

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL  
AFFAIRS**

**Attorney General's Department**

**Criminal Code Amendment (Agricultural Protection) Bill 2019 [Provisions]  
PUBLIC HEARING**

**Monday 12 August 2019**

**In response to questioning by Senator Carr at the hearing on Monday 12 August 2019, Mr Andrew Walter (First Assistant Secretary, Security and Integrity Division, Attorney-General's Department) undertook to:**

Give [the Committee] a time frame for how long these proposals have been around and the government's consideration of those issues.

**The answer to the honourable senator's question is as follows:**

The Attorney-General's department has been providing advice to Government on this issue since January 2019. This follows concerns raised by the publication of personal information online, including personal details of farmers, addresses and workplaces since early 2019 and incidents of trespass on agricultural properties and businesses.

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**Senator Carr asked the following question at the hearing on Monday 12 August 2019:**

That's not what the seafood industry say to us. They say:

what protections are offered to fish processing facilities operating at sea, and to what extent do the proposed protections for terrestrial agriculture extend to wild-catch operations ...

**The answer to the honourable senator's question is as follows:**

The offences in the Bill do not extend to incitement of trespass to fish processing facilities operating at sea. The Bill was designed to respond to concerns that persons were encouraging others to trespass on agricultural land. Agricultural land will typically be more accessible to those who may wish to trespass or cause criminal damage than a vessel or facility at sea. Additionally, agricultural land can include the farmer's family home.

Extending the offences to cover incitement of trespass on fishing vessels outside Australia's territorial waters would require the resolution of complex jurisdictional questions that could introduce significant uncertainty into the application of the Bill.

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**Monday 12 August 2019**

**Senator Carr asked the following question at the hearing on Monday 12 August 2019:**

Would you provide the committee with a list of all state and territory laws that criminalise trespass and damage to property, including trespass upon and damage to agricultural property or inciting others to do so?

**The answer to the honourable senator's question is as follows:**

In the table below the Attorney-General's Department has identified the primary offences in relation to trespass and property damage and relevant incitement offences in State and Territory laws.

	<b>Provision</b>	<b>Offence</b>	<b>Maximum Penalty</b>
<b>ACT</b>	<a href="#">Crimes Act 1900 s 151</a> Forcible entry on land	A person who enters on land that is in the actual and peaceable possession of another person in a manner likely to cause a breach of the peace commits an offence.	20 penalty units [ <a href="#">\$3200</a> ], imprisonment for 1 year or both.
	<a href="#">Crimes Act 1900 s 116</a> Destroying or damaging property	A person commits an offence if— <ul style="list-style-type: none"> <li>(a) the person destroys or causes damage to property, other than by fire or explosive; and</li> <li>(b) the property belongs to— <ul style="list-style-type: none"> <li>(i) someone else; or</li> <li>(ii) the person and someone else; and</li> </ul> </li> <li>(c) the person intends to destroy or cause damage, or is reckless about destroying or causing damage, to the property; and</li> <li>(d) the damage to the property does not exceed \$5000.</li> </ul>	50 penalty units [ <a href="#">\$8000</a> ], imprisonment for 2 years or both.
	<a href="#">Criminal Code 2002 s 403</a> Damaging property	A person commits an offence if the person— <ul style="list-style-type: none"> <li>(a) causes damage to property belonging to someone else; and</li> <li>(b) intends to cause, or is reckless about causing, damage to that property and any other property belonging to someone else.</li> </ul>	1000 penalty units [ <a href="#">\$160000</a> ], imprisonment for 10 years or both.

	Provision	Offence	Maximum Penalty
	<p data-bbox="300 233 616 296"><a href="#">Criminal Code 2002 s 47</a> Incitement</p>	<p data-bbox="658 233 1509 296">If a person urges the commission of an offence (the <i>offence incited</i>), the person commits an offence of incitement.</p> <p data-bbox="658 336 1413 368">A person may be found guilty of the offence of incitement—</p> <p data-bbox="707 371 1496 435">(a) even if it was impossible to commit the offence incited; and whether or not the offence incited was committed.</p>	<p data-bbox="1592 233 2007 456">(a) if the offence incited is punishable by life imprisonment— imprisonment for 10 years, 1000 penalty units [<a href="#">\$160000</a>] or both; or</p> <p data-bbox="1592 467 2007 727">(b) if the offence incited is punishable by imprisonment for 14 years or more (but not life imprisonment)— imprisonment for 7 years, 700 penalty units [<a href="#">\$112000</a>] 700 or both; or</p> <p data-bbox="1592 738 2007 999">(c) if the offence incited is punishable by imprisonment for 10 years or more (but less than 14 years)— imprisonment for 5 years, 500 penalty units [<a href="#">\$80000</a>] or both; or</p> <p data-bbox="1592 1010 2007 1477">(d) if the offence incited is punishable by imprisonment for less than 10 years, either or both of the following:</p> <p data-bbox="1641 1169 2007 1393">(i) the lesser of the maximum term of imprisonment for the offence incited and imprisonment for 3 years;</p> <p data-bbox="1641 1404 2007 1477">(ii) 300 penalty units [<a href="#">\$48000</a>]; or</p> <p data-bbox="1592 1489 2007 1589">(e) if the offence incited is not punishable by imprisonment—the number of</p>

	<b>Provision</b>	<b>Offence</b>	<b>Maximum Penalty</b>
NSW	<p><a href="#"><u><i>Inclosed Lands Protection Act 1901 s 4</i></u></a>            Unlawful entry on inclosed lands</p>	<p>(1) Any person who, without lawful excuse (proof of which lies on the person), enters into inclosed lands without the consent of the owner, occupier or person apparently in charge of those lands, or who remains on those lands after being requested by the owner, occupier or person apparently in charge of those lands to leave those lands, is liable to a penalty.</p> <p>(1A) A drover or person in charge of stock being driven on a road lawfully inclosed within the lands of any person has a lawful excuse for entering those lands for the purpose of preventing the stock from straying, or regaining control of stock that have strayed, from that road.</p> <p>(2) Where a road is lawfully inclosed with the lands of any person, and such road is not clearly defined but there is a reasonably defined track commonly used by persons passing through such lands, the centre of such track shall, for the purposes of this Act, be deemed to be the centre of the road.</p> <p>(3) Where a road is lawfully inclosed with the lands of any person and such road is not clearly defined and there is no reasonably defined track through such lands a person passing through such inclosed lands shall not be guilty of an offence unless it is shown that the route taken by such person in so passing was, having regard to the circumstances, unreasonable.</p> <p>(4) In this section, stock includes horses, cattle, sheep, goats, pigs and camels.</p>	<p>10 penalty units (prescribed premises) [<a href="#"><u>\$1100</u></a>], 5 penalty units (other premises) [<a href="#"><u>\$550</u></a>].</p>

	<b>Provision</b>	<b>Offence</b>	<b>Maximum Penalty</b>
	<a href="#">Crimes Act 1900 s 195</a> Destroying or damaging property	<p>A person who intentionally or recklessly destroys or damages property belonging to another or to that person and another is liable.</p> <p>A person who, in the company of another person or persons, intentionally or recklessly destroys or damages property belonging to another or to that person and another is liable.</p> <p>A person who, during a public disorder, intentionally or recklessly destroys or damages property belonging to another or to that person and another is liable.</p>	<p>Imprisonment for 5 years, or if the destruction or damage is caused by means of fire or explosives, to imprisonment for 10 years.</p> <p>Imprisonment for 6 years, or if the destruction or damage is caused by means of fire or explosives, to imprisonment for 11 years.</p> <p>Imprisonment for 7 years, or if the destruction or damage is caused by means of fire or explosives, to imprisonment for 12 years.</p>
	<a href="#">Crimes Act 1900 s 351A</a> Recruiting persons to engage in criminal activity	A person (not being a child) who recruits another person to carry out or assist in carrying out a criminal activity is guilty of an offence.	Imprisonment for 7 years.
NT	<a href="#">Trespass Act 1987 s 5</a> Trespass on premises	A person who trespasses on premises commits an offence.	20 penalty units [ <a href="#">\$3140</a> ] or imprisonment for 6 months.
	<a href="#">Criminal Code Act 1983 s 241 of Schedule 1</a> Damage to property	<p>A person is guilty of an offence if the person causes damage to property belonging to another person.</p> <p style="padding-left: 40px;">(a) intentionally causes damage to property belonging to that other person or someone else; or</p> <p>is reckless as to causing damage to property belonging to that other person or someone else.</p>	Imprisonment for 14 years.

	<b>Provision</b>	<b>Offence</b>	<b>Maximum Penalty</b>
	<a href="#"><u>Criminal Code Act 1983 s 12 of Schedule 1</u></a> Abettors and accessories before the fact	When an offence is committed, the following persons also are deemed to have taken part in committing the offence and may be charged with actually committing it:  (a) every person who aids another in committing the offence; (b) every person who does or omits to do any act for the purpose of enabling or aiding another to commit the offence; and (c) every person who counsels or procures another to commit the offence.	A finding of guilt of counselling or procuring the commission of an offence entails the same consequences in all respects as a finding of guilt of committing the offence.
	<a href="#"><u>Summary Offences Act 1923 s 69B</u></a> Inciting to the commission of offences	A person who:  (a) incites to, urges, aids or encourages; or (b) prints or publishes any writing which incites to, urges, aids or encourages, the commission of an offence or the carrying on of an operation for or by the commission of an offence, is guilty of an offence.	\$2000 or imprisonment for 12 months.
<b>Qld</b>	<a href="#"><u>Summary Offences Act 2005 s 11</u></a> Trespass	(1) A person must not unlawfully enter, or remain in, a dwelling or the yard for a dwelling.  (2) A person must not unlawfully enter, or remain in, a place used as a yard for, or a place used for, a business purpose.	20 penalty units [ <a href="#"><u>\$2669</u></a> ] or 1 year's imprisonment  20 penalty units [ <a href="#"><u>\$2669</u></a> ] or 1 year's imprisonment
	<a href="#"><u>Criminal Code 1899 s 469</u></a> Wilful damage	Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence which, unless otherwise stated, is a misdemeanour, and the person is liable.	5 year's imprisonment

	<b>Provision</b>	<b>Offence</b>	<b>Maximum Penalty</b>
	<a href="#"><u>Criminal Code 1899 s 7</u></a> Principal offenders	<p>(1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say—</p> <p>(a) every person who actually does the act or makes the omission which constitutes the offence;</p> <p>(b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;</p> <p>(c) every person who aids another person in committing the offence;</p> <p>(d) any person who counsels or procures any other person to commit the offence.</p>	A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.
SA	<a href="#"><u>Summary Offences Act 1953 s 17</u></a> Being on premises for an unlawful purpose	A person who has entered, or is present on, premises for an unlawful purpose or without lawful excuse is guilty of an offence.	<p>(a) Where the unlawful purpose is the commission of an offence punishable by a maximum term of imprisonment of 2 years or more—imprisonment for 2 years.</p> <p>(b) In any other case—\$2 500 or imprisonment for 6 months.</p>
	<a href="#"><u>Criminal Law Consolidation Act 1935 s 170A</u></a> Criminal trespass – places of residence	A person who trespasses in a place of residence is guilty of an offence if another person is lawfully present in the place and the person knows of the other's presence or is reckless about whether anyone is in the place.	<p>(a) for a basic offence—imprisonment for 3 years;</p> <p>(b) for an aggravated offence—imprisonment for 5 years.</p>

	<b>Provision</b>	<b>Offence</b>	<b>Maximum Penalty</b>
	<a href="#">Criminal Law Consolidation Act 1935 s 85</a> Arson and other property damage	A person who, without lawful excuse, damages another's property (other than a building or motor vehicle)— <ul style="list-style-type: none"> <li>(a) intending to damage property; or</li> <li>(b) being recklessly indifferent as to whether his or her conduct damages property,</li> </ul> is guilty of an offence.	Imprisonment for 10 years.
	<a href="#">Criminal Law Consolidation Act 1935 s 267</a> Aiding and abetting	A person who aids, abets, counsels or procures the commission of an offence is liable to be prosecuted and punished as a principal offender.	As the principal offence.
<b>Tas</b>	<a href="#">Police Offences Act 1935 s 14B</a> Unlawful entry on land	A person, without reasonable or lawful excuse (proof of which lies on the person), must not enter into, or remain on, any land, building, structure, premises, aircraft, vehicle or vessel without the consent of the owner, occupier or person in charge of the land, building, structure, premises, aircraft, vehicle or vessel.	50 penalty units [ <a href="#">\$8400</a> ] or imprisonment for 12 months (for trespass in a dwelling), 25 penalty units [ <a href="#">\$4200</a> ] or imprisonment for 6 months (for other trespass)
	<a href="#">Police Offences Act 1935 s 37</a> Injuries to property offences relating to property	A person shall not unlawfully destroy or injure any property.	10 penalty units [ <a href="#">\$1680</a> ] or imprisonment for 12 months

	<b>Provision</b>	<b>Offence</b>	<b>Maximum Penalty</b>
	<p><a href="#"><u>Criminal Code Act 1924 s 3 of Schedule 1</u></a> Which parties to crime to be deemed principals in the first degree</p>	<p>Where a crime is committed, each of the following persons is deemed to be a party to, and to be guilty of, the crime, and may be charged with actually committing it:</p> <ul style="list-style-type: none"> <li>(a) every person who actually commits the crime;</li> <li>(b) every person who does any act or makes any omission for the purpose of enabling or aiding another person to commit the crime;</li> <li>(c) every person who abets another person in committing the crime;</li> <li>(d) every person who instigates any other person to commit the crime.</li> </ul>	<p>Any person who instigates another to do any act or make any omission of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted a crime on his part, is guilty of the same crime as if he had himself done the act or made the omission; and may be charged with himself committing that crime.</p>
	<p><a href="#"><u>Criminal Code Act 1924 s 298 of Schedule 1</u></a> Inciting to commit crimes</p>	<p>Any person who incites another to commit a crime is guilty of a crime.</p>	<p>All crimes under the <i>Criminal Code Act 1924</i> are (subject to provisions of the <i>Sentencing Act 1997</i>) subject to a maximum penalty of 21 years. However, we expect that judicial discretion would mean generally the penalty for incitement would be in line with the penalty for the incited offence.</p>

	<b>Provision</b>	<b>Offence</b>	<b>Maximum Penalty</b>
<b>Vic</b>	<a href="#">Summary Offences Act 1966 s 9</a> Wilful destruction, damage etc. of property	Any person who— <ul style="list-style-type: none"> <li>(a) destroys damages pollutes or obstructs any aqueduct dam sluice pipe pump waterway pond pool or fountain;</li> <li>(b) being an artificer workman journeyman or apprentice wilfully damages spoils or destroys any goods wares work or material committed to his care or charge;</li> <li>(c) wilfully injures or damages any property (whether private or public) the injury done being under the value of \$5000; or</li> <li>(d) wilfully trespasses in any public place other than a Scheduled public place and neglects or refuses to leave that place after being warned to do so by the owner occupier or a person authorized by or on behalf of the owner or occupier; or</li> <li>(e) without express or implied authority given by the owner or occupier or given on behalf of the owner or occupier by a person authorised to give it or without any other lawful excuse, wilfully enters any private place or Scheduled public place, unless for a legitimate purpose; or</li> <li>(f) neglects or refuses to leave a private place or Scheduled public place after being warned to do so by the owner or occupier or a person authorised to give that warning on behalf of the owner or occupier, unless the person has a lawful excuse; or</li> <li>(g) without lawful excuse, enters any place (whether private or public) in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace—</li> </ul> shall be guilty of an offence.	25 penalty units [ <a href="#">\$4131</a> ] or imprisonment for six months
	<a href="#">Crimes Act 1958 s 197</a> Destroying or damaging property	A person who intentionally and without lawful excuse destroys or damages any property belonging to another or to himself and another shall be guilty of an indictable offence.	Level 5 imprisonment (10 years maximum).

	<b>Provision</b>	<b>Offence</b>	<b>Maximum Penalty</b>
	<a href="#">Crimes Act 1958 s 321G</a> Incitement	<p>(1) Subject to this Act, where a person in Victoria or elsewhere incites any other person to pursue a course of conduct which will involve the commission of an offence by—</p> <ul style="list-style-type: none"> <li>(a) the person incited;</li> <li>(b) the inciter; or</li> <li>(c) both the inciter and the person incited—</li> </ul> <p>if the inciting is acted on in accordance with the inciter's intention, the inciter is guilty of the indictable offence of incitement.</p> <p>(2) For a person to be guilty under subsection (1) of incitement the person—</p> <ul style="list-style-type: none"> <li>(a) must intend that the offence the subject of the incitement be committed; and</li> <li>(b) must intend or believe that any fact or circumstance the existence of which is an element of the offence in question will exist at the time when the conduct constituting the offence is to take place.</li> </ul> <p>(3) A person may be guilty under subsection (1) of incitement notwithstanding the existence of facts of which the person is unaware which make commission of the offence in question by the course of conduct incited impossible.</p>	Penalty must not exceed the penalty for the relevant offence.
WA	<a href="#">Criminal Code Compilation 1913 s 69</a> Forcibly entering land	Any person who, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, enters on land which is in the actual and peaceable possession of another is guilty of a crime.	Imprisonment for 2 years or a summary conviction penalty of \$6000.

	<b>Provision</b>	<b>Offence</b>	<b>Maximum Penalty</b>
	<a href="#"><u>Criminal Code Compilation 1913 s 70A</u></a> Trespass	A person who, without lawful excuse, trespasses on a place is guilty of an offence.	Imprisonment for 12 months and a fine of \$12000.
	<a href="#"><u>Criminal Code Compilation 1913 s 444</u></a> Criminal damage	Any person who wilfully and unlawfully destroys or damages any property is guilty of a crime.	<p>(a) If the property is destroyed or damaged by fire, to life imprisonment; or</p> <p>(b) if the property is not destroyed or damaged by fire, to imprisonment for 10 years</p> <p>Summary conviction penalty: for an offence where —</p> <p>(a) the property is not destroyed or damaged by fire; and</p> <p>(b) the amount of the injury done does not exceed \$25 000</p> <p>imprisonment for 3 years and a fine of \$36000.</p>
	<a href="#"><u>Criminal Code Compilation 1913 s 445</u></a> Damaging property	A person who unlawfully destroys or damages the property of another person without that other person's consent is guilty of an offence.	Imprisonment for 2 years and a fine of \$24000.

	<b>Provision</b>	<b>Offence</b>	<b>Maximum Penalty</b>
	<p><a href="#"><u>Criminal Code Compilation 1913 s 7</u></a> Principal offenders</p>	<p>When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say —</p> <ul style="list-style-type: none"> <li>(a) every person who actually does the act or makes the omission which constitutes the offence;</li> <li>(b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;</li> <li>(c) every person who aids another person in committing the offence.</li> <li>(d) any person who counsels or procures any other person to commit the offence.</li> </ul>	<p>A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.</p>

	<b>Provision</b>	<b>Offence</b>	<b>Maximum Penalty</b>
	<p><a href="#"><u>Criminal Code</u></a>  <a href="#"><u>Compilation 1913 s 553</u></a>            Incitement to commit indictable offence</p>	<p>Any person who, intending that an indictable offence (the principal offence) be committed, incites another person to commit the principal offence, is guilty of a crime.</p>	<p>(a) if the principal offence is punishable on indictment with imprisonment for life — to imprisonment for 14 years;</p> <p>(b) in any other case — to half of the penalty with which the principal offence is punishable on indictment.</p> <p>Summary conviction penalty: for an offence where the principal offence may be dealt with summarily, the lesser of —</p> <p>(a) the penalty with which the principal offence is punishable on summary conviction; or</p> <p>(b) the penalty that is half of the penalty with which the principal offence is punishable on indictment.</p>