



The 'AGRICULTURAL PROTECTION' Act

[Criminal Code Amendment \(Agricultural Protection\) Act 2019 \(Cth\)](#)

This Act amends the Commonwealth *Criminal Code Act* which means it applies across Australia and can be enforced by Commonwealth prosecutors. Most criminal offences are administered by the state so sentencing practices may be slightly different.

The Act **creates two new criminal offences specifically targeting the use of the internet / electronic communications with the intention of getting another person to trespass** or, commit **property damage or theft, on agricultural land**. These laws apply whether or not any trespass or actual damage occurred.

We have provided a summary of the offences below, including some definitions from the relevant legislation. However, it is important to note that **the courts have not yet provided any interpretation of these laws**, as such it is difficult to predict or explain with any certainty how the laws may operate.

Be aware that you cannot seek legal advice in anticipation of committing an offence.

Specific definitions:

A carriage service = “a service for carrying communications by means of guided and/or unguided electromagnetic energy.”¹ (social media platforms, emails, websites...)

Agricultural land = “land in Australia that is used for a primary production business.”

The entirety of the land does not have to be used for primary production. These are some of the primary production businesses included in the Act:

- Grazing
- Animal feedlots
- Dairy farming
- Farming animals for the purpose of producing meat/by-products
- Poultry farming
- Bee-keeping
- Operating an abattoir
- Operating livestock sale yards
- Wood and wood fibre processing facilities
- Forestry carried out on private land

¹ *Telecommunications Act 1997* (Cth).

1. Inciting trespass

- a. You need to have transmitted, made available, published or otherwise distributed material, and
- b. You must have used a carriage service to do so, and
- c. You must have done so with the **intention** of inciting another person to trespass on agricultural land, and
- d. You must be **reckless** as to whether that act of trespassing or any conduct by the other person while trespassing, could cause detriment to a primary production business being carried out on that land.

Carries a maximum penalty of 12 months imprisonment.

2. Inciting property damage or theft

- a. You need to have transmitted, made available, published, or otherwise distributed material, and
- b. You must have used a carriage service to do so, and
- c. You must have done so with the **intention** of inciting another person to:
 - i. Unlawfully damage property, or
 - ii. Unlawfully destroy property, or
 - iii. Commit theft of property.

Carries a maximum penalty of 5 years imprisonment.

Intention is established where a person **means** to bring about a result or is aware that it will occur in the ordinary course of events. Although you may not admit this is your intention, this may be shown by using circumstantial evidence or the material you posted/ distributed.

Recklessness requires that you are aware of a substantial risk that the trespass or conduct could cause a detriment to the business, and having regard to that, it is unjustifiable to take the risk. Whether the risk is unjustifiable will depend on the specific facts.

The legislation sets out **defences for journalists** operating in their professional capacity and whistleblowers already provided protection under existing laws. If you have been charged under either or both of these offences, you should **seek urgent legal advice**.

Action Ready would like to acknowledge the Jagera and Turrbal people on whose land we live, learn and resist. We pay our respects to elders past, present and emerging as well as First Nations people on the frontlines of climate change across the world. The colonial legal system is a tool for oppression that has been used to silence dissent in so-called Australia for over 230 years. Laws that impinge on the right to protest find their foundations in laws that impinge on First Nations people's right to life and culture.