

Legislative Council
Hansard
Wednesday 12 August 2026

[excerpt...]

The President, **Mr Farrell**, took the Chair at 11 a.m., acknowledged the Traditional People and read Prayers.

**POLICE OFFENCES AMENDMENT (INCREASED PENALTIES FOR
DAMAGE TO TASMANIAN WAR MEMORIALS) BILL 2026 (No. 5)**

Second Reading

[5.29 p.m.]

Ms WEBB (Nelson) - Thank you. Mr President, I rise to make a contribution to the debate on this private member's bill, and at the outset I wish to acknowledge the work that it takes to prepare and present a private member's bill. I do appreciate that effort, and recognise the effort undertaken by the member for Bass in the other place to do that. I acknowledge his interest in making an effort in this area.

However, Mr President, basically I regard the content of this bill at best could be regarded as the equivalent of a piece of quite populist performance art, to be honest. But at worst - and this is what really concerns me - it's unworkable overreach and unnecessary. Despite this being a private member's bill, I think it's still of note that the bill was supported by the government in the other place, and despite the bill's unnecessary duplication of and meddling with provisions already currently on the statute books - this is the same government who periodically announces its waging war on unnecessary red tape, but quite content, apparently, to pass a bill which is unnecessary legislation.

Unnecessary, and I don't say that because of any lessening of people's distress and harm around damage to war memorials - and I'll come to that more later - but unnecessary because we currently have a range of legislated offences and penalty provisions in place in both the *Police Offences Act 1935* and the *Criminal Code Act 1924* for any proven interference or desecration of war memorials and war memorial areas.

Further, as advised by the Tasmanian Law Society, it's arguable certain provisions of this bill in its current form will not be able to be implemented as intended. It's notable that that sort of unworkability that's present in this bill is not surprising because we established in the briefings held on this bill that the member who's bringing it forward did not get legal advice on it as he was having it developed. He did not consult with the Law Society or the legal profession as he was having it developed and brought forward. Perhaps if he'd done so, it could have been drawn to his attention more effectively, if he cared to attend to it, that this is an unworkable bill in some aspects. Not least that it's unnecessary, but also it is unworkable.

Critical consideration when evaluating and reviewing - as we discuss ad infinitum in this place, when we're evaluating or reviewing proposed legislation, we ask what's the issue and the problem that we're seeking to address and fix. Then the next question is: is the proposed solution in what we're considering going to work? Is it the best indicated solution?

When seeking to evaluate the identified problem, I'm unconvinced that the mover of this

bill has stated a strong evidence-based case. Of course, damage and desecration of war memorials is absolutely abhorrent, it's harmful, it hurts individuals and communities, it is offensive to all of us here and in the community generally. Of course that's the case. But that sentiment and feeling that we all have, that abhorrence that we all hold for that, doesn't equate to there being a problem to solve for which this is then the right answer.

We have not seen a case made for the urgency or the detail of what's presented here. Of course that's not to say - and I do absolutely recognise that sadly, deliberate damage and vandalism or other interferences of war memorials around the nation, and here in Tasmania can and does occur. I acknowledge absolutely the briefings that we've had and the correspondence we've had from the RSL, who of course - representing their members and their communities that we all value in each of our electorates around the state - are keen to see efforts made to reduce the likelihood and prevent damage and desecration of war memorials and those war memorial areas or sites. Of course we share that aspiration. Is this the best indicated way to prevent those activities? Absolutely no evidence to say that it is, zero evidence to say that it is. Zero.

It might feel good for us to be contemplating this and to be supporting it and to be making statements here about how much we value and support our veterans and our RSL who support our veterans in our community. But feeling good about that and making those statements isn't the same as making good, correct law. What we're doing here at heart and at core is making law. This bill proposes law that's unnecessary and unworkable, and I'll speak a bit more about that.

First, though, having acknowledged of course damage and vandalism to war memorials can occur, certainly when thinking about this bill and this topic, I was prompted to recall attending a deeply moving ceremony not quite two years ago - on Remembrance Day in 2024, which was held by the Friends of Soldiers Memorial Avenue on the Hobart Domain to dedicate two new trees to the memory of Second Lieutenant Colin Edmund Alleyne Chalmers and Private James Glass, who were killed in action during the Great War. It was a deeply significant and moving ceremony, Mr President, with the trees and the plaques dedicated during that ceremony by the then-Governor, the Honourable Barbara Baker, and witnessed by not just some of us who were there as participants from the community, but also descendants of the two soldiers who are being memorialised with the trees and some of those descendants had travelled from interstate to be there and be part of that very special memorialisation ceremony.

Members may remember then the shocking incident, which was barely six months later in June 2025, when it was discovered that 19 bronze plaques had been stolen from that very same Soldiers Memorial Avenue Remembrance Walk. It was an unfathomable, utterly disrespectful act. An act that had devastating impact on people associated with that avenue. It was dispiriting and heart wrenching for people who are connected to the soldiers who are memorialised there, for the wonderful group - the Friends of Soldiers Memorial Avenue group - that attend to and develop and continue to care for that memorial. Absolutely devastating. Fortunately, in that instance, it appears the culprit was shamed by the public outcry that had occurred and they experienced a change of heart, and the 19 plaques were found in a bag outside a government department office in Rosny Park. There were some minor damage and restoration needed with some reinstatement into place, but that was a positive outcome, at least in that sense, notwithstanding the hurt and harm caused by the initial act.

I highlight that instance just because I do recognise such absolutely abhorrent actions. We can all recount stories of more of them potentially - having said that, we don't have firm data about exactly how many instances we're talking about here or any demonstrated trend in

increasing instances. Antisocial behaviour and these sorts of abhorrent acts do occur. Had that culprit been identified from that soldiers memorial theft I spoke about - and I'm not sure whether they were or not to be honest - but had they been identified and arrested, I would expect that appropriate charges would then have been considered either under the existing summary offence charges provided for in section 37AAA Interference with war memorials in the *Police Offences Act 1935*, or under the *Criminal Code Act 1924*, section 273A Interference with war memorial or war memorial areas. They were available for that to occur and if that person or people were caught, I imagine that's what they were charged under.

Which gets us to the question of whether the proposed changes are necessary or not. Are they anything beyond something that makes us feel good and warm inside here? I recognise that the intent of the bill before us is not to introduce another offence but to increase the penalties for the current existing offence under the *Police Offences Act 1935*, while also seeking to amend the definition of section 67 of the *Sentencing Act*. However, when we get to that detail, that's where it becomes problematic.

Part 2 of the bill seeks to amend section 37AAA of the *Police Offences Act 1935*. The act was amended in 2014 to introduce this provision to include a specific offence in that act. That was important recognition, I suspect, at that time. I wasn't in this place when that came through, but I imagine there was a lot of discussion about the value of specific recognition of the kind of harm and impact that this sort of offence has. We introduced that in 2014, despite there already being existing similar offences under the *Criminal Code* and in the *Police Offences Act*. When that was inserted - it came along with particular penalties, financial and imprisonment penalties. The bill here seeks to increase the range of punishment from what's currently available. Currently, we've got a fine not exceeding 25 penalty units, or imprisonment for a term not exceeding 12 months. What we're proposing to do with this bill is significantly increase that to a penalty not less than 25 penalty units, and not more than 500 penalty units, and then (b) is imprisonment for a term not exceeding 7 years. For the current period from 1 July 2026 to 30 June 2027, the value of 1 penalty unit is \$213, which means that current legislated maximum penalty of 25 units presents a range from \$0 to \$5,325. The new penalties proposed by this bill would see that increase from \$5,325 to \$106,500.

To place that upper figure there into context, according to the Australian Bureau of Statistics, a median annual salary in Tasmania is approximately \$67,600, before tax. Based on the ABS median weekly main job earnings of \$1,300 for Tasmanian employees per-week. So, this proposed new maximum fine will be almost 1.5 times more than the average Tasmanian salary. It's arguable a 20-fold increase in the maximum fine is not proportionate. However, my main concern is actually the shift proposed by the bill to legislate a mandatory minimum fine. To reiterate, the current legislated provision provides magistrates with the discretion which all experts regard as important, the discretion of magistrates. Under the current arrangements they can impose any fine between \$0 to \$5,325. The bill seeks to limit that full spectrum of discretionary power of magistrates and instead require and constrain them to start from an initial point of \$5,325. As we heard from the Law Society, mandatory minimum fines are bad law. That is an absolutely consistent message from anyone you speak to in the legal profession, and any legal academics you will speak to anywhere.

There is no evidence to say that mandatory minimums are a good idea, or that they work, and they have absolutely guaranteed, very bad, unintended consequences, and other impacts. I'm just going to quote from some notes that were circulated to members, following our Law Society briefing, that was provided on 25 March, this year. In the notes that were circulated afterwards, the Law Society said, in relation to this matter:

It removes the court's discretion when it comes to the level of appropriate fine. Discretion is important because of the endless circumstances in which an offence might be committed, and the endless circumstances of offenders who may be before the court.

This is the principle of discretion for magistrates who are there attending to each individual matter. This isn't about, someone can just say: I can't afford it, and therefore the magistrate lets them off. That is an incredibly simplistic proposition, that is not the case, and it's not why we have discretion here. We have discretion because, as people in the legal profession know, absolutely rock solidly, the circumstances that come through a court before a magistrate are varied in the extreme, and are always individual to the situation, and the people involved. The full circumstances, the full scope, of whatever that particular crime, or offence has been dealt with is. When I say that I mean variation of circumstances, not just for the person who's being charged and brought before the court, but also for the victims involved, for the circumstances around it, all of it. The magistrates are there, we task them with being the experts in dispensing justice, within the scope that we provide in legislation. What we're preparing to do here in this bill, is constrain them from fully doing their job appropriately, presuming that we know best to put a constraint with a mandatory minimum in place, and take away options that are available to them in terms of discretion.

Mr President, moving on to the increase in prison terms, as proposed in clause 5(b)(1A) sub-clause(b). The current legislated prison-term penalty provides for a maximum sentence of 12-months, that's what's currently available.

The bill seeks to increase imprisonment for a term of up to seven years, from 12 months to seven years. This is highly problematic, for a range of reasons. Again, to go to the question of proportionality, it's important to note there is virtually no other offences in the *Police Offences Act 1935* with a potential seven-year sentence of imprisonment. We could quibble and say that there's some that are three, there's a couple that are four; there's none that are seven, I don't believe. Let's be really clear, let's talk about what is typically there in this form of the *Police Offences Act*, currently: the maximum sentence that can be imposed for a very wide range of offences contained in this act currently is typically for a period of three years. That's the maximum that's typically present in this act.

If this bill passes unamended, damaging a war memorial will have a maximum punishment more than double of nearly all other crimes under the *Police Offences Act 1935*: nearly all of them. There's no justification for increasing the maximum sentence far beyond that applied to other offences in this act. Knowing that we can also escalate this to be dealt with differently, not summarily, but indictable, instead; at most, it should only be regarded as proportionate with the offence of, for example, some others that have three years as the maximum: stealing with force, consorting, resisting a police officer, all of those risk a maximum of three years' imprisonment. To jump to seven is absolutely disproportionate and inappropriate for this act.

This does raise the question of why the bill doesn't seek to increase the maximum jail time from the current 12 months available to a level that's consistent with other offences in the *Police Offences Act*. Why wouldn't we look for consistency here and, for example, go for three years? That's a three-fold increase on what's current. It's absolutely an indication of a step up in penalty, but it remains consistent with the act. Why wasn't that what was sought for here? At least an increase of three years would deliver on the second reading speech's stated aim, this is what was said in the second reading speech, strengthening the penalties for damaging war memorials and war memorial areas, while at the same time it would have been maintaining

consistency with other offences in this act.

Which brings us to another serious problem, I think, with this bill, which is the lack of clarity regarding the established distinction between summary and indictable offences. As has been pointed out by the law society when they briefed us: currently section 38(2) of the *Acts Interpretation Act* limits offences punishable by imprisonment for a term exceeding three years and which do not specify the offences to be dealt with summarily, that is to say, in the Magistrates Court, then the matter will be treated as an indictable offence by the Supreme Court, which, again, raises the issue of proportionality. The proposed increase of imprisonment from 12 months to seven years saw questions raised by key stakeholders as to whether the Magistrates Court can deal with the offence due to the proposed penalty amendments that it contains.

According to the law society, they had concerns regarding the potentially ambiguous wording of clause 5(1A) regarding whether an offence is to be dealt with as a summary or indictable offence. Since that point of confusion was raised in the context of our briefings by the law society, the government subsequently has circulated further advice stating it is the bill's intention for offences to be dealt with as summary offences in the Magistrates Court under this bill, despite the maximum capacity for seven-year prison terms which would otherwise indicate an indictable offence in most cases.

Ms O'Connor - No jury trial.

Ms WEBB - No jury trial. If this is the case, then it serves to introduce a further significant inconsistency with the *Sentencing Act 1997*. Section 13 of the *Sentencing Act* states that the maximum term of imprisonment a court of petty sessions may impose is three years for a first offence or five years for a second or subsequent offence, as acknowledged in the Police minister's letter dated 15 April to us, which was circulated to members. Upon receipt of that letter, I again sought the informed opinion of the law society, which is more than the mover of the bill had done. Since the letter sought to address the questions that the society had raised, I wanted to show the society the government's response and get their further input. According to the law society, even should the minister's advice that was presented in the government's letter to us be accepted at face value, it remains:

problematic that it is proposed to give magistrates the power to impose imprisonment for seven years when this is significantly out of keeping with the maximum they can otherwise impose.

Of course, as the member for Hobart has mentioned, part of the concern there is because this is without a jury trial; this is an incredibly long imprisonment sentence that becomes available without the benefit and the appropriateness of a jury trial for such a serious penalty to be contemplated.

It is out of keeping with what would normally be dealt with summarily and again, I emphasise this increase of penalties and potential inconsistencies introduced into our established sentencing statutes and practices are all proposed in the absence of a compelling case that current legislative offences and penalties are inadequate. There's nothing to demonstrate that there's a particular problem that is being caused by inadequacy of our current arrangements. If the stated inadequacy is that crimes still occur at times, then every single law we have in our police offences and probably also our criminal code is inadequate, because crimes do still occur at times and offences do still occur. Absolutely tragic as it is, it is not, in and of itself, a reason to bring this sort of response to bear.

Lastly, this bill's clause 5, proposed new sub-clause 1B(a) remains unimplementable, particularly should offences be treated as summary. As advised by the law society, magistrates do not have the power to order where community service is to occur. I note the minister's April letter to members does not address this apparent problem with implementation of this aspect of the bill. It's silent on it. 1B(b) actually is consistent with current summary offences, but duplicates current powers magistrates already have; hence it's unnecessary. In summary, I go back to my threshold evaluation questions: has the case been made that there is a current problem, both in an established increase of this particular offence and inability of our current laws to respond adequately?

This consideration raises further questions which are now put to the government. Since the original offence for interfering with war memorials was introduced into the *Police Offences Act 1935* in 2014, my first question is: how many people have been charged with that summary offence in total, and when? How many were convicted and what were their sentences? How many of those charged with the summary offence have been repeat offenders? How many people have been charged under an indictable offence for the crime of interfering with a war memorial since 2014?

How many sentences have been made on an indictable offence for the crime of interfering with a war memorial since 2014? What were those sentences and how many were repeat offenders? Is it correct that if indicted for the crime of interfering with a war memorial currently to the Supreme Court, a sentencing judge has full discretion when determining a sentence, so, not restricted by either a maximum or a minimum penalty? Has anyone since 2014 been committed to the Supreme Court for the crime of interfering with a war memorial? Has there been any appeal in Tasmania alleging that a sentence for interfering with a war memorial was manifestly inadequate? If so, when were such appeals undertaken and what was their outcome?

Anyone who is seriously bringing this bill to us for consideration in a way that wasn't just about capturing a populist imagination and trying to capture community sentiment which is heartfelt and genuine, anyone seriously bringing this bill would have presented an evidence-based case for it. They would have demonstrated the problem it's trying to solve, they would have presented us with data that supported that, and it would have been part of material presented with the bill. That's what we would expect from a responsible legislator, but as I said, that's not what this bill is providing for us to consider.

Regarding the matter of proportionality, can the government advise why it was determined to increase the current maximum 12-month imprisonment penalty to seven years rather than to three years - consistent with a vast majority of other *Police Offences Act* maximum imprisonment penalties - given that our current laws provide for and recognise the potential need to scale offences from the less serious offence to crimes across both the *Police Offences Act* and the criminal code respectively? Upon what evidence or advice was it considered necessary to expand or beef up the Magistrates Court offence here? These questions are integral to answering the threshold question of established problem and appropriateness of proposed solution.

There is one last area of comment which I wish to make before closing.

I recognise the considerable effort made in developing a prosecuting this bill despite my concern about it, as I have articulated throughout my contribution. However, I would urge that equivalent effort should be made by government in investing in education and diversionary programmes and restorative justice models which may tackle the root cause of the anti-social behaviour in the first place rather than continuously amplifying a lazy reliance upon a ham-fisted punitive response not evidence based and which occurs once it's too late and the damage

has been done. I fear that once again we're locking ourselves into a narrow and blinkered situation where despite pre-existing penalties being in place, demonstrably having a limited preventative impact of their own, we just blindly increase those penalties with no evidence to suggest that that will deliver an outcome which so many in our community so genuinely and sorely seek.

Ms O'Connor - Because there is no evidence.

Ms WEBB - Absolutely not. To be very clear, this bill and what's in it is most certainly not a restorative justice approach. I encourage members to better inform themselves if they think it is and to do some research about what that actually means, what a restorative justice model actually looks like when it's implemented and brought to bear.

Mandatory minimums and increased penalties in false hope of deterrence are the exact opposite of a restorative justice approach, in fact. And the fact that the government shows no inclination or commitment to putting anything like a restorative justice approach in place here absolutely belies any suggestion that they have a commitment to delivering the outcome that's desired to prevent this occurring in the first place and deal with it effectively if it does. By effectively, what I mean is to try to ensure that repeat offending doesn't happen and that healing can occur around the act that's being committed. None of that is delivered by this bill. None.

We see this limited approach instead. Purportedly the pinnacle of a law-and-order lens being relied upon repeatedly across our statutes by this government, despite the unequivocal and mounting evidence from criminologists and others working in this field that punitive action on its own, within a restorative justice vacuum, does not work.

I note the bills. Actually, and on that, Mr President, the RSL would absolutely, I think, support a restorative justice approach. It became a point of discussion in our briefings. They want this to be prevented from happening. They want genuine healing to occur if there are instances when it does. Absolutely none of that's delivered by this bill.

I note the bill's second reading speech does also acknowledge that it is beyond the scope of the bill to seek to address anti-social behaviour at memorial sites, noting I quote:

It may warrant further policy development and consultation in the future.

Well of course Mr President, of course it warrants that. This government could readily demonstrate a real commitment to that, but the government has since 2014, since the current penalties were introduced into the *Police Offences Act 1935*, they have absolutely failed to prioritise any other measures, any others to tackle the source of anti-social behaviour of this kind. Even the member who brought this bill to the other place, at times has been the minister responsible for police, for example, and could have presumably been an advocate for those sorts of measures and that has not occurred.

A point I want to bring here as I can come towards concluding, is it's also important for us to acknowledge in this debate that when we hear that war memorials and war memorial areas, they're described as sacred sites. I agree, and they commemorate loss which has occurred in conflicts external to our national shores. It's incredibly important that we do commemorate those losses and actually hold them in our hearts and support families and those loved ones who are particularly attached and have particular significance for war memorial sites. However, in addition to that, I can only hope and urge that similar sentiment and focus is expanded in our government, in our community, in this parliament to also include those historic internal conflicts in this place, Lutruwita/Tasmania, which in the main are not acknowledged by

equivalent memorials, or acknowledgement, but which are just as strongly held, felt, and honoured, by our Tasmanian and Australian Aboriginal communities. We do not see the same reverence, value and care taken around memorialising those sites, with and for the Tasmanian Aboriginal community.

To close my contribution, I reiterate the following points, notwithstanding and taking absolutely nothing away from the heartfelt sentiment which we all share and support about the value, and the absolute importance of protecting our war memorials, our war memorial areas, our commemorative processes, in relation to our veteran community. I remain unconvinced of the extent to which the problem exists which this bill purports to address.

Further, I'm deeply concerned that the bill would introduce unnecessary, and serious inconsistencies, without other relevant statutes and broader jurisprudence approach as per that strong and clear advice from the Tasmanian Law Society. Although I appreciate the minister's subsequent efforts to address the concerns that were raised by the Tasmanian Law Society, that the government forwarded through to us. I note that, significantly, despite the subsequent explanation, the society stands by their analysis and assessment of the bill's problematic elements. It's incumbent upon government, Mr President, and this Chamber, to take such expert advice seriously when informing ourselves of the merit, or otherwise, of proposed legislation we're charged with reviewing and considering. I'm hopeful that we will receive informative responses to a series of questions that I, and others, have raised during the debate.

Lastly, I would acknowledge the member for Mersey who's indicated he's got some amendments for this bill, one amendment. I've also circulated some potential amendments should the bill pass to the second reading. Which on indications thus far, looks like it will. I do mention that I've have amendments. However, I've made it fairly clear I don't support the bill in its current form, and even if all proposed amendments are made, I'm still not able to confirm that I would support this bill. It's unnecessary, it's actually an emotive exercise for people in this place, and the other place. Of course we all feel good to get up and say really warm, and important things about the RRSLS, our veteran community, the important war memorial sites that we have in this state. But this bill does nothing to deliver on the outcomes we would want to see for that community, and those sites. Mr President, I think that's beyond a shame, I think it's actually harmful.