

Criminal Code Amendment (Agricultural Protection) Act 2019

No. 67, 2019

An Act to amend the *Criminal Code Act 1995*, and for related purposes

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Criminal Code Amendment (Agricultural Protection) Act 2019

No. 67, 2019

An Act to amend the *Criminal Code Act 1995*, and for related purposes

[*Assented to 19 September 2019*]

The Parliament of Australia enacts:

1 Short title

 This Act is the *Criminal Code Amendment (Agricultural Protection) Act 2019*.

2 Commencement

 (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | The day after this Act receives the Royal Assent. | 20 September 2019 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

 (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

 Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Agricultural protection

Criminal Code Act 1995

1 Section 473.1 of the *Criminal Code*

Insert:

***abattoir*** means a place where animals are slaughtered (whether or not for human consumption), but does not include a restaurant.

***agricultural land*** means land in Australia that is used for a primary production business. For the purposes of this definition, it is immaterial:

 (a) whether a part of the land is used for residential purposes; or

 (b) whether a part of the land is used for a business that is not a primary production business.

***Crown land*** means land that is the property of:

 (a) the Commonwealth, a State or a Territory; or

 (b) a statutory authority;

but does not include land that is subject to a lease to a person other than:

 (c) the Commonwealth, a State or a Territory; or

 (d) a statutory authority.

***forestry*** means:

 (a) planting or tending trees in a plantation or forest that are intended to be felled; or

 (b) felling trees in a plantation or forest.

***meat by‑product*** includes skin, hide, tallow, meat meal and inedible offal.

***primary production business*** means any of the following:

 (a) a business of grazing;

 (b) a business of operating animal feedlots;

 (c) a business of dairy farming;

 (d) a business of farming animals for the purpose of producing meat or meat by‑products;

 (e) a business of poultry farming;

 (f) a business of aquaculture;

 (g) a business of bee‑keeping;

 (h) a business of operating an abattoir;

 (i) a business of operating livestock sale yards;

 (j) a business of operating a registered establishment (within the meaning of the *Export Control Act 1982*);

 (k) a business of operating a fish processing facility;

 (l) a business of growing fruit;

 (m) a business of growing vegetables;

 (n) a business of growing nuts;

 (o) a business of growing crops;

 (p) a business of viticulture;

 (pa) a business of operating:

 (i) a wood processing facility; or

 (ii) a wood fibre processing facility;

 (q) a business of forestry that is carried on on private land.

***private land*** means land other than Crown land.

***statutory authority*** means a body established for a public purpose by or under a law of the Commonwealth, a State or a Territory.

2 At the end of Division 474 of the *Criminal Code*

Add:

Subdivision J—Offences relating to use of carriage service for inciting trespass, property damage, or theft, on agricultural land

474.46 Using a carriage service for inciting trespass on agricultural land

 (1) A person (the ***offender***) commits an offence if:

 (a) the offender transmits, makes available, publishes or otherwise distributes material; and

 (b) the offender does so using a carriage service; and

 (c) the offender does so with the intention of inciting another person to trespass on agricultural land; and

 (d) the offender is reckless as to whether:

 (i) the trespass of the other person on the agricultural land; or

 (ii) any conduct engaged in by the other person while trespassing on the agricultural land;

 could cause detriment to a primary production business that is being carried on on the agricultural land.

Penalty: Imprisonment for 12 months.

 (2) Subsection (1) does not apply to material if the material relates to a news report, or a current affairs report, that:

 (a) is in the public interest; and

 (b) is made by a person working in a professional capacity as a journalist.

 (2A) In a prosecution for an offence against subsection (1), the defendant does not bear an evidential burden in relation to the matters in subsection (2), despite subsection 13.3(3).

 (3) Subsection (1) does not apply to conduct engaged in by a person if, as a result of the operation of a law of the Commonwealth, a State or a Territory, the person is not subject to any civil or criminal liability for the conduct.

Note 1: The *Public Interest Disclosure Act 2013* provides that an individual is not subject to any civil or criminal liability for making a public interest disclosure.

Note 2: Section 1317AB of the *Corporations Act 2001* provides that a person who makes a disclosure that qualifies for protection under Part 9.4AAA of that Act is not subject to any civil or criminal liability for making the disclosure.

Note 3: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

 (4) Subsection (3) does not limit section 10.5 (lawful authority).

474.47 Using a carriage service for inciting property damage, or theft, on agricultural land

 (1) A person (the ***offender***) commits an offence if:

 (a) the offender transmits, makes available, publishes or otherwise distributes material; and

 (b) the offender does so using a carriage service; and

 (c) the offender does so with the intention of inciting another person to:

 (i) unlawfully damage property on agricultural land; or

 (ii) unlawfully destroy property on agricultural land; or

 (iii) commit theft of property on agricultural land.

Penalty: Imprisonment for 5 years.

 (2) Subsection (1) does not apply to material if the material relates to a news report, or a current affairs report, that:

 (a) is in the public interest; and

 (b) is made by a person working in a professional capacity as a journalist.

 (2A) In a prosecution for an offence against subsection (1), the defendant does not bear an evidential burden in relation to the matters in subsection (2), despite subsection 13.3(3).

 (3) Subsection (1) does not apply to conduct engaged in by a person if, as a result of the operation of a law of the Commonwealth, a State or a Territory, the person is not subject to any civil or criminal liability for the conduct.

Note 1: The *Public Interest Disclosure Act 2013* provides that an individual is not subject to any civil or criminal liability for making a public interest disclosure.

Note 2: Section 1317AB of the *Corporations Act 2001* provides that a person who makes a disclosure that qualifies for protection under Part 9.4AAA of that Act is not subject to any civil or criminal liability for making the disclosure.

Note 3: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

 (4) Subsection (3) does not limit section 10.5 (lawful authority).

When a person commits theft

 (5) For the purposes of this section, a person commits theft of property if:

 (a) the property belongs to another person; and

 (b) the person dishonestly appropriates the property with the intention of permanently depriving the other person of the property.

 (6) An expression used in subsection (5) and in Chapter 7 has the same meaning in that subsection as it has in that Chapter.

 (7) In a prosecution for an offence against this section, the determination of dishonesty is a matter for the trier of fact.

 (8) Sections 131.2 to 131.11 apply (with appropriate modifications) in determining whether a person commits theft of property (within the meaning of this section).

474.48 Implied freedom of political communication

 (1) This Subdivision does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

 (2) Subsection (1) does not limit the application of section 15A of the *Acts Interpretation Act 1901* to this Act.

3 Subsections 475.1A(1) and (2) of the *Criminal Code*

Omit “or G”, substitute “, G or J”.

4 Paragraphs 475.1B(1)(a) and (2)(a) of the *Criminal Code*

Omit “or F”, substitute “, F or J”.

[*Minister’s second reading speech made in—*

*House of Representatives on 4 July 2019*

*Senate on 9 September 2019*]

(117/19)