

196. Wilful Damage: s 469

196.1 Legislation

[Last reviewed: March 2025]

Criminal Code

[Section 458](#) – Unlawful acts

[Section 459](#) – Acts done with intent to defraud

[Section 469](#) – Wilful damage

196.2 Commentary

[Last reviewed: March 2025]

The Defendant must have:

- (1) Unlawfully; and
- (2) Wilfully;
- (3) Destroyed or damaged any property.

‘Punishment in special case’ clauses are appended to s 469.

The prosecution does not have to prove the property was the property of the person named in the indictment, unless the prosecution is relying on such ownership as proof that the damage was unlawful under s 458 (*R v McClymont; ex parte Attorney-General* [1987] 2 Qd R 442, [443]).

Destroyed or damaged

In *R v Zischke* [1983] 1 Qd R 240, [246], the Court held that ‘the formula that most nearly embraces all the attempts at definition is that a thing is damaged if it is rendered imperfect or inoperative’.

The phrase ‘destroys or damages’ in a similar NSW offence (*Crimes Act 1900* (NSW), s 195(1)) was discussed by the High Court in *Grajewski v DPP (NSW)* [2019] HCA 8; (2019) 93 ALJR 405. The Majority held at [53] that:

‘[a] person does not damage a thing by conduct which does not bring about any alteration to the physical integrity of the thing. The alteration may be relatively minor and temporary as in letting the air out of a tyre, which physically alters the tyre and renders it imperfect’.

See s 1 of the *Criminal Code* as to what constitutes damage to a document.

Wilfully

The element of 'wilfully' requires either (1) proof of actual intention, or (2) that the Defendant deliberately does an act, aware at the time it is done, that the damage or destruction of the property is a likely consequence of that act, and that the Defendant does the act regardless of the risk (see *Lockwood; ex parte A-G* [1981] Qd R 209; *T v The Queen* [1997] 1 Qd R 623).

Unlawfully

Section 458(1) of the *Criminal Code* specifies that 'an act which causes injury to the property of another, and which is done without the owner's consent, is unlawful unless it is authorised or justified or excused by law'.

Subsection (3) states that it is 'immaterial that the person who does the injury is in possession of the property injured, or has a partial interest in it, or an interest in it as joint or part owner or owner in common'. A defence for injury to property is included in s 458(4) where the Defendant uses reasonably necessary force to defend or protect himself or herself, another, or property from injury that the Defendant believed on reasonable grounds to be imminent.

Section 459 states that '[w]hen an act which causes injury to property, and which would be otherwise lawful, is done with intent to defraud any person, it is unlawful'. It is immaterial in such cases that the property is that of the defendant. As to the meaning of intent to defraud, see **Chapter 195 - Uttering**.

196.3 Suggested Direction

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The prosecution must prove beyond reasonable doubt that:

- 1. The Defendant damaged [or destroyed] the property described in the indictment.**

'Damage' means to render imperfect or inoperative.

- 2. The Defendant did so wilfully.**

'Wilfully' requires proof that the Defendant either:

- a) had an actual intention to do the particular kind of harm that was in fact done; or**
- b) deliberately did an act aware at the time [he/she] did it that the result charged in the indictment was a likely consequence of [his/her] act and that [he/she] recklessly did**

the act regardless of the risk. The word 'likely' in the direction concerning recklessness conveys a substantial – a real and not remote chance.

3. The Defendant did so unlawfully.

'Unlawfully' means not justified authorised or excused by law.

An act which causes injury to the property of another, and which is done without the owner's consent is unlawful unless authorised or justified or excused by law.

It is immaterial that the person who does the injury is in possession of the property injured, or has a partial interest, or an interest in it as joint or part owner or owner in common.

(Where an intent to defraud is relevant, reference to the following may be added):

When an act which causes injury to property, and which would be otherwise lawful, is done with an intent to defraud any person, it is unlawful.

In addition, when an act which causes injury to property is done with intent to defraud any person, it is immaterial that the property in question is the property of the Defendant.

(Where relevant, direct on any circumstances of aggravation or special case provisions).