

Property Offences

(NSW) Imperial Acts Application Act 1969 s 18 (person may only enter land where permitted by law and with no more force than is reasonably necessary)
 (QLD) Criminal Code s 7(1)
 (SA) Summary Offences Act 1953 s 17D(1)
 (TAS) Criminal Code s 79(1)
 (WA) Criminal Code s 69.

There are no equivalent provisions in Victoria.

2. (ACT) Crimes Act 1900 s 152
- (NT) Summary Offences Act 1923 s 46B
- (NSW) Imperial Acts Application Act 1969 s 19 (where actual possession is for a period less than three years)
- (QLD) Criminal Code s 71
- (SA) Summary Offences Act 1953 s 17D(2)
- (TAS) Criminal Code s 79(2)
- (VIC) Crimes Act 1958 s 207(2) (where actual possession is for a period less than three years)
- (WA) Criminal Code s 70.

[130-12270] Trespass offences In all jurisdictions, trespass may also constitute an offence in a variety of circumstances, even when not committed in circumstances likely to give rise to disturbance of the peace. It is an offence for a person to trespass on prohibited Commonwealth land.¹ It is also an offence to trespass on premises in Commonwealth Territories other than the Northern Territory,² or on Commonwealth premises;³ the maximum fine for such an offence is doubled when the conduct of the accused includes:⁴

- (1) unreasonable obstruction of persons or vehicles;
- (2) offensive or disorderly behaviour; or
- (3) refusal to leave on being requested to do so by the occupier or a person authorised by the occupier (or, in the case of Commonwealth premises, by a constable, a protective service officer, or other authorised person).

Absolute liability applies to the physical element of circumstance of these offences as to the premises being located in a Territory or being Commonwealth premises.⁵ It is not necessary to prove any additional, aggravating circumstances beyond the act of trespass or entering on the property.⁶ Similar provisions apply in relation to 'protected premises'.⁷

Prosecutions, but not arrests, for trespass under the (CTH) Public Order (Protection of Persons and Property) Act 1971 require the consent of the Director of Public Prosecutions or a person authorised by the director to give such consent.⁸

Under Commonwealth legislation authorised officers may refuse a person entry to court premises, or may direct the person to leave those premises if the person refuses to:⁹

- (1) provide details of identity;
- (2) submit to a frisk search; or
- (3) lodge property with the officer.

where these demands are reasonably believed to be in the interests of security. Such directions can also be given if the officer believes the person does not have a proper reason for being on the premises.¹⁰ A desire to attend proceedings constitutes a 'proper reason'.¹¹ Failure to comply with a direction is an offence, and a constable may refuse entry to, or remove the person from the premises.¹²

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State and Territory legislation creates numerous offences in relation to trespass by people or animals on public and private land.¹³

Notes

1. (CTH) Crimes Act 1914 s 89(1). Land is 'prohibited Commonwealth land' if it belongs to, or is occupied by the Commonwealth, and if there is a notice on it forbidding trespass: *ibid* s 89(5). See *Gunn v Thomson* (1990) 54 SASR 1. Compare the definition of 'prohibited place': (CTH) Crimes Act 1914 s 80.
2. (CTH) Public Order (Protection of Persons and Property) Act 1971 ss 11(1), 4(1) (definition of 'Territory' does not include the Northern Territory). As to Commonwealth Territories see DEPENDENCIES. 'Premises' means any land, building or part of a building: *ibid* s 4(1). *Ibid* s 11 is not intended to exclude or limit the concurrent operation of any Australian Capital Territory laws: *ibid* s 11(3A). No such provision applies in relation to *ibid* s 12.
3. *Ibid* s 12(1). 'Commonwealth premises' means premises, whether in a State or in a Territory, occupied by the Commonwealth or by a public authority under the Commonwealth: *ibid* s 4(1).
4. (CTH) Public Order (Protection of Persons and Property) Act 1971 ss 11(2) (non-Commonwealth premises in Territories), 12(2) (Commonwealth premises).
5. *Ibid* ss 11(2A), 12(3).
6. *Gunn v Thomson* (1990) 54 SASR 1 (under (CTH) Crimes Act 1914 s 89(1)).
7. See (CTH) Public Order (Protection of Persons and Property) Act 1971 s 20. For the definition of 'protected premises' (which include diplomatic missions and consular posts), see *ibid* s 4(1).
8. (CTH) Public Order (Protection of Persons and Property) Act 1971 s 23(2), 23(3). The consent of the Director of Public Prosecutions is not required to prosecute a person for trespassing on premises other than Commonwealth premises: *ibid* s 11(3), 11(4).
9. *Ibid* ss 13C-13E. 'Court' is defined to include certain tribunals: *ibid* s 13A. The application of the provisions is, however, limited to courts prescribed by regulations: *ibid* s 13B. To date, no such courts have been prescribed.
10. *Ibid* s 13E(1)(b).
11. *Ibid* s 13E(2).
12. *Ibid* s 13E(3). 'Constable' means a member of the Australian Federal Police or the police force of a State or territory: *ibid* s 4(1).
13. Examples include:
 (NT) Trespass Act 1987 ss 5 (trespass on premises), 6 (on prohibited land), 7 (after being directed to leave), 8 (after being warned to stay off), 13 (defences)
 (NSW) Impounding Act 1993 s 33 (animal trespass); (NSW) Inclosed Lands Protection Act 1901 s 4A (trespassers who, after being asked to leave, behave in an offensive manner)
 (QLD) Education (General Provisions) Act 2006 s 334; (QLD) Explosives Act 1952 ss 39, 47; (QLD) Land Act 1994 s 404; (QLD) Nature Conservation Act 1992 s 99;
 (QLD) Transport Infrastructure Act 1994 ss 257, 329, 377; (QLD) Summary Offences Act 2005 ss 11 (unlawfully entering or remaining in a dwelling or yard), 12, 13 (unlawfully entering or remaining on farm land, interference with gates)
 (SA) Summary Offences Act 1953 ss 17A (trespass generally), 17B (interference with gates)
 (TAS) Police Offences Act 1935 ss 14A (peeping, loitering with intent), 14B-14D (trespass generally), 19A (trespass on sports grounds)
 (VIC) Land Act 1958 ss 190, 386; (VIC) Summary Offences Act 1966 ss 9, 50A (trespass on land used for primary production); (VIC) Transport Act 1983 s 223;
 (VIC) Water Act 1989 s 291
 (WA) Country Areas Water Supply By-laws 1957 cl 37 (trespass to land for water supply works); (WA) Government Railways Act 1904 s 48 (railway land); (WA) Local

Criminal Procedure

Sentencing

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Government (Miscellaneous Provisions) Act 1960 s 483 (removing barrier to allow cattle trespass); (WA) Soil and Land Conservation Act 1945 s 28(1)(d) (trespass by animals on soil conservation reserves).

[130-12275] Livestock Under Commonwealth legislation and in the Australian Capital Territory it is an offence for a person to permit livestock in the person's possession to trespass on Commonwealth land.¹ Wilfully permitting or causing livestock to trespass is an offence in several jurisdictions.²

Notes

- (CTH) Crimes Act 1914 s 90
(ACT) Trespass on Territory Land Act 1932 s 4B.
- (ACT) Stock Act 2005 s 42
(NSW) Rural Lands Protection Act 1998 s 139
(SA) Impounding Act 1920 s 44
(VIC) Impounding of Livestock Act 1994 ss 25(h), 25A
(WA) Soil and Land Conservation Act 1945 s 28(1)(d); (WA) Local Government (Miscellaneous Provisions) Act 1960 s 483.
See also:
(NT) Pounds Act 1930 s 35 (owner of straying cattle liable to penalty)
(QLD) Land Act 1994 s 404(1)(e) (unlawfully depasturing stock on non-freehold or trust land a prohibited trespass related act)
As to trespass by animals see further ANIMALS [20-450]-[20-480].

(ix) Offensive Behaviour

[130-12280] Legislation It is an offence to engage in offensive behaviour in all jurisdictions.

Commonwealth legislation proscribes offensive behaviour by trespassers on Commonwealth premises and towards protected people.¹ Offensive behaviour in public places is proscribed.²

In all jurisdictions offensive behaviour is proscribed in specific contexts, the nature of which vary considerably from jurisdiction to jurisdiction. The degree to which offensive behaviour is regulated also varies between jurisdictions.³ Some provisions permit authorities to direct a person who behaves in an offensive manner to leave the premises.⁴

Notes

- (CTH) Public Order (Protection of Persons and Property) Act 1971 ss 4(1) (definition of 'protected persons'), 11(2)(b) (while trespassing on premises in a Territory), 12(2)(b) (while trespassing on Commonwealth premises), 18(1)(c) (towards protected people).
- (ACT) Crimes Act 1900 s 392
(NT) Summary Offences Act 1923 s 47
(NSW) Summary Offences Act 1988 s 4; (NSW) Inclosed Lands Protection Act 1901 s 4A (by a person on enclosed lands, who has been asked to leave, but has not yet left those lands)
(QLD) Summary Offences Act 2005 s 6
(SA) Summary Offences Act 1953 s 7
(TAS) Police Offences Act 1935 ss 12, 13

(VIC) Summary C
(WA) Criminal C

- See, for example:
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(NT) Motor Om
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(NT) Territory Park
(NSW) Passenger T
(SA) Education
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Act 1994 s 56(5); (S
religious services);
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(TAS) Electricity
(VIC) Prostitution
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(WA) Governme
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(SA) Developm
ss 32(a), 71(a); (S
(SA) Environment
Act 1992 s 9(9)(a);
1996 s 50(1)(a);
(SA) Wilderness P
Compensation Act
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4. See, for example:
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(SA) Gaming A
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(VIC) Summary Offences Act 1966 s 17(1)(d)

(WA) Criminal Code s 74A.

3. See, for example:

(CTH) Civil Aviation Regulations 1988 reg 256AA (offensive and disorderly
 behaviour on an aircraft)

(NT) Motor Omnibus Regulations 1953 reg 65; (NT) Tennant Creek (Control of
 Public Places) By-laws 1989 cl 27 (stall-holders not to behave offensively);

(NT) Territory Parks and Wildlife Conservation By-laws 1984 cl 24(c)

(NSW) Passenger Transport Regulation 2007 cl 49

(SA) Education Act 1972 s 104 (towards teachers); (SA) Electricity Act 1996
 s 89(2) (towards electricity officers); (SA) Gas Act 1997 s 85(2) (towards gas officers);

(SA) Harbors and Navigation Act 1993 s 84(1) (on vessels); (SA) Passenger Transport
 Act 1994 s 56(5); (SA) Summary Offences Act 1953 s 7A (obstructing or disrupting
 religious services); (SA) Pastoral Land Management and Conservation Act 1989 s
 63(2); (SA) Art Gallery Regulations 2002 reg 6; (SA) Passenger Transport (Regular
 Passenger Services; Conduct of Passengers) Regulations 1994 reg 10(4)

(TAS) Electricity Supply Industry Act 1995 s 114(2)

(VIC) Prostitution Control Act 1994 s 16(a) (towards prostitutes); (VIC) Water
 Industry (Reservoir Parks Land) Regulations 2001 reg 11(5)

(WA) Government Railways Act 1904 s 43(5).

South Australian legislation conferring powers on inspectors typically makes it an
 offence for inspectors and those assisting them to use offensive language:

(SA) Development Act 1993 s 19(11); (SA) Dog and Cat Management Act 1995
 ss 32(a), 71(a); (SA) Employment Agents Registration Act 1993 s 23(6)(a);

(SA) Environment Protection Act 1993 s 92(1)(a); (SA) Fruit and Plant Protection
 Act 1992 s 9(9)(a); (SA) Native Vegetation Act 1991 s 33EA(a); (SA) Rail Safety Act
 1996 s 50(1)(a); (SA) Natural Resources Management Act 2004 s 73(a);

(SA) Wilderness Protection Act 1992 s 15(8)(a); (SA) Workers Rehabilitation and
 Compensation Act 1986 s 110(10)(b).

As to disorderly conduct at public meetings see [130-12290].

4. See, for example:

(NSW) Liquor Act 2007 s 77(2)

(SA) Gaming Machines Act 1992 s 67; (SA) Liquor Licensing Act 1997 ss 124,
 125, 127; (SA) Summary Offences Act 1953 s 73 (any public venue).

[130-12285] Common law The standard for determining offensiveness is
 whether it is calculated to arouse anger, resentment, disgust or outrage in the
 mind of a reasonable person.¹ To be guilty of offensive behaviour, a person must
 both intend to engage in the behaviour and be aware of the circumstances which
 make it offensive.² It is not, however, necessary to provide that anyone was
 offended by the behaviour, so long as the behaviour was of such a nature and
 the circumstances such that a reasonable person would have been offended by
 the behaviour.³ Offensive behaviour can be constituted by the use of words,
 even where use of those words would also constitute an offence under another
 statutory provision.⁴ A single offence may be constituted by a series of acts.⁵

Notes

1. *Inglis v Fish* [1961] VR 607 at 611 per Pape J. See also *Pregelj v Manison* (1987) 51
 NTR 1; 88 FLR 346 at 363; 31 A Crim R 383 per Kearney J, CCA(NT).

2. *Pregelj v Manison* (1987) 51 NTR 1; 88 FLR 346; 31 A Crim R 383, CCA(NT) (act
 of sexual intercourse taking place in private house which could be observed from
 the street not offensive behaviour unless party charged was aware that the act could
 be so observed).