



Criminal Code (Trespass Offences) Amendment Bill 2019

**Report No. 54, 56th Parliament
Legal Affairs and Community Safety Committee
November 2019**

Legal Affairs and Community Safety Committee

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Abbreviations

ACF	Australian Conservation Foundation
AJP	Animal Justice Party
ALQ	Animal Liberation Queensland
Australian Pork / APL	Australian Pork Limited
Biosecurity Act	<i>Biosecurity Act 2014</i>
EDO NQ	Environmental Defenders Office of Northern Queensland
EDO Qld	Environmental Defenders Office Queensland
FLPs	fundamental legislative principles
GSM	Green Shirts Movement
IRC	Isaac Regional Council
Legislative Standards Act	<i>Legislative Standards Act 1992</i>
MBQ	Master Builders Queensland
NFF	National Farmers' Federation
Property Council	Property Council of Australia
QFF	Queensland Farmers' Federation
QLS	Queensland Law Society
QPS	Queensland Police Service
QRC	Queensland Resources Council
Summary Offences Act	<i>Summary Offences Act 2005</i>
Transport Infrastructure Act	<i>Transport Infrastructure Act 1994</i>

Chair's foreword

This report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Criminal Code (Trespass Offences) Amendment Bill 2019.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill or gave evidence at the public hearings in Brisbane and Warwick. I also thank Mr Dale Last MP and Parliamentary Service staff.

I commend this report to the House.



Peter Russo MP

Chair

Recommendation

Recommendation

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The committee recommends the Criminal Code (Trespass Offences) Amendment Bill 2019 not be passed.

1 Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* (POQA) and the Standing Rules and Orders of the Legislative Assembly.¹

The POQA provides that a portfolio committee is responsible for examining each bill in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles.

On 1 May 2019, the Criminal Code (Trespass Offences) Amendment Bill 2019 (Bill) was introduced into the Legislative Assembly by Mr Dale Last, Member for Burdekin, Shadow Minister for Natural Resources and Mines and Shadow Minister for Northern Queensland, and referred to the committee. The committee is to report to the Legislative Assembly by 1 November 2019.

1.2 Inquiry process

On 3 May 2019, the committee invited the public to make submissions on the Bill. The committee emailed its subscribers and potential stakeholders. One hundred and thirty-two submissions were received. See Appendix A for a list of submitters.

The committee received a public briefing about the Bill from Mr Dale Last MP on 13 May 2019.

The committee held public hearings in Brisbane and Warwick on 19 August 2019 and 10 September 2019 respectively. See Appendix B for a list of witnesses.

The committee received written advice from Mr Last MP in response to matters raised in submissions in correspondence dated 8 August 2019.

The submissions, correspondence from Mr Last MP and transcripts of the briefing and the hearings are available on the committee's webpage.

1.3 Policy objectives of the Bill

The objective of the Bill is to protect businesses in Queensland from unlawful trespass activities. The Bill would do this by introducing three new criminal offences into Queensland's Criminal Code – aggravated trespass, serious criminal trespass and organised trespass.

1.4 Private Member consultation on the Bill

The explanatory notes advise that the Queensland Law Society (QLS), the Queensland Farmers' Federation (QFF) and AgForce Queensland (AgForce) were consulted in relation to the Bill.²

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

² Explanatory notes, p 2

Recommendation

The committee recommends the Criminal Code (Trespass Offences) Amendment Bill 2019 not be passed.

2 Background to the Bill

Mr Last MP advised that the Bill ‘was introduced to help address the threat posed to legal businesses by activist groups who oppose their business operations on environmental or ideological grounds’.³

Mr Last MP explained further:

... In recent months, we have seen agricultural operations, transport infrastructure, resources projects and contracting businesses targeted by these groups.

... The actions of the activist groups have had significant economic impacts on these businesses, resulting, in some cases, in trauma to individual employees. Furthermore, they have threatened the biosecurity of agricultural operations.⁴

Mr Last MP added:

... The action taken by these groups has not been approved by the landowner/lessee.

... The action taken by these groups has not been approved by the Queensland Police Service in accordance with the Peaceful Assembly Act 1992.

... On several occasions, the actions of these groups have, or could have, resulted in either physical or psychological injury (or both) to employees of these businesses who are undertaking their lawfully permitted duties.⁵

Some stakeholders, including Queensland Resources Council (QRC), elaborated on the background to the amendments:

For several years the QRC has been raising concerns with the Queensland Government regarding the tactics being employed by groups which oppose the development of the State’s minerals and energy resources. ...

The sector has seen a sharp increase in the number of illegal trespasses on rail and port infrastructure in recent years. ... Despite the best efforts of the Queensland police to prevent and prosecute offenders, illegal trespass continues to be prevalent, particularly around regional resource towns such as Bowen.

...

Protester actions on rail and port infrastructure is designed to stop the transport of coal. This usually involves a protester securing themselves to part of the infrastructure. When targeting rail infrastructure, the protester will alert the rail infrastructure manager to the obstruction and trains will be halted. When targeting port infrastructure, the protesters will await discovery by port workers.

Protesters utilise a number of methods to obstruct a railway or port, including:

- Using a bamboo tripod to suspend a protester directly over the railway;*
- Placing a concrete-filled drum on the railway tracks. The drum has a hollow section where the protester inserts their forearms;*
- Securing a L-shaped, concrete cylinder (which can be lined with glass) to infrastructure. The protester then inserts their forearms into the cylinder;*

³ Dale Last MP, correspondence dated 8 August 2019, p 3.

⁴ Dale Last MP, correspondence dated 8 August 2019, p 3.

⁵ Dale Last MP, correspondence dated 8 August 2019, p 3.

- *Impersonating rail workers to flag down approaching trains using correct emergency signals. Once the train has stopped, the protesters will climb onboard; and*
- *Suspending a protester from a tree by a rope. The rope is then secured to the railway track.*

All methods are inherently dangerous activities which can require quick thinking by the rail or port operators to prevent injury or loss of life. The activities shutdown the railway or port for hours after the protester is removed.

... On-track protests are now one of the primary safety concerns for Aurizon and in particular for more than 1,000 of Aurizon's frontline train drivers in Queensland. ...

Illegal protests are utilised as an economic instrument to drive up costs, with the brunt borne by rail operators and police.⁶

The QFF described the situation with respect to intensive animal farming:

Queensland's intensive animal farmers have experienced coordinated animal activist attacks, despite adhering to world leading animal welfare standards. The radical actions we have seen from activists invade farmers' privacy, threaten the welfare of their animals, pose unacceptable risks to their businesses and have implications for food security. The constant threat of being the next target also hinders farmers' ability to operate their businesses to produce the highest quality food, fibre and foliage as they must wear the economic and social costs of these actions.⁷

In relation to pig production, Australian Pork Limited (Australian Pork) submitted:

... The unauthorised trespass, filming and surveillance of pig production facilities has been an increasingly common occurrence, and has caused damage to pig production facilities, as well as immense distress for individual farmers and their staff. Pig producers undertaking lawful businesses are being targeted by activist vigilantes, intent on undertaking illegal activities (e.g. trespass) with the objective of causing the industry harm, and to stop consumers eating pork. Additionally, carefully designed biosecurity protocols are being ignored by trespassers who often move from farm to farm within a region to place hidden cameras, damage property and disrupt businesses.

Specifically, with regards to biosecurity, damage caused by a disease-carrying trespasser (even endemic diseases) could have ongoing effects on an individual's business, livelihood and the animals they produce. Reckless trespass of other pig farms within the quarantine period could cause a farm or regional biosecurity incident, with losses that could escalate into the tens of millions of dollars. In extreme cases, with emergency diseases involved, it could mean the shutting down of one or more livestock sectors – and close valuable export markets. These are not hypothetical situations – African Swine Fever is having a devastating effect on pig production in China, spreading largely due to the movements of people and vehicles through infected areas.⁸

Mr Last MP considered the current penalties for trespassing to be insufficient.⁹ The Leader of the Opposition, Mrs Deb Frecklington MP, was reported as saying that 'hefty fines and lengthy jail time are the only way to stamp out this disruptive, pre-meditated and sophisticated behaviour.'¹⁰

⁶ Submission 106, pp 3-6.

⁷ Submission 91, p 2.

⁸ Submission 123, p 1.

⁹ Queensland Parliament, Record of Proceeding, 1 May 2019, p 1335.

¹⁰ Mark Phelps, 'Farm trespass: LNP pushes \$400,00 fines, 10 year jail sentences', *Queensland Country Life*, 1 May 2019, <https://www.queenslandcountrylife.com.au/story/6097147/lnp-pushes-for-tougher-farm-trespass-laws/>.

3 Current legislative framework

Currently, there are certain legislative provisions in Queensland that aim to protect businesses and other properties from unlawful trespass.

3.1.1 Summary Offences Act 2005

The *Summary Offences Act 2005* (Summary Offences Act) prohibits persons from unlawfully entering, or remaining in, a dwelling or place used for a business purpose, or the yard of either place. The maximum penalty is 20 penalty units (\$2,669)¹¹ or 1 year of imprisonment.¹²

The Summary Offences Act also provides that a person must not unlawfully enter, or remain on, land used for agricultural or horticultural purposes, or grazing, or animal husbandry. The maximum penalty is 10 penalty units (\$1,334.50) or 6 months imprisonment.¹³

3.1.2 Transport Infrastructure Act 1994

Under the *Transport Infrastructure Act 1994* (Transport Infrastructure Act), the maximum penalty for intentionally or recklessly trespassing on a railway is 40 penalty units (\$5,338).¹⁴

3.1.3 Biosecurity Regulation 2016

In April 2019, the Biosecurity and Other Legislation Amendment Regulation 2019 amended the Biosecurity Regulation 2016 to make it an offence for a person entering, present at or leaving a management area for a biosecurity management plan to fail to comply with the measures stated in the plan unless the person has a reasonable excuse. The maximum penalty is 20 penalty units (\$2,669). Biosecurity inspectors, authorised persons and police officers may issue on-the-spot fines of five penalty units (\$667.25).¹⁵

¹¹ *Penalties and Sentences Act 1992*, ss 5, 5A; Penalties and Sentences Regulation 2015, s 3. The current value of a penalty unit is \$133.45.

¹² *Summary Offences Act 2005*, s 11.

¹³ *Summary Offences Act 2005*, s 13.

¹⁴ *Transport Infrastructure Act 1994*, s 257. See also, *Surat Basin Rail (Infrastructure Development and Management) Act 2012*, s 49.

¹⁵ Biosecurity and Other Legislation Amendment Regulation 2019, explanatory notes, p 3.

4 Stakeholders' views on the Bill

The committee received over 130 submissions on the Bill. The majority of the submissions were from individuals who were opposed to the Bill. Most of the business organisations who submitted supported the Bill. The groups with an environmental focus who submitted were opposed to the Bill.

This section of the report outlines the general arguments raised in favour of, and against, the Bill, and Mr Last MP's response to particular issues raised in submissions. Specific comments made by stakeholders about the Bill's provisions are included in part 5 of this report.

4.1 Arguments in favour of the Bill

The QRC, the QFF, Queensland Major Contractors Association, the National Farmers' Federation (NFF), Master Builders Queensland (MBQ), Australian Pork and the Whitsunday Regional Council were among those stakeholders who expressed support for the Bill. The reasons given for supporting the Bill included:

- trespassers pose biosecurity risks¹⁶
- trespassers threaten the welfare of animals¹⁷
- the current fines for trespassing are too low¹⁸
- trespassers cause distress to property owners¹⁹
- trespassers cause interference to farm business activities²⁰
- trespassers prevent businesses from operating, with negative flow-on impacts for the businesses' employees, the local communities, shareholders and others²¹
- trespassing presents safety risks for the trespasser and those responsible for managing the situation²²
- trespassers put at risk the safety of farming families, farm workers and livestock²³
- higher penalties would provide a greater deterrent to trespassers.²⁴

The NFF expressed its support for the Bill as follows:

... The Bill will create three new offences with significant maximum penalties that reflect the seriousness of trespass crimes, and will create a strong deterrent to those who seek to invade farming operations and other supply chain businesses such as livestock transport, saleyards and abattoirs. It will send a strong message to the public that the Queensland Government will not tolerate disruption of lawful businesses by those intent on causing harm, and provide comfort to farmers who are distressed by the threat of anti-farming activists entering their properties.²⁵

The Mayor of Whitsunday Regional Council advised:

¹⁶ See for example, submissions 2, 31, 91, 123.

¹⁷ See for example, submissions 91, 123.

¹⁸ See for example, submissions 2, 4, 31, 91, 92, 106.

¹⁹ See for example, submissions 4, 91.

²⁰ See for example, submissions 91, 107, 123.

²¹ See for example, submission 53.

²² See for example, submissions 53, 91, 106.

²³ See for example, submission 92.

²⁴ See for example, submissions 53, 92, 106, 107.

²⁵ Submission 92, p 1.

My Council supports the introduction of tougher laws to put an end to the harassment of businesses, the disruption of business activities and the disruption to members of the community who are just going about their daily lives in a legal and respectful way.

*While it is everyone's right to have different opinions, it is not right that some choose to trespass and carry out actions such as blocking a rail line or chaining themselves to commercial or community infrastructure, causing economic loss and inciting fear amongst innocent employees and community members.*²⁶

Isaac Regional Council (IRC) supported the objectives of the Bill 'to protect businesses from unlawful trespass, i.e. from forms of extreme activism activities which cause significant economic loss to key industries such as agricultural and the resources sector'.²⁷ The IRC noted, however, that it regards as 'critically important that lawful rights to freedom of assembly and association are not impacted by unintended outcomes of the Bill'.²⁸ The IRC would support any minor amendments needed to eliminate unintended outcomes.²⁹

The QFF stated:

*... This Bill provides the Queensland Government with the opportunity to ... better protect farmers from interference with the property by animal activists.*³⁰

Mr Greg Carey advised that Carey Bros Abattoir supported the Bill 'because we do not want to see these radical groups getting around disrupting genuine workers—genuine Australian workers—who are keeping the wheels of this country turning'.³¹

The MBQ strongly supported the Bill. It considered the Bill:

*... has merit in relation to the construction industry in terms of deterring unlawful entry and interference on construction sites. This is especially desirable where the interference is not related to genuine safety issues and is intended to cause economic and financial losses by stopping or slowing construction.*³²

The Property Council of Australia (Property Council) submitted:

*Taking into consideration the impact trespassing can have on disrupting business, damaging property and affecting employee's welfare, the Property Council believes the proposed amendments are reasonable and necessary to ensure the safety and protection of our members and their assets.*³³

4.1.1 Penalties

Some stakeholders in favour of the Bill commented on the existing penalties for trespassing and those proposed by the Bill.

The Green Shirts Movement (GSM) considered that existing penalties for trespass are too low, arguing there is 'an extraordinarily strong need to increase penalties for criminal trespass'.³⁴ The GSM

²⁶ Submission 125, p 1.

²⁷ Submission 80, p 2.

²⁸ Submission 80, p 2.

²⁹ Submission 80, p 3.

³⁰ Submission 91, p 5.

³¹ Public hearing transcript, Warwick, 10 September 2019, p 10.

³² Submission 3, p 1.

³³ Submission 121, p 1

³⁴ Submission 2, p 1.

elaborated: 'It is not only a breach of the law in the case of farming enterprises, it is a breach of biosecurity as well.'³⁵

Mr Lawrence Ryan, a dairy farmer, held a similar view:

*It is far too soft at the moment—way too soft. These fellows get some of the lightest fines you would ever see. I was actually in court on another matter—not my matter; I was supporting someone else—the day some of these activists went through. Some of these fellows were given \$70 fines that day. That is ridiculous. They might as well not even have held up the courtroom for a \$70 fine. It is nearly an insult to Mr Carey that someone would be given a \$70 fine. Some of them were given bigger fines. ...*³⁶

The QRC was of the view that '[t]he increased penalties and recognition of the organised nature of the activities will go some way towards addressing the ongoing issues with the current law.'³⁷ The QRC considered that there is 'little deterrent in the current law',³⁸ submitting.

... Most protesters who have been charged for blocking rail corridors receive fines ranging between \$100 and \$500, often with no conviction recorded. Protesters recognise that the offences are minor.

...

*Further, the current law has little appreciation of the coordinated nature of protester actions. Protesters appear before the Court as individuals and are given penalties as individuals. There is no consequence for the organisers of the deliberate, premeditated and ongoing campaign.*³⁹

The QRC noted that the most common charge for protester action is trespass under the Summary Offences Act or under the Transport Infrastructure Act. The QRC added:

There are more serious offences, which carry much heavier penalties, for example, offences relating to endangering the safety of a vehicle. However, there are currently significant gaps in these offences which means they do not capture protester activities. For example:

- The offences of 'endangering the safe use of vehicles and related transport infrastructure' ... and 'endangering the safety of a person in a vehicle with intent' ... both contain intent provisions which must be satisfied for the offence to be proven. To do this it needs to be proven that the offender intends to cause harm to others. In most cases, the protesters will alert the rail authorities about the obstruction on the track. This action would likely negate intent provisions drafted this way. Maximum penalty - life imprisonment.*
- The offence of 'interfering with a railway' ... has been reduced in scope over the years so that it relates only to direct impact caused by someone on or in the corridor. The offence will not be committed by someone standing outside or above the corridor (e.g. in a tree/tripod) but whose presence there causes the railway to be closed. Maximum penalty – 40 penalty units (currently \$5222).*

...

- There appears to be no offence that captures the disturbing trend of protesters impersonating rail safety workers and flagging down trains using correct emergency signals. Impersonating a public officer is a crime but is not applicable to this scenario as the construction of the*

³⁵ Submission 2, p 1.

³⁶ Public hearing transcript, Warwick, 10 September 2019, p 18.

³⁷ Submission 106, p 8.

³⁸ Submission 106, p 7.

³⁹ Submission 106, p 7.

*offence requires the public official to owe a public duty under legislation. ... Maximum penalty – 3 years imprisonment.*⁴⁰

The QFF opined that the penalties proposed in the Bill are proportionate with similar offences:

*... While the offences of burglary, entering or being in premises and committing indictable offences and unlawful entry of vehicle for committing an indictable offence are no doubt more serious, other analogous offences are contained in the Criminal Code. For example, regarding agriculture, unlawfully using stock applies to “any person who unlawfully uses an animal that is stock, without the consent of the person in lawful possession thereof”. For such an offence, a fine to the value of the animal or a prison sentence of five years may be imposed. Conversely, the crime of wilful damage occurs where a person “wilfully and unlawfully destroys or damages any property” and if no other punishment is provided, imprisonment for five years may apply. While both of these crimes differ to those proposed by the Bill, the decreased imprisonment time may be balanced by the larger fines imposed. Therefore, the penalties imposed by the Bill may be considered consistent with those covered by the Criminal Code and make a reasonable comparison for conduct they intend to prevent.*⁴¹

With respect to the recent introduction of on-the-spot fines for breaches of a farm’s biosecurity management plan, the QFF submitted:

*Feedback from the community has also indicated that the recent introduction of \$652.75 fines for failing to comply with a farm’s biosecurity management plan are not significant enough to deter future offenders and QFF agrees.*⁴²

The QFF concluded:

*A law is the product of the social conditions at the time it is made, it is not static and should change to respond to the current social and political values of a community. In an era of increasing actions towards legitimate businesses that have become more disruptive and extreme, the current offence of unlawfully entering farming land does not meet the expectations of farmers and the community in punishing and preventing future offences of trespass on farms and does not reflect the potential risk to farming businesses. Other jurisdictions already have higher penalties for this type of trespass, and/or are considering introducing new laws to impose greater penalties for this behaviour. QFF supports the principle of this Bill as it would provide the courts with the legislative consent to impose a greater sentence and bring the penalties for trespassing on farming land back in line with farmer and community expectations. It is incumbent upon the Parliament to set appropriate penalties to ensure legislative protections sufficiently punish and deter would be and repeat offenders so farmers and society can operate their legitimate businesses without threat of disruptive, costly and damaging law-breaking behaviour.*⁴³

Some stakeholders supported the Bill but wanted even higher penalties than those proposed. Mr Lawrence Ryan commented that many of the activists are young and are not concerned ‘because they know that no conviction will be recorded’.⁴⁴ Mr Ryan’s view was that the activists:

... should be given mandatory huge fines, fines that are going to hang over their head for the rest of their working life. They should have convictions recorded that will be there when they go to

⁴⁰ Submission 106, pp 8-9.

⁴¹ Submission 91, p 5 (footnotes omitted).

⁴² Submission 91, p 6.

⁴³ Submission 91, pp 6-7.

⁴⁴ Public hearing transcript, Warwick, 10 September 2019, p 17.

*get a job, when they go to get a bank loan, when they go to travel overseas; it is there. Then they will think twice about what they are doing.*⁴⁵

In answer to a question from the committee which noted that the penalties in the Bill are up to 10 years imprisonment and fines of up to \$391,000, Mr Garry Cooper, a beef and grain producer who also runs a cattle feedlot, responded:

*On a personal level for repeat offenders with no backing from large international groups that have other agendas, that may be enough. However, I think the hierarchy of organised protest groups needs to be pursued much further and much harder than it is at the moment. A fine of half a million dollars or something like that is probably not going to affect that hierarchy that is driving this agenda. In the long term, if that hierarchy is not addressed and something is not done about it, we are going to have a disaster in Australia.*⁴⁶

4.2 Arguments against the Bill

The reasons given by certain stakeholders for their opposition to the Bill included:

- the negative impact on the ability to protest⁴⁷
- the penalties are excessive in comparison to other offences⁴⁸
- the proposed laws would benefit certain corporate interests⁴⁹
- there are already laws making trespass an offence⁵⁰
- it poses a risk to whistleblowers and investigators.⁵¹

4.2.1 Existing laws

Numerous stakeholders commented that there are already Queensland laws making trespass an offence.

The QLS advised that there is currently a range of legislation that might be applicable to the conduct contemplated by the Bill.⁵²

Sections 11 and 13 of the Summary Offences Act (Qld) 2005 provide for offences of ‘trespass’, which carry periods of imprisonment. These provisions are of particular relevance as a court may be dealing with an offender for an offence in which there has not been any actual or threatened damage or injury to property or person.

⁴⁵ Public hearing transcript, Warwick, 10 September 2019, p 18.

⁴⁶ Public hearing transcript, Warwick, 10 September 2019, p 15.

⁴⁷ See for example, submissions 5, 6, 7, 8, 10, 11, 14, 15, 17, 18, 23, 24, 26, 30, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 46, 47, 50, 55, 56, 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74, 76, 77, 78, 79, 82, 84, 85, 86, 88, 89, 90, 93, 94, 95, 98, 99, 100, 102, 103, 104, 108, 109, 110, 114, 116, 118, 119, 120, 122, 124, 126, 130, 131, 132.

⁴⁸ See for example, submissions 5, 9, 10, 11, 14, 15, 16, 17, 18, 21, 23, 24, 26, 27, 29, 30, 32, 34, 36, 37, 43, 44, 45, 48, 49, 50, 51, 52, 54, 55, 56, 58, 59, 63, 64, 67, 68, 69, 70, 71, 73, 76, 81, 82, 85, 86, 87, 88, 90, 93, 95, 97, 101, 103, 108, 109, 110, 111, 115, 116, 118, 119, 120, 122, 124, 126, 127, 128, 129, 130, 132.

⁴⁹ See for example, submissions 7, 17, 24, 26, 30, 32, 44, 66, 76, 83, 87, 104, 108, 109, 116, 122, 129.

⁵⁰ See for example, submissions 11, 16, 17, 18, 23, 26, 30, 32, 34, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 48, 49, 50, 52, 54, 55, 56, 57, 58, 59, 62, 63, 68, 69, 71, 74, 75, 76, 77, 85, 86, 88, 89, 90, 93, 95, 97, 101, 102, 105, 110, 111, 115, 118, 119, 120, 126, 127, 129, 132.

⁵¹ See for example, submissions 17, 18, 26, 30, 32, 33, 34, 36, 37, 41, 44, 46, 57, 60, 61, 62, 74, 84, 85, 94, 98, 99, 100, 102, 108, 120, 127, 128, 129, 130, 132. See also for example, submission 24 – whistleblowing would be stifled.

⁵² Queensland Law Society, submission 49, p 1.

Further, sections 274-278 of the Criminal Code provide rights and powers to individuals to deal with trespassers in certain circumstances.

In addition, the Queensland Police Service possess 'move on' powers (part 5 of the Police Powers and Responsibilities Act 2000 (Qld)) which can apply in certain circumstances.⁵³

The QLS noted that the explanatory notes 'do not provide any compelling data or evidence to suggest that the existing legislation is inadequate.'⁵⁴

The Animal Justice Party (AJP) made a similar comment, saying it believed that the Bill's objective (to protect all legitimate and legal businesses in Queensland from unlawful trespass) 'are more than adequately provided for by existing provisions within the Criminal Code.'⁵⁵ The AJP identified ss 7 and 421 of the Criminal Code as covering organised trespass and serious criminal trespass respectively.⁵⁶

In its submission, the Environmental Defenders Office (EDO Qld) summarised the relevant currently available offences under the Summary Offences Act, the Transport Infrastructure Act and the Biosecurity Regulation then continued:

In addition to these laws, there is also the ability for an owner of property to sue for civil trespass and to seek damages for any fiscal or property damage that may have occurred due to, or in addition to the trespass. This means that any loss of profit or damage to property may be recompensed directly through suing the perpetrator directly.⁵⁷

The Environmental Defenders Office of Northern Queensland (EDO NQ) explained why it considered that the conduct which the Bill proposes to criminalise is already adequately covered in existing legislation:

Conduct which is sought to be covered by the proposed offences is already criminalised in Queensland through the Summary Offences Act, Criminal Code, Biosecurity Act framework, and Transport Infrastructure Act.

Trespass under the Summary Offences Act contains a maximum penalty of 20 penalty units or 1 year imprisonment. This offence covers all conduct, which the Bill is aimed at. Further, Mr Last, in his first reading speech and during the public briefing, made specific reference to trespass on farms having additional biosecurity concerns. This conduct has already been addressed with police recently obtaining the power to issue on the spot fines.

In situations where the Bill would have conduct fall within aggravated or serious criminal trespass, a broad interpretation of s 421 of the Criminal Code 'entering or being in premises and committing indictable offences' may already apply and contains similar penalties.

A person commits an offense under s 421 if they enter a premise with intent to, or commits, an indictable offense. Premise is defined to include both buildings, and land [on] which structures are situated. Structure is not defined in the code, and railways and ports could easily fall within that definition. Therefore, the situations of trespass on farms and transport infrastructure, which are the purpose of the Bill, are already covered in our Criminal Code.⁵⁸

In response to submitters' assertions that the provisions duplicated those currently in Queensland law, Mr Last MP stated:

⁵³ Queensland Law Society, submission 49, p 2.

⁵⁴ Queensland Law Society, submission 49, p 2.

⁵⁵ Submission 24, p 11.

⁵⁶ Submission 24, pp 11-12.

⁵⁷ Submission 115, p 2.

⁵⁸ Submission 76, p 2. See also Queensland Law Society, public hearing transcript, Brisbane, 19 August 2019, p 2.

*... There clearly is a need for new laws, not a duplication, as, under current laws, those trespassing are not being issued with fines/penalties that meet community expectations.*⁵⁹

4.2.2 Penalties

Many submitters considered that the proposed penalties were excessive in comparison to penalties for other offences.

The QLS, for example, stated:

*In the view of the society, the penalties proposed are excessive when balanced against the overall legislative framework, that is, the penalties imposed as maximums for other offences in Queensland.*⁶⁰

Animal Liberation Queensland (ALQ) compared the penalties for the proposed offences with those of existing offences:

*The proposed amendments would create offences for organised trespass for example that is far greater than the penalties for violent crimes under the Criminal Code offences such as assault, domestic violence, kidnapping, or serious animal cruelty.*⁶¹

The Australian Conservation Foundation (ACF) asserted:

These extremely punitive penalties are inconsistent with existing Queensland laws and far exceed the penalties provided for similar offences in comparable jurisdictions. To highlight how extreme these penalties are, they should be contrasted with other offences in Queensland attracting a penalty of 10 years imprisonment including, inter alia, permitting the abuse of a child over the age of 12 years, grooming children under 12 years of age for sex and attempted incest. ... The suggestion that trespass should be treated with equal severity is ridiculous.

*Further, although the Bill's explanatory notes refer to "similar legislation" in South Australia, our research indicates that this is a mischaracterisation of that states' laws. In South Australia, the equivalent maximum custodial penalty for aggravated trespass is 6 months imprisonment. Similarly, in Victoria the equivalent maximum penalty is 6 months imprisonment, and in New South Wales there is only a financial penalty. Given that the existing maximum custodial penalty for trespass in Queensland is 1 year's imprisonment, consistency with other jurisdictions would suggest that Queensland's current custodial penalties should be lessened rather than increased.*⁶²

Regarding proportionality in penalties, the EDO NQ submitted:

Proportionality in penalties is an important aspect of our criminal law system and must strike a balance between punishment, deterrence and rehabilitation. The proposed s 423 would be an indictable offence carrying a maximum of 10 years' imprisonment for the exact same conduct as would otherwise carry a 3 year maximum. This will effectively increase the penalty for similar conduct over threefold.

Mr Last, in the Bill's introductory speech gave wilful damage and arson as examples of offenses which carry maximum sentences of 5 years and life imprisonment respectively. Both penalties have long been established as proportionate and the justification for an additional offence and

⁵⁹ Dale Last MP, correspondence dated 8 August 2019, p 2.

⁶⁰ Public hearing transcript, Brisbane, 19 August 2019, p 2.

⁶¹ Submission 85, p 1.

⁶² Submission 116, pp 1-2 (footnotes omitted).

*penalty to be imposed for the same conduct, but in a specific locality, is both unnecessary and disproportionate in consideration to our existing criminal law.*⁶³

ALQ noted Queensland's existing laws that deal with trespass and added:

*... There is no need to introduce new offence provisions, particularly ones which are so manifestly unjust in the level of penalty they seek to apply.*⁶⁴

In response to submitters' comments on the size of the penalties in the Bill, Mr Last MP noted that actions that fall under the Bill would have 'considerable effect on businesses, their employees, their suppliers and other sections of the wider community'⁶⁵ and have a high financial cost for the businesses.⁶⁶

With reference to the potential economic impact for agricultural industries affected by a biosecurity breach, Mr Last MP advised:

*The report by Ridge Partners shows an economic loss of \$25M to producers alone. It also cites the loss of 122 permanent jobs and quotes a \$3.67M loss of economic activity at the local level alone. These figures do not take into account the cost of recovery from such an incident or reputational damage.*⁶⁷

Regarding the resources and transport industries, Mr Last MP stated:

*... the potential for economic loss can, also, not be understated. In addition to lost production time and the avoidable economic cost of injury to workers or protesters, incidents involving illegal access to sites by untrained individuals has the potential to result in increased expenses for security and for increases in costs such as WorkCover. As stated previously, there is also the potential for ongoing economic and personal damage to workers, their families and the protesters and their families as well.*⁶⁸

Mr Last MP concluded:

*If we take into account the social costs, economic costs and the potential for reputational damage to entire Queensland industries, the penalties suggested in my Bill could easily be described as being "on the lower end" from a compensatory point of view. Incurring these costs must come with significant penalty to offenders and there must be significant deterrence provided to reduce the possibility of future occurrences.*⁶⁹

4.2.3 Indictable offences

The Environmental Defenders Office Queensland (EDO Qld) noted that the existing offence of trespass is a summary offence whereas the proposed offence provisions in the Bill are indictable offences. EDO Qld explained that '[s]ummary offences are less serious offences that are usually heard by a single judge, compared to indictable offences which are more serious, with more onerous penalties and which are usually heard by a judge and jury trial process'.⁷⁰ EDO Qld elaborated:

Normally an indictable offence is heard via two hearings; a committal hearing in a Magistrates Court and trial in a District or Supreme Court. Both of these hearings can be substantial and

⁶³ Submission 76, p 3.

⁶⁴ Submission 85, p 3.

⁶⁵ Dale Last MP, correspondence dated 8 August 2019, p 4.

⁶⁶ Dale Last MP, correspondence dated 8 August 2019, p 5.

⁶⁷ Dale Last MP, correspondence dated 8 August 2019, p 5.

⁶⁸ Dale Last MP, correspondence dated 8 August 2019, p 6.

⁶⁹ Dale Last MP, correspondence dated 8 August 2019, p 6.

⁷⁰ Submission 115, p 3.

*resource intense. A jury may also be involved in an indictable offence. Contrastingly, a summary offence is typically heard via one hearing.*⁷¹

EDO Qld added:

*There may be an increase in civil disobedience actions in the coming years, with rising concerns around climate change and mass species extinctions. Creating offences and penalties which are highly onerous on our court and legal system will mean that these activities may clog our courts, arguably unnecessarily.*⁷²

Mr Last MP addressed the concern about a possible increased burden on the court system, stating:

*... Claiming that the courts would get 'clogged' is also just an admission that there is a problem and a legal deterrent like the laws proposed are required to address the issue. If the courts capacity needs to expand to resolve the level of prosecutions, then it is the Government's responsibility to accommodate this. Stronger penalties are aimed as a deterrent to prevent these crimes being committed in the first place and protect regional jobs.*⁷³

4.2.4 Protesting

Many submitters were concerned about the impact that the Bill may have on protesting.

EDO NQ, for example, submitted:

Protest, peaceful or otherwise, has underpinned the success of social movements which have dramatically changed the society we live in today. Peaceful protest is a means which must remain available to the public to express their political views and wishes for our society.

*The Bill is a direct response to the protests by animal activist and environmental movements on issues that are highly political in nature. While the Bill clearly targets these movements, the broad definition of 'private land' and 'economic loss' means that the Bill will have far reaching consequences for other social movements in the future.*⁷⁴

ALQ considered non-violent protests are important to democracy and the proposed laws pose a threat to protesters and whistleblowers:

These proposed laws are squarely aimed at peaceful protestors who take a stand against activities that may be illegal or unjust or contrary to the public interest. It is also important to note that these laws are not limited to animal rights or environmental protests and may have far reaching ramifications for other sectors of society. While we do not advocate for people to break the law, it is important to recognise that non-violent peaceful protest plays an important role in democracies.

...

*This Bill is rather an attempt to silence members of the public who have grown frustrated by the government's perceived lack of action to address issues of public concern and therefore take part in peaceful protest. This is a threat to public dissent and the role of whistle-blowers in ensuring our regulations and governance are adequate, fair and just in protecting the public interest.*⁷⁵

The AJP similarly considered that protest is important within a democracy. It was of the view that the right to protest would be limited by the Bill.

⁷¹ Submission 115, p 3.

⁷² Submission 115, p 3.

⁷³ Dale Last MP, correspondence dated 8 August 2019, p 2.

⁷⁴ Submission 76, p 3.

⁷⁵ Submission 85, pp 1-2.

The right to protest is an important tenet of democratic participation and will be severely undermined by the broad scope and ambiguous language of proposed sections of this Bill. Protest is an important tool for citizens to demand action on issues that the government and industry are not adequately addressing. The right to protest falls not only under the Human Rights Act 2019 (Qld) but also the constitutional freedom of political communication implied by the High Court (Australian Capital Television Pty Ltd v Commonwealth). The proposed new offences overly restrict the right to protest, are ambiguous and are not proportionate or directed towards a legitimate objective (Brown v Tasmania). One method by which movements seek to draw attention to an issue of concern is through protesting at the site of the issue. While we see many protests taking place in public spaces, there are also instances where the site of the issue is on privately owned or controlled land. This is of particular concern for labour movements protesting at workplaces, environmental groups protesting at the site of destruction, and animal rights groups protesting at the site where the cruelty is committed.⁷⁶

The ACF also stressed the importance of protest to democracy and was of the view that proposed laws that would impact on protest should be carefully considered.

Given the centrality of protest to a healthy democracy, laws designed to limit the freedom to protest must be carefully justified with reference to other public concerns such as health and safety and the proper functioning of democratic society. ... the Bill would criminalise even minor inconveniences to a business' profits as well as protest activities that clearly benefit the public interest.⁷⁷

EDO NQ was concerned that the Bill would limit the right to protest for the benefit of private enterprises.

... The Bill limits the public right to protest not to protect the interests of the people of Queensland, but the economic interests of private enterprise.

The Bill intends to protect the economic activities of private corporations in Queensland at the cost of the public's right to protest. The profits of corporations is not a sufficient justification for restricting peaceful protest by the public.⁷⁸

Jenny Fitzgibbon opposed the Bill on grounds including that people should have the right to protest:

Any person or group should have the freedom to enact civil disobedience in a non-violent manner where they have good reason to believe a travesty of justice is being committed. I therefore thoroughly oppose the Bill. Ordinary citizens need to be able to oppose an injustice without being treated by our own society in a manner worse than someone [whose] intention is to cause harm, like a person wilfully damaging the environment, causing pain or injury to a person or an animal, or being violent towards others.⁷⁹

Mr Last MP addressed submitters' concerns regarding the Bill's possible impact on people's ability to protest:

The Criminal Code (Trespass Offences) Amendment Bill does not, in any way, impede a citizen's right to protest. As defined in the Bill, penalties would only apply to offences committed on Private Land where permission has not been given, by the occupier, for protest activity.

Lawful protest on Public Land would not be affected by the Bill and neither would lawful protest on Private Land where permission for that protest was provided by the occupant.

⁷⁶ Submission 24, pp 17-18.

⁷⁷ Submission 116, p 3.

⁷⁸ Submission 76, p 3.

⁷⁹ Submission 29, p 1.

*Civil disobedience, by its very nature, relies on people deliberately disobeying the Law. I would submit to the committee that persons who engage in civil disobedience are already subjected to offences contained in a multitude of other Legislation.*⁸⁰

4.2.5 Whistleblowers and investigators

ALQ advised that some animal protection organisations have covertly obtained footage to expose animal cruelty but the high penalties in the Bill may deter future action at the possible detriment of the animals:

ALQ, alongside other animal protection organisations, have at times made use of covertly obtained footage to expose animal cruelty, illegal behaviour that is not being addressed by government, and to bring issues to public attention. An important example of covert surveillance that has led to positive change for animals is ALQ's investigation (alongside Animals Australia in NSW & Victoria) that led to the exposure of the cruel practice of live baiting in the greyhound racing industry. Covert video footage obtained by ALQ was central to law enforcement charging several participants with animal cruelty and resulting in widespread industry and legal reform across the country.

*... Current whistleblower and public interest protections are too weak to be relied on to counter this risk. If ALQ Directors were faced with the prospect of 10 years jail for exposing live baiting cruelty to the nation, then it is quite likely this risk may have been deemed too great, and widespread live baiting would still be taking place today.*⁸¹

Mr Last MP addressed the issue raised in submissions about the exposure of incorrect and illegal practices, stating:

*... intrusion on an agricultural business by untrained persons with no regard for biosecurity procedures cannot be tolerated. If, in fact, further monitoring of animal welfare is required, it is incumbent on the Government and Statutory Departments to identify this need and respond appropriately.*⁸²

Mr Last MP added:

*... It is not the role of activist groups to take on regulatory responsibilities and attempts by objectors to justify their actions under this umbrella are disingenuous.*⁸³

Mr Last MP commented further on the possible biosecurity ramification of activists' actions:

On many occasions, this and previous governments at both the State and Federal level have cited both Queensland's and Australia's status as providing safe, high quality food and fibre. Activists who invade agricultural operations have demonstrated no understanding of the need to ensure proper biosecurity precautions and, by their actions, have demonstrated their unwillingness to comply with the relevant laws and procedures.

*The potential economic impact for an agricultural business affected by a Biosecurity breach is enormous and such an occurrence would also have a major impact on Queensland's reputation for providing safe food. One only needs to refer to the Australian Senate inquiry into White Spot Disease to see the potential impact on industry of a biosecurity incident.*⁸⁴

⁸⁰ Dale Last MP, correspondence dated 8 August 2019, p 3.

⁸¹ Submission 85, p 2.

⁸² Dale Last MP, correspondence dated 8 August 2019, p 6.

⁸³ Dale Last MP, correspondence dated 8 August 2019, p 7.

⁸⁴ Dale Last MP, correspondence dated 8 August 2019, p 5.

5 Examination of the Bill

The Bill proposes to introduce three new offences—aggravated trespass, serious criminal trespass and organised trespass—to strengthen Queensland’s trespass laws. This section of the report outlines the proposed new provisions and summarises stakeholders’ comments on them.

5.1 Aggravated trespass

The Bill proposes to insert new s 422 (Aggravated trespass) into the Criminal Code. Under proposed s 422, a person who unlawfully enters or is in premises, private land or transport infrastructure with intent to cause economic loss to another person or the State commits an offence. The proposed maximum penalty is 100 penalty units (\$13,345) or three years imprisonment.

5.1.1 Stakeholder comments

The QLS did not support proposed s 422.⁸⁵ The organisation considered the offence of aggravated trespass to be ‘broadly worded and vague’⁸⁶ because there does not appear to be a definition of ‘economic loss’ nor is there guidance on how economic loss is to be measured and proven.⁸⁷ The QLS also sought clarification on:

*... how the concept of ‘causing economic loss’ would be considered criminal behaviour and in what other circumstances, if any, to which this applies. In our view, an intention to cause economic loss to a person or business, in and of itself, is not necessarily criminal. Therefore, the Society considers that this is too low a threshold of conduct to be characterised as a Criminal Code offence.*⁸⁸

Anne Morrison-Gardiner suggested that the wording of proposed s 422 ‘is so broad it could include simply wearing a badge advocating a consumer boycott of a product or company service’.⁸⁹

The AJP described proposed s 422 as ‘uncertain at best and anti-democratic at worst’⁹⁰ and recommended that it be rejected.⁹¹ The AJP commented that the proposed penalty is more than double the penalty for trespass under s 11 of the Summary Offences Act ‘to punish an intention to cause economic loss’.⁹² The AJP elaborated:

... Causing economic loss is presently only associated with extreme criminal offences including: demands with menaces upon agencies of government, contamination of goods, hoax contamination of goods, extortion, sabotage and threatening sabotage of government ... To apply this factor to actions relating to whistleblowing, protests and investigations is extraordinary.

The AJP is concerned that including an intent to cause economic loss in Section 422 is dangerous when the factor is ill-defined and broad enough to capture nearly all protest and other democratic expressions which take place on private land. There is no threshold for what constitutes ‘intent’, but if it includes consequences which are reasonably foreseeable, ... then all forms of democratic expression may be included as these typically have negative economic consequences for business brought before public scrutiny and therefore some form of pure

⁸⁵ Submission 49, p 3.

⁸⁶ Submission 49, p 2.

⁸⁷ Submission 49, p 2.

⁸⁸ Submission 49, p 3.

⁸⁹ Submission 124, p 1.

⁹⁰ Submission 24, p 12.

⁹¹ Submission 24, p 13.

⁹² Submission 24, p 12.

*economic loss is reasonably foreseeable. We are also concerned that there is no qualification for what constitutes 'economic loss' in Section 422. A brief five-minute protest in a Brisbane CBD office reception will make staff temporarily less efficient and may moderately impact commercial activity - will these light losses trigger the application of Section 422? The AJP suggests that criminalising economic loss is not appropriate in a mature, democratic society, especially so when there are serious questions about what constitutes intent to cause this economic loss. Civil remedies already exist for these issues. Section 422 is a gag on free speech and a barrier to public scrutiny of commercial practices and cannot be supported in its current form.*⁹³

EDO NQ was of the view that neither proposed s 422 nor proposed s 423 were necessary because s 421 of the Criminal Code 'may already apply and contains similar penalties'.⁹⁴

Australian Pork, however, welcomed proposed s 422:

*... Courts have so far been limited in their ability to apply appropriate penalties to offenders, given that offences of trespass are typically listed as summary offences and carry small fines, e.g. the Gippie Goat Café incident in Victoria where the activist received a \$1 fine. The livestock production sector has been vocal in its claim that these penalties are wholly inappropriate and do not reflect the true harm caused to producers. Moreover, they do not create a deterrent for prospective offenders that the community expects of the criminal justice system. An offence of aggravated trespass is therefore appropriate to include in the Criminal Code and is welcomed by APL.*⁹⁵

5.2 Serious criminal trespass

Proposed new s 423 provides that a person who enters or is in premises, private land or transport infrastructure⁹⁶ used for business purposes and commits an offence punishable by three years imprisonment or more commits a crime. The maximum penalty under the Bill for proposed s 423 is 3,000 penalty units (\$400,350) or 10 years imprisonment.

5.2.1 Stakeholder comments

Australian Pork considered that the inclusion of the serious criminal trespass offence in the criminal Code is 'a positive step in criminalising activities that occur on farming properties that are often overlooked by the police and the judiciary.'⁹⁷ By way of example, Australian Pork explained that 'many sows will experience production impacts such as abortions and still births following trespass incidents'.⁹⁸

AgForce supported the proposed offences of aggravated trespass and organised trespass but it had some concerns about the offence of serious criminal trespass:

*To enable primary producers to freely undertake their legitimate and vital activities, Queensland Legislation must include regulatory measures that provide a greater deterrent to planned activities and events by extreme activist; sending a strong message to those people intent on causing disruption and delay, that their actions will not be tolerated.*⁹⁹

⁹³ Submission 24, pp 12-13.

⁹⁴ Submission 76, p 2.

⁹⁵ Submission 123, p 2.

⁹⁶ Clause 4 provides the definition of 'transport infrastructure'. It means a port or railway.

⁹⁷ Submission 123, p 2.

⁹⁸ Submission 123, p 2.

⁹⁹ Submission 107, p 2.

AgForce considered that ‘two (2) of the three (3) proposed offences’¹⁰⁰ send the requisite strong message but it had concerns about the proposed offence of serious criminal trespass:

*AgForce is of the opinion that the wording in the Bill concerning this offence is vague, potentially open to misinterpretation and widens the intended application because it does not specifically relate to unlawful access to business premises. Concern exists that those that the proposed offence intends to protect may be negatively affected, potentially finding themselves charged under the proposed offence.*¹⁰¹

AgForce recommended that ‘the Committee approves the Bill, with clarifying amendments to include a better understanding of economic loss and to ensure QPS can effectively apply the appropriate offence.’¹⁰²

The AJP recommended that s 423 be rejected.¹⁰³ It contended that proposed s 423 ‘is not necessary and is adequately covered by existing provisions within the *Criminal Code*’.¹⁰⁴ The AJP highlighted existing s 421 which provides:

- any person who enters or is in any premises with intent to commit an indictable offence in the premises commits a crime and is liable to a maximum penalty of 10 years’ imprisonment
- any person who enters or is in any premises and commits an indictable offence in the premises commits a crime and liable to a maximum penalty of 14 years’ imprisonment.¹⁰⁵

The AJP submitted that it:

*... struggles to provide any examples of offences which require immediate attention in the interest of public safety, that are punishable by more than three years’ imprisonment, and which are not sufficiently and adequately covered by the existing Section 421. Therefore there appears to be no reason to introduce Section 423 especially when it is more ambiguous than the existing provision.*¹⁰⁶

The QLS did not support proposed s 423.¹⁰⁷ The organisation was concerned about the provision because:

- it is headed ‘Serious criminal trespass’ but it does not require an actual trespass to occur - the offence is committed by a person who is at a business and commits an offence punishable by three years’ imprisonment or more
- the range of conduct that would be captured by proposed s 423 ‘is exceptionally broad and might have unintended consequences’¹⁰⁸

¹⁰⁰ Submission 107, p 2.

¹⁰¹ Submission 107, p 2.

¹⁰² Submission 107, p 2.

¹⁰³ Submission 24, p 14.

¹⁰⁴ Submission 24, p 13.

¹⁰⁵ Submission 24, p 13.

¹⁰⁶ Submission 24, p 14.

¹⁰⁷ Submission 49, p 4.

¹⁰⁸ Submission 49, p 3. The QLS provided examples of possible unintended consequences, including: ‘if an individual smokes an illegal substance in a supermarket, they can be charged with “serious criminal trespass”.’

- it is unclear whether the words ‘used for business purposes’ are intended to limit the whole phrase ‘premises, private land or transport infrastructure’, or only apply to ‘transport infrastructure’¹⁰⁹
- the penalty is ‘excessive when balanced against the overall legislative framework, which governs offending behaviour in Queensland.’¹¹⁰

The ACF contended that:

*... the Criminal Code Act 1899 (Qld) already contains appropriate offences dealing with matters such as damage to property and injury to persons. These laws can already be applied in circumstances where there has also been an unlawful entry onto private property. Therefore, the additional offence of ‘serious criminal trespass’ is unnecessary.*¹¹¹

5.3 Organised trespass

Under proposed new s 424, a person would commit a crime if the person:

- is a participant in an organisation, and
- counsels or procures, or arranges for, another person to commit an offence of aggravated trespass or serious criminal trespass, and

the other person:

- is a participant in the same organisation, and
- commits an aggravated trespass or a serious criminal trespass.

Organisation is defined to include a business and a charity. Participant, in an organisation, means a director, member or volunteer of the organisation.

The maximum penalty for breaching proposed s 424 would be 3,000 penalty units (\$400,350) or 10 years imprisonment.

5.3.1 Stakeholder comments

Australian Pork expressed its strong support for the inclusion of the organised trespass offence:

*APL strongly supports the inclusion of an organised trespass offence. The model of unlawful animal activism has relied on the commission of minor and summary offences by a multitude of offenders, which collectively inflicts serious damage to individual producers and creates a climate of fear across the whole livestock industry. The organisers of such movements are often not present during the trespass and have therefore remained exempt from any prosecution. This section allows for the organisers of such criminal activity to be held responsible for the damage they cause through their networks.*¹¹²

The QLS, on the other hand, did not support proposed s 424.¹¹³ It submitted that it was concerned about the provision because:

- like proposed s 423, the penalty is ‘excessive when balanced against the overall legislative framework, which governs offending behaviour in Queensland.’¹¹⁴

¹⁰⁹ Submission 49, p 3.

¹¹⁰ Submission 49, p 4.

¹¹¹ Submission 116, p 3.

¹¹² Submission 123, p 3.

¹¹³ Submission 49, p 5.

¹¹⁴ Submission 49, p 4.

- the section may have unintended consequences.¹¹⁵

The QLS also noted:

*Section 424 only increases the maximum penalty if the offence counselled or procured is section 422. If a person counselled an offence against section 423 then, by operation of section 7, the maximum penalty would be 10 years. So section 424 adds nothing to section 423.*¹¹⁶

The Environment Council of Central Queensland Inc questioned whether proposed s 424 would make all organisations of which a trespasser is a member liable, such as the Catholic Church, Rotary, an environmental charity, a regional botanic gardens or a political party.¹¹⁷

The AJP submitted that proposed s 424 should be omitted:

The AJP strongly recommends that Section 424 be removed due to significant overreach, its chilling effect on legitimate protest, and the potential for 'guilt by association'.

*The scope of Section 424 is too wide and implicates organisations that are not relevant to the commission of an offence and indeed may not even be aware of these offences have occurred. We fear that introducing Section 424 will unfairly and unnecessarily target and tarnish the reputation of law-abiding businesses and charities and it may be contrary to Article 22 of the ICCPR and Section 22 of the Human Rights Act 2019 (Qld).*¹¹⁸

The AJP asserted that s 7 of the Criminal Code 'adequately captures individuals who would assist others to commit trespass, or indeed any other offence, without singling out businesses and charities'.¹¹⁹ The AJP submitted that s 424 'effectively introduces guilt by association and will treat Queensland businesses and charities akin to criminal organisations'.¹²⁰

EDO NQ also referred to s 7, stating that 'party provisions are already well established in our Criminal Code (s 7)'.¹²¹ EDO NQ noted that the current party provisions do not require a relationship to exist between the parties through participation in an organisation.¹²²

The AJP was concerned that s 424 may be applicable even if the offence is not connected to the mission or activities of a business or charity.¹²³ The AJP submitted that two members of an organisation could trigger s 424 and, as a result, the organisation could find itself in the press.¹²⁴

This is because there is no requirement in Section 424 that the participant commits an offence in pursuit of their role within an organisation or as directed by that organisation; it is sufficient that they both happen to be participants. In other words, Section 424 does not require a causal link

¹¹⁵ Submission 49, pp 4-5. The QLS provided examples of possible unintended consequences including: if two friends attending a protest blocked the doorway of a business, the maximum penalty would be 3 years under s 422. But if the friends were members of an organisation, even if the organisation is unrelated to the protest, the maximum penalty would be 10 years under s 424.

¹¹⁶ Submission 49, p 5.

¹¹⁷ Submission 95, p 2.

¹¹⁸ Submission 24, p 15.

¹¹⁹ Submission 24, p 15.

¹²⁰ Submission 24, p 15.

¹²¹ Submission 76, pp 2-3.

¹²² Submission 76, p 3.

¹²³ Submission 24, p 16.

¹²⁴ Submission 24, p 16.

*and targets the individuals' association contrary to the protections under Article 22 of the ICCPR and Section 22 of the Human Rights Act 2019 (Qld). ...*¹²⁵

The AJP submitted that proposed s 424 would impede legitimate and organised protest and whistle-blowing:

*Covert investigations, whistle-blowing, 'occupations' or 'lockdowns' are a legitimate form of democratic protest against unethical industry practices and there is a real risk that Section 424 will be used to crush this expression of public dissent. ... The low hurdles in Sections 422 and 423, coupled with the extraordinary penalty in Section 424 will undoubtedly have a chilling effect on democratic participation and protect unethical industry practices from public scrutiny. The public simply would not know much of what goes on behind closed doors if the Bill were to be passed and enforced. ...*¹²⁶

¹²⁵ Submission 24, p 16.

¹²⁶ Submission 24, p 17.

6 Compliance with the *Legislative Standards Act 1992*

6.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (Legislative Standards Act) states that ‘fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of FLPs to the Bill. The committee brings the following to the attention of the Legislative Assembly.

6.2 Compliance with the *Legislative Standards Act 1992*

The committee considered that cls 5 and 6 raise potential FLP issues.

6.2.1 Rights and liberties of individuals – proportionality and relevance of penalties

This section considers whether penalties proposed in the Bill are proportionate and relevant.

Clause 5 of the Bill introduces three new offences:

- aggravated trespass – where a person unlawfully enters or is in premises, private land or transport infrastructure with intent to cause economic loss to another person
- serious criminal trespass – where a person enters or is in premises, private land or transport infrastructure used for business purposes and commits an offence punishable by 3 years imprisonment, and
- organised trespass – where a person who is a participant in an organisation counsels or procures, or arranges for, another person who is a participant in the same organisation to commit an offence (either aggravated or serious criminal trespass).

According to the explanatory notes, the last offence would apply if:

*... a director, member or volunteer of an organisation, has been found to have organised a deliberate and premeditated campaign against a project or business that involves individuals from that organisation being found guilty of committing offences of aggravated trespass or serious criminal trespass...*¹²⁷

Aggravated trespass would carry a maximum penalty of 100 penalty units (\$13,345) or 3 years imprisonment. The last two offences would each carry a maximum penalty of 3,000 penalty units (\$400,350) or 10 years imprisonment.

Issue of fundamental legislative principle

The creation of new offences and penalties affects the rights and liberties of individuals.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate.

As stated by the Office of the Queensland Parliamentary Counsel (OQPC), a penalty should be proportionate to the offence:

¹²⁷ Explanatory notes, p 2.

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

*... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*¹²⁸

Committee comment

The committee notes that the proposed new offences in ss 423 and 424 carry very high maximum penalties.

The explanatory notes help explain the policy intent and the operation of the new offences. However, they make no reference to any matter of FLP regarding the level of penalties. On this point, Mr Last MP told the committee:

*This bill is modelled on a combination of offences in the UK and also South Australia. There are very similar provisions that exist in both of those localities. If the provisions in this bill go through unchanged, they will no doubt be the toughest trespass laws in Australia. When we were looking at the penalties, I also looked at what was embedded in the Biosecurity Act. The maximum penalty that we are talking about - 10 years or 3,000 penalty units - is the same as what is embedded in the Biosecurity Act. If someone were to engage in a biosecurity breach of a serious nature, that is the penalty they will face under that act. I used that as a benchmark, if you like, and brought that across to these trespass offences.*¹²⁹

And:

*If you have a look at section 24 of the Biosecurity Act, they range from 500 penalty units to 3,000 penalty units. They are significant, as they should be.*¹³⁰

In answer to the committee's question taken on notice at the briefing, the following information was provided regarding the UK provision which Mr Last MP referenced at the briefing:

*The aggravated trespass offence has been used in the UK to prosecute activists. The UK offence attracts an equivalent \$4,660 maximum fine and maximum 3 month prison sentence.*¹³¹

The QLS was critical of the level of these penalties, describing them as 'excessive when balanced against the overall legislative framework for offending behaviour in Queensland'.¹³²

The penalties in the Bill also raise the issue of proportionality of penalties for comparable offences within legislation. As noted above, penalties within legislation should be consistent with each other.¹³³ The QLS stated it was:

... concerned that it is considered a fundamentally more serious offence (three years compared to ten years) for the trespass offence to have been committed against a business, even though no economic loss was caused. It is accepted that for the increased penalty to apply another offence would need to have been committed. This could lead to circumstances in which 'damage'

¹²⁸ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

¹²⁹ Public briefing transcript, 13 May 2019, p 3.

¹³⁰ Public briefing transcript, 13 May 2019, p 7.

¹³¹ Email, dated 17 May 2019, to the committee, in answer to question taken on notice.

¹³² Submission 49, p 4.

¹³³ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

*by spray painting a protest slogan on the entrance way of a building could then cause a person to face a ten year maximum penalty for an otherwise peaceful process.*¹³⁴

As a comparison, some broadly similar offence provisions in other statutes are discussed below.

Summary Offences Act 2005

There is an offence of trespass contained in s 11 of the Summary Offences Act. Section 11 makes it an offence for a person to unlawfully enter, or remain in:

- a dwelling or the yard for a dwelling, or
- a place used as a yard for, or a place used for, a business purpose.

This offence carries a maximum penalty of 20 penalty units (\$2,669.00) or 1 year of imprisonment.

Section 12 makes it an offence for two or more persons to together unlawfully enter or unlawfully remain in or on:

- any part of a public building or structure or a building or structure used for a business purpose, or
- any land occupied by or used in connection with any public building or structure or a building or structure used for a business purpose.

The Summary Offences Act also contains an offence of trespassing on farming land. Section 13 makes it an offence for a person to unlawfully enter, or remain on land used for:

- agricultural or horticultural purposes, or
- grazing, or
- animal husbandry.

An offence against s 12 or s 13 incurs a maximum penalty of 10 penalty units (\$1,334.50) or 6 months imprisonment.

Biosecurity Act 2014

Section 24 of the *Biosecurity Act 2014* (Biosecurity Act) is the general biosecurity obligation offence provision. It provides for a range of penalties for a failure to discharge a 'general biosecurity obligation'.

(1) A person on whom a general biosecurity obligation is imposed must discharge the obligation.

Maximum penalty -

(a) if the offence is an aggravated offence - 3,000 penalty units or 3 years imprisonment; or

(b) if the offence is not an aggravated offence -

(i) for a breach in relation to prohibited matter - 1,000 penalty units or 1 year's imprisonment; or

(ii) for a breach in relation to restricted matter - 750 penalty units or 6 months imprisonment; or

(iii) otherwise - 500 penalty units.

At the public briefing, Mr Last MP referred to the penalties in the Biosecurity Act and advised that he used them as a 'benchmark ... and brought that across to these trespass offences'.¹³⁵

¹³⁴ Submission 49, p 4.

¹³⁵ Public briefing transcript, Brisbane, 13 May 2019, p 3. See also, Public briefing transcript, Brisbane, 13 May 2019, p 7.

Criminal Code Act 1899

Section 421 of Queensland's Criminal Code provides:

421 Entering or being in premises and committing indictable offences

- (1) *Any person who enters or is in any premises with intent to commit an indictable offence in the premises commits a crime.*

Maximum penalty - 10 years imprisonment.

- (2) *Any person who enters or is in any premises and commits an indictable offence in the premises commits a crime.*

Maximum penalty - 14 years imprisonment.

- (3) *If the offender gains entry to the premises by any break and commits an indictable offence in the premises, he or she is liable to imprisonment for life.*

Criminal Justice and Public Order Act 1994 (UK)

Section 68 of the United Kingdom's *Criminal Justice and Public Order Act 1994* creates an offence of aggravated trespass:

- (1) *A person commits the offence of aggravated trespass if he trespasses on land [in the open air] and, in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land [in the open air], does there anything which is intended by him to have the effect –*

(a) of intimidating those persons or any of them so as to deter them or any of them from engaging in that activity,

(b) of obstructing that activity, or

(c) of disrupting that activity.

Criminal Law Consolidation Act 1935 (SA)

South Australia's *Criminal Law Consolidation Act 1935* contains broadly analogous provisions to those in the Bill. In summary:

- Section 168 creates an offence of serious criminal trespass. This offence is committed if a person enters or remains in a place (other than a place that is open to the public) as a trespasser with the intention of committing an offence involving theft, or against a person (so, including an assault), or against property punishable by imprisonment for 3 years or more.
- The maximum penalties for serious criminal trespass on *non-residential buildings* are:
 - basic offence: 10 years imprisonment
 - aggravated offence: 20 years imprisonment (s 169).
- The maximum penalties for serious criminal trespass for *places of residence* are:
 - basic offence: 15 years imprisonment
 - aggravated offence: imprisonment for life (s 170).
- An offence is aggravated if committed in any of the general circumstances of aggravation in the Act (see s 5AA) or if another person is lawfully present and the offender knows of the other's presence or is reckless about whether anyone is in the place of residence (s 170(2)).

Section 170A creates a lesser offence of criminal trespass relating to a place of residence (if another person is lawfully present and the offender knows of the other's presence or is reckless about whether anyone is in the place). This offence has a maximum penalty of three years imprisonment for a basic offence and five years imprisonment for an aggravated offence.

6.2.2 Rights and liberties of individuals – whether legislation is unambiguous and drafted in a sufficiently clear and precise way

Clause 5 proposes to insert the three new offences of aggravated trespass, serious criminal trespass, and organised trespass.

By new s 422, a person commits aggravated trespass if they *unlawfully* enter or are in premises, private land or transport infrastructure. (Clause 4 defines ‘transport infrastructure’ as meaning a port or railway.)

New s 423 (serious criminal trespass) reads:

A person who enters or is in premises, private land or transport infrastructure used for business purposes and commits an offence punishable by 3 years’ imprisonment or more commits a crime.

It can be seen that this provision has a requirement, similar to s 422, for a person to enter or be in premises, private land or transport infrastructure, but does not expressly include the word ‘unlawfully’.

New s 423 contains a requirement for the premises, private land or transport infrastructure to be used *for business purposes*. This is not a requirement in s 422.

The new sections will sit within chapter 39 of the Criminal Code. Section 418 contains definitions for that chapter, including for the term ‘premises’:

premises includes -

- (a) *a building or structure and a part of a building or structure other than a dwelling; and*
- (b) *a tent, caravan, or vehicle; and*
- (c) *any similar place.*

These are all capable of being used for business purposes.

Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is unambiguous and drafted in a sufficiently clear and precise way.¹³⁶ The purpose and intended operation of legislation must be clear. This is particularly important in provisions imposing a liability on a person or creating criminal offences.¹³⁷

As drafted, s 423 would extend to a person who is *lawfully* on the premises, private land or transport infrastructure and there commits an offence punishable by three years imprisonment or more.

Committee comment

It is unclear whether the provision was intentionally drafted in this manner. The accompanying explanatory notes make no specific reference to this aspect. Under the heading *Policy objectives and the reasons for them*, the explanatory notes state:

*The Bill seeks to protect all legitimate and legal businesses in Queensland from unlawful trespass activities by introducing three new criminal offences to significantly strengthen Queensland’s trespass law.*¹³⁸

In his explanatory speech, the Bill’s proponent described the operation of s 423 (underlining added):

¹³⁶ *Legislative Standards Act 1992*, section 4(3)(k). See generally, Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, from p 87; and Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs - Clear Meaning*, from p 5.

¹³⁷ Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs - Clear Meaning*, p 9.

¹³⁸ Explanatory notes, p 1.

*The new offence of serious criminal trespass occurs if a person who enters or is in premises, private land or transport infrastructure used for business purposes and therein commits an offence punishable by three years' imprisonment or more. ... A serious criminal trespass offence would only apply to a trespass action in a non-residential premises—for example, commercial premises. ... This offence is designed to act as a deterrent for anyone seeking to commit a crime or serious offence—for example, arson, assault or wilful damage while trespassing. The significant penalty associated with this offence targets those individuals who seek to trespass and commit further crimes.*¹³⁹

It can be seen that this statement appears to limit the intended operation of s 423 only to persons who are unlawfully on premises. Similarly, at the briefing on the Bill, the committee was told (underlining added):

*[The Bill] introduces a new offence of serious criminal trespass to enable the prosecution of a person who enters premises for business purposes and commits an offence punishable by three or more years in prison. ... This offence is designed to act as a deterrent to anyone seeking to commit a crime or further offence whilst trespassing. The significant penalty associated with this offence targets those individuals who seek to trespass and commit crimes.*¹⁴⁰

AgForce expressed the opinion:

*... the wording in the Bill concerning this offence is vague, potentially open to misinterpretation and widens the intended application because it does not specifically relate to unlawful access to business premises. Concern exists that those that the proposed offence intends to protect may be negatively affected, potentially finding themselves charged under the proposed offence.*¹⁴¹

In the present case, it could be argued that there is no ambiguity in s 423, on the basis that on its clear wording, it captures both persons lawfully and persons unlawfully present at the specified places. At the same time, it can be noted that the heading to the section itself is 'serious criminal trespass'.¹⁴² Further, this interpretation does appear to be contrary to the intention behind the provision, as set out in the explanatory speech.

If the section does extend to persons lawfully on the relevant premises, this would include not only invitees such as customers and contractors, but also for example, the owner or other lawful occupant or operator (such as a lessee). If such a person were to therein commit an offence (punishable by 3 years imprisonment or more), then they would commit an offence under s 423.¹⁴³

In this context in particular, the section as drafted arguably raises some possible concerns around double jeopardy. Section 16 of the Criminal Code provides:

A person can not be twice punished either under the provisions of this Code or under the provisions of any other law for the same act or omission, except in the case where the act or omission is such that by means thereof the person causes the death of another person, in which case the person may be convicted of the offence of which the person is guilty by reason of causing

¹³⁹ Queensland Parliament, Record of Proceedings, 1 May 2019, p 1336.

¹⁴⁰ Public briefing transcript, 13 May 2019, p 1. A similar statement occurs at p 7:

[The] offence of serious criminal trespass ... applies where they trespass and then commit a further offence punishable by three years' imprisonment or more. If it is the case that they go on and they wilfully damage or assault someone or burn something to the ground, that is where that offence is then triggered to reflect the seriousness of not only the trespass but the fact that they have then committed a further criminal offence ...

¹⁴¹ Submission 107, p 2. See also Queensland Law Society, submission 49, p 3.

¹⁴² A heading to a section is part of the Act – see section 14 of the *Acts Interpretation Act 1954*.

¹⁴³ See also on this aspect, Queensland Law Society, submission 49, p 3.

such death, notwithstanding that the person has already been convicted of some other offence constituted by the act or omission.

If a person is lawfully on premises and therein commits an offence that triggers s 423, they will in practical effect be exposed to being prosecuted for two offences – and penalties – for the same act or omission. This would arise simply on the basis that the person was in a place within s 423 – on their own farm, or in a taxi, a food van, or perhaps a circus tent, for example.

The absence of a reference in s 422 to ‘used for business purposes’ is perhaps odd, as it seems clear (from both the explanatory notes and the briefing) that the intent is for the offences to protect businesses.¹⁴⁴ This does not seem too problematic as, because the definition of ‘premises’ in s 418 of the Criminal Code excludes dwelling-houses, the reach of the section would be limited – though it can be observed that it would appear to extend to a tent, caravan or vehicle (used for business purposes or not).

In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation.¹⁴⁵ The Bill itself contains no clause setting out the purpose or object of the Bill, though the explanatory notes do set out the policy objective, as mentioned above.

An allied issue arises here, regarding the content of the explanatory notes and the explanatory speech. Extrinsic material capable of being used to interpret legislation should be consistent with the language of the legislation.¹⁴⁶ The use of extrinsic material to interpret Queensland legislation is governed by section 14B of the *Acts Interpretation Act 1954*:

(1) Subject to subsection (2), in the interpretation of a provision of an Act, consideration may be given to extrinsic material capable of assisting in the interpretation –

- (a) if the provision is ambiguous or obscure – to provide an interpretation of it; or*
- (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable – to provide an interpretation that avoids such a result; or*
- (c) in any other case – to confirm the interpretation conveyed by the ordinary meaning of the provision.*

(2) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to –

- (a) the desirability of a provision being interpreted as having its ordinary meaning; and*
- (b) the undesirability of prolonging proceedings without compensating advantage; and*
- (c) other relevant matters.*

(3) In this section –

extrinsic material means relevant material not forming part of the Act concerned, including, for example –

...

- (c) a report of a committee of the Legislative Assembly that was made to the Legislative Assembly before the provision was enacted*

¹⁴⁴ See the explanatory notes, p 1, and the public briefing transcript, 13 May 2019, p 5.

¹⁴⁵ *Acts Interpretation Act 1954*, s 14A.

¹⁴⁶ Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs – Clear Meaning*, p 21.

...

(e) an explanatory note or memorandum relating to the Bill that contained the provision, or any other relevant document, that was laid before, or given to the members of, the Legislative Assembly by the member bringing in the Bill before the provision was enacted

(f) the speech made to the Legislative Assembly by the member when introducing the Bill.

In examining a particular previous Bill, the former Scrutiny of Legislation Committee concluded that the content of the explanatory speech was *more limited than the relevant clause in the Bill and this may cause some ambiguity* and observed:

*The Committee is aware that the second reading speech may be used as extrinsic material capable of assisting a court in the interpretation of this clause, however, the Committee is of the view that it is preferable for the Parliament to make its intent clear in the wording of the clause.*¹⁴⁷

On another occasion, that committee was of the view that the explanatory notes did not accurately express the content and intent of the relevant legislation. It noted that the explanatory notes might be used in future to interpret the provision and recommended that they be revised to accurately reflect the proposed amendment.¹⁴⁸

6.2.3 Rights and liberties of individuals – whether legislation is unambiguous and drafted in a sufficiently clear and precise way

Clause 6 proposes to amend s 552BB of the Criminal Code by adding to the list of excluded offences the proposed ss 423 and 424, so as to, according to the explanatory notes, ‘ensure these offences aren’t dealt with summarily’.¹⁴⁹

Summary convictions attract lower maximum penalties. (See s 552H of the Criminal Code.)

Issue of fundamental legislative principle

As noted above, whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is unambiguous and drafted in a sufficiently clear and precise way.¹⁵⁰ The purpose and intended operation of legislation must be clear.

Committee comment

The offence created by each of new ss 423 and 424 is designated in that provision as a ‘crime’. By virtue of s 3 of the Criminal Code, crimes and misdemeanours are indictable offences, meaning an offender cannot, unless otherwise expressly stated, be prosecuted or convicted except upon indictment (so, not summarily.)

Exceptions are set out in chapter 58A, which includes s 552BB.

When one considers the wording of all the provisions of chapter 58A as they currently stand, it is clear that no exception arises that would extend to either of the new sections. The new sections will not fall within s 552A (charges of indictable offences that must be heard and decided summarily on prosecution election) or s 552B (charges of indictable offences that must be heard and decided summarily unless defendant elects for jury trial).

¹⁴⁷ See the discussion at Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs - Clear Meaning*, pp 21 and 22 and the references therein.

¹⁴⁸ See the discussion referenced in the last footnote.

¹⁴⁹ Explanatory notes, p 3.

¹⁵⁰ *Legislative Standards Act 1992*, section 4(3)(k). See generally, Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, from p 87; and Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs - Clear Meaning*, from p 5.

Section 552BB lists offences which amount to exclusions from the operation of s 552BA, which provides that certain other indictable offences must be dealt with summarily. However, offences with a possible prison term of more than three years are already excluded, by the terms of s 552BA itself. The new offences each have a maximum penalty which includes up to 10 years imprisonment.

In other words, as the law currently stands, any offences under the new sections would be required to be prosecuted upon indictment and could not be dealt with summarily. Clause 6 is therefore unnecessary.

6.3 Explanatory notes

Part 4 of the Legislative Standards Act requires an explanatory note to be circulated when a Bill is introduced, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. They do not include an assessment of the consistency of the Bill with FLPs.¹⁵¹ Other concerns with the content are noted above.

The explanatory notes otherwise contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

¹⁵¹ As required by s 23(1)(f) of the *Legislative Standards Act 1992*.

Appendix A – Submitters

Sub #	Submitter
001	Mr Bill Tait (Jnr) Esq
002	Green Shirts Movement
003	Master Builders Queensland
004	Janice Mcburnie
005	Mackenzie Gordon
006	Shananther Wong
007	Philip Johnson
008	Jenna Cullen
009	Sarah List
010	Michael Callanan
011	Capricorn Conservation Council
012	Kima Wareham
013	Nicole Read
014	South East Climate Action
015	Phoebe Smithies
016	Name withheld
017	Rory McCourt
018	Faye C Chapman
019	Jennifer Horsburgh
020	Michael Downes
021	Sylvia Kelso
022	Dr. Clive S. Berger
023	Jonathan Peter
024	Animal Justice Party
025	Zara Maria Di Bella

026	Kerry McCourt
027	Patricia Morrow
028	Dr John Newton DCA
029	Jenny Fitzgibbon
030	Noel L'Orange
031	Rowena Crouch
032	Lesley Burnett
033	David Curtin
034	Prim Yensch
035	Nina deVreeze
036	Caroline Newsham
037	Jasmine Healy-Pagan
038	Cassandra Jeffs
039	Snezana Redford
040	James Perkins
041	Melanie Woollett
042	Ashok Jain
043	Rebecca Smith
044	Dr Jacqueline Widin
045	Jacqui Jewell
046	Danielle Whitlock
047	Monica Brindle
048	Brian Hallmond
049	Queensland Law Society
050	Jessica Lunardon
051	Penelope Sheridan
052	Sue Weber
053	Queensland Major Contractors Association

054	Zachary McKee
055	Penelope Holland
056	Anne Horrigan
057	Steven Arnold
058	Tony Fontes
059	Madelyn Goodrick
060	Ritu Naithani
061	Simon Taylor
062	Mackenzie Severns
063	Karen Jesshope
064	Dr Peter Jones
065	Stefan Aeberhard
066	Carine Visschers
067	Wendy Tubman
068	Krystal Camilleri
069	Sophia King
070	Jacky McKenner
071	Jessica Camilleri
072	Mark Delaney
073	Heather Laurie
074	Andrew David
075	Dr Julie P Smith
076	Enviromental Defenders Office of Northern Queensland
077	Alayna Cole
078	Kleon Toffetti
079	Jessica Gates
080	Isaac Regional Council

081	Name withheld
082	George Hirst
083	Jenny Brown
084	Emma Holt
085	Animal Liberation Queensland
086	Bronte Doneman
087	Adam Dalman
088	Corey Zemek
089	Cailean Congedo
090	Eric Oliver
091	Queensland Farmers' Federation
092	National Farmers' Federation
093	Grace Rosevear
094	Jo Sullivan
095	Environment Council of Central Queensland Inc.
096	Zachary McAulay
097	Samara Grumberg
098	Joshua Cox
099	Fflur Collier B.Sc
100	Leith Merrifield
101	Michele Bain
102	Marilyn Orr
103	David Lowe
104	Lilly Davis
105	Christine Haworth
106	Queensland Resources Council
107	AgForce Queensland

108	Pam Ison
109	Ray Ison
110	Annie Hewett
111	Paul Jukes
112	Name withheld
113	Ann Leonard
114	Kris and Terry Farley
115	Environmental Defenders Office (Qld) Inc
116	Australian Conservation Foundation
117	Ben Tehan
118	Susan Lane
119	Tyron Ford
120	Koala Action Inc. (KAI) and Moreton Bay Koala Rescue Inc. (MBKR)
121	Property Council of Australia
122	Jennifer Anne Cole
123	Australian Pork Limited
124	Anne Morrison-Gardiner
125	Whitsunday Regional Council
126	Mackay Conservation Group
127	Elizabeth Cook-Long
128	Katalina Cabrera
129	Gloria Lederer-Ponzer
130	Shaun Cunneen
131	Paul Hildred
132	Amelia Thompson

Appendix B – Witnesses at public briefing and public hearings

Public briefing held on 13 May 2019

- Mr Dale Last MP, Member for Burdekin, Shadow Minister for Natural Resources and Mines; Shadow Minister for Northern Queensland

Public hearing held on 19 August 2019

Queensland Law Society

- Bill Potts, President
- Ken Mackenzie, Deputy Chair, Criminal Law Committee
- Binny De Saram, Legal Policy Manager

Queensland Resources Council

- Ian Macfarlane, Chief Executive
- Emma Hansen, Resources Policy Manager

Animal Liberation Queensland

- Chay Neal, Executive Director

Animal Justice Party

- Ric Allport, Queensland Convenor
- Joanne Webb, Committee Member

AgForce

- Mike Guerin, Chief Executive Officer
- Michael Allpass, Livestock Policy Officer

Public hearing held on 10 September 2019

Queensland Farmers' Federation

- John Coward, President, Pork Inc. and CEO, Queensland United Egg Producers (teleconference)

Australian Pork

- Ms Deb Kerr, General Manager of Policy

Carey Bros Abattoir

- Greg Carey

Private Capacity

- Graham Reimers
- Brent Hoffman
- Garry Cooper
- Lawrence Ryan
- Scott Bartley
- Ross Bartley

Statement of Reservation

The Liberal National Party members of the Legal Affairs and Community Safety Committee do not support the majority position taken by the committee in recommending that the Bill not be passed.

From the outset, the LNP wants to make it very clear that nobody has a right to break the law. It's ok to protest and have different opinions, but if you choose to trespass and terrorise hard-working businesses, farmers and workers, or choose to block a rail line taking exports to port, then you can expect to be punished. No one has the right to stop law-abiding Queenslanders from earning a wage and providing for their families. The committee's decision to oppose the bill, despite the overwhelming support of our law-abiding industries, small businesses and regional communities, in our opinion, aligns with the Palaszczuk Labor Government's anti-farmer, anti-region, anti-jobs agenda.

The bill garnered support from important local industries and local governments such as the Property Council, AgForce Queensland, Queensland Resources Council, Australian Pork Limited, Queensland Major Contractors Association, Queensland Farmers' Federation, National Farmers' Federation, Master Builders Association of Queensland, Isaac Regional Council and Whitsunday Regional Council. Combined these groups and industries represent more than 27,200 businesses and companies and employ hundreds of thousands of people. The two regional councils, Whitsunday and Isaac Regional Councils, that principally supported the Bill also have a population of more than 66,000 residents and transient workers that work in industries that would benefit from strengthened trespass laws like those proposed in the Bill.

At the Warwick public hearing we heard firsthand from local farmers about the necessity of tougher laws to protect their families, staff and lawful livelihoods. The committee also heard from Australian Pork Limited General Manager of Policy Deb Kerr who supported the concept of creating indictable offences that provided a real deterrent going onto say:

DEB KERR: *"It has been our experience that when activists have been charged with very serious offences in the past—not in this state but in other states—they have behaved consequently in line with the fact that they were facing some serious court time and possibly strong prison time or fines. They do actually take that more seriously than a summary type offence. We find that once that threat has gone or been abated—in the case I am thinking of, the court threw the charges out on a technicality— then the behaviour recommences. When you have very strong deterrents such as prison time and criminal charges against a person which prevents things like overseas travel and so on, they do start to take it seriously."*

This is just one example of witness after witness from industry that supported the need for tougher legal deterrents such as those proposed in the bill, to protect local jobs.

The usual and expected opponents of laws protecting businesses' right to undertake their lawful activities included extreme environmental groups and animal extremists' groups, however they failed to raise any new issues. Groups like Animal Liberation Queensland and the Animal Justice Party persist in their incorrect view that the right to protest entitles people to break the law and to terrorise and financially disadvantage law abiding people and businesses. If left unchallenged by tough laws such as this bill, their activities impact local communities and cost regional jobs.

Certain environmental groups tried to justify their opposition to the proposed laws claiming that it would create 'duplication' or would 'clog' our courts. There clearly is a need for new laws, not a duplication, as those involved in recent invasion protests have not been sufficiently punished according community expectations. Claiming that the courts would become 'clogged' effectively concedes that there is a problem, and it follows that deterrents such as those proposed in this bill are necessary to address the issue. If court resourcing requires expansion in order to deal with an increased level of prosecutions, then it is the Government's responsibility to accommodate this. Stronger penalties are aimed at deterring the commission of these unlawful activities in the first place and to protect farmers, small businesses their families and staff.

While there is an element of opposition to the bill by those who advocate causes that may be involved in the offences proposed in the bill, the overwhelming support of business, farmers and industry organisations shows there is considerable appetite for new tougher laws. What is clear is that the committee report has failed to address the concerns of landholders, businesses, farmers and the wider community, who expect that those who trespass, sabotage and interfere with the lawful business of others will be deterred and held to account by way of appropriate penalties. It is simply unacceptable that extremists are invading farms and businesses where families live and work without any real consequences - the current law just doesn't cut it.

The LNP is serious when it comes to protecting hard-working Queensland farmers, businesses and workers from extremist trespassers and saboteurs, and that is why this bill was introduced by the Member for Burdekin.



James Lister MP
Deputy Chair
Member for Southern Downs



James (Jim) McDonald MP
Member for Lockyer