

PRACTICAL SUMMARY FOR PARTICIPANTS IN PEACEFUL ACTIONS IN THE ACT

This summary sheet is intended to provide general information about the process of arrest for protesters participating in non-violent direct action in the ACT. It is not a substitute for legal advice. If you need legal advice or assistance, please see contact information over the page.

We acknowledge that all protests occur on Aboriginal land and that sovereignty of this land was never ceded. We acknowledge that discussion about legal rights is not valid without recognising the struggle that First Nations people face against legal repression.

Preparing for a protest where there will be a risk of arrest

- Do** take a contact number that will enable you to get legal advice or assistance.
- Do** inform yourself about the possible consequences of arrest.
- Do not** bring anything that creates suspicion you intend to commit a crime, eg knives, drugs.
- If you bring your mobile phone, **backup and delete** any personal/sensitive information.
- Even if you have **NO** intention of getting arrested, always be prepared.

Arrest

- Generally, a police officer can only arrest you if they **suspect** (or, in some cases, **believe**) on **reasonable grounds** that you have or are committing an **offence**.
- The officer arresting you **must** tell you **that** you are under arrest and **why**.
- A police officer may use necessary force to arrest you. Unreasonable force is **assault**.
- Resisting arrest is an offence. If you apply **force** to a police officer who is lawfully arresting you (eg, push, hit, kick or strike them), you may be charged with assault.
- You **DO NOT** have to accompany a police officer to the police station unless you are under arrest.

Common offences protesters may be arrested for

Offences under the *Public Order (Protection of Persons and Property) Act 1971* (Cth); the *Crimes Act 1900* (ACT); and the *Criminal Code 2002* (ACT), such as:

- Trespass;
- Behaving in an offensive or disorderly manner;
- Obstruction of persons or vehicles;
- Obstruction of a public official;
- Damaging or defacing property or affixing a placard;
- Interfering with infrastructure, such as the light rail.

Avoiding arrest and dealing with the police

- If you do not wish to be arrested, you should always obey police requests to move, particularly if you may be committing an offence such as trespass or obstructing traffic.
- In the ACT, police do **not** have move-on powers for protesters, but it is still an offence not to obey police if:
 - Police ask you to leave an area where they reasonably think you have recently, are or will be engaged in conduct involving violence, intimidation or damage to property.
 - Police cannot give you this direction, or any direction to move, if you are simply protesting without committing an offence.

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Police searches

- If a police officer suspects on reasonable grounds that you have in your possession a thing relevant to a serious offence (an offence punishable by 5 years imprisonment or longer) and that it is necessary to search you to prevent that thing being concealed, lost or destroyed because the circumstances are serious and urgent, then they may stop, detain and conduct a frisk or ordinary search.
- In the ACT, a strip search may only be conducted after a person has been arrested, but only if:
 - the police believe you have evidence on you
 - they believe a strip search is necessary to get that evidence **and**
 - a superintendent or higher has given approval.

If you are arrested

- You have a right to remain silent. Anything you do say to the police can be used in evidence against you in court, or for the purposes of deciding whether to charge you.
- **DO NOT** answer questions, apart from providing your name, address and date of birth, until you have had an opportunity to speak with a lawyer.
- You should ask to speak with a friend or relative, to let them know where you are, and with a lawyer, so that you can get advice.

If you are charged

- If you are charged with an offence, then police may grant you bail at the police station.
- If police do not grant you bail, then you must be brought before a judicial officer as soon as it is practical for the police to do so, within 48 hours after being taken into custody. That judicial officer can grant you bail.
- If you are granted bail, then you will no longer be in custody. You must follow any bail condition imposed and attend court when you are required to.
- Failure to attend court in answer to bail is an offence.
- You should get legal advice or further legal advice as soon as possible.

Police requests for information

- If a police officer has reason to believe that an offence has been or may be committed **and** believes on reasonable grounds that you may be able to assist them in inquiries in relation to that offence, they may ask you for your name and address and you **must** provide these. If you don't, or you provide a false name or address, you will be committing an **offence**.
- If a police officer asks your name and address, then you are entitled to ask them for their name and address of duty.
- You do **not** have to provide any other information to police or answer police questions. Anything you do say may be used as evidence.

How long can you be held in custody?

After an arrest, police can generally detain you in custody to investigate whether you have committed an offence for a period of **four** hours. This period is reduced to **two** hours if you are under 18 or if you are an Aboriginal and/or Torres Strait Islander person.

During this period (which may be extended in certain circumstances), police will decide whether to release you without charge or charge you with an offence.

IMPORTANT CONTACTS:

Legal Aid:

Helpline: 1300 654 314

Website:

www.legalaidact.org.au/

Youth Law Centre:

Phone: (02) 6173 5410

Email:

yhc@legalaidact.org.au

Aboriginal Legal Service NSW/ACT:

Phone for police charges:

1800 765 767

Website: www.alsnswact.org.au/