

**House of Assembly—No 106**

As laid on the table and read a first time, 2 December 2020

South Australia

**Criminal Law Consolidation (Protection of War Memorials) Amendment Bill 2020**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935* and to make related amendments to the *Graffiti Control Act 2001*.

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- 1 Amendment of section 10A—Court may make orders in relation to driver's licences
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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

- 5 This Act may be cited as the *Criminal Law Consolidation (Protection of War Memorials) Amendment Act 2020*.

#### 2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### Part 2—Amendment of *Criminal Law Consolidation Act 1935*

#### 10 3—Amendment of section 84—Preliminary

- (1) Section 84(1)—before the definition of *building* insert:

*appropriate authority* means a State or local government authority;

- (2) Section 84(1)—after the definition of *to damage* insert:

*desecrate*, in relation to a war memorial, means—

- 15 (a) mark graffiti on, damage or move the whole or any part of the war memorial; or
- (b) deal with the war memorial in a way, or in circumstances, that the person knows, or could reasonably be expected to know, is likely to cause offence to a reasonable person;

20 *outdoor memorial area* means—

- (a) an area of land within 20 metres of a war monument that is a public place used wholly or partly for displaying the war monument; or

- (b) a garden, plant or tree that is, or a group of plants or trees that are, wholly or partly dedicated to war remembrance and that have been lawfully planted in a public place;

(3) Section 84(1)—after the definition of *owner* insert:

*war memorial* means—

- (a) a war monument; or
- (b) an outdoor memorial area;

*war monument* means a building, statue, structure or other property that is wholly or partly dedicated to war remembrance and is lawfully erected or installed in a public place (whether on a permanent or temporary basis);

*war remembrance* means the remembrance of people who—

- (a) served in war; or
- (b) died in war or as a result of any war or warlike operations in which Australians have been on active service; or
- (c) died during or as a result of active service.

#### **4—Insertion of section 85C**

After section 85B insert:

##### **85C—Desecration of war memorial**

- (1) A person who, without lawful excuse, desecrates a war memorial is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (2) A court finding a person guilty of an offence against this section must—

- (a) if the court is satisfied that a suitable program exists for the taking of remedial action, under the supervision of an appropriate authority, to restore the war memorial to the same state as it was in before the offence or to a state specified by the court and that it will be reasonably practicable for the person to participate in that program—order that the person participate in that program (and, in doing so, comply with all reasonable directions of the appropriate authority); or
- (b) in any other case—order that the person pay another person the cost of taking remedial action to restore the war memorial to the same state as it was in before the offence or to a state specified by the court.

- (3) An order under subsection (2)(a) may be enforced as if it were an order requiring the performance of community service (and in any enforcement proceedings the court may exercise any power that it could exercise in relation to an order requiring the performance of community service).

- (4) The court may decline to make an order under subsection (2)(b), or make an order for the payment of a lesser amount, if—
- (a) the defendant is aged under 16 years of age; or
  - (b) the court is otherwise satisfied that the defendant has no means of paying the amount required under that paragraph.

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## **Schedule 1—Related amendment to *Graffiti Control Act 2001***

### **1—Amendment of section 10A—Court may make orders in relation to driver's licences**

Section 10A(3) and (4)—after "section 85" wherever occurring insert:

or 85C

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### **2—Amendment of section 10B—Duty to produce driver's licence at court**

Section 10B(3) and (4)—after "section 85" wherever occurring insert:

or 85C