

# NORTHERN TERRITORY OF AUSTRALIA

## CRIMINAL CODE AMENDMENT (CRIMINAL DAMAGE) ACT 2011

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Act No. 5 of 2011

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# NORTHERN TERRITORY OF AUSTRALIA

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Act No. 5 of 2011

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An Act to amend the Criminal Code

[Assented to 16 March 2011]  
[Second reading 1 December 2010]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Criminal Code Amendment (Criminal Damage) Act 2011*.

### 2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

## Part 2 Amendment of Criminal Code

### 3 Act amended

This Part amends the Criminal Code.

### 4 Section 1 amended

(1) Section 1, definition *property*, before "means"

*insert*

, except for Part VII, Division 6,

## (2) Section 1

*insert (in alphabetical order)*

***belongs***, for Part VII, Division 6, see section 239.

***causes***, for Part VII, Division 6, see section 240.

***damage***, for Part VII, Division 6, see section 238.

***property***, for Part VII, Division 6, see section 238.

***property damage offence***, for Part VII, Division 6, see section 238.

**5 Part VII, Division 6 replaced**

Part VII, Division 6

*repeal, insert*

**Division 6 Criminal damage****Subdivision 1 Interpretation****238 Definitions**

In this Division:

***belongs***, in relation to property, see section 239.

***causes***, in relation to damage or other result, see section 240.

***damage***, to property, includes:

- (a) destroying the property; and
- (b) causing the physical loss of the property by interfering with the property (including by removing any restraint over the property or abandoning the property); and
- (c) causing any loss of a use or function of the property by interfering with the property; and
- (d) defacing the property, and
- (e) for a document – obliterating or rendering illegible the whole or any part of the document; and
- (f) for an animal – harming or killing the animal; and

- (g) for a plant or other thing forming part of land – severing it from the land.

***property:***

- (a) means any real or personal property of a tangible nature; and
- (b) without limiting paragraph (a), includes:
  - (i) a wild creature that is tamed or ordinarily kept in captivity or that is or is being reduced into the possession of a person; and
  - (ii) any organ or part of a human body and any blood, ova, semen or other substance extracted from the human body.

***property damage offence* means:**

- (a) an offence against Subdivision 2 (other than an offence against section 242); or
- (b) conduct in a State or another Territory that:
  - (i) is an offence against a law of that State or Territory; and
  - (ii) would constitute an offence against Subdivision 2 (other than an offence against section 242) if the conduct occurred in the Territory.

**239 Person to whom property belongs**

- (1) For this Division, property ***belongs*** to anyone who has:
  - (a) possession or control of it; or
  - (b) any proprietary right or interest in it, other than an equitable interest arising only from:
    - (i) an agreement to transfer or grant an interest; or
    - (ii) a constructive trust.
- (2) If property is subject to a trust, the person to whom the property belongs includes anyone having a right to enforce the trust.
- (3) If property belongs to 2 or more persons:
  - (a) a reference in this Division to a person to whom the property belongs is a reference to all those persons; and

- (b) for an offence committed by a person (the *defendant*) – a reference in this Division to property belonging to another person includes a reference to property belonging to the defendant and other persons.

## **240 Causing damage or other result**

For this Division, a person *causes* damage or any other result if the person's conduct substantially contributes to the damage or other result.

## **Subdivision 2 Offences**

### **241 Damage to property**

- (1) A person is guilty of a crime if the person causes damage to property belonging to another person.

Fault elements:

The person:

- (a) intentionally causes damage to property belonging to that other person or someone else; or
- (b) is reckless as to causing damage to property belonging to that other person or someone else.

Maximum penalty: Imprisonment for 14 years.

- (2) A person is guilty of a crime if the person makes a threat to another person to cause damage to property.

Fault elements:

The person:

- (a) intentionally makes a threat to another person to cause damage to property; and
- (b) is reckless as to causing the other person to fear that:
  - (i) the threat will be carried out; and
  - (ii) the carrying out of the threat will cause death or serious harm to someone.

Maximum penalty: Imprisonment for 7 years.

- (3) A person is guilty of an offence if the person makes a threat to another person to cause damage to property belonging to that other person or someone else.

Fault elements:

The person:

- (a) intentionally makes a threat to another person to cause damage to property belonging to that other person or someone else; and
- (b) intends to cause the other person to fear that the threat will be carried out.

Maximum penalty: Imprisonment for 2 years.

- (4) For subsections (2) and (3):

- (a) it is not necessary to prove that the threatened person actually feared that the threat would be carried out; and
- (b) a threat may be made by any conduct, and may be explicit or implicit and may be conditional or unconditional; and
- (c) a threat to a person includes a threat to a group of persons; and
- (d) fear that a threat will be carried out includes apprehension that the threat will be carried out.

- (5) A person is guilty of an offence if the person possesses a thing for use by that person or someone else to cause damage to property belonging to another person.

Fault element:

The person intends that the person or someone else will use the thing to cause damage to property belonging to another person.

Maximum penalty: Imprisonment for 2 years.

## **242 Sabotage**

- (1) A person is guilty of a crime if the person:

- (a) commits a property damage offence; and

- (b) causes damage to a public facility in committing the property damage offence.

Fault elements:

The person:

- (a) has the fault elements for a particular property damage offence; and
- (b) in committing the property damage offence, intends to cause:
  - (i) major disruption to government functions; or
  - (ii) major disruption to the use of services by the public; or
  - (iii) major economic loss.

Maximum penalty: Imprisonment for life.

- (2) A person who is convicted of the offence of attempting to commit a crime against subsection (1) is punishable by imprisonment not exceeding 14 years.

*Note for subsection (2)*

*For the offence of attempting to commit the crime, see section 43BF.*

- (3) A person is guilty of a crime if the person makes a threat to another person to damage a public facility.

Fault elements:

The person:

- (a) intentionally makes a threat to another person to damage a public facility; and
- (b) intends to cause the other person to fear that the threat will be carried out and will cause:
  - (i) major disruption to government functions; or
  - (ii) major disruption to the use of services by the public; or
  - (iii) major economic loss.

Maximum penalty: Imprisonment for 15 years.



## (4) For subsection (3):

- (a) it is not necessary to prove that the threatened person actually feared that the threat would be carried out; and
- (b) a threat may be made by any conduct, and may be explicit or implicit and conditional or unconditional; and
- (c) a threat to a person includes a threat to a group of persons; and
- (d) fear that a threat will be carried out includes apprehension that the threat will be carried out.

## (5) In this section:

***damage to a public facility*** means:

- (a) causing damage to a public facility or any part of the facility; or
- (b) causing disruption to the use or operation of a public facility.

***public facility*** means any of the following (whether publicly or privately owned):

- (a) government facilities, including premises used by government employees in connection with official duties;
- (b) public infrastructure facilities, including facilities providing water, sewerage, energy, fuel, communication or other services to the public;
- (c) public information systems, including systems used to generate, send, receive, store or otherwise process electronic communications;
- (d) public transport facilities, including facilities used to transport people or goods;
- (e) public places, including any premises, land or water open to the public.

**243 Arson**

- (1) A person is guilty of a crime if the person causes damage to a building or conveyance by using fire or an explosive substance.

Fault elements:

The person:

- (a) intentionally uses fire or an explosive substance; and
- (b) intentionally causes, or is reckless as to causing, damage to a building or conveyance.

Maximum penalty: Imprisonment for life.

- (2) A person who is convicted of the offence of attempting to commit a crime against subsection (1) is punishable by imprisonment not exceeding 14 years.

*Note for subsection (2)*

*For the offence of attempting to commit the crime, see section 43BF.*

- (3) A person is guilty of a crime if the person makes a threat to another person to use fire or an explosive substance to cause damage to a building or conveyance.

Fault elements:

The person:

- (a) intentionally makes a threat to another person to use fire or an explosive substance to cause damage to a building or conveyance; and
- (b) intends to cause, or is reckless as to causing, another person to fear that the threat will be carried out.

Maximum penalty: Imprisonment for 7 years.

- (4) For subsection (3):

- (a) it is not necessary to prove that the threatened person actually feared that the threat would be carried out; and
- (b) a threat may be made by any conduct, and may be explicit or implicit and may be conditional or unconditional; and
- (c) a threat to a person includes a threat to a group of persons; and

- (d) fear that a threat will be carried out includes apprehension that the threat will be carried out.

- (5) In this section:

***building*** includes:

- (a) a part of a building; and
- (b) all or part of any other structure or thing (whether or not moveable) that is used, designed or adapted for residential purposes (for example, a caravan).

***conveyance*** means an aircraft, vessel, train, motor vehicle or trailer attached to a motor vehicle.

## **244 Bushfires**

- (1) A person is guilty of a crime if:
  - (a) the person causes a fire; and
  - (b) there is a substantial risk that:
    - (i) the fire would spread to vegetation on property belonging to another person; and
    - (ii) the person would not be able to stop the spreading of the fire.

Fault elements:

The person:

- (a) intentionally causes the fire or is reckless as to causing the fire; and
- (b) is reckless as to the risk.

Maximum penalty: Imprisonment for 15 years.

- (2) Subsection (1) does not apply to a person who caused a fire for the purposes of fire management or land management (or both):
  - (a) in accordance with a law in force in the Territory (including, for example, the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), the *Bushfires Act* and the *Fire and Emergency Act*); or

- (b) in accordance with an agreement entered into by the Territory.

*Example for subsection (2)(a)*

*A person who caused a fire in the course of carrying out fire management activities such as hazard reduction activities under the Fire and Emergency Act.*

*Example for subsection (2)(b)*

*A person who caused a fire in the course of carrying out fire management and land management activities under an agreement between the Territory and a private company established for the reduction of greenhouse gas emissions.*

- (3) For this section, a person **causes** a fire if the person:

- (a) lights a fire; or
- (b) maintains a fire.

## **245 Leaving explosive substance at a place**

A person is guilty of an offence if:

- (a) the person leaves an explosive substance at a place; and
- (b) there is a substantial risk that the explosive substance would cause damage to property belonging to another person.

Fault elements:

The person:

- (a) intentionally leaves an explosive substance at a place; and
- (b) is reckless as to the risk.

Maximum penalty: Imprisonment for 2 years.

## **246 Endangering operation of aircraft**

- (1) A person is guilty of a crime if the person engages in conduct that results in a substantial risk of endangering the safe operation of an aircraft.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to the result.

Maximum penalty: Imprisonment for life.

- (2) A person who is convicted of the offence of attempting to commit a crime against subsection (1) is punishable by imprisonment not exceeding 14 years.

*Note for subsection (2)*

*For the offence of attempting to commit the crime, see section 43BF.*

## **247 Obstructing runways**

A person is guilty of a crime if the person obstructs any aircraft in its passage on a runway.

Fault element:

The person intentionally obstructs, or is reckless as to obstructing, any aircraft in its passage on a runway.

Maximum penalty:       Imprisonment for 5 years.

## **Subdivision 3   Circumstances in which there is no criminal responsibility**

### **248       Consent**

A person (the *defendant*) is not criminally responsible for an offence against this Division that involves damage to property (other than section 242) if, at the time of the conduct constituting the offence:

- (a) the person entitled to consent to the damage to the property concerned had so consented; or
- (b) the defendant believed that:
  - (i) the person whom the defendant believed was entitled to consent to the damage of the property concerned had so consented; or
  - (ii) such a person would have so consented if that person had known about the damage to be caused to the property and its circumstances.

*Note for section 248*

*Part IIAA, Division 3, provides for other circumstances in which there is no criminal liability.*

**249 Claim of right**

- (1) A person is not criminally responsible for an offence against this Division (other than section 242) if, at the time of the conduct constituting the offence, the person believed:
- (a) that the person had a right or interest in the property concerned; and
  - (b) the right or interest authorised the person to engage in the conduct.
- (2) For this section, a right or interest in property includes a right or privilege in or over land or waters, whether created by a grant, licence or otherwise.

*Note for section 249*

*Part IIAA, Division 3, provides for other circumstances in which there is no criminal liability.*

<b>6</b>	<b>Amendment of Schedule 1 (Provisions of Code to which Part IIAA applies)</b>
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Schedule 1

*omit*

Section 240A (Causing bushfires)

*insert*

Part VII (Property offences and related matters), Division 6 (Criminal damage)

## Part 3 Consequential amendments

<b>7</b>	<b><i>Justices Act</i> amended</b>
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- (1) This section amends the *Justices Act*.

- (2) Section 121A(1)(b)(ii)

*omit*

, 240, 241, 243, 245, 246, 247, 251 or 252

*insert*

and 241

- 
- (3) At the end of the Act

*insert*

## **Part IX Transitional matters for the Criminal Code Amendment (Criminal Damage) Act 2011**

### **205 Transitional matters for *Criminal Code Amendment (Criminal Damage) Act 2011***

The amendment made to section 121A by the *Criminal Code Amendment (Criminal Damage) Act 2011* does not affect the operation of this Act, on and after the commencement of the amendment, to an offence:

- (a) mentioned in section 121A(1)(b)(ii) as in force immediately before the commencement of the amendment; and
- (b) was committed or is alleged to have been committed before the commencement of the amendment.

### **8 *Sentencing Act* amended**

- (1) This section amends the *Sentencing Act*.
- (2) Section 3, definition ***aggravated property offence***, paragraph (d)  
*omit, insert*
  - (d) an offence against section 241 of the Criminal Code;
- (3) After section 131  
*insert*

## **Division 4 Transitional matters for the Criminal Code Amendment (Criminal Damage) Act 2011**

### **132 Transitional matters for *Criminal Code Amendment (Criminal Damage) Act 2011***

The amendment made to section 3 by the *Criminal Code Amendment (Criminal Damage) Act 2011* does not affect the operation of this Act, on and after the commencement of the amendment, to an offence:

- (a) mentioned in section 3, definition ***aggravated property offence***, paragraph (d), as in force immediately before the commencement of the amendment; and

- 
- (b) was committed or is alleged to have been committed before the commencement of the amendment.

**9      *Youth Justice Act* amended**

- (1) This section amends the *Youth Justice Act*.
- (2) After section 225
- insert*

**Part 17              Transitional matters for the Criminal Code  
Amendment (Criminal Damage) Act 2011**

**226      Transitional matters for *Criminal Code Amendment (Criminal  
Damage) Act 2011***

The amendment made to regulation 3 of the *Youth Justice Regulations* by the *Criminal Code Amendment (Criminal Damage) Act 2011* does not affect the operation of this Act, on and after the commencement of the amendment, to an offence:

- (a) mentioned in regulation 3(a) of the *Youth Justice Regulations* as in force immediately before the commencement of the amendment; and
- (b) was committed or is alleged to have been committed before the commencement of the amendment.

**10      *Youth Justice Regulations* amended**

- (1) This section amends the *Youth Justice Regulations*.
- (2) Regulation 3(a)
- omit*
- 239, 241, 242, 244, 246, 247 or 252
- insert*
- 243 or 246