

15 JULY 2019

Criminal Code (Trespass Offences) Amendment Bill 2019 Submission

Thank you for the opportunity to provide a submission regarding *the Criminal Code (Trespass Offences) Amendment Bill 2019* ("the Bill").

The Australian Conservation Foundation ("ACF") is Australia's national environment organisation. Since 1966, ACF has been a strong advocate for Australia's natural world. We represent a community of more than 500,000 people - including more than 105,000 Queenslanders - who speak out, show up and act for a world where forests, rivers, people and wildlife thrive. We are proudly independent, non-partisan and funded by donations from our community.

ACF holds serious concerns about the Bill and we recommend that it is rejected.

At its core, the Bill is an unprincipled and authoritarian over-reaction to acts of peaceful protest. Although, as a charity, ACF does not participate in unlawful activity, we recognise the fundamental importance of the right to peaceful protest in democratic society. We note that many of the legal rights and protections that Australians enjoy today are the consequence of people bravely challenging unjust laws and immoral industrial practices.

ACF opposes the Bill for the following reasons:

It imposes excessive and inconsistent penalties

The Bill imposes a maximum penalty of 100 penalty units (approximately \$13,300) or 3 years imprisonment for 'aggravated trespass' and 3,000 penalty units (approximately \$400,300) or 10 years imprisonment for 'serious criminal trespass' and 'organised trespass'.

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.¹ 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.² Similarly, in Victoria the equivalent maximum penalty is 6 months imprisonment,³ and in New South Wales there is only a financial penalty.⁴ 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.

CASE STUDY: ADANI'S ABBOT POINT COAL PORT

Activists blockading Adani's Abbot Point coal port have been arrested and slapped with fines of over \$10,000 for a range of offences including trespassing on a railway, obstructing a railway and obstructing police.⁵ This response to peaceful protest can be contrasted with Adani's fine of \$13,055 - a trivial cost for a multinational company - for breaching environmental laws and polluting the Caley Valley wetlands with coal-laden water.⁶ It is obvious from this example that a far stricter approach is being applied to protesters attempting to stop climate change and environmental harm, than one of the multinational companies responsible for it.

It is a disproportionate response to peaceful protest

The Bill seeks to criminalise trespass 'with intent to cause economic loss'. Economic loss is not defined in the Bill or *Criminal Code Act 1899* (Qld) and could foreseeably apply to a broad spectrum of protest activities. The disproportionality of this proposed offence is demonstrated by two examples:

¹ *Criminal Code Act 1899* (Qld) ss 213(2), 218B(2), 222(2).

² *Summary Offences Act 1953* (SA) ss 17(1), 17A(1).

³ *Summary Offences Act 1966* (Vic) s 9(1)(e).

⁴ *Inclosed Lands Protection Act 1901* (NSW) s 4B.

⁵ Kate Hedley, *WA Today*, 'Anti-Adani activist says she would 'do it again' after copping massive fine' (8 May 2019).

⁶ Nick Baker, *SBS News*, 'Mining giant Adani fined for polluting 'beautiful' Queensland wetlands during monster storms' (26 March 2019).



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- The peaceful occupation and blockade of a company's lobby.
 - The on-site filming of a company engaging in unlawful activity (e.g. a mining company polluting a river system) and then broadcasting this evidence to the public.

Both examples could be characterised as 'intent to cause economic loss', in the first example by hindering the company's productivity, and in the second example, by damaging the company's reputation resulting in some level of economic loss. In either example, staff members or volunteers of organisations involved in organising the protest would be exposed to the offence of 'organised trespass', which carries even more severe penalties than those imposed on the persons carrying out the initial act of 'aggravated trespass'.

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. As the examples above illustrate, the Bill would criminalise even minor inconveniences to a business' profits as well as protest activities that clearly benefit the public interest.

The open-ended application of the Bill can only be interpreted as an attempt to silence Australians who challenge the economic and political power of big industries.

It unnecessarily duplicates existing offences

The offence of 'serious criminal trespass' criminalises trespass in circumstances where the person also, 'commits an offence punishable by 3 years imprisonment or more'.

However, 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.

Summary

The right to protest is integral to a free and flourishing democratic society. The Bill is excessive, disproportionate, unnecessary and should be rejected.

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