknowledge the commitment of ex-service and community organisations, and local, State and Territory governments in preserving and maintaining these memorials. War memorials and honour rolls are community expressions of the gratitude and respect that we pay to those who have sacrificed their lives, often in distant parts of the world.

Many instances of war memorial and RSL shrine vandalism have been reported over the years. Indeed, in February 2005 the RSL called for better education about Sydney's Anzac War Memorial after it was desecrated in the worst act of vandalism in 10 years. On a Saturday morning authorities were shocked to find the Hyde Park monument sprayed with a dozen gold graffiti marks that were disturbing in their nature. That vandalism came after two bronze statues were damaged at the Cenotaph in Martin Place in the previous month. Sadly, Hyde Park monuments have been targets of similar acts of vandalism on many occasions. In July this year, for the second time in three months, vandals desecrated Albury's Monument Hill war memorial. The plaque and the concreted post of Albury's own was pulled out and dumped on the steps of the monument. Plants were ripped out and cans of alcohol littered the site.

In May graffiti was sprayed on the Albury memorial, a day before this legislation was introduced in Parliament, which will impose fines on anyone who damages a war memorial in New South Wales. In April this year the Mayor of Bathurst, Councillor Norm Mann, said that a group of teenage girls who allegedly defaced the town's war memorial had deeply upset many ex-service men and women who lived in the Bathurst community. A 16-year-old girl was charged for painting the Bathurst carillon with anti-war slogans and four others are being dealt with under the Young Offenders Act. The graffiti was cleaned off just before the town's Anzac Day dawn service. Bathurst RSL's honorary secretary, Jim McFerran, said that the combined community effort to clean up the graffiti had turned a negative into a positive.

His comment at the time remains, I believe, a salient point in the prevention of these senseless acts of vandalism in the future. He said, "I hope someone gives them a good lesson in Australian history", which is what the Hon. Charlie Lynn was talking about earlier. Young people must be educated. When we talk to them about significant aspects of our history we realise that they do not have a clue. That is why I support Prime Minister John Howard putting an emphasis back on Australian history so that we know our origins, we know what made this fine country what it is, and we are aware of the sacrifices that have made by men and women throughout the decades.

Recently I read an article that stated that on the eve of Remembrance Day vandals smashed a rifle and slouch hat on the life-size marble soldier on top of Waverley War Memorial. Waverley War Memorial is a particularly fine example of monuments that have been erected in even the smallest of Australian communities to commemorate the dead in the war to end all wars. In many communities memorials were erected by way of public subscription. Charles Wood, a tramway employee, paid £1,400 from his inheritance to erect Waverley's War Memorial. This was not the first attack on this memorial precinct. In the previous year flowerbeds around the memorial were dug up and plants were strewn around, which marred the celebration. Many councils now have resorted to special surveillance to protect their memorials from senseless vandalism. The ratepayers foot the bill, but I believe they are always happy to do so.

I pay tribute to the Hon. Charlie Lynn for all he has done throughout the year in promoting more awareness on the importance of the sacrifice of Australian service men and women on the Kokoda Track. The famous Kokoda Track Memorial Walkway at Concord also has suffered from acts of vandalism. In 2004 the then New South Wales RSL president Rusty Priest organised a \$200,000 upgrade of this beautiful Kokoda Track Memorial Walkway, which



had been the subject of disgraceful vandalism. The upgrade involved the installation of surveillance cameras, improvements to the existing memorial stations and connections to security monitoring systems. Money collected from court fines imposed on vandals should be put towards supplying local communities and RSL clubs with the ability to implement security measures for their memorials.

I am sure all honourable members recall the incident on 11 December 2005 when the Australian flag of Brighton-le-Sands RSL Club was torched during the Cronulla riots—a disgusting and despicable act. The youth responsible was caught on closed-circuit television. He climbed the club's flagpole, tore the flag off the pole, threw it down to a group of his friends and together they dragged it on the pavement, jumped on, spat on it, urinated on it and then torched it. This young man was among about 100 people who set out from the south-western suburbs in a series of retaliation raids after the Cronulla riots. Eventually, he was sentenced to 12 months probation after pleading guilty to trespass and malicious damage, and was ordered to attend a youth justice conference with senior members of the RSL.

As a consequence of this discussion with the RSL this young Australian apologised to the diggers for burning the Australian flag. He then admitted he had no idea what the RSL stood for and he did not understand what the flag meant to most Australians and, indeed, what it means to be an Australian. By the end of the facilitated conference this youth was quite remorseful and apologetic to the club and RSL members as well as to the local community. It was a success story and more of this procedure should be followed to educate the perpetrators of these deeds and their followers. Often the perpetrators of such vandalism are seen as mentors to many of their fellow youth—unfortunately, the wrong sorts of mentors. Indeed, this young man has since gone on to join a youth leadership program on the Kokoda Track and is achieving good things in his life. He is now a role model for his friends and local youth.

Sadly, we come now to the central issue: educating our youth about our Australian history, our values, our civil structures, our system of government and our democratic processes. Sheer ignorance of these important principles generates this obvious lack of respect. However, if we approach this problem with kid gloves, we may not be effective in preventing such future antisocial acts. Harsher penalties must be imposed as well as providing a better education and awareness system about Australian values. If these proposals prove to be financially onerous on the individuals concerned, the courts always can resort to appropriate judicial community service avenues. In early 2006 Federal Liberal member of Parliament for Mackellar, Bronwyn Bishop, introduced a private member's bill to make the act of destroying or violating the Australian flag a Federal criminal offence. I agree with the Hon. Bronwyn Bishop that such instances of violation to the Australian flag or our war memorials have been used as a symbol to denigrate our Australian culture and way of life. We need to stand up for our national symbols and send a message that serious consequences will result if our flag or war memorials are destroyed or violated in any way.

In July this year the Minister for Veterans' Affairs, Bruce Billson, condemned those responsible for vandalism of war memorials and pledged assistance towards measures to prevent and repair damage caused by vandalism. The Federal Government under its highly successful Saluting Their Service commemorations program has been providing funding for many of the restoration, prevention and increased security initiatives for our war memorials. I urge the New South Wales Government to follow the lead of its Victorian counterpart in funding restoration projects that engender an increased understanding and interest in the stories behind the memorials. War memorials, memorial gates, honour rolls, cenotaphs and soldier statues should be repaired, protected and restored across the State with funding selectively directed towards regional New South Wales.

Councils should be encouraged to apply for grants to help in the restoration of a significant memorial for their local community that will help to recognise the important role our service men and women played in shaping Australia into the country it is today. Australia has a proud history of service in wartime. Since 1901 more than 1.5 million men and women have served Australia in wars and conflicts. More than 102,000 have died for our right to live in a peaceful and democratic society. I believe we must also look to the future. A new generation of service men and women now is responsible for the defence of our nation and for protecting the peace and freedoms we value so dearly. Through strengthened legislation such as this bill and, in particular, the amendments proposed by the Hon. Charlie Lynn, we acknowledge past, current and future national defence contributions. Sadly, as the years pass, the ranks of our veterans are diminishing: fewer can tell their stories and impart the lessons of war. It now falls to all of us to honour those who served, and to preserve our wartime heritage for the benefit of future generations.

**The Hon. DAVID CLARKE** [8.26 p.m.]: Wherever you go throughout New South Wales you will find war memorials that have been constructed to remember those who gave their lives in defence of our nation, and to acknowledge those who fought for our country in time of war and conflict. These memorials can be found in probably every town, every city and every suburb of every city in New South Wales. They are located in front of clubs, as part of schools and universities, and next to churches. They can be found in public parks and at many other places of prominence. War memorials whatever their shape, size or location are held in the highest respect and are honoured by the Australian people. They are sacred places, which are meant forever to symbolise the gratitude of the Australian people and help to ensure that the memory of their sacrifice will live on forever. But from time to time incidents occur when our war memorials and the symbols of our nation that serve to honour ex-service personnel are defaced or desecrated or are subjected to some other behaviour or indignity that is an

affront to the memory of those that such edifices are meant to honour.

In 2005 we had the well-publicised case of the desecration of the Hyde Park War Memorial when gold graffiti was sprayed all over it. Understandably, the people of New South Wales were shocked and outraged by this mindless and senseless act of vandalism. Only a year ago we had the case of an individual who showed contempt for Australia, Australian values, our war dead and our returned service men and women when he climbed to the top of the Brighton-le-Sands RSL Club, hauled down the Australian flag and proceeded to burn it. What an infamy that was. What a slap in the face to the Australian people that action represented. What an insult it was to those returned service men and women who gather at that RSL club and who, from time to time, no doubt reminisce about those times when their lives were put on the line daily in defence of Australia, the Australian people, and for the freedom and democracy we have in this country.

The War Memorial Legislation Amendment (Increased Penalties) Bill 2007 doubles the maximum financial penalties and introduces orders of community service for those who deface, desecrate or engage in offensive conduct directed against our war memorials and what they represent. The people of New South Wales will welcome this bill. It will send a message to those who would engage in such conduct that the people of New South Wales find such conduct abhorrent, are outraged by such behaviour and will not allow the memory of our returned service men and women, and those who did not return at all, to be abused, insulted and belittled. To those culprits who claim to be unaware of the significance of their actions, this bill will send a very clear message to them and to anybody else that such behaviour is an insult to our war dead and will not be tolerated.

For a long time the New South Wales Opposition has been advocating that stronger action should be taken against those who deface and desecrate our war memorials. Members of the Opposition are deeply concerned that up until now the Government has refused to bring the penalties for desecration of war memorials into line with those that exist for the desecration of Aboriginal sites. As pointed out by the shadow Attorney General, Greg Smith, under Labor, the desecration of war memorials will carry a penalty of up to \$4,400 under the Summary Offences Act, but the desecration of an Aboriginal site under the National Parks and Wildlife Act carries a penalty of \$11,000.

In the other place the Labor Government voted to reject the Coalition's amendment to bring damage to war memorials into line with penalties applying to the desecration of Aboriginal sites. Members of the Opposition think that the desecration of Aboriginal sites and war memorials are equally abhorrent: penalties should be applied equally to the desecration and defacement of both. We hope that the Government will come to its senses and support the worthy amendments proposed by the Opposition.

The Opposition will support the bill. We seek to strengthen its provisions. We will do both because the memory of our war dead is sacred, because their sacrifice is worthy of respect, and because the sacrifice of their lives is something that should live in the memory of our nation, today and always. Their memory and the memorials that immortalise them should be protected by the weight of the law, and by as much weight as is necessary.

**Reverend the Hon. FRED NILE** [8.31 p.m.]: The Christian Democratic Party supports the War Memorial Legislation Amendment (Increased Penalties) Bill 2007. As other members have stated during this debate, war memorials throughout our State and nation have a very important place in the lives of families and communities in Australia. As people travel around Australia, they will find in every town and suburb war memorials taking different shapes and forms, often depicted as the lone soldier still on guard duty, and reminding the people in our community of the sacrifice and death of many Australian service men and women in past wars. War memorial sites commemorate those who died in World War I, World War II, Korea, Vietnam and in more recent actions involving Australian soldiers.

The main purpose of the legislation is prevention. It is most important that we prevent attacks on war memorials that cause such offence to Australian people, Australian families and especially those who have lost loved ones in previous conflicts. Honourable members have already mentioned some of the places where memorials have been damaged. The incident at Bathurst triggered this legislation. Teenage girls graffitied the Bathurst War Memorial just before Anzac Day and caused a great deal of offence to war veterans in the community. The attacks on the War Memorial in Hyde Park, on the Cenotaph in Martin Place and on war memorials in many country centres, such as Albury and other country towns, constant attacks on the memorial walkway at Concord, and desecration of the Australian flag as well as recent attacks on the Australian flag point to the need for prevention and the need to educate our schoolchildren.

As the Hon. Charlie Lynn mentioned earlier, young people must be taught about the importance and the background of Australia's involvement in various conflicts and wars over many years. I believe that those who engage in graffiti and vandalism have no knowledge of the significance of war memorials. They are completely ignorant of the importance of war memorials and I wonder why that is the case. The young man who burnt the Australian flag at the RSL club at Brighton-le-Sands gave the excuse that he had no idea of the importance or significance of the flag. But he should have known, whether he is a person born in Australia or overseas. It is very important for those who come to our country to have appropriate education about war memorials. The Christian Democratic Party supports the new citizenship tests and its emphasis on Australian values because, hopefully,

that will assist in bringing a better understanding of the importance of the Australian flag and the place that war memorials have in our nation's life.

The Christian Democratic Party agrees in principle with the amendments moved by the Hon. Charlie Lynn to double the penalties provided in the bill. I recognise that the Government's bill doubles the current penalties, but the amendments will take the penalties to the same level as penalties applying to the desecration of Aboriginal sacred sites. The penalties for desecrating war memorials should at least be on the same level as penalties for desecrating Aboriginal sites, but it is very important also to have an education program.

I note that only a few weeks ago a special anniversary service was held to commemorate the Battle of Beersheba. It was held opposite the Mitchell Library where the Governor unveiled a plaque in memory of Australian soldiers who died during a battle that had such a major impact on the whole outcome of World War I in the Middle East. The plaque was dedicated on the anniversary of the Battle of Beersheba. More than 100 men and women celebrated the event by re-enacting that very historical and successful charge.

As a member of the RSL and someone who served in the Army Reserve for 22 years, I was very pleased to have had the privilege of assisting the Governor in dedicating the plaque at that event. I take this opportunity to remember the recent death of Major General Paul Cullen, one of our very famous World War II soldiers and the commanding officer of the Australian Imperial Force battalion that arrived just in time to relieve militia units that had been holding back the Japanese advance. That intervention led to the final defeat of Japanese units.

The Christian Democratic Party supports this legislation that will double the maximum penalty for a person who wilfully damages or defaces any protected place and doubles the maximum penalty for someone who commits any nuisance, offensive or indecent act on any war memorial. It also provides for bylaws that may create an offence involving the Anzac Memorial building that is punishable by penalties not exceeding 40 penalty units, and other aspects of the legislation. The Christian Democratic Party is very pleased to support the bill and the proposed amendments.

**The Hon. MATTHEW MASON-COX** [8.38 p.m.]: It is with pleasure that I indicate support for the War Memorial Legislation Amendment (Increased Penalties) Bill 2007. I thank members for their worthy contributions, except Ms Sylvia Hale. I will make some comments on her contribution before dealing with the substantive provisions of the bill. I found her whole approach to this bill quite revealing. The Greens stated that they oppose the bill because it takes the wrong approach, but they cannot say what is the right approach. They talk about education and penalties, then throw their hands in the air and walk away from the issue. Frankly, that is not good enough. That does not honour our ex-service men and women who have sacrificed everything for this country. That response says that the Greens just walk away from the issue because they do not have a solution and they do not have any idea what they stand for. Ms Sylvia Hale should be ashamed of that response.

In terms of Ms Sylvia Hale's complaint about her behaviour being described as un-Australian, I point out that it is very much un-Australian not to protect our war memorials, just as it is un-Australian to desecrate them. That is the point that Ms Sylvia Hale needs to take to heart and understand. She should understand that war memorials are important to people who remember the sacrifice of their families and friends during wars and to those who respect the contribution made by ex-service men and women in defending our country. They are the important things we need to remember. I bring that strongly to the attention of Ms Sylvia Hale. William Shakespeare summed it up thus: "it is a tale full of sound and fury, Signifying nothing." That is probably the most dignified description I could give to Ms Sylvia Hale's contribution.

I endorse the Hon. Charlie Lynn's comments about increasing the penalties for vandalising war memorials. The Opposition has taken the lead on this issue, and several Opposition members referred to the policy that we took to the State election. Education is key to ensuring that future Australians remember with honour and respect the sacrifice of our service men and women in all theatres of war. The bill is about protecting the honour of our service men and women. It is about remembering their sacrifice for our nation and it is about respecting their memory as gallant, selfless servants of our nation.

**The Hon. AMANDA FAZIO** [8.40 p.m.]: I support the War Memorial Legislation Amendment (Increased Penalties) Bill. The penalties introduced by the bill are completely satisfactory and in line with the aim of the bill to discourage people from vandalising war memorials. However, I noticed during this debate the rather unfortunate practice of members labelling as "un-Australian" anyone who does not agree with them. I have noticed also the cheap and crass way in which people try to gain political kudos by speaking of those Australians who sacrificed their lives and their health and the welfare of their families by fighting for democracy. I am saddened whenever I hear that someone has vandalised a war memorial because it shows that they do not understand the true horror of war and the great contribution that people made in fighting for their country and for the principles of freedom and democracy. However, I am equally saddened when I see people exploiting the memories of those service men and women for political gain. I think that cheapens the service that war veterans in this country have given.

I am well aware that many people believe we must be jingoistic when discussing war veterans' issues. My father is a war veteran, both my grandfathers were war veterans and one of my great uncles died in the First World War.

My father is very active in the RSL, defence force welfare and those sorts of organisations. So I have firsthand knowledge of the ongoing effects of service on war veterans' health—including psychological harm—and the terrible impact that this has on their families. However, I think it is inappropriate to exploit their circumstances and the fact that war memorials are vandalised from time to time. It cheapens the principles that we support when we say that people should not vandalise war memorials.

As to whether the penalties should be the same for vandalising a war memorial and vandalising an Aboriginal sacred site, I make the following comments. When a war memorial is vandalised we have very good stonemasons and sculptors in this country who can repair them. If people vandalise an Aboriginal sacred site—if they chip away stone carvings, graffiti over cave paintings or other paintings on stone, or dig up a sacred site—it can never be fully restored. We must remember that. I also point out that in most cases people must go out of their way to find an Aboriginal sacred site to vandalise. We are proud of the contribution that Australians have made in fighting for freedom and democracy so we erect our war memorials in very prominent, public places. We should note that distinction. The bill proposes perfectly adequate and satisfactory penalties. I suggest that they do not increase any further. I reiterate that jingoism and phoney nationalism have no place in this debate.

**The Hon. HENRY TSANG** (Parliamentary Secretary) [8.43 p.m.], in reply: I thank honourable members for their contributions to the debate on the War Memorial Legislation Amendment (Increased Penalties) Bill. The Government is pleased that the Opposition has expressed support for the bill. The bill is part of the Government's Respecting our Diggers policy, which is designed to ensure that there is ongoing respect for war veterans and which increases the legislative capacity to penalise criminal and inappropriate activities around war memorials. The bill will double the maximum penalties for damaging or defacing war memorials anywhere in New South Wales. There is a community expectation that these monuments will be protected and that serious penalties will be imposed when any disrespect is shown to war memorials and the memories they represent. The bill responds to these sentiments expressed by the community and reinforces the Government's commitment to respecting our diggers.

I will address some of the matters raised by Ms Sylvia Hale. She opposes the bill solely because she believes increasing the maximum penalties for damaging war memorials will have no impact on the offence rate. I remind Ms Sylvia Hale that offenders can face potential fines of up to 40 penalty units, which currently equates to \$4,400, for vandalising a war memorial. So if Ms Sylvia Hale does not have \$4,400 she had better not encourage anyone to damage a war memorial. In addition, for more serious offences of this nature offenders can be imprisoned for up to five years if they are charged with malicious damage under section 195 of the Crimes Act 1900. The Government has further amended the legislation to enable courts to order an offender to perform community service work as an alternative to issuing a fine. The Government believes this approach will be much more effective than simply jacking up the maximum fines.

Ms Sylvia Hale said that the Government was not encouraging education in this area. I ask her to note that the Government is introducing a new program that involves students visiting and interviewing New South Wales war veterans and recording their experiences as part of their school studies. Schools will be given grants to purchase equipment, facilitate meetings with veterans and allow the necessary supervision to record this living history. The students' work will then be provided to the veteran, the veteran's family and the State Library, ensuring the future cataloguing of war stories—some of which have never been heard before. The program is being trialled in 20 New South Wales high schools and its success will be evaluated before expanding the initiative across the State. As a life member of the RSL and a trustee of the Anzac House Trust, it gives me great pleasure to commend the bill to the House.

**Question—That this bill be now read a second time—put and resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

### **In Committee**

**Clauses 1 to 6 agreed to.**

**The Hon. CHARLIE LYNN** [8.50 p.m.], by leave: I move Liberal Party amendments Nos 1 and 2 in globo:

No. 1 Page 3, schedule 1 [1], line 6. Omit "40 penalty units". Insert instead "100 penalty units".

No. 2 Page 3, schedule 1 [2], line 9. Omit "20 penalty units". Insert instead "100 penalty units".

I refer to what this bill is about and what the cenotaph and memorials represent. The cenotaph, as I said earlier in my contribution to debate on the second reading of the bill, is an empty tomb. It represents the graves of hundreds of thousands of Australians who have died overseas in active service. It is only since the Vietnam War that Australians have brought home the bodies of deceased soldiers, thus enabling parents, relatives and kinfolk to go through the formal funeral service and the mourning process. But to the families of the hundreds and

thousands of veterans who fought and died in World War I, World War II and Korea, the cenotaph or the town memorial is the grave of their kinfolk.

I take exception to some of the arguments that accuse speakers in the debate of false patriotism and jingoism. As a career-serving soldier of 21 years and a Vietnam War veteran I can assure members that not a lot of people understand service, but as I say to many people in the services: it is a club with a very special membership. To understand that membership and to be a member of that club you must have served. You have either served or you have not.

The veteran community harbours a lot of scars from the way that some radical elements in our society have treated them over the years. We are all aware that in World War II, when our soldiers were fighting the most desperate of defensive campaigns in which we have ever been involved, at Kokoda—when they did not have enough food or ammunition; they were desperate for supplies—back here in Townsville the Waterside Workers' Union went on strike because they wanted more pay. They did not believe in supporting our soldiers. In my opinion it was an act of gross treason. I know a few soldiers sorted some of them out when they got home. A similar thing happened during the Vietnam War when we were relying on service: again the waterside workers went on strike and refused to load supplies on the HMAS *Jeparit*, if I recall, for those in Vietnam—I was there. Every single soldier serving in Vietnam felt betrayed.

We did not volunteer to go to Vietnam and fight a war. War is a breakdown of the political process. We were sent to Vietnam by the government of the day and the great thing about the Australian army—and it continues today—is that it is an apolitical army. Soldiers serve the government of the day. If they send us, we go and we serve, just as they do today in Afghanistan and Iraq. That is not their war; it is Australia's war. They are executing our defence policy and fighting for it in a foreign country. It is an absolutely shameless act for them to wear the brunt of betrayal back here. In Vietnam we did not have embedded communication, we had things called letters, things you used to write, and we were very reliant on them. When the mail came it was the biggest event of the day—I remember the feeling. I also remember how it felt when no mail turned up, and it did not turn up on regular occasions in Vietnam.

**The CHAIR (The Hon. Amanda Fazio):** Order! I remind the Hon. Charlie Lynn that he should speak to the amendments, which seek to change 40 penalty units to 100 penalty units.

**The Hon. CHARLIE LYNN:** I am trying to explain the significance of memorials to serving soldiers. In 1981 an organisation called Women Against Rape marched against our veterans at the shrine and members of that organisation jumped in the pool of remembrance. They desecrated the pool and mocked our soldiers. They threw flour and other items at Sir Roden Cutler, VC, one of our great Australians and a wonderful Governor of this State, because they had no respect for him. It attracted front-page headlines. And people think it is okay to act like that because they will get a mention in the newspapers. Veterans almost have to absorb this in silence; they feel anger about it; they feel betrayed and dishonoured.

The cenotaph and the War Memorial are very sacred. The Hon. Amanda Fazio spoke about sites that are sacred to the Aboriginal Dreamtime. I support her comments in that regard: if someone disfigures or destroys them they are gone for all time. I have been to such sites in very remote areas and I have the highest respect and regard for them. A very good friend of mine who was in the army with me for 20 years spends most of his time with Aborigines looking after their sacred sites because he understands their significance. A cenotaph and a memorial have exactly the same significance to a veteran and to the veteran's kinfolk as a sacred site has to the Aboriginal community. I am not saying one is worth more than the other; I am saying that we should honour both.

We can talk about education and all agree on it. But those opposite are in government and they should go and see the Minister for Education and Training and demand that respect of these sites be included in our education system. They are in government, and they can fix it if they have the will to fix it. But their words are empty. They spout this sort of stuff in this place, but do nothing about it. These amendments align penalties for desecration of war memorials and cenotaphs with those relating to the protection of sacred sites, and for that reason they should be supported.

**The Hon. LYNDA VOLTZ [8.58 p.m.]:** As the member of this Chamber who has most recently served in the regular army I wish to make a few comments about the amendments, in particular about war memorials and how sacred they are to us. The first point I make is that they are important to all soldiers who serve during war, and that includes people like my great grandfather, who died as a result of mustard gas poisoning in the First World War and who also happened to be a member of a trade union, and my uncle Keith, who was a prisoner in Changi and who also happened to be a member of a trade union. It is really a dishonour to their memory for anyone to say that members of the trade union movement who served in the world wars or subsequent wars were not supportive of the war movement.

**The Hon. Charlie Lynn:** I did not say that.

**The Hon. LYNDA VOLTZ:** You constantly get up—

**The Hon. Charlie Lynn:** Point of order: I have been misquoted. I never said that. I referred to strikes that took place.

**The CHAIR (The Hon. Amanda Fazio):** Order! There is no standing order that allows as the basis of a point of order a claim by a member that he or she has been misquoted.

**The Hon. Charlie Lynn:** I referred to strikes; I am being misquoted.

**The CHAIR (The Hon. Amanda Fazio):** Order! The member will resume his seat. The Hon. Lynda Voltz has the call.

**The Hon. LYNDA VOLTZ:** When we talk about those who served in our armed forces in conflicts we should remember what a broad church the army, navy and air force are in this country and the type of people who have served in them. The armed forces cross all boundaries; their larrikin nature and laid-back attitude has always been the hallmark of members of the Australian armed forces. All types of people join the armed forces. Much symbolism is important to our country. Like I do, the Hon. Charlie Lynn understands why people put jam tin symbols on their hats, why the infantry sash is red and what it means to the infantry, and why the soldiers in Iraq place a piece of grass in front of their tents. We know what it means, but not everybody does.

Earlier I gave examples of desecrations of war memorials. It was obvious that the vandalism of the memorial in Hyde Park involved graffiti tags. Those responsible for the vandalism had no idea about the purpose of the building, consequently increasing the size of the fines will make no difference to them. The Government may double the fine for desecrating war memorials, but if those responsible do not know the structure they have vandalised is a war memorial, they will not know that they are being fined \$11,000 for desecrating it.

The part of the legislation which is crucial and which will make a difference is the provision relating to community service orders. Community service will make offenders think about what they have done. If offenders do not know the structure they have vandalised is a war memorial, it would not matter that the fine was \$4,000, \$11,000 or \$20,000. The point is that we want them to stop damaging and putting graffiti tags on war memorials. If kids know that they may get community service if they damage a war memorial, that will make a difference. It will educate the kids who commit these offences. The community service provisions are crucial in this legislation.

The increase in penalty to 40 penalty points or a \$4,400 fine is significant, but the possibility of community service will have an impact. At the end of the day, if kids do not know that a war memorial is a war memorial, it will not matter what the size of the fine is that attaches to the offence. For example, the boy who burnt the flag changed his attitude because of his experience on the Kokoda Trail; he realised that he did something that offended people who have pride and respect for our history. The penalties provided in the legislation are crucial. I understand the concerns expressed by members, but I know that the penalties will change people's attitudes.

**Ms SYLVIA HALE [9.02 p.m.]:** In this debate not one skerrick of evidence has been produced to show that doubling or quadrupling fines, or whatever penalty is imposed, will make any difference. No-one has adduced one example.

**The Hon. Henry Tsang:** It's not just a fine. That is the whole point.

**Ms SYLVIA HALE:** I remind the Hon. Henry Tsang that we are debating an amendment that seeks to increase the fines. I am saying that there is not one jot or tittle of evidence that increasing fines will deter anyone. All we have heard is examples of people who have been given probation or who have engaged in conferencing, and how effective that has been. Everyone has spoken about the importance of education, but not one member has shown how doubling or trebling fines, or whatever it is one wants to do with the fines, will have an effect. As I said earlier, the members of the Legislation Review Committee have commented on the likely impact of increased fines.

They said that those who are most likely to be impacted by an increase in fines, if they are caught—and that is frequently not the case—are those who will be least able to pay a fine, that is, young people, particularly those under the age of 18 years, because that seems to be the predominant age range of people found guilty of graffiti offences. They will not be able to pay their fines and, through their default, may find themselves in jail. What does that achieve? People will end up with criminal records and suffer imprisonment for an offence that should not ever warrant such a penalty. We are talking about predominantly young people who act impulsively, on the spur of the moment. As the Hon. Lynda Voltz pointed out, these people may be unaware of the significance of the building they are defacing.

A whole wealth of neurological evidence is becoming available to show that the brains of young men do not mature until they reach 25 years of age, and they are incapable of assessing or appreciating the ramifications and likely repercussions of their acts. They act impulsively and without due reflection. If there is hard scientific evidence of this fact, I believe it is wrong not to take it into account in the laws that we pass, particularly the laws designed to capture one section of the community. Earlier one member said that it is time to end the kid gloves

approach, but I believe that merely doubling the amount of the fine is an empty gesture. Magistrates and judges will be reluctant to impose such fines. It may look good and it may allow the Government to thump the tub of jingoism and chauvinism, but it is bad law in principle.

**The Hon. Matthew Mason-Cox:** What should we do?

**Ms SYLVIA HALE:** We should take preventive measures. As the Hon. Amanda Fazio pointed out, war memorials are often in a prominent position in small towns. The wonder is not that they are vandalised but that they are not vandalised more frequently because they are so often located in such a prominent position. Obviously, preventive action should be taken to stop vandalism occurring. Whether the lighting and fencing surrounding the memorials can be improved, whether the material used to cover the memorials is adequate, whether surveillance of the memorials by members of the community can be improved, there are things that can be done. We should not engage in empty rhetoric and send out empty messages by doubling or trebling the fines. That has no purpose other than to go for a cheap, lazy and shameful newspaper headline.

**The Hon. CHARLIE LYNN** [9.07 p.m.]: That is the greatest dump of verbal diarrhoea I have heard in the 11 years I have been a member of this Chamber. We are not saying that every single person should receive the maximum penalty. That is why we have magistrates: to listen to their stories. As the Hon. Lynda Voltz said, magistrates will take into account any submission made to them that the kids do not recognise memorials as sacred places. Magistrates deal with these kids every day of the week, and they refer them to programs. I am in heated agreement with the Hon. Lynda Voltz that community service is a great answer. And if magistrates have the option to refer them to people who specialise in these programs, that is fantastic. But if kids keep reoffending and deliberately damage war memorials, magistrates should have the option to impose a sentence of community service, as happens for offences relating to sacred sites. Rarely, and under the most extreme circumstances, would a magistrate ever award the maximum penalty.

However, he should have it, because there will always be one or two that need it, especially with today's graffiti. As a trustee of the Anzac Memorial I frequently receive notification of graffiti attacks. Nowadays paint from spray cans causes real damage, because of the chemicals in it. It cannot be easily cleaned away the next day, as was possible with graffiti in the past. Vandals now use products that do permanent damage to sacred sites, as the Hon. Amanda Fazio referred to. The trustees received many submissions suggesting that we include reference to the Battle of Fromelles on the war memorial. After much debate and angst, the trustees rejected the suggestion as the memorial was built in 1920, and that battle took place in 1916. The feeling of that day was very strong: it was built for a specific purpose and that should not change. If that memorial is chipped away, it will be damaged forever.

Morally, Aboriginal sacred sites and the Anzac Memorial should be treated equally, and we should leave it to the good judgment and discretion of magistrates to determine whether people who appear before them for desecrating either should be sentenced to community service. Members on both sides of the House support that view. But for those who continue to reoffend and show no remorse for their action—they just want to stick it up us—the magistrate should have a bigger stick at their disposal. That is what the amendments are all about and I commend them to the Committee.

**The Hon. HENRY TSANG** (Parliamentary Secretary) [9.11 p.m.]: The Government does not support the Opposition's amendments. The Government has given Opposition amendment No. 1 serious and close consideration and has formed the view that it is ill conceived and will not be effective in punishing and deterring people who damage or desecrate war memorials. The provisions contained in the bill will double the existing maximum financial penalties for people who damage or desecrate war memorials. This will mean that offenders will face potential fines of up to 40 penalty points, which currently equates to \$4,400, for vandalising a war memorial. It is worth keeping in mind that for more serious offences of that nature, offenders can be imprisoned for up to five years. I repeat for the benefit of the Hon. Charlie Lynn that offenders can be put in jail for five years if they are found guilty of malicious damage under section 195 of the Crimes Act 1900.

However, the Government acknowledges that there may be situations in which the nature of an offence is such that a court might consider a fine to be too lenient, but imprisonment too harsh. Accordingly, the Government has put forward a further amendment to the bill that will provide a middle rung in the sentencing ladder between fines and imprisonment. Ms Sylvia Hale will be happy to know that under that amendment, which was passed in the Legislative Assembly, courts will be able to order an offender to perform community service work as an alternative to issuing a fine. The Government believes that that approach will be much more effective than simply jacking up the maximum fines. The reality is that no court in this land will impose the kinds of whimsical maximum fines put forward by the Opposition in its amendment.

The Government is of the view also that although fines can be effective in punishing offenders at the lower end of the scale, they do not actually make offenders face the damage they have caused, or the people they have hurt, or force offenders to make any kind of tangible reparation to the community. That is the view that has been put forward by the Returned and Services League in relation to this issue. The Hon. Rick Colless asked for the view of the Returned and Services League, I will now give it to him. The President of the New South Wales Returned

and Services League , Don Rowe, stated in a media release today:

The RSL believes that offenders who commit this crime should make appropriate reparation to the community.

They shouldn't just be able to pay for the problem to go away through the payment of a fine—they should be forced to face up to the damage that they have caused.

We believe that forcing vandals to do community service work will be a much more appropriate punishment than a mere fine.

The Government will not support Opposition amendment No. 2. We believe that there is a need for a clear sentencing ladder in regard to this offence. The Government will provide this by giving courts punishment options at the lower, middle and upper ends of the scale. At the lower end, courts will be able to issue appropriate fines, up to a maximum of \$4,400—a not insignificant sum. The Government's further amendment to the bill will provide a middle rung by giving courts the option of sentencing an offender to do community service work as an alternative to issuing a fine.

Finally, if an offence is considered serious enough, an offender can be charged with malicious damage under the Crimes Act 1900 and sentenced to imprisonment for up to five years. The Government believes that the package it is putting forward, which I remind the Committee is supported by the Returned and Services League , is a measured and realistic approach to dealing with this very real problem. Accordingly, the Government does not support Opposition amendments Nos 1 and 2.

**Question—That the amendments be agreed to—put.**

**The Committee divided.**

**Ayes, 15**

Mr Ajaka	Mr Khan Mr Lynn	Mr Pearce
Mr Clarke	Mr Mason-Cox	
Ms Ficarra	Reverend Dr Moyes	<i>Tellers,</i>
Mr Gallacher	Reverend Nile	Mr Colless
Miss Gardiner	Ms Parker	Mrs Pavey
Mr Gay		

**Noes, 22**

Mr Brown	Dr Kaye Mr Kelly	Mr Tsang Ms Voltz
Mr Catanzariti	Mr Obeid	Mr West Ms Westwood
Mr Cohen	Mr Primrose	
Mr Costa	Ms Rhiannon	<i>Tellers,</i>
Mr Della	Ms Robertson	Mr Donnelly
Ms Bosca	Mr Roozendaal	Mr Veitch
Ms Griffin	Mr Smith	
Ms Hale		
Mr Hatzistergos		

**Pairs**

Ms Cusack	Mr Macdonald
Mr Harwin	Ms Sharpe

**Question resolved in the negative.**



**Amendments negatived.**

**Schedule 1 agreed to.**

**Schedules 2 and 3 agreed to.**

**Title agreed to.**

**Bill reported from Committee without amendment.**

#### **Adoption of Report**

**Motion by the Hon. Henry Tsang agreed to:**

That the report be adopted.

**Report adopted.**

#### **Third Reading**

**Motion by the Hon. Henry Tsang agreed to:**

That this bill be now read a third time.

**Bill read a third time and returned to the Legislative Assembly without amendment.**

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