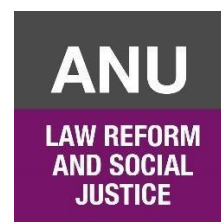


# PRACTICAL GUIDE TO LAW AND PROTESTS IN THE AUSTRALIAN CAPITAL TERRITORY

Vanessa Sporne, Joel Bourke, Rebecca Emdler, Sarah Graham-Higgs, Sarah Mack, Jasmine Matz, Hamish McQuade and Annika Reynolds

GREEN  LAW



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# Acknowledgement of Country

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We recognise our Aboriginal and Torres Strait Islander nations were the first sovereigns of our lands and waters. This sovereignty was never ceded and continues to this day, informing our connection to land, waters and community.

Indigenous respect and guardianship over the Australian land is an integral part of environmental justice and must be acknowledged and respected for the realisation of environmental justice in this country.

GreenLaw and its members acknowledge we meet on Indigenous land and, in working towards environmental justice, stand beside the traditional guardians of our lands. We pay our respects to Elders past, present and emerging.

We recognise that during the writing of this guide we met on Ngunnawal and Ngambri country, that our neighbours to the north are the Gundungurra people, to the south the Ngarigo people, towards the coast the Yuin people and to the west the Wiradjuri people.

# Introduction

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The Practical Guide to Law and Protests in the ACT is the product of over nine months of work and the dedication of a team of volunteer legal researchers. GreenLaw is proud to be presenting this practical guide, aimed at helping groups and individuals understand legal issues around organising and participating in non-violent direct actions.

Engaging in peaceful protests and non-violent direct actions is an important form of political expression, essential for a well-functioning democracy. Although GreenLaw is an environmental justice organisation, these guides can be used for the organisation of peaceful protests for any social justice cause.

The Guide covers non-violent direct actions and peaceful protests only. It is intended that these guides will be used for actions that are peaceful and do not involve harm to people or property. Whilst freedom of political communication is essential to democracy, violence is not. These guides will thus use the language of either 'peaceful protest' or 'non-violent direct actions (NVDAs)' to highlight the scope of the guide. We hope that by enhancing individual and organisational understanding of relevant Australian and ACT law that this guide can ensure NVDAs are conducted as effectively and safely as possible.

## ***How to use this guide***

The information contained in the Guide is not legal advice. It focuses on the most likely outcomes of a peaceful protest. Although the guides provide a lot of useful information, it is no substitute for specific legal advice from a qualified lawyer that knows about your circumstances. We strongly recommend you seek legal advice if you are concerned about the NVDA you are organising or have been arrested. See Chapter 9 for more details on seeking legal advice in the ACT.

The Guide follows a potential chronological timeline of an NVDA, starting at planning the protest in Chapter 1, through to Chapter 8 outlining strategies to minimise risks of violence at NVDAs and how a typical court hearing may run in Chapter 13. Guide chapters can be read in chronological order, or you can merely click through to the relevant chapter from the Contents Page. It is recommended that organisers read the entire guide.

The Guide was last reviewed for legal accuracy on the following date: September 2020. Any law reform or other changes after this date have not been captured in this Guide.

Please contact GreenLaw via: [green\\_law@outlook.com](mailto:green_law@outlook.com), if you experience trouble with any hyperlinks throughout the Guide.

## ***Acknowledgements and Thanks***

This Guide took over a year and the combined efforts of a team of eight law students at the ANU GreenHub and the supervisory support of a number of academics.

In particular we wish to thank Vanessa Sporne, the project lead for the Guide, who has worked tirelessly to ensure this Guide was complete and to a standard that is worthy of publication. Without Vanessa, the Guide may never have seen the light of day.

We also wish to thank Annika Reynolds, Sarah Mack and Eleanor Cooper, the GreenLaw management team who provided editing and management support throughout.

Associate Professor Anthony Hopkins has generously provided his time to review each of the chapters in this Guide, providing feedback and next steps to ensure the legal accuracy and usefulness of this Guide. We thank him for his time and commitment to upholding the rights of peaceful protestors and political communication in the ACT.

Dr Jelena Gligorijevic has also been a key part of this Guide, providing her expertise in relation to Chapter 2. Defamation is not an area of law typically taught to law students at ANU, and her endless patience in providing feedback for this chapter is immeasurable. Thank you for your commitment and continued willingness to provide support.

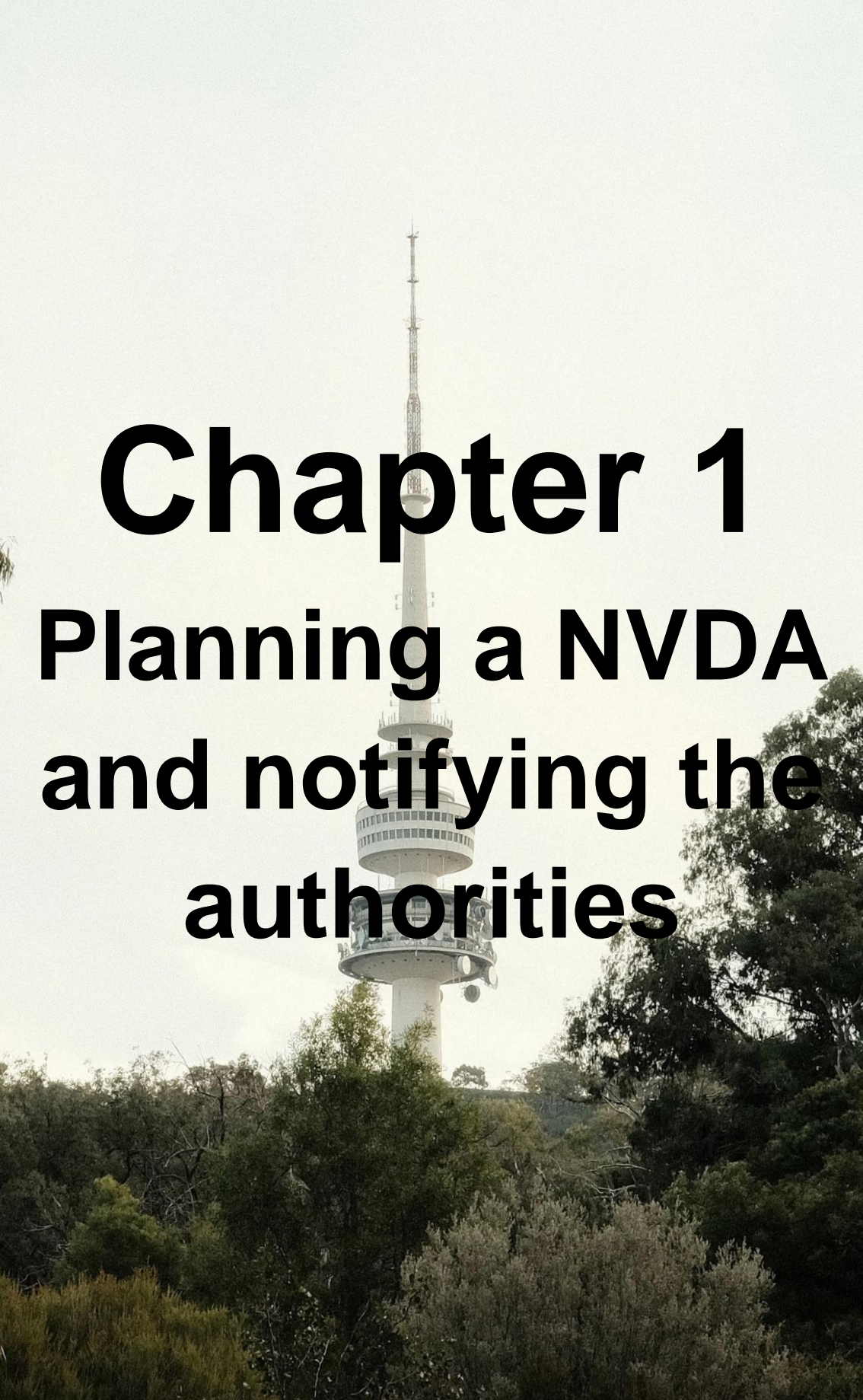
Finally, we would like to thank Associate Professor Vivien Holmes and Director of the LRSJ and Associate Professor Matthew Zagor for their support, commitment to social justice and endless belief in our work and capabilities.

## ***About LRSJ and GreenLaw***

The ANU Law Reform and Social Justice (LRSJ) program supports the integration of law reform and principles of social justice into teaching, research and study across the College. LRSJ provides opportunities for students to explore and interrogate the complex role of law in society, and the part that law and lawyers play in promoting both change and stability.

GreenLaw is a young person-led organisation empowering the next generation of lawyers to understand the importance of environmental law and the power of legal institutions to further climate justice. Through legal research, GreenLaw aims to empower environmentally-conscious organisations to engage effectively with legal institutions.

GreenLaw and the LRSJ jointly manage the ANU GreenHub at the Australian National University College of Law.



# **Chapter 1**

## **Planning a NVDA and notifying the authorities**



## ***Where is the NVDA located?***

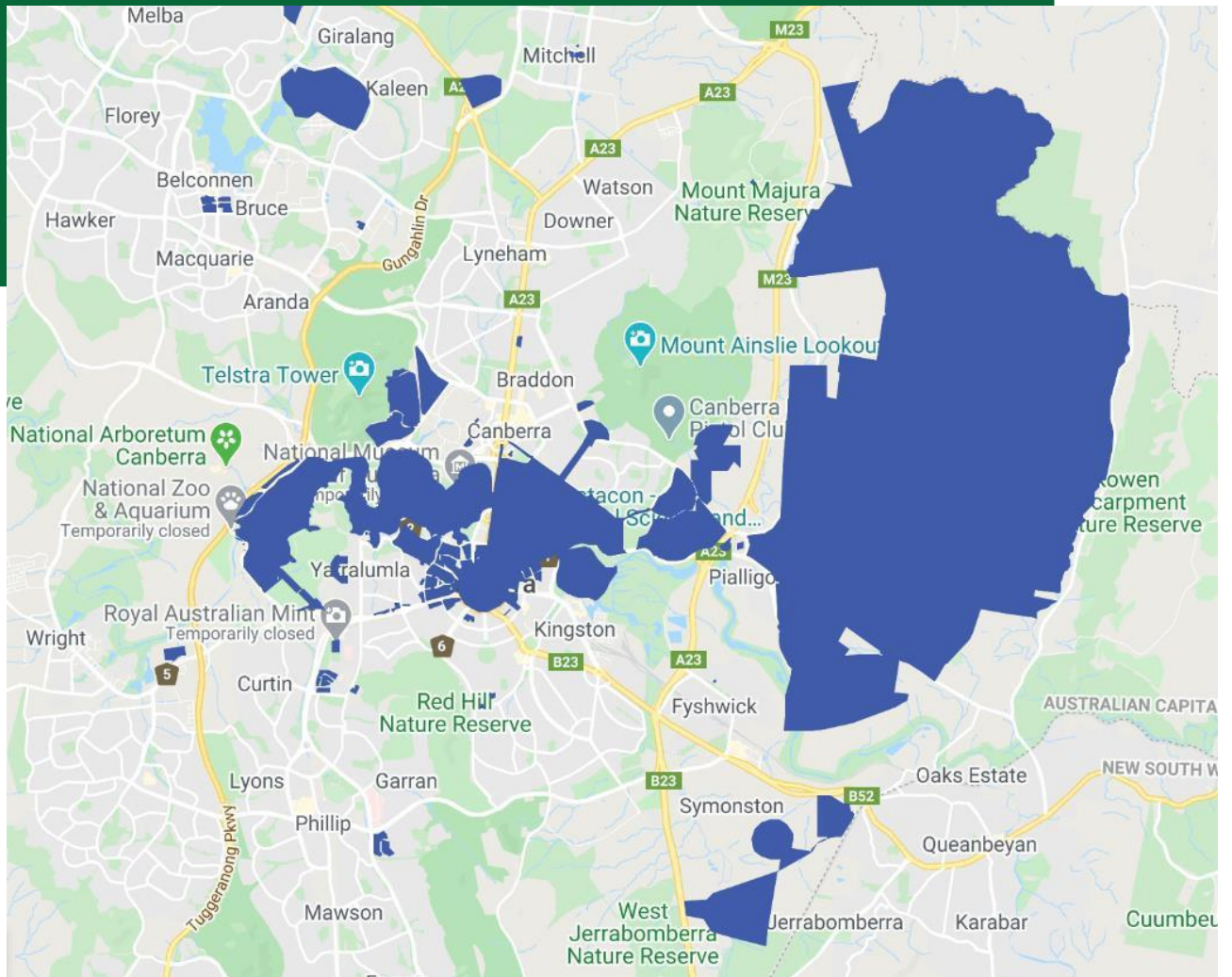
The Australian Capital Territory (ACT) is divided into two jurisdictions. This means that two different sets of laws apply to different areas in the ACT. Some land in the ACT is under Commonwealth jurisdiction, meaning the federal government is in charge of creating laws and will be the body that prosecutes on these lands (referred to as Commonwealth land). This land is managed by the National Capital Authority (NCA) or the Department of Finance on behalf of the Commonwealth. Some notable areas of Commonwealth jurisdiction that may be important for peaceful protesters are the Parliamentary Zone, Anzac Parade and the Diplomatic Estates in Yarralumla.

To determine whether you are carrying out a NVDA on ACT or Commonwealth land consult the Territory Plan map - the ACT government maintains [maps](#) of ACT and Commonwealth land.

It is important to know what type of land you are on, because ACT and Commonwealth land have different notification systems and rules for the planning and carrying out of NVDA's.



Figure 1 Map with Commonwealth Land in Blue<sup>1</sup>



<sup>1</sup> <https://www.nca.gov.au/administration-national-land>



In general, Commonwealth land is in the following areas:

- Canberra's system of inner hills and ridges surrounding the city such as Mount Ainslie and Black Mountain,
- Main avenues and approach routes to Canberra including Northbourne Avenue, State Circle and the Federal and Monaro Highways,
- The Central National Area, including the Parliamentary Zone,
- Diplomatic areas and residencies,
- Lake Burley Griffin, including its foreshores and adjoining urban areas, and
- The main national institutions and symbols of the Commonwealth.

This is not a complete list. It is important that you check the [Territory Plan map](#) whenever you plan a NVDA. The classification of land may also change.

The NCA has published a 'Right to Protest' document which sets out who you need to contact if you are planning a peaceful protest on Commonwealth land (See Resources at the end of this Chapter).

## ***NVDAs on ACT Land***

You may require approval from the ACT government for certain actions on ACT land. You may need approval for both the use of ACT land and for the impact that the NVDA may have on traffic conditions. If the action impacts traffic conditions and requires traffic control, the government may impose a fee for traffic control (see below for more details).



To determine if your NVDA requires approval you should contact Access Canberra directly. To get approval you can contact Access Canberra via phone (see Resources at the end of this Chapter).

Alternatively, you can fill out an application online for the approval of your action. This form will request a description of the event, dates, locations and whether the event is expected to alter traffic conditions. It can be accessed through the [Access Canberra website](#).

You can also visit an Access Canberra office in person to discuss approval for your NVDA.

## Changing Traffic Conditions on ACT Land

If the NVDA involves blocking roads, walking on roads, or other major disruptions to traffic flows, you will likely have to submit a [temporary traffic management plan](#).

A traffic management plan should include a discussion of the impacts your action will have on traffic and pedestrians. It may include information on potential detours and safety barriers.

You will have to pay a fee to have a traffic management plan authorised. The listed fees can be found in the link above. If you are a registered charity or not-for-profit organisation you are exempt from the requirement to pay a fee.



## NVDAs on Commonwealth Land

Commonwealth land is controlled by the National Capital Authority and there is a different approval process for a peaceful protest. The approval process for actions on Commonwealth land is more complex than ACT land and how you seek approval will depend on the type of action you are planning.

If an action is not mentioned in the following section, it is recommended you discuss the action with the National Capital Authority directly to determine if you require approvals. Their email can be found in the Resources at the end of this Chapter.

## NVDAs involving Development Works on Commonwealth Land

Approval will be required if your action involves erecting, altering or demolishing structures, landscaping, tree felling or excavation works. It is unlikely a NVDA will meet this threshold, as 'development works' are normally linked to construction, renovations or other major projects.

However, if the action does meet this threshold you will be required to seek approval through the National Capital Authority's Works Approval Process. This is a formal and lengthy process. It involves requirements for site plans, architectural drawings, and construction management plans. It is advised you contact the National Capital

Authority directly or visit the National Capital Authority's [website](#) to determine if you need a work approval.

If you do need approval it is further recommended you contact the ACT Environment Defender's Office as you will need advice on planning law (see Chapter 9 for more details).

## **NVDAs in the Parliamentary Precinct**

The Parliamentary Precinct (the immediate surrounds of Parliament House) is also regulated by the National Capital Authority. However, the Presiding Officers have discretion to approve or not approve protests. Commonwealth Parliament has two Presiding Officers: the Speaker of the House of Representatives and the President of the Senate who jointly oversee the administration of the Department of Parliamentary Services. This means that either or both Presiding Officers may be of the same political party as the government.

The Presiding Officers have the power to deny approval for protests, assemblies or private activities within the Parliamentary Precinct. They do not have to explain their decision and there is no way to challenge their decision.

Peaceful protests are generally permitted within the Authorised Assembly Area, which is the outdoors area in front of Parliament House. However, there are some restrictions on protesting activities, including:

- Lighting of fires is prohibited except with permission from the Presiding Officers,
- Signs and banners are not to be attached to buildings or planted in the ground,
- Marking surfaces is prohibited, and
- Items (such as food) are not to be sold or alcohol consumed.

You must have completed and submitted an ['Authorisation to Use Parliamentary Precincts – Authorised Assembly Area' form](#) prior to the protest.





It is important to note that both ACT and Commonwealth criminal laws may apply in the Parliamentary Precinct (see Chapter 3 for more details). There are also three important points to be aware of when undertaking a NVDA in the Parliamentary Precinct:

1. If the operation of a chamber of Parliament is interrupted, you may be removed or taken into custody,
2. The Presiding Officers can ban people from the Precinct for a period of time (usually three months) if they are considered a threat, and
3. If you wear clothing containing printed slogans you may be asked to leave the galleries.

If you are concerned your action is not allowed in the Parliamentary Precinct, it is recommended you read the guidelines provided by the Department of Parliamentary Services provided in the Resources at the end of this Chapter.



## Resources

### **Access Canberra, Events Management Division**

Phone: 02 6205 4400

### **Access Canberra, Event Approval Form**

<<https://form.act.gov.au/smartforms/landing.htm?formCode=1291>>

### **ACT City Services, Temporary Traffic Management Information**

<<https://www.cityservices.act.gov.au/roads-and-paths/traffic/temporary-traffic-management>>

### **Department of Commonwealth Parliamentary Services, Authorisation to Use Parliamentary Precincts – Authorised Assembly Area and other Information**

<[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Department\\_of\\_Parliamentary\\_Services/policies](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Department_of_Parliamentary_Services/policies)>

### **Environmental Defenders' Office ACT, Non-Violent Direct Action on Commonwealth Land**

<<https://www.edo.org.au/publication/non-violent-direct-action-on-commonwealth-land/>>

### **Environmental Defenders' Office ACT, Non-Violent Direct Action on ACT Land**

< <https://www.edo.org.au/publication/non-violent-direct-action-on-act-land/>>

### **Environmental Defenders' Office ACT, Environmental Law Handbook**

<<https://www.edo.org.au/publication/act-environmental-law-handbook-3rd-edition/>>

### **National Capital Authority, Administration of National Land**

<<https://www.nca.gov.au/administration-national-land>>

### **National Capital Authority, Designated Areas**

<<https://www.nca.gov.au/planning-heritage/about-planning-act/designated-areas>>

### **National Capital Authority, The Right to Protest**

<[https://www.nca.gov.au/sites/default/files/publication-documents/The\\_Right\\_to\\_Protest.pdf?acsf\\_files\\_redirect](https://www.nca.gov.au/sites/default/files/publication-documents/The_Right_to_Protest.pdf?acsf_files_redirect)>

### **National Capital Authority, Works Approval Process**

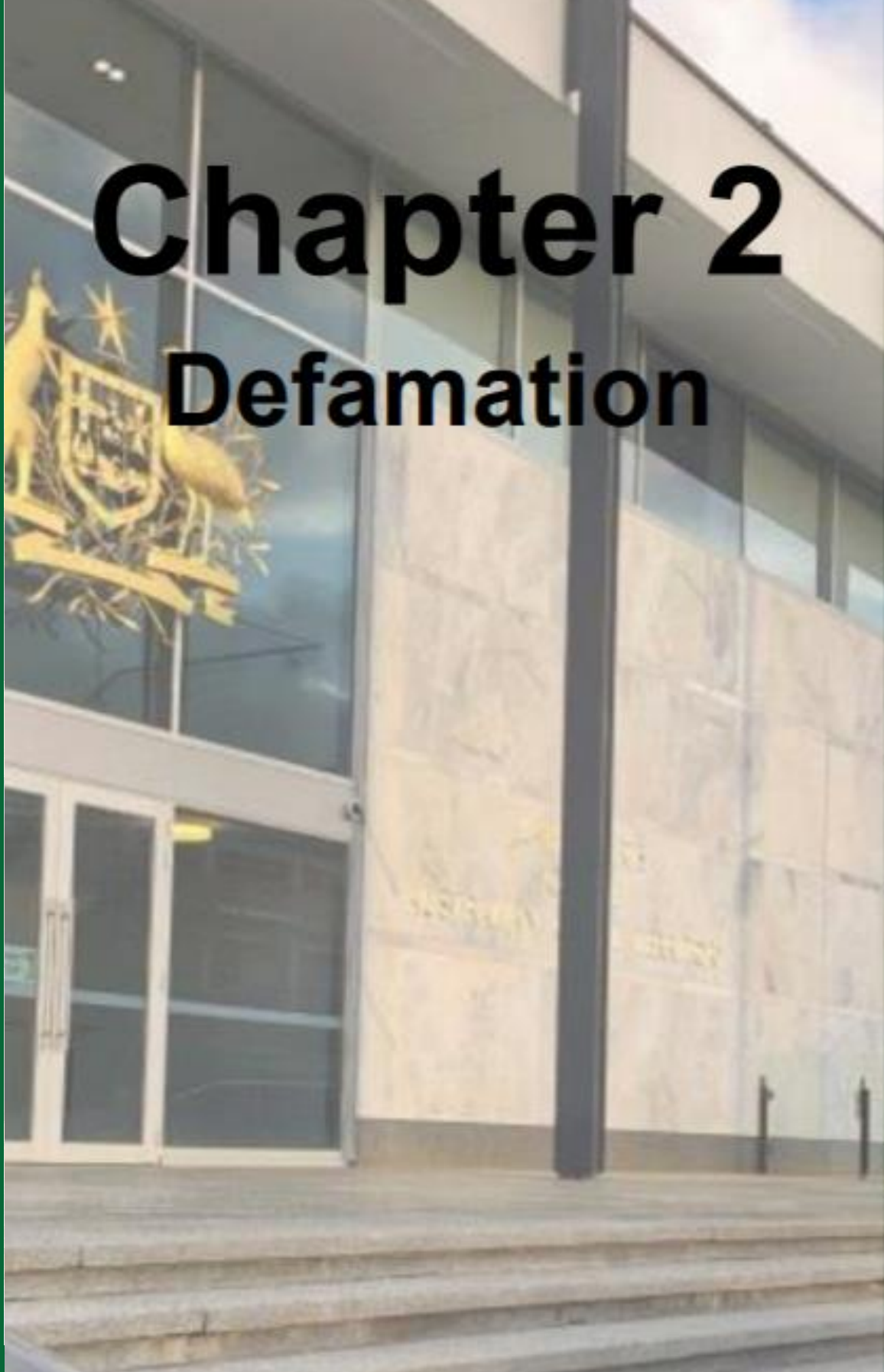
<<https://www.nca.gov.au/planning-heritage/works-approval/works-approval-process>>

Email: [worksapproval@nca.gov.au](mailto:worksapproval@nca.gov.au)



# Chapter 2

## Defamation



## Chapter 2: Defamation

### ***What is defamation?***

Defamation is when somebody claims that something that was said, published, or otherwise communicated has damaged their reputation. It is a civil wrong and a private individual brings the case against you.

Defamation is a complex area of law and whether something is defamatory is dependent on the exact circumstances. It is highly recommended you seek legal advice for your specific circumstances. This section is intended merely to introduce you to defamation and give you a basic understanding of the law. It is **not a replacement** for appropriate legal advice.

Defamation is a civil wrong. If you are found liable, you could be ordered to pay substantial compensation to the person you have defamed. The purpose of defamation law is to protect an individual's reputation. The ACT legislation also treats the right to privacy as relevant in defamation law

Significant reform of Australia's defamation law is currently being considered. Defamation legislation is largely uniform across Australian jurisdictions and the Council of Attorneys-General is reviewing this legislation with expected reform recommendations from mid- to late-2020. Model amendments were approved by the Council of Attorneys-General in July 2020 but actual law reform has not yet occurred.

Many of the defences that are available in response to a defamation lawsuit seek to ensure 'defamation' as an area of law does not encroach too much upon the interests of freedom of expression, which underpin your interests in protesting, and, specifically, that it does not breach the constitutional implied freedom of political communication. There are 'reasonable limits' on how far a person can protect their reputation, particularly with regard to 'matters of public interest and importance', which can include matters about which people may be protesting. See *Civil Law (Wrongs) Act 2002* (ACT) s 115(b).

It is for the plaintiff to show on the balance of probabilities (i.e. more likely than not) that the publication conveys the defamatory meaning they allege. It then falls to the defendant to prove a defence or otherwise pay compensation/damages to the plaintiff.

### **Constitutional Implied Freedom of Political Communication**

The law recognises that "each member of the Australian community has an interest in disseminating and receiving information, opinions and arguments concerning

government and political matters that affect the people of Australia.” This is not a personal right, but rather, the freedom of political communication in Australia is a constitutional limitation on governmental actions (either legislation or executive acts). See *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 571 for more explanation.

A court determines whether the freedom of political communication has been unreasonably burdened (limited) by determining first whether the law itself is a limitation on the communication about government or political matters. Defamation laws have previously been found to be a limitation on political communication (see *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520).

Then the court will assess the purpose of the limitation, for example to protect someone’s reputation, and whether it is proportionate to the limitation on political communication. See *Brown v Tasmania* (2017) 261 CLR 328 for more details.

## ***What are the elements of defamation?***

Defamation in the ACT is a mix of common law (judge-made law) and legislation. The main elements of defamation come from the common law, but legislation has modified parts of this framework and established additional defences.



There are three elements that must be made out:

1. The material must have a ‘defamatory meaning’,
2. The material must be communicated by you to someone other than the plaintiff, and
3. The material must identify the plaintiff.

## ***Does the material have a defamatory meaning?***

A material or publication is defamatory if it has a meaning which would cause an ‘ordinary reasonable person’ to think less of the plaintiff, causing harm to the plaintiff’s reputation. For more explanation, see *Sungravure Pty Ltd v Middle East Airlines Airliban SA* (1975) 134 CLR 1, 10.

The concept of ‘reputation’ is very broad. It includes all elements of a person’s standing in the community, including in their professional and personal lives. Because of this broad understanding, whether something is ‘defamatory’ is an open-ended question and will change with community standards. Generally, something will be defamatory if causes people to ‘think less of that person’ or it lowers community perceptions of them.

However, whether something is defamatory in meaning is determined based on the facts of each case, and so it is recommended you seek legal advice based on your specific circumstances. There are two main ways something can have a defamatory

meaning. First, through its “natural and ordinary meaning” or through what is called “true innuendo.”

### **What is the “natural and ordinary meaning?”**

This is the plain and simple meaning of the material, as an ordinary person or the general community would understand it. The ordinary meaning of material may also include implications. It is assumed ordinary members of the community may read between the lines when it comes to material. It is also assumed that an ordinary person will interpret different types of material in different ways. For example, it is likely a person will read a book more analytically than when listening to the radio.

### **What is a “true innuendo?”**

A “true innuendo” is when the recipient of the material would need to have knowledge of other facts in order to understand the material as defamatory. This means that material may be defamatory even if its ordinary and natural meaning is innocent.

For example, if the material states that a person attended an address, which others know to be the location of criminal activity. The material does not itself state the person visited a place of criminal activity, but other facts about the address may mean the statement is defamatory. This was an example given by Justice Kirby in *Chakravarti v Advertiser Newspapers Ltd* (1998) 193 CLR 519.

## ***Communication of the Material***

The defamatory material may be published or communicated by almost any method, including over the internet. For example, through spoken words, written material, drawings, signs or gestures, even the display of objects in public are considered ‘communication’. Posters and other signage may also constitute publication. For more detail, see *Civil Law (Wrongs) Act 2002* (ACT) s 116.

The key part of publication/communication is that the material is seen by a third party (other than the plaintiff or defendant). This is because harm to a person’s reputation only occurs when third parties comprehend the material.

Everyone who participates in the publication is potentially liable. This includes if you merely repeat something. For example, sharing a hyperlink of defamatory material.

If something was published via a mass medium such as radio or television, then there is a presumption that it was published (and viewed). If this is the case, then the plaintiff does not have to call evidence to show that anyone did actually receive the publication or prove the identities of the recipients.

It is also important to note that even if you publish something anonymously, the plaintiff may apply for a preliminary discovery to the court to find your identity as per the *Court Procedure Rules 2006* (ACT), r 650.

## ***Does the material identify the plaintiff?***

For material to be defamatory (for the material to be presumed to damage someone's reputation), it must be clear that it is referring to that person. Identification could be because the material refers to the plaintiff by name or title, or because there are enough details in the material that an ordinary reasonable recipient would understand the material referred to the plaintiff.

## **What is an 'ordinary reasonable recipient'?**

The law often uses an objective standard when making assessments. An 'ordinary reasonable recipient' is one such objective standard, where the court will use a fictional 'reasonable person'. The court will assess whether this reasonable person would have understood that the material referred to the plaintiff. An 'ordinary reasonable recipient' is generally considered to be 'fair-minded' with a general knowledge of current and world affairs. However, it will ultimately be up to a court to determine whether a reasonable person would identify the plaintiff and it is recommended you seek legal advice for your specific circumstances. For further detail see *Favell v Queensland Newspapers Pty Ltd* (2005) 79 ALJR 1716, [10].

The plaintiff does not need to show that the recipient actually understood the material as referring to the plaintiff; the reasonable person standard is enough.

## ***Resolving a defamation claim before litigation***

These are options open to someone who has been accused of defamation to settle the case so it doesn't go to trial, which can be lengthy, costly proceedings, possibly leading to significant damages (compensation that you have to pay). You should seek legal advice specific to your situation.

### **Offer to make amends**

The publisher (defendant) may offer to make amends within 28 days of being given a 'concerns notice,' which is a notice in writing from someone claiming to have been defamed detailing the alleged defamatory imputations, see *Civil Law (Wrongs) Act 2002* (ACT) s 126.

An offer to make amends must also be in writing and be an offer to correct the defamatory imputations. This might be publishing a notice or telling someone else who has been given the defamatory material that it is or may be defamatory. The offer must also include an offer to pay for any expenses reasonably incurred by the aggrieved person. It may contain additional offers, such as an offer to publish an apology notice,



or to pay additional compensation for any hurt caused by the defamatory publication. For further detail, see *Civil Law (Wrongs) Act 2002* (ACT) s 127(1).

If an offer to make amends is accepted, the publisher must follow through and carry out the terms in the offer. The defamed person cannot pursue legal proceedings. If a reasonable offer is not accepted, this is a defence the publisher may raise. But whether 'in all the circumstances the offer was reasonable' is a question for the court to decide. See *Civil Law (Wrongs) Act 2002* (ACT) s 129 and s 130 for more information on offer to make amends.

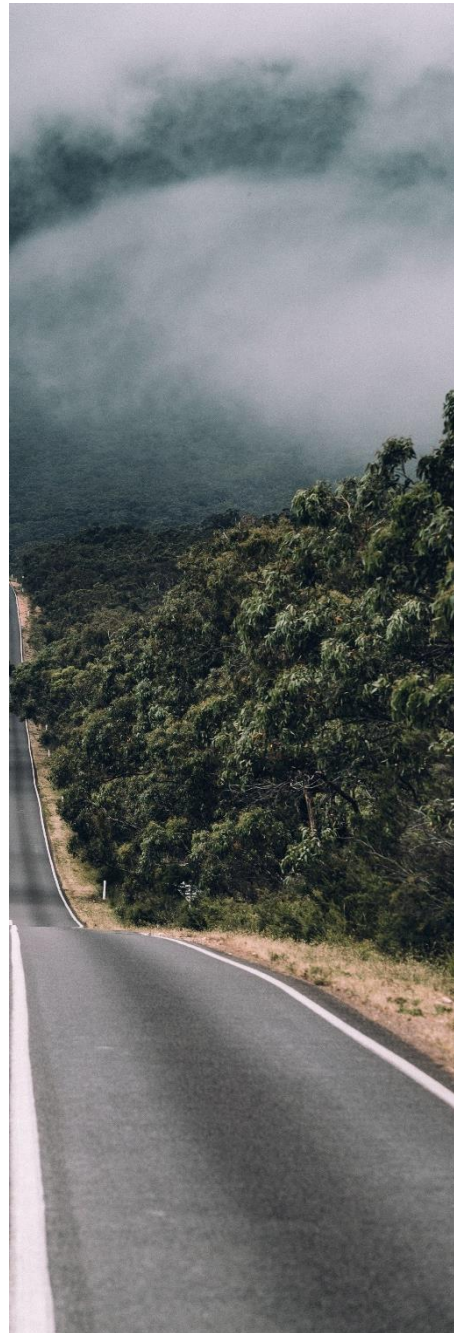
### **Apology**

If the publisher makes an apology, this does mean that they are admitting any fault or liability. It also has no bearing on the court's determination of liability (*Civil Law (Wrongs) Act 2002* (ACT) s 132).

### ***What defences are there against defamation?***

If the plaintiff is able to show the three elements above on the balance of probabilities (i.e. that it is more likely than not that all three elements are present in the particular case), you may be able to avoid liability (paying compensation to the plaintiff) if you can prove a defence.

Defences are excuses or justifications that can be raised during legal proceedings. If a defence is raised successfully, you are not held liable for defamation. Most of the defences below relate to circumstances in which defamatory imputations are considered permissible or justified. For all of these defences, it is recommended you seek legal advice for your specific circumstances.



Seek legal advice specific to your situation as defences to a suit of defamation are complicated and depend on the circumstances. Some defences come from the common law (judge-made law), and the *Civil Law (Wrongs) Act 2002 (ACT)* modifies or adds other defences. Defences include showing that the defamatory imputation is “substantially true,” (*Civil Law (Wrongs) Act 2002 (ACT)* s 135); that the publication of the material does not harm the plaintiff (s 136); or that the defamatory material is contained in a public document (s 138). There are also certain circumstances in which it can be shown that the recipients of the publication had an interest in receiving the publication and the defendant acted reasonably in publishing it (s 139A(1)).

Note that some of these defences can be defeated by proof of malice. Malice in this context means having a “desire to injure the person who is defamed.” Just because you believe the defamatory statement to be true does not mean that publication was not malicious, particularly if it can be shown that wanting to hurt the plaintiff was the primary motive for publication. For more information on the meaning of malice, see *Roberts v Bass (2002) 212 CLR 1*.

For example, if the plaintiff can show that you acted with malice, a court may hold you liable even if the material was in the public interest.

## ***How can I avoid being sued?***

Although there are a number of defences to defamation, it is safer to avoid being sued in the first place. Here are some tips to keep yourself safe, although it is recommended you seek legal advice for your specific circumstances:

- Do not make false statements. Research what you say before you say it. Make sure it is true and, if possible, it is already in the public domain.
- Do not make assertions free of context. Describe the situation. For example, instead of claiming someone is corrupt, outline the actions that you think indicate they are corrupt.
- Avoid commenting on someone’s thoughts or motivations. It is difficult to know what motivates someone in doing or saying something. Again, describe what that person has done.
- Seek legal advice if you are unsure whether a statement may be defamatory before you say it. For more details on legal advice, see Chapter [x] on Legal Aid.
- Keep a record of all media engagements and statements you have made.



For organisers, consider these points in addition:

Carefully select who will be making public statements. Ensure they have media training, appropriate prompts, and know their facts.

Ensure all public speakers are aware of the potential to be sued and how to lower that threat.

Minimise the number of people publicly associated with statements. This provides greater control and limits the risk of being sued.

## ***Bodies that cannot sue for defamation***

Certain bodies cannot be defamed. These include:

- Governments,
- Public bodies, such as local government authorities or departments (see *Civil Law Wrongs Act 2002* (ACT) s 121),
- Classes of people (for example, university students as a whole) *unless* that class is so small that its members can be reasonably identified (see *David Syme & Co v Canavan* (1918) 25 CLR 234),
- Deceased persons (see *Civil Law Wrongs Act 2002* (ACT) s 122),
- Corporations in the ACT, *unless* they are not-for-profit companies or employ ten or fewer people (see *Civil Law Wrongs Act 2002* (ACT) s 121).

Even though a corporation, which is not an “excluded company”, cannot be defamed under ACT law, individuals who are company directors or otherwise associated with a company may sue for defamation if a publication about the company reflects badly on their personal reputation. Note also that while corporations and local government authorities cannot be defamed, they can sue for something similar, known as ‘injurious falsehood.’ This exists to protect against economic loss due to false and malicious statements.



For a claim of injurious falsehood to be made out, it must be shown on the balance of probabilities that:

1. A false statement was made,
2. The false statement caused actual economic loss or other damage, and
3. The statement was made with malice.

For more on injurious falsehood, see *Mirror Newspapers Ltd v World Hosts Pty Ltd* (1979) 141 CLR 632.

In these circumstances, 'malice' means that you had an intent to hurt the plaintiff, and knowledge that the statement was false or you were reckless as to whether the statement was true or false (you did not care whether it was true made the statement anyway). However, a claim of malice can be rebutted if the defendant can show they had an honest belief in the statement's truth. For more information on malice and honest belief, see *Schindler Lifts Australia Pty Ltd v Debelak* (1989) 89 ALR 275.

# Resources

## **The Law Project, Defamation Law in Australia**

<<https://www.thelawproject.com.au/defamation-law-in-australia>>

## **Youth Law Australia, Defamation**

<<https://yla.org.au/act/topics/courts-police-and-the-law/defamation/>>

## **Case Law Cited**

*David Syme & Co v Canavan* (1918) 25 CLR 234

*Favell v Queensland Newspapers Pty Ltd* (2005) 79 ALJR 1716

*Lange v Australian Broadcasting Corporation* (1997) 285 CLR 520

*Mirror Newspapers Ltd v World Hosts Pty Ltd* (1979) 141 CLR 632

*Roberts v Bass* (2002) 212 CLR 1

*Schindler Lifts Australia Pty Ltd v Debelak* (1989) 89 ALR 275

*Sungravure Pty Ltd v Middle East Airlines Airliban SA* (1975) 134 CLR 1

## **Legislation Cited**

*Civil Law (Wrongs) Act 2002* (ACT)

<<https://www.legislation.act.gov.au/a/2002-40/>>

*Court Procedure Rules 2006* (ACT)

<<https://www.legislation.act.gov.au/sl/2006-29/>>



# Chapter 3

## Potential offences on ACT and Commonwealth land



## Chapter 3: Potential offences on ACT and Commonwealth land

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### *The differences between ACT and Commonwealth Land*

The Australian Capital Territory is divided into two jurisdictions (see Chapter 1). Some land in the ACT is under Commonwealth jurisdiction, all other land is under ACT law. This means that different set of laws might apply, depending on what area of the ACT you are in. It is important to know what type of land you are on, because ACT and Commonwealth land have different criminal offences and potential penalties.

It is recommended organisers check whether the planned action is on ACT or Commonwealth land before any planning begins. See Chapter 1 for more details.



### *Potential Offences*

This section is intended to give you a brief idea of the kinds of offences you may be charged with while participating in NVDAs in the ACT, while the following Chapter will explain what kinds of penalties you can expect if you are found guilty of committing the offence. The table gives a short description of each offence.

You can find detailed information on each offence such as the elements and defences in the EDO's [Factsheet](#) on non-violent direct actions (see Resources at the end of this Chapter).

Offence	Information
<b>Trespass</b>	<p>Trespass is unlawfully entering someone's land (whether owned by a private person or the government). Unlawfully entering means you do not have permission to enter that space. Trespass is a criminal offence under ACT and Commonwealth law. In ACT it is an offence to trespass on any premises in the ACT (a premises is any land, building or part of a building). See s 11 <i>Public Order (Protection of Persons and Property) Act 1971</i> (Cth).</p> <p>Trespass does not require damage. No property damage or personal damage is required for the Court to find you guilty of trespass.</p>
<b>Unreasonable Obstruction</b>	<p>Unreasonable obstruction is an offence in the ACT on ACT land and Commonwealth land. See s 4 <i>Public Order (Protection of Persons and Property) Act 1971</i> (Cth).</p> <p>Unreasonable obstruction is an act or thing done by a person that constitutes, or contributes to an obstruction of, or interference with, the exercise or enjoyment by other persons of their lawful rights or privileges (including right of passage along the public streets).</p>
<b>Damaging Property</b>	<p>A person commits an offence if they cause damage to property belonging to another person and they intended to cause or were reckless about causing damage to that property. See s 403 <i>Criminal Code 2002</i> (ACT). Property is anything physical in nature that an individual has possession of or control over. For example, a car or a building.</p>
<b>Defacing Premises</b>	<p>A person commits an offence if they attach any form of sign, or make any mark on private or public property without the consent of the occupier or anyone acting on behalf of the occupier. Public property in this instance can include roads and bus shelters.</p> <p>It is important to note that there are specified places at which it is legal to place a sign or poster in public places. These include community noticeboards and poster silos, a list of which can be found at:  <a href="https://www.cityservices.act.gov.au/city-living/maintenance-of-public-areas/posters_and_noticeboards">https://www.cityservices.act.gov.au/city-living/maintenance-of-public-areas/posters_and_noticeboards</a></p>
<b>Resisting arrest</b>	<p>Resisting arrest involves actively doing something to attempt to prevent an arrest. See s 361 <i>Criminal Code 2002</i> (ACT). This</p>

	<p>includes actively obstructing, hindering, intimidating or resisting a police officer. This applies even if the arrest you are attempting to prevent is not your own, but another demonstrator's. Examples of conduct that may be considered resisting arrest includes:</p> <ul style="list-style-type: none"> <li>• Running away;</li> <li>• Physical violence towards police such as hitting or scratching;</li> <li>• Placing yourself between the police and someone they wish to arrest;</li> <li>• Twisting or trying to free yourself from an officer's grasp; and</li> <li>• Continuing to defy an officer's direction to stop resisting.</li> </ul> <p>Refer to Chapter 6 for further information in reference to the process of arrest.</p> <p>Following police directions will ensure that you are not seen to be resisting arrest. Even if you believe police are using unreasonable force, it is important that you do not attempt to prevent or resist an arrest. Doing so could result in serious charges, such as assault.</p>
<b>Refusing to provide name and address</b>	It is an offence to give a false name and address or refuse to provide these details.
<b>Offences as part of an assembly</b>	Each member of an assembly commits an offence, if they conduct the assembly in a way that indicates that it will be carried out in a manner that involves physical violence to persons or damage to property. See <i>s 6 Public Order (Protection of Persons and Property) Act 1971 (Cth)</i> .

## ***Police Discretion***

Police discretion is when a police officer suspects that a person has committed an offence and uses their judgement (discretion) to decide how best to proceed. They consider the seriousness of the offence and any contextual and mitigating factors in deciding whether to arrest and/or charge a person. (e.g. do they need to arrest a person to protect community safety or protect evidence?). The aim of police discretion in our justice system is to prevent harsh outcomes that may result if police strictly enforce the law when justice may be better served by not introducing an offender into the criminal justice process. For example, a police officer may choose not to proceed to arrest someone in response to a minor offence.



## Why is it important to be aware of police discretion?

Police discretion is a central part of our criminal justice system and impacts how police choose to interact with certain individuals, organisers or minorities. Police discretion can either work in your favour or against you.

For example, police can use their discretion when deciding whether and how to charge a person at a protest. If a police officer decides to charge a person then they may make a physical arrest or issue a summons to attend court at a later date. The discretion must be exercised in accordance with police powers in legislation. Police discretion is part of the reason why we have seen different police responses to NVDA's around Australia.

It is important to have strategies in place to reduce risks associated with police discretion, both to the NVDA as a whole and vulnerable individuals that may be participating. See Chapter 8 for more details and concrete strategies.





## Resources

### **ACT City Services, Posters and Noticeboards**

<[https://www.cityservices.act.gov.au/city-living/maintenance-of-public-areas/posters\\_and\\_noticeboards](https://www.cityservices.act.gov.au/city-living/maintenance-of-public-areas/posters_and_noticeboards)>

### **Environmental Defenders' Office ACT, Non-Violent Direct Action on Commonwealth Land**

<<https://www.edo.org.au/publication/non-violent-direct-action-on-commonwealth-land/>>

### **Environmental Defenders' Office ACT, Non-Violent Direct Action on ACT Land**

< <https://www.edo.org.au/publication/non-violent-direct-action-on-act-land/>>

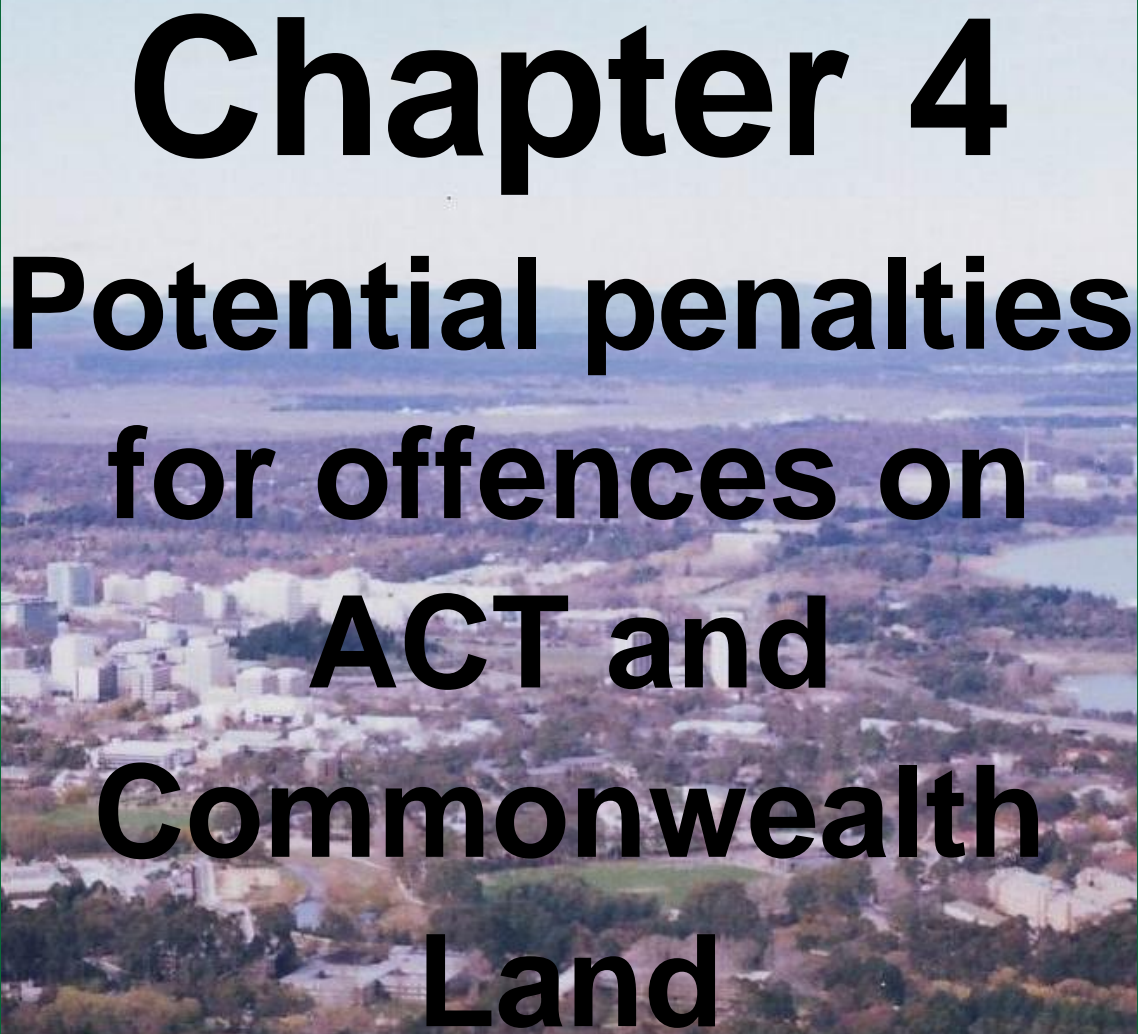
### **Legislation Cited**

*Public Order (Protection of Persons and Property) Act 1971 (Cth)*

<<https://www.legislation.gov.au/Details/C2016C01075>>

*Criminal Code 2002 (ACT)*

<<https://www.legislation.act.gov.au/a/2002-51/>>

An aerial photograph showing a city with various buildings and a large area of dense, green forest in the foreground. The text is overlaid on the image.

# **Chapter 4**

## **Potential penalties for offences on ACT and Commonwealth Land**

## Chapter 4: Potential penalties for offences on ACT and Commonwealth land

If you are charged with an offence (even before you are found guilty) your lawyer will talk to you about penalties and sentencing. It is up to a judge to decide whether a penalty is imposed and the seriousness of the penalty.

Many of the penalties below are monetary and a judge may reduce the amount you must pay if you can demonstrate financial hardship. If the maximum penalty does not include imprisonment, it means a Court cannot impose a prison sentence for that offence.

One penalty unit is equal to \$160. See s 133(2)(a) Legislation Act 2001 (ACT).  
For Commonwealth offences, one penalty unit is equal to \$210. See s 4AA(1) Crimes Act 1914 (Cth).

Table of penalties and sentences:

Jurisdiction	Offence	Penalty
ACT and Commonwealth Land	Trespass	Maximum 10 penalty units
ACT and Commonwealth Land	Unreasonable Obstruction	Maximum 20 penalty units
ACT and Commonwealth Land	Offensive and Disorderly Behaviour	Maximum 20 penalty units
ACT and Commonwealth Land	Refusing to Leave Land	Maximum 20 penalty units
ACT and Commonwealth Land	Trespass on Protected Premises	Maximum 10 penalty units

<b>ACT</b>	Damage of Property	Maximum 1,000 penalty units and/or 10 years imprisonment
<b>ACT</b>	Threat to Cause Property Damage	Maximum 200 penalty units and/or 2 years imprisonment
<b>ACT</b>	Defacing Premises	Maximum 50 penalty units and/or 6 months imprisonment
<b>ACT</b>	Resisting Arrest	Maximum 200 penalty units and/or 2 year imprisonment
<b>ACT</b>	Reckless to the Knowledge of a Public Official's Identity	Maximum 50 penalty units and/or 6 months imprisonment
<b>ACT and Commonwealth Land</b>	Offences as part of an assembly – reasonable apprehension of unlawful physical violence or unlawful damage to property	Maximum of 20 penalty units
<b>ACT and Commonwealth Land</b>	Failure to comply with directions to disperse an assembly	Maximum 6 months imprisonment
<b>ACT</b>	Failure to comply with a repair damage direction	Maximum of 20 penalty units, or recovery of reasonable costs of repairing damage.
<b>ACT and Commonwealth Land</b>	Failure to provide your correct name and address	Maximum of \$500 fine.

The prosecution will determine what to charge you with, while the judge has discretion as to what the penalty is (if you are found guilty). This means that it is up to the judge to determine the fair outcome, given the circumstances of the offence.

For more information in regard to the process of sentencing, see Chapter 13.

## Resources

### **Environmental Defenders' Office ACT, Non-Violent Direct Action on Commonwealth Land**

<<https://www.edo.org.au/publication/non-violent-direct-action-on-commonwealth-land/>>

### **Environmental Defenders' Office ACT, Non-Violent Direct Action on ACT Land**

<<https://www.edo.org.au/publication/non-violent-direct-action-on-act-land/>>

### **Legal Aid NSW, Going to Court Guide**

<<https://www.legalaid.nsw.gov.au/publications/factsheets-and-resources/going-to-court-guide-to-the-local-court-for-defendants>>

### **Legislation Cited**

*Public Order (Protection of Persons and Property) Act 1971 (Cth)*

<<https://www.legislation.gov.au/Details/C2016C01075>>

*Criminal Code 2002 (ACT)*

<<https://www.legislation.act.gov.au/a/2002-51/>>

*Crimes Act 1914 (Cth)*

<<https://www.legislation.gov.au/Details/C2020C00212>>



# **Chapter 5**

## **Police Powers**

### **during a NVDA**



# Chapter 5: Police powers during a NVDA

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## ***Can police direct me to move on?***

In the ACT, police do not have the power to direct you to move on if you are clearly identified as a protestor, for example if you are in a group clearly demonstrating on a particular issue or have a banner or sign showing you are intending to publicise your view on an issue (s 175(2) *Crimes Act 1900* (ACT)).

However, the police can direct you to move on if they reasonably think you have recently engaged in, or are currently or will be engaging in, conduct that involves violence, intimidation or damage to property (s 175(1) *Crimes Act 1900* (ACT)).

It is recommended organisers have a strategy for dealing with police when they arrive at a NVDA and ensuring that the NVDA remains controlled. You are more likely to be directed to move on if the action appears out of control. It is recommended your strategy address some of the following:

- How can you minimise the risk of police using their limited move-on powers?
- At what point would you disperse your action? For example, when there are police presence or police asking you to move on.
- What is the chain of authority within your action for deciding whether the NVDA should follow a direction given by police?
- If the action is not going to follow police directions, how do you best minimise risks for participants?

## ***Can the police ask me questions at the NVDA?***

The police can ask you questions at the action, and in some circumstances you are required to reply.

If the officer has reason to believe that an offence has been, or may be, committed and that you may be able to assist them, they may ask you about it. They will likely first ask you for your full name and address. **You must provide these if a police officer requests them.** If you provide false details after an officer has asked you, you are committing an offence, see Chapter 3 for more details.

Even if the police suspect you may be able to assist them, you do not have to answer any other questions. It is recommended you provide the police with as little information as possible. Anything you do or say may be used as evidence.

If the police ask for your name and address, you are entitled to ask for:

- Their name, and
- Their AFP number and the station they work at.

See s 211(3) *Crimes Act 1900* (ACT)) for more details.

## ***Remaining anonymous when interacting with police at a NVDA***

**You are required to provide your name and address if a police officer requests it** (see the section above).

However, if you are at an NVDA and need to talk to police you can request to remain anonymous. For example, if you are seeking out the police to provide information or lodge a complaint. You may use a pseudonym or remain anonymous if the police do not require you to identify yourself, and it is practical for the police to deal with you anonymously, see s 5C of the AFP [Privacy Policy](#).



If it is impractical to deal with you anonymously, the police will request your details. **It is important to remember that if the police do ask for your name and address you must provide them.**

## ***Can a police officer search me?***

If a police officer suspects on reasonable grounds that:

1. You have in your possession something that is related to a serious offence (an offence punishable by 5 years imprisonment or longer) such as a firearm or something stolen,
2. That it is necessary to search you to prevent that thing being concealed, lost or destroyed, and
3. Because the circumstances are serious and urgent (there is a justification for the police to conduct a search without a warrant).

Objects that relates to a serious offence include firearms, knives or blunt objects such as bats.

They may stop, detain and conduct a frisk or ordinary search (s 207 *Crimes Act 1900* (ACT)).

### **What is an ordinary search?**

An ordinary search means a search of a person or articles in possession of a person that may include:

1. Requiring a person to remove their outerwear and any gloves, shoes, socks and hat, and
2. An examination of those items.

An ordinary search does not include pat downs of the individual. (s 224 *Crimes Act 1900* (ACT)).

### **What is a frisk search?**

A frisk search involves a police officer running their hands or a metal detector over a person's outer clothing.

An ordinary or frisk search should (if practicable) be conducted by a person of the same sex as the person being searched.

### **Can the police conduct a strip search?**

In the ACT, a strip search may only be conducted after a you have been arrested, and only if:

1. The police believe you have evidence (of an offence) on your person,
2. The police believe a strip search is necessary to get that evidence, and
3. A superintendent or higher ranked officer has given approval (s 227 *Crimes Act 1900* (ACT)).



This means you can reduce the likelihood of being strip searched even if you are arrested. Ensure that you hand over all potential evidence when asked, such as your mobile phone, and ask any officers who seek to strip search you for evidence that a superintendent or higher ranked officer has given approval. See Chapters 5 and 6 for more details.

A police officer can use necessary and reasonable force to conduct a strip search (s 227(7) Crimes Act 1900 (ACT)).

The strip search must be conducted in a private area. The search must be conducted by someone of the same sex. A transgender person has the right to request a male or female officer (s185A Crimes Act 1900 (ACT)). The search must not be conducted in the view of someone of the opposite sex.

The search must not involve touching the body. The search must not involve removing more clothes than is reasonably necessary.

A parent or guardian must be present for a strip search of a child, see Chapter 16, or for a person with impaired intellectual functioning.





## **Resources**

### **Australian Federal Police, Privacy Policy**

< <https://www.afp.gov.au/about-us/privacy> >

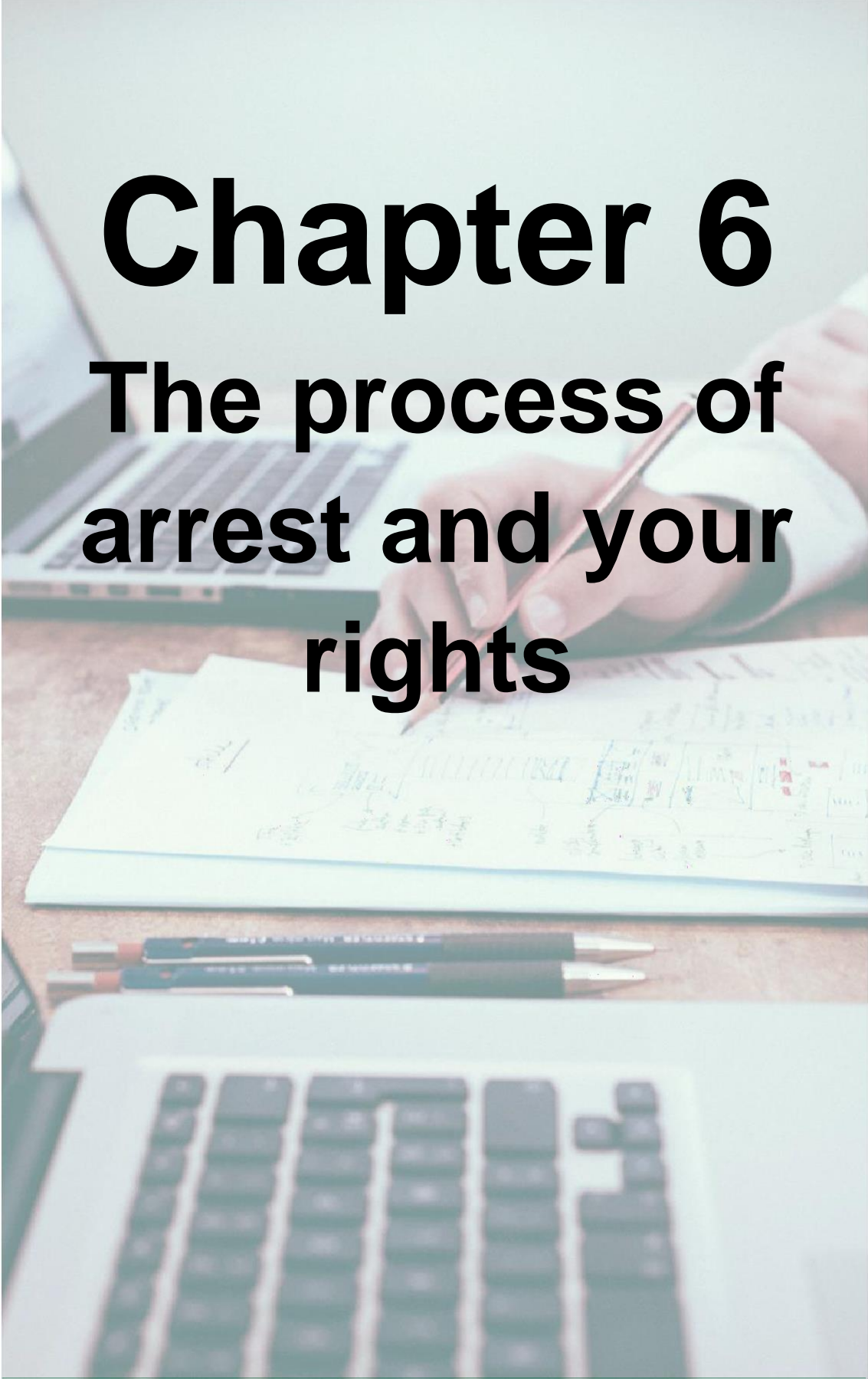
### **Youth Law Australia, Police Powers and My Rights with the Police**

<<https://yla.org.au/act/topics/courts-police-and-the-law/police-powers-and-my-rights-with-the-police/>>

### **Legislation**

*Crimes Act 1900* (ACT)

< <https://www.legislation.act.gov.au/a/1900-40/> >

A person is shown from the chest down, wearing a white shirt, sitting at a desk. They are holding a red pen and writing on a notepad. The notepad has some handwritten notes and diagrams. In the background, a laptop keyboard is visible. The entire scene is overlaid with a semi-transparent white box containing the chapter title and subtitle. The background image is framed by a dark green border.

# **Chapter 6**

## **The process of arrest and your rights**

# Chapter 6: The process of arrest and your rights

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To arrest you, the police are required to:

1. Tell you they intend to arrest you (for example saying 'you are under arrest'),
2. Show there has been an act or arrest or submission (basically ensuring you are restrained),
3. Tell you their name and place of duty (station), and
4. Tell you the reason for the arrest (what offence you are being arrested for).

The police have a level of discretion in determining what is reasonable to do in order to place you under arrest. When arresting you, the police officer may use as much force as is reasonably necessary to make the arrest or to prevent the escape of the person after arrest.

Reasonableness depends on the circumstances. Even if you believe the level of force is unreasonable, do not resist. You could be charged with resisting arrest.

If not in a police uniform, a police officer is also required to provide you with evidence.

Before questioning you, the officer must caution you that you do not have to say or do anything, but anything you say or do may be used in evidence.

To avoid being hurt by an arrest it is recommended you demonstrate you have submitted by words, stating 'yes, I understand,' when the police say they will arrest you and complying with their instructions as they are arresting you.

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 purpose of deciding whether to charge you.

See Chapter 8 for more information on how organisers can minimise the risk of police using force to arrest at protests.

It is recommended you do not answer any questions, except for providing your full name, address and date of birth until you speak with a lawyer. It is recommended that you ask to speak with a lawyer as soon as possible after your arrest.

## ***Searching a person upon arrest***

A police officer who arrests you may search you at or after the time of arrest, if the officer suspects on reasonable grounds that you may be carrying anything:

- That would be dangerous to you or someone else,
- That could assist someone in escaping lawful custody,
- That is an object which was used in an offence,
- That is an object that will provide evidence of an offence, or
- That is an object that was used or intended to be used in connection with an offence.

(See s 223 and s 224 *Crimes Act 1900* (ACT))

It is important you do not have items on you that could cause suspicion. It is also important you back-up your phone and delete all personal information and data before attending a protest to avoid your personal information being used as evidence.

You should ask to speak with a friend or relative, to let them know where you are, and to speak with a lawyer as soon as possible (see Chapter 9 for more details).



## ***Resources***

### **ACT Law Society, Arrest Fact Sheets**

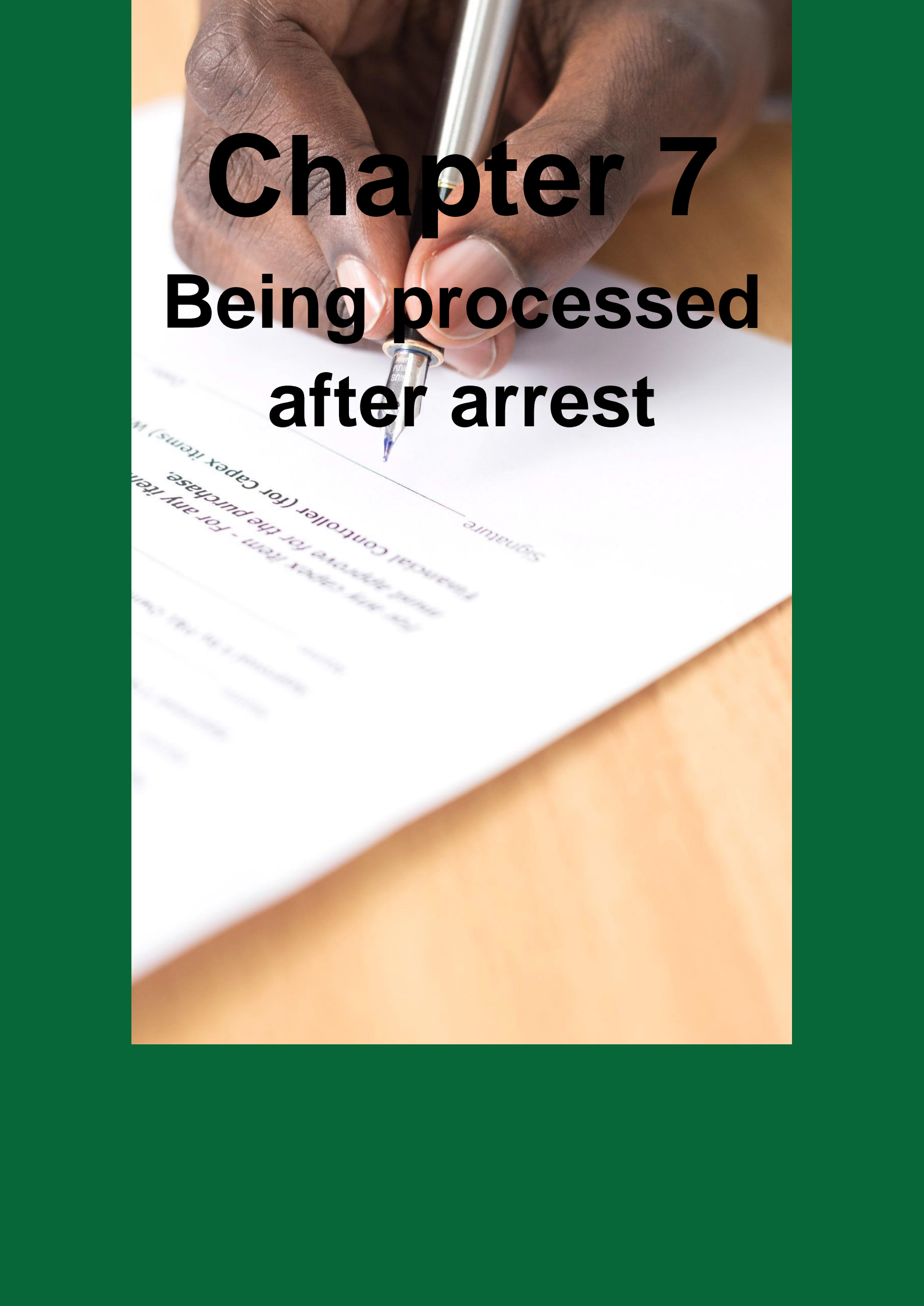
< <https://www.actlawsociety.asn.au/for-the-public/fact-sheets/under-arrest>>

### **Legislation**

*Crimes Act 1900* (ACT)

< <https://www.legislation.act.gov.au/a/1900-40/>>





# Chapter 7

## Being processed after arrest

# Chapter 7: Being processed after arrest

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## *How will you be processed when you arrive?*

ACT Policing are a branch of the AFP, see Chapter 15 for more details. The police will follow the [AFP national guidelines](#) for how you will be treated and processed in custody.

### **Transport to police station**

Once you are arrested you are taken into 'custody'. This means the police will take you to one of the following places: a police station, police cells at a court or a custody centre. In the ACT it is most likely you will be held at City Watch-House.

When you are being transported you will likely travel in a police vehicle and you may be handcuffed.

### **Being held in custody**

The purpose of custody is to process you (get relevant personal information from you), interview you, and ultimately decide whether to charge you with an offence and whether you are eligible for bail.

You will first undertake a **custody admission**. An officer will conduct an initial assessment and record it. The assessment will include:

- An explanation of why you are being detained and what you have been arrested for,
- An assessment of your health and risk status, and
- You will be asked to remove all personal property.

You may be searched again and then placed in a holding cell. The holding cell will have continuous video-recording and the police are required to check on you regularly to ensure your wellbeing.

If you are sick or injured, it is important to alert a police officer. You are entitled to the same standard of medical care as any other member of the public.

### **Making phone calls**

While in custody you can request to make two phone calls.

One phone call can be made to communicate with a legal practitioner. It is strongly recommended you do seek legal support if you are in custody, see Chapter 9 for more details.

Another phone call may be made to a relative or friend of your choice.

Where requested, such facilities must be made available as soon as is practicable. If the person has difficulty in speaking, hearing or understanding English an interpreter service must be provided. The police must give you privacy during these calls.

If the police deny you the right to make either of these phone calls, they must record the reason for the denial. See the [AFP National Guidelines on Persons in Custody and Police Custodial Facilities](#).

## What happens to your personal property?

The police are able to take your personal property when you are in custody. At the very least they will remove anything they reasonably suspect could be used to harm yourself or others, or damage property. This includes your mobile phone. It is recommended you back up your phone and delete all information before attending aNVDA.

If your property is taken the police must:

- Record the details of the property,
- Get you to sign stating the record of the property is accurate, and
- Secure it appropriately.

Once you are released from custody you should have all property returned to you, unless it has been seized as evidence.



## How long can you be held in custody?

There are limits on how long you can be held in custody **without charge**. In the ACT, police can hold you for a period of up to **four hours** before they must let you go.

The time limit applies to the investigation period (for example being interviewed) and there some activities that **do not** count towards this time limit, notably:

- Any delays because you are waiting for a lawyer or other support person to arrive, and
- Any delays to receive medical attention or because of intoxication.

For a full list for activities that do not contribute to the time limit, see s 23C *Crimes Act 1914* (Cth). Police can make an application to a court to extend this time to eight hours.

You can only be detained in custody for up to **two hours** if you are under 18 or if you are an Aboriginal and/or Torres Strait Islander person (see Chapter 16 for more information).

It is during this period that the police will decide whether to release you without charge or to charge you with an offence.

It is a requirement that the officer takes you before an authorised justice (judge or magistrate), as soon as is reasonably practicable after you have been arrested.

## **Police interviews**

In an interview, you will be asked about your actions and the offence police believe you have committed.

If you are under 18, the police must try to contact a parent, guardian, relative, lawyer or other responsible adult to sit in with you during the interview. See Chapter 16 for more details.

The police will record the interview. You have a right to a copy of the interview and you should ask for one. The investigating police will normally let you know if a transcript becomes available, but at a minimum, you should receive a copy within 7 days.

Anything you say can be used as evidence in court. You must give your name and address, otherwise you don't need to answer any other questions.

The police may ask you to sign a 'record of interview' before they give you a copy. If they do ask you to sign, wait until a lawyer can check the record for you. You should not sign anything you disagree with or that you think contains an error.

## ***Contacting the police to ensure the safety of arrestees?***

If you are concerned about someone in detention, you can contact the Police Assistance Line:

*Phone: 131 444.*

Alternatively, you can visit the [ACT Police website](#) to get the address of local police stations to enquire in person. For more details about strategies to keep track of arrestees see Chapter 8.



## ***What happens if you are charged?***

If you are charged with an offence, the police may choose to grant you bail at the police station. Bail means you are released from custody but will still be expected to attend court at a later date to determine whether you are guilty of offence. To learn more about attending court, see Chapter 12.

If the police do not grant you bail, then you must be brought before a judicial officer (magistrate or judge) as soon as it is practical for the police to do so, or within 48 hours after being taken into custody. This will normally happen before 10am the next day. The judicial officer can grant you bail.

If you have to stay overnight, you will be taken to the City Police Station Watch House, or detention centre if you are charged on a Saturday. You must be given facilities to bathe, clean your clothes and to shave, see *s 18 Bail Act 1992 (ACT)*.

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.

It is recommended you seek legal advice before accepting you bail conditions. There have been instances where police have imposed highly restrictive bail conditions on participants in NVDAs.

Failure to attend court in answer to bail is an offence. It is recommended that once you are released on bail that you seek legal advice and support for court.





## Resources

### **Action Ready Queensland, What to Expect in the Watchhouse**

<<https://www.actionreadyqld.com/watchhouse>>

### **ACT Police Website**

<<https://police.act.gov.au/connect-us>>

### **Australian Federal Police, National Guidelines on Persons in Custody and Police Facilities and Police Custodial Facilities**

<<https://www.afp.gov.au/about-us/information-publication-scheme>>

[Note: please scroll through guidelines list on website to find the relevant pdf]

### **Police Assistance Line**

Phone: 131 444

### **Youth Law Centre, Youth Law Matters: A Legal Guide for Young People in the ACT**

<<http://legalaidact.org.au/sites/default/files/files/publications/Youth%20Law%20Matters%20May%202020.pdf>>

### **Legislation**

*Crimes Act 1914* (Cth)

<<https://www.legislation.gov.au/Details/C2020C00212>>

*Crimes Act 1900* (ACT)

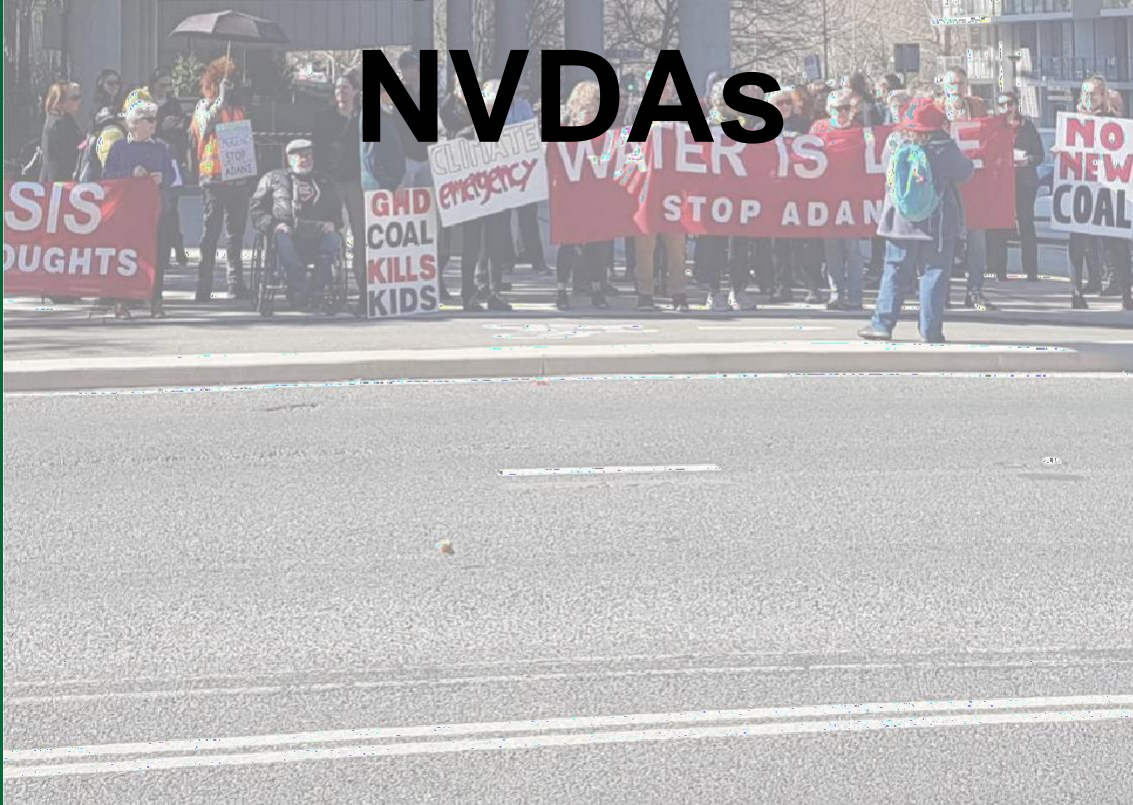
< <https://www.legislation.act.gov.au/a/1900-40/>>

*Bail Act 1992* (ACT)

<<https://www.legislation.act.gov.au/a/1992-8/>>

# Chapter 8

## Minimising risks relating to police as organisers of NVDAs



## Chapter 8: Minimising risks relating to police as organisers of NVDAs

Chapters 5 to 7 have shown that the police have numerous powers that may be exercised to arrest participants of NVDAs, disperse the action or harass and intimidate individuals. It is critical that organisers ensure they have strategies in place to address a potential police presence and minimise the risks associated.

### ***Minimising Risks of a Police Presence at a NVDA***

There are a range of strategies you can use prior to, and during, a peaceful protest to minimise the risks of a police presence resulting in harm to participants. A brief overview of the strategies is provided below:

Strategy	Description
<b>Lawyers at NVDA planning</b>	<p>It is important to have lawyers involved in the planning of your actions and as early as possible. This will help you develop legal supports within your group, and it allows you to build a relationship early on. The lawyers that are involved in planning may (and should) also form part of your group's legal support team on-site at protests. See below for more details.</p> <p>A useful resource for reaching out to legal groups that may be able to provide support during the planning stage of NVDAs is available at <a href="#">Legal Aid</a>, and at the <a href="#">Fitzroy Legal Service (in Victoria)</a>.</p>
<b>Legal education for participants</b>	<p>It is important for people involved in your NVDA to have an understanding of the legal implications of their actions prior to being involved. This is particularly important if they plan to be arrested. It is recommended to provide participants with resources, such as this Guide, and the resources listed in Chapter 17. The more you know, the better prepared you will be.</p> <p>You can also develop legal research capabilities within your organisation to increase your ability to understand the law internally. Useful resources for legal education are available from the <a href="#">Fitzroy Legal Centre</a>, <a href="#">Melbourne Activist Legal Network</a>, and <a href="#">Action Ready QLD</a>.</p>

<p><b>Seek specific legal advice</b></p>	<p>If you are uncertain about the specific risks of your planned NVDA or know there are significant legal and physical risks for participants, it is highly recommended you seek out legal advice.</p> <p>When seeking out legal advice it is important to have as much information as possible for your lawyer to assess, including:</p> <ul style="list-style-type: none"> <li>● Where the NVDA is planned and what type of police presence is likely;</li> <li>● What type of land the action is on (see Chapter 1);</li> <li>● Whether you know of any laws, by-laws or local by-laws that are relevant to the action; and</li> <li>● What criminal offences or other civil actions the NVDA may incur for individuals or your group.</li> </ul> <p>For more information on reaching out to legal organisations for advice see Chapter 9 of this Guide.</p>
<p><b>Police Liaison</b></p>	<p>A police liaison is someone who represents your organisation in discussion with police. It may not be appropriate for your organisation to have a police liaison depending on the types of actions you are planning to take.</p> <p>However, a police liaison will help police know what you are planning, limiting the chances the police will overreact and reducing risks of police violence.</p> <p>A police liaison does not have to be a lawyer but having a lawyer present at certain discussions may be useful.</p> <p>A police liaison on-site can be critical in reducing the risk of police violence and coordinating with the 'Forward Commander' of any police presence. If people are locked on this is particularly important for safety reasons to ensure the police are aware of the situation.</p> <p>It is recommended you seek additional information to develop a police liaison strategy, such as from the <a href="#">Melbourne Activist Legal Network</a>.</p>

## ***Minimising Risks of Police Arrests and Subduing Participants***

Additionally, you can build on the strategies above to specifically address the risks associated with arrests. A brief overview of these strategies are provided below:

<b>Strategy</b>	<b>Description</b>
<b>Legal Observer Team</b>	<p>A legal or human rights observer team act as independent third parties. It is <b>important that your legal observers are not protestors</b> and that they distinguish themselves in some way, potentially with vests.</p> <p>A legal observer watches police actions, records them and ensures police are accountable for their actions. They will often write up incident reports or video the process of arrest to ensure it complies with the law.</p> <p>There are existing legal observer groups in Australia that operate independently, including the Pt'chang Nonviolent Community Safety Group in Victoria and UTS Community Law in NSW.</p> <p>If it is not possible to organise for an independent organisation to attend, you can still arrange for members of your organisation to act as observers as long as they abide by the general parameters of a legal observer (acting independently and separate from the NVDA).</p> <p>More information on legal observers and resources for developing an observer team can be found in resources provided by <a href="#">Melbourne Activist Legal Support</a>.</p>
<b>Legal Support Team</b>	<p>It is recommended you also have a legal support team present at NVDA's. This team can play a range of roles, including:</p> <ul style="list-style-type: none"> <li>● Monitoring the overall NVDA and police directions,</li> <li>● Taking notes of all arrests and tracking the locations of arrestees to ensure their safety, and</li> <li>● Noting down any police incidents.</li> </ul> <p>If police know that all arrestees are being monitored by a legal supporter it will help ensure the arrestee is treated more carefully not only during the arrest process but also during processing and in detention at the police station.</p> <p>A legal support team can also provide advice to organisers if the situation deteriorates or the police make directions to move on or other orders.</p> <p>It is recommended you seek further information on legal supports teams and also legal advice from community legal centres about how to best establish and manage a legal support team. Further</p>



	information can be found at <a href="#">Melbourne Activist Legal Support</a> , <a href="#">Police Accountability.org.au</a> , and at the <a href="#">Fitzroy Legal Service</a> .
<b>Arrange Photo and Video Coverage</b>	<p>At a minimum it is <b>strongly recommended</b> you organise for the police presence to be recorded. Evidence of cameras are powerful deterrents of police violence and will ensure there is accountability if violence occurs.</p> <p>It is also recommended you organise for as much coverage and as many cameras possible to minimise risks of the police seizing all copies of the footage. If you have a legal support team, make sure they have an easy way of accessing this coverage.</p> <p>It is recommended you seek additional information to develop a camera strategy including resources by <a href="#">Action Ready</a> and the <a href="#">Melbourne Activist Legal Network</a>.</p>
<b>Independent Media</b>	To supplement your filming strategy, it may be useful to cultivate a positive relationship with independent or public media, so that there is an independent media presence at NVDA's.

## ***Minimising Risks Associated with Police Searches***

The strategies outlined above, particularly ensuring you have a legal support team and independent legal observers, will also help ensure the police do not abuse their searching powers to intimidate, harass or assault participants in NVDA's.

It is also recommended that legal education prior to an action specifically addresses police powers to search, the impacts this may have on people and their rights.

## ***Arrestee Support***

Many of the strategies outlined so far have been about minimizing the harm that a person may experience when protesting or being arrested. It is however critical for organisers to recognize that arrestees will require support from the moment of arrest, through custody and detention, to post-trial or even post-sentence if someone is convicted and sentenced.

An arrestee faces significant risks, not just because of the legal consequences of their actions, but because of the vulnerable position they are in when in custody. It is the responsibility of organisers to ensure all potential arrestees have the following supports in place prior to a NVDA:

- Knowledge of their rights, the arrest process and what being in custody will entail,
- The contact details of a lawyer, or legal aid organisation, and knowledge of how that legal representation will work (whether it will be pro bono and how extensive it will be), and
- The family or other trusted confidants should know about the arrestee's decision to put themselves at risk of being arrested and how best to support the arrestee.

The aftermath of an arrest, including the court process itself, can be a long, intimidating and isolating process. It is the responsibility of organisers to support their arrestees by helping them seek legal advice, providing emotional support and acting in solidarity with arrestees. This is especially important for members who are putting their hands up to be arrestees for the first time.

Organisers should always celebrate and debrief with arrestees after their court case is finalized, whatever the outcome.



## **Resources**

**Police Accountability Project, Resources**

<[http://www.policeaccountability.org.au/research\\_resources/](http://www.policeaccountability.org.au/research_resources/)>

**Melbourne Activist Legal Network, Resources**

<<https://melbactivistlegal.org.au/resources/>>

**Fitzroy Legal Service, Activist Rights Resources**

<<https://www.activistrights.org.au/>>

**Action Ready Queensland, DIY Research Resources**

<<https://www.actionreadyqld.com/diy-research>>

**Action Ready Queensland, Legal Observer Reports**

<<https://www.actionreadyqld.com/legal-observer-reports>>

# **Chapter 9**

## **Legal support in the ACT**



## Chapter 9: Legal support in the ACT

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### ***What is Legal Aid ACT?***

Legal Aid ACT is a legal service that provides legal assistance in the ACT. Legal Aid is intended to provide services to vulnerable and disadvantaged people so they can defend their rights. It also provides community legal education and promotes law reform to help disadvantaged people achieve justice.



### **What are some of the services Legal Aid ACT offers?**

Legal Aid ACT provide a range of services, including legal support for criminal law and some civil law matters.

Legal Aid ACT has a [legal aid helpline](#) that offers free and confidential legal advice, assistance, information and referrals for everyone in the community: 1300 654 314.

Legal Aid also has lawyers on duty at the ACT Magistrate Court, called Duty Lawyers. They can provide advice and assistance for urgent matters without an appointment. They provide 'one-off' assistance but not ongoing support. Duty Lawyers are generally suitable to:

- Give you advice about your matters,
- Explain what might happen at your court hearing;
- Help you get an adjournment (which is to delay your hearing so you have time to get legal advice);
- Talk to the court or other parties on your behalf;
- Speak for you in court to get bail for criminal matters; or
- Speak for you in court if you intend to plead guilty in relation to some relatively minor and uncomplicated criminal matters.

It is important that you bring all relevant legal documents with you when speaking to a duty lawyer. Generally, duty lawyers are available between 9am - 12pm, but it is important to check the Legal Aid ACT website for times available.

For more complex matters where you require ongoing support, a legal assistance grant may be required to fund your case.

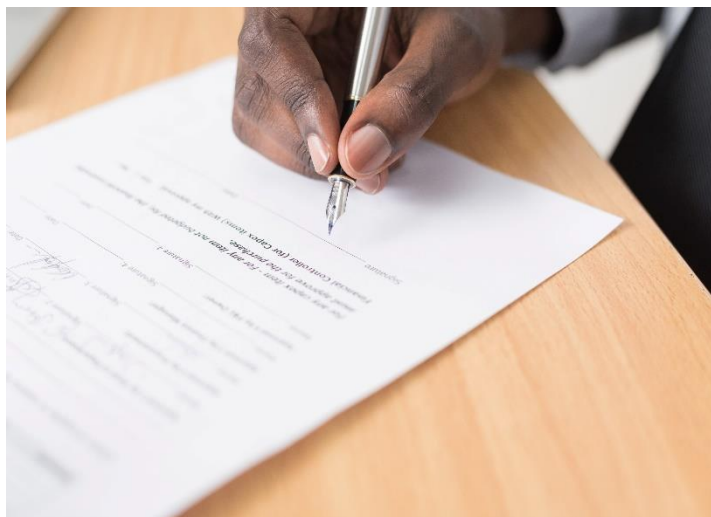


## ***What is a Legal Assistance Grant?***

A legal assistance grant is an amount of money given to you by Legal Aid ACT to help pay for your legal costs. You must fill out a form to apply. Legal Aid ACT can help you fill it out. The application form is not available on the Legal Aid ACT website. You must visit their office or email Legal Aid ACT directly at [legalaid@legalaidact.org.au](mailto:legalaid@legalaidact.org.au).

You may be asked to pay a small fee to contribute to running your case. The standard fee is \$120.00. This fee may be waived in certain circumstances, such as severe financial hardship.

Legal Aid ACT may refer you to a private lawyer. This is because they may not have the capacity to take on your case. If you are eligible for a grant, Legal Aid ACT will pay that lawyer's cost for you.



Grants are capped. This means only a certain amount of money can be given to you to cover legal costs. You must make sure you understand the limit of the grant. Even if you succeed in a grant application, if legal costs for your case extend beyond the grant of aid, Legal Aid ACT may no longer be able to assist you.

You must satisfy three tests to be eligible for a legal assistance grant:

1. Means test,
2. Reasonableness test, and
3. Guidelines test.

### **Means test**

Legal Aid ACT will assess whether you can afford to hire a private lawyer. This is done by looking at your financial situation, including your income, cost of living, your assets (e.g. any property or investments you might own) and liabilities (e.g. a mortgage or credit card debt), how much cash you have access to, and any other financial obligations (such as supporting children or other dependents). They may also take into account how expensive it will be to hire a private lawyer in your case.

### **Reasonableness test**

If Legal Aid ACT decide your financial situation makes you eligible for assistance, they will then assess if you meet the reasonableness test. Legal Aid ACT will look at whether it is 'reasonable in all the circumstances' for them to provide you with assistance.'

This test requires Legal Aid ACT to assess how likely it is that the case will be decided in your favour. The test also requires an assessment of the extent to which providing a grant of legal aid will benefit you, another member of the public or the public generally. A closely related consideration is the extent to which you, a member of the public or the public generally will suffer detriment if legal assistance is not provided. If it is predicted that the cost of running your case is likely to exceed \$100,000, legal assistance will not be granted.

Legal Aid may also consider whether you would proceed with the case if you were able to fund it yourself. If they believe you would not proceed with the case if self-funded, they are less likely to approve a grant.

They must consider whether the benefit to the community outweighs the cost of providing the assistance.

## **Guidelines test**

Your matter must also be a type of matter covered by Legal Aid ACT guidelines.

Matters a grant covers include:

- Criminal proceedings, where you are likely to suffer imprisonment or likely to lose your job as a result of the conviction,
- Representation of children in all criminal matters that are not traffic offences,
- Any proceedings under the Terrorism (Extraordinary Temporary Powers) Act 2006,
- Proceedings, which raise real questions of a denial or breach of human rights,
- Actions for damages (compensation) for death or personal injury, and
- Other matters listed in the Legal Aid Guidelines.

Other criminal matters may be accepted at the discretion of Legal Aid ACT.

Matters that will not normally receive a grant include:

- Proceedings where you are unlikely to gain a benefit over \$5 000,
- Proceedings for damages (compensation) for defamation, and
- Other matters listed in the Legal Aid Guidelines.

Keep in mind that whether Legal Aid ACT is able to offer you assistance depends also on their capacity to take on your case. Ultimately, Legal Aid ACT will exercise its discretion when it comes to the question of whether to grant legal aid.

## ***How will Legal Aid ACT help me once I have a grant?***

Legal Aid will provide you with legal representation for the duration of the grant. What this looks like depends on the legal case, but typically will involve:

- Legal representation in Court and/or in negotiations with the other party, and
- Legal advice on how to run your case.

Your lawyer owes you a number of duties. They must act in good faith in your best interests and carry out your instructions. This means that although the lawyer will give you advice about the case, it is up to you to decide how the case should proceed. For example, whether you want to plead guilty or not guilty. Your lawyer must carry out those instructions unless they are illegal, unethical or unreasonable (but your lawyer will talk to you if that is the case).

The information you give your lawyer, and all communication between you, is confidential. They will only disclose that information with your consent.

It is important to note that the legal advice your lawyer gives you or information that you disclose in relation to a court case is protected under client legal privilege. A court cannot force you to provide this information, however there are some exceptions to this. There are also exceptions regarding the storage of your personal data - more information regarding this can be found on the Legal Aid [website](#). You can also familiarise yourself with Legal Aid's [privacy policy](#).



## ***In what circumstances will Legal Aid ACT stop helping me?***

There are a number of circumstances where Legal Aid ACT will not be able to provide legal support. One circumstance is if grant funding runs out. Additionally, if you do not accept your lawyer's advice, the grant of legal assistance may be stopped. It is important to be honest with your lawyer if you do not feel comfortable taking their advice to make sure Legal Aid ACT understands why you are not following the advice. This will help them make the best decision about grant funding.

## ***What other legal services are there that may be able to help me?***

### **Youth Law Centre**

The Youth Law Centre (YLC) is a free service for young people (aged 12-25) which can provide legal advice in person, or over the phone or email. Their office is open from 9am - 5pm on weekdays. The YLC can help you with a variety of matters including criminal matters. If they are unable to assist you, they may refer you to another organisation or legal centre. They can be contacted at: (02) 6173 5410 or [ylc@legalaidact.org.au](mailto:ylc@legalaidact.org.au).

### **Environmental Defenders Office**

The EDO offers legal advice to individuals, environmental organisations and community councils on ACT environmental law matters, NSW law where cross-border matters arise, or matters in the ACT concerning Commonwealth environmental law. The EDO offers free initial legal advice of up to two hours on environmental law matters. They may also provide ongoing representation for matters of environmental and community interest. They can be contacted at: [canberra@edo.org.au](mailto:canberra@edo.org.au). Their website is [here](#).

If you are not satisfied with either of these alternatives, contact the relevant Law Society in your state and they will be able to suggest a firm which can assist you.

## **Resources**

### **ACT Legal Assistance Forum, Free Law Directory**

<[http://www.legalaidact.org.au/sites/default/files/files/publications/Free Law Directory October 2018.pdf](http://www.legalaidact.org.au/sites/default/files/files/publications/Free_Law_Directory_October_2018.pdf)>

### **Legal Aid ACT**

<<http://www.legalaidact.org.au/>>

### **Legal Aid ACT Helpline**

<<http://www.legalaidact.org.au/what-we-do/legal-aid-helpline>>

Phone: 1300 654 314

Email: [legalaid@legalaidact.org.au](mailto:legalaid@legalaidact.org.au)

### **Legal Aid ACT Privacy Policy**

<<https://www.legalaidact.org.au/about-us/who-we-are/corporate-information/foi-privacy>>

### **Environmental Defenders' Office, Website**

<<https://www.edo.org.au/get advice>>

Email: [canberra@edo.org.au](mailto:canberra@edo.org.au)

### **Legislation**

*Legal Aid Act 1977 (ACT)*

< <https://www.legislation.act.gov.au/a/1977-31/>>



A photograph of a crowd of people at a protest. In the center, a person holds a sign that reads "Always was Always will be ABORIGINAL LAND!". The background shows other protesters and a building. The text "Chapter 10 Your rights to privacy in police investigations" is overlaid on the image in a large, bold, black font.

# Chapter 10

## Your rights to privacy in police investigations

# Chapter 10: Your rights to privacy in police investigations

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This Chapter aims to provide an overview of your privacy rights in relation to police investigations. However, this is a complex and evolving area of law, it is highly recommended you seek legal advice if you have concerns about how your information is being collected or used. It is also recommended, in addition to reading Chapter 11, that groups seek legal advice for how to navigate privacy issues.

Individual rights to privacy from the police are governed by the *Privacy Act 1988* (Cth) and the *AFP Privacy Policy*. In the *Australian Federal Police Act 1979* (Cth) there are also some sections dealing with privacy rights.



## ***Information Police May Collect***

### **Small-scale or indirect police contact**

The police have broad powers to collect information about you in the course of their duties. The police maintain records of most citizens, mostly information gathered for everyday purposes such as traffic violations and licence records. Most of this information will be collected either from you directly (if you provide statements) or with a warrant.

Generally, even if you are not under arrest, if the police ask you for your **name and address, you must provide it to them**. You may be committing an offence if you do not provide these when the police ask for them. But beyond this, if you are not under arrest, you do not have to:

1. Answer any questions beyond giving your name and address;
2. make any statements; or
3. Go to a police station.

This applies whether you have been questioned on the street, or have gone to a police station/approached the police voluntarily. You have a right to remain silent, and the police should remind you of this and caution you that anything you say to them could be used in evidence (even if you are not under arrest). You can simply politely indicate to the police that you would not like to give out personal information.

## **Information collected after arrest or other close police contact**

However, in the event of an arrest (or other police contact during a NVDA), the police will hold more detailed personal information about you that may form part of a range of police documents, including: records that assist in the enforcement of criminal law, investigation and intelligence records, court records, criminal records, professional standards records, traffic records and records relating to forensic procedures.

The police may collect a range of personal information for these documents including:

- Your name, date of birth, physical description and gender,
- Your next of kin,
- Details of your pay or allowances and physical addresses,
- Your internet addresses, usernames and passwords,
- The details of your drivers, firearms or other licenses,
- Your tax file number, motor vehicle or other registrations, and
- Any government or employment identifiers.

It is important to know that the police are also able to collect sensitive information about you. This includes personal, business or criminal relationships, political affiliations, informal or formal membership of organisations, expressed opinions and other statements, travel movements and aspects of personal conduct. See *s 5A AFP Privacy Policy*.

You still have a right to remain silent if you are under arrest or are being questioned. The only information that you personally must provide to police are your **name** and **address**.

If you would like to try and limit the amount of personal information the police hold about you, you can refuse to answer their further questions. If you are concerned about the information the police may hold about you in the event of an investigation for a charge, you should speak to your legal representative.

## ***What can this information be used for?***

Section 6 of the *Privacy Policy* outlines the full range of instances in which the police may disclose this personal information. The police may use and disclose any information for 'the purposes it was given'. For example, if you provide information about your schedule to show you were not at the location of a crime, the police would use that information to determine your whereabouts. The police may also use or disclose your information for purposes relating to the function of ACT Police or the AFP. These purposes are outlined in section 8 of the *AFP Act*, including:

- Safeguarding Commonwealth property and interests,
- The investigation of federal crimes or State crimes with a federal aspect, or
- To support and cooperate with an Australian or foreign law enforcement agency, intelligence or security agency, and government regulatory agency.

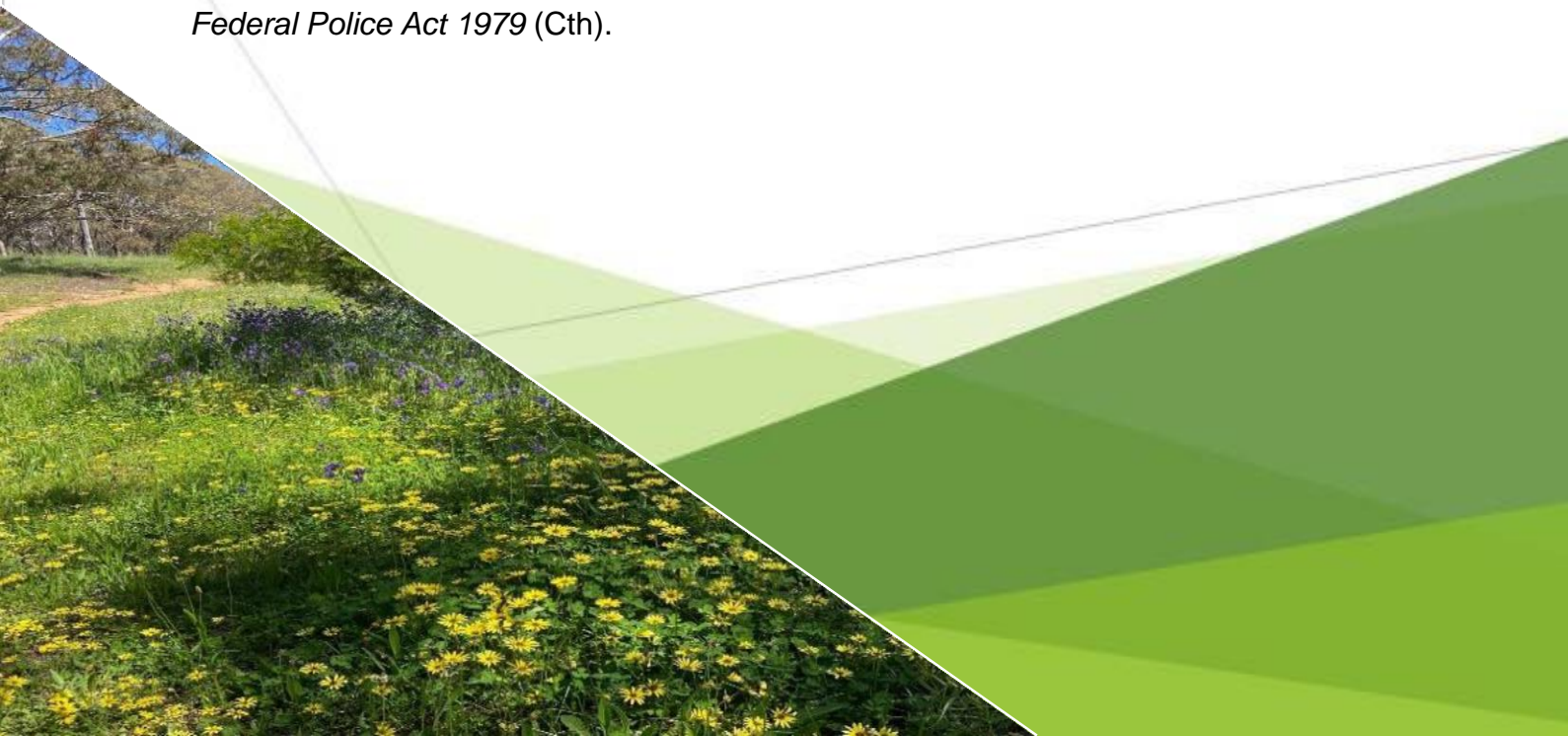
The police may also use or disclose your information:

- Because of other legislation which allows information to be used in specific circumstances. For example, requirements under witness protection legislation, or
- At the direction of the Minister for Justice, or if required or authorised by a court order (if you are charged after an arrest).

Finally, the police may release your information if they reasonably believe it will:

- Assist in the prevention of crime,
- Assist in the preparation for court, tribunal, or alternative dispute resolution proceedings, or
- Assist in surveillance activities.

Beyond these reasons (as varied as they are), it is an offence for the police to release or use your personal information in an unauthorised manner. See *s 60A Australian Federal Police Act 1979 (Cth)*.





## ***Accessing the information the police have collected about you***

You have the right to know what information the police have stored about you. You can request to access the personal information the police have in two ways.

First, you can request to access your information under the Privacy Act by either post or email:

- *Email: [privacy@afp.gov.au](mailto:privacy@afp.gov.au)*
- *Post Address: Privacy Officer, AFP Legal, Australian Federal Police, GPO Box 401, Canberra ACT 2601*

Your request must include the following information:

- Your name, date of birth, address and relevant previous addresses.
- Your contact details,
- Details about the personal information you are seeking, including date periods, and
- Photographic identification.

Alternatively, you can request your personal information from the Department of Home Affairs under the *Freedom of Information Act 1982 (Cth)*. There are three ways you can request this information. First, by their [online form](#). Alternatively, you can email or post to the Department of Home Affairs:

- *Email: [foi@homeaffairs.gov.au](mailto:foi@homeaffairs.gov.au)*
- *Post Address: Freedom of Information Section, Department of Home Affairs, PO Box 25, Belconnen ACT 2616*

This request must include the following details:

- An address where the Department can send their decision about releasing your personal information,
- Details of the information you want disclosed (for example stating what police records you want to view and the personal details you want provided), and
- A statement that you are making this request under the *Freedom of Information Act 1982 (Cth)*.

This will enable the Department to find your information and allows you to forward your complaint to the Freedom of Information Commissioner if the Department does not comply with your request or is too slow to process your request.



## ***What would this mean in relation to interaction with the police during a protest?***

Prior to arrest, you may have typical details lodged with the police (for example licence details). However, you should be aware that in the event of an arrest at a NVDA, police may have the right to collect and store more comprehensive personal information about you. This information is likely to be shared with people involved in any court proceedings.

If you plan on participating in a NVDA that has a high risk of arrest, it is important that you read up on your privacy rights in the AFP Privacy Policy. If you are concerned about the nature of the personal information held about you after an arrest, you should discuss your concerns with a lawyer. The two key ways that you can protect your privacy rights when dealing with the police are:

1. Exercising your right to silence after providing your name and address; and
2. Backing up and deleting personal information on your mobile phone before going to a NVDA.

If you are arrested and/or charged with an offence and are concerned about the personal information the police may gather on you when conducting investigations, you should seek advice particular to your circumstances with your legal representative.



## **Resources**

### **Australian Federal Police, AFP Privacy Policy**

<<https://www.afp.gov.au/about-us/privacy>>

### **ACT Police, Request for ACT Police Reports**

<<https://police.act.gov.au/report-and-register/request-act-policing-reports>>

### **Legislation**

*Privacy Act 1988* (Cth)

<<https://www.legislation.gov.au/Details/C2020C00237>>

*Australian Federal Police Act 1979* (Cth)

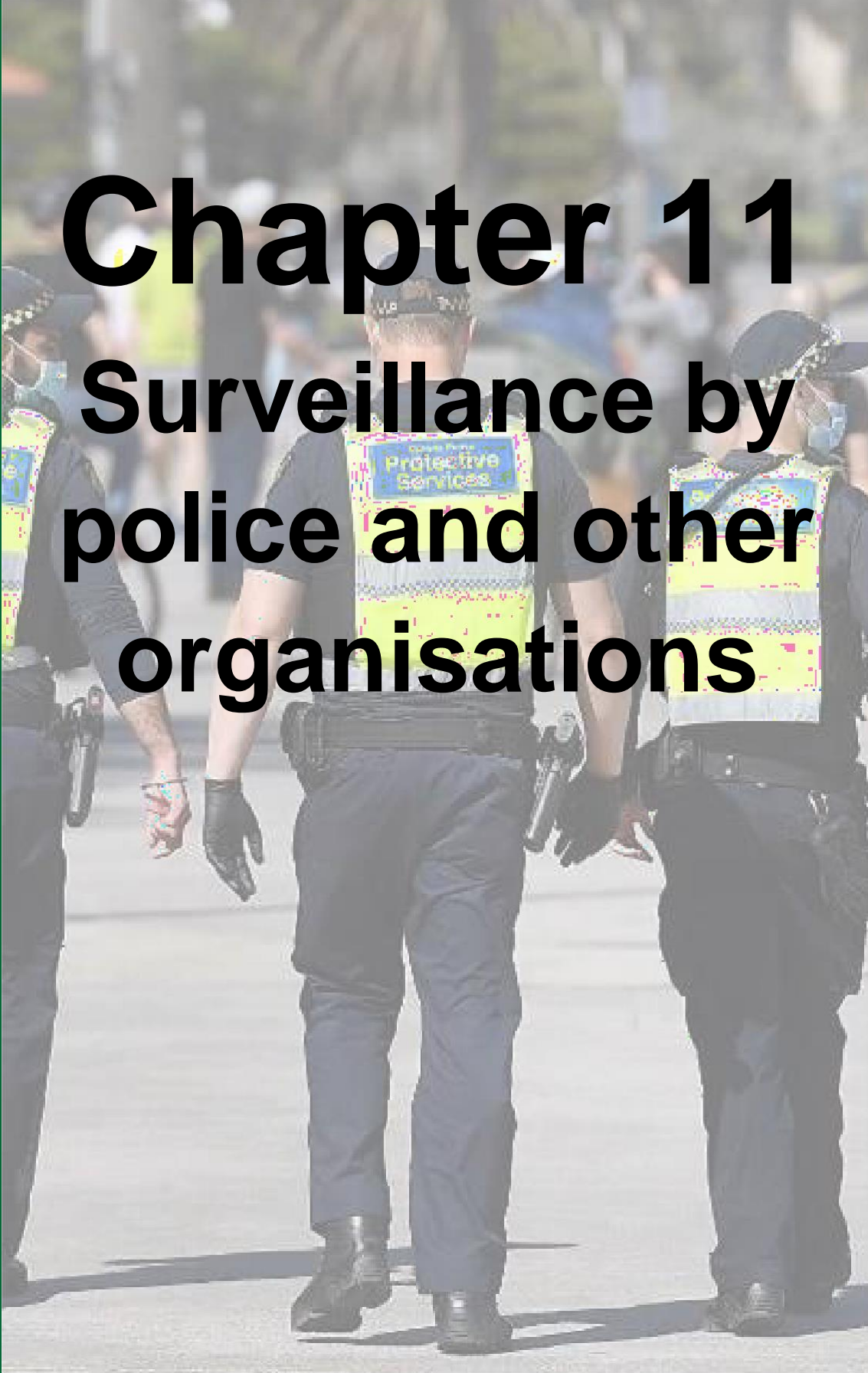
<<https://www.legislation.gov.au/Details/C2020C00155>>

*Freedom of Information Act 1982* (Cth)

<<https://www.legislation.gov.au/Details/C2020C00110>>

# Chapter 11

## Surveillance by police and other organisations



# Chapter 11: Surveillance by police and other organisations

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It is not uncommon for organisations involved in controversial issues or that organize NVDAs to be monitored or surveilled by Australian government bodies, such as the police.

As organisers it is important to remember the following:

- Overreaction or paranoia to evidence of surveillance is disruptive to your organisations and increases the anxiety of those involved; and
- It is important to remain calm but proactive about potential surveillance.

## ***Evidence of surveillance?***

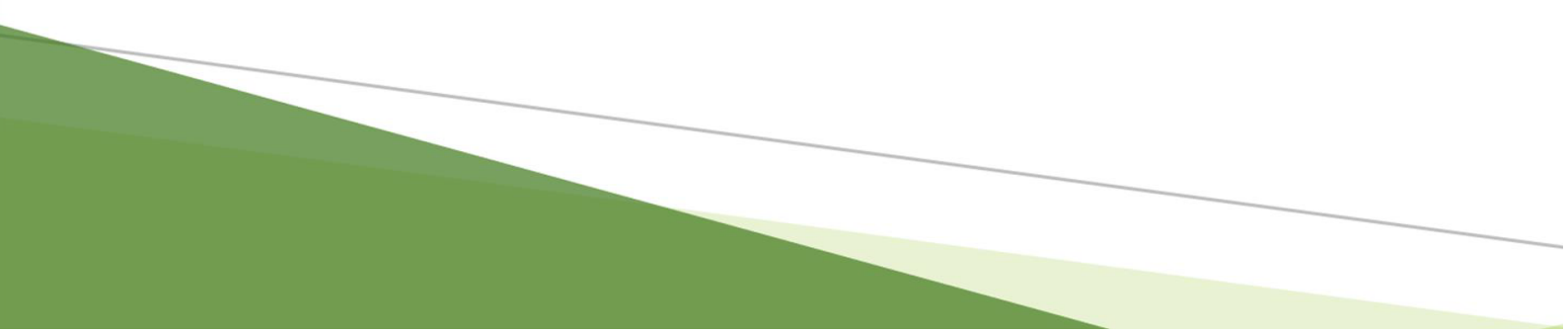
There are multiple signs of surveillance that organisers should be aware of. It is possible any of the following may occur:

- Visits by police or federal agents to politically involved individuals or those close to them,
- Officers taking pictures of members participating in your activities or entering your offices,
- Individuals writing down licence plate numbers of cars and other vehicles in the area of your meetings or other activities, or
- Telephone problems.

## ***What to do to address or limit the impact of surveillance***

If you encounter these signs or other evidence of surveillance it is important to hold a meeting to discuss spying and harassment with other organisers. This will first help you determine if other members are experiencing the same issues or being harassed by police.

Other early intervention of prevention methods you can use to limit the impact of surveillance on your activities includes:

- Locking important documents and computer disks in secret locations (preferably locked, fireproof cabinets),
  - Encrypting your online communications. Use encrypted apps for messaging,
  - Implementing a sign-in policy for your office and meetings, and
  - Develop a policy for how people should handle suspected surveillance, including whether they should record incidents and how.
- 

Most importantly, it is critical you seek out legal advice if you suspect you are being surveilled. The laws around police surveillance are complex and you will require specific legal advice to determine the legality of the surveillance activities and how best to address it. You should **discuss with your lawyer** if any of the following actions are appropriate:

- Requesting an investigation or making complaints with telecommunications companies, Australia Post, or the AFP complaints mechanisms (see Chapter 12),
- Initiating a lawsuit, or
- Contacting the broader media to broadcast potential police abuses of power.

It is recommended you read further information at:





## ***Resources***

**Melbourne Activist Legal Network, Activist Legal Support Manual**

<<https://melbourneactivistlegalsupport.files.wordpress.com/2014/10/activistlegalsupportmanual.pdf>>

# Chapter 12

## Making a complaint about the police



## Chapter 12: Making a complaint about the police

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As ACT Policing is a branch of the Federal Police, all complaints made about the police in the ACT are made through the Federal Police complaints process. Federal police complaints are initially internally monitored. This means that complaints are handled by a division of the AFP called 'AFP Professional Standards.' This branch uses the AFP code of conduct as a guide when investigating complaints and suggesting suitable actions.

As a member of the public you are able to approach the [AFP Professional Standards](#) division directly to lodge your complaint. However, it is recommended if you are complaining about police actions at NVDAs (either as a participant or organiser) that you seek legal advice and support before lodging a complaint. See Chapter 9 for more details about Legal Aid ACT and other community legal groups you can seek help from.

The work of AFP Professional Standards is externally monitored by the [Commonwealth Law Enforcement Ombudsman](#). The Commonwealth Law Enforcement Ombudsman is a second agency that police complaints may be lodged with if AFP Professional Standards fail to address a complaint (either in its entirety or if in your opinion the AFP response is not satisfactory).

There are two separate complaints processes for AFP Professional Standards and the Ombudsman.



## ***Process One - Making a Complaint to the AFP Professional Standards Division***

You can make a complaint for yourself, on behalf of someone else, or [anonymously](#).

In order to make a complaint to AFP Professional Standards, you can:

- Complete an online form,
- Contact or write to AFP Professional Standards, or
- Attend or telephone any AFP police station or office.

When making a complaint, you should be issued with a complaint reference number. It is important that you record this.

The **complaint reference number** will assist you in contacting the police again (if you fail to hear back from them). You will also need to provide a complaint reference number if you wish to forward your complaint to the Commonwealth Law Enforcement Ombudsman.

### **Completing an online form**

There are different [online forms](#) depending on whether you are making the complaint about yourself, on behalf of someone else, or anonymously.

The forms will ask for a range of information about the circumstances of the incident you are complaining about and the details of the officers you are complaining about. It is important to ensure you record the following details of any police you come into contact with, in case a complaint is required, including:

- Names,
- Ranks,
- AFP numbers, and
- AFP appointee work location (if known).

The nature of the information required to make a full police complaint means that making accurate records of all incidents involving police during protests (including asking and recording the details of any police officers dealt with) is very important. See Chapter 8 for more details on strategies to collect information during NVDAs.

### **Writing to AFP Professional Standards**

It is important to remember to ask for a complaint reference number when writing to AFP Professional Standards directly. It is recommended you provide the same level of detail expected from the online forms, including: all the circumstances of the incident, and relevant details of all officers involved. Contacting the Professional Standards office is also useful if you fail to hear back from the police after first lodging a complaint.

Complaints can be lodged directly with AFP Professional Standards in the following ways:

Mail:

Professional Standards, Australian Federal Police,  
GPO Box 401,  
Canberra ACT 2601

Telephone:

The Professional Standards Hotline: +61 (0)2 6131 6789

Email:

[PRS-ComplaintsCoordinationTeam@afp.gov.au](mailto:PRS-ComplaintsCoordinationTeam@afp.gov.au)

## Attending the police station

If you require an interpreter or wish to speak with a member of the police force directly when lodging a complaint, you can make a complaint at any police station in person or over the telephone.

They may also request that you sit for a formal interview. It is recommended you seek legal advice before agreeing to an interview.

The police officer handling the complaint at the station must give you their own details (AFP Number and Rank) as well as give you a complaint reference number.

## What will happen to complaints?

AFP Professional Standards states that minor complaints about officers are managed within the officer's workplace, overseen by Professional Standards. Serious complaints are investigated directly by [Professional Standards](#).





## ***Process Two - Making a complaint to the Commonwealth Ombudsman.***

The Commonwealth Law Enforcement Ombudsman is an independent agency designed to ensure government agencies are treating the community fairly and according to law. The Ombudsman is **independent of the police and is a free process**.

The Ombudsman is also required to annually report to the Australian Parliament on the AFP, especially how the AFP handle complaints to them.

The Commonwealth Law Enforcement Ombudsman will generally only investigate and handle complaints if:

1. A complaint has already been lodged with the police (see Process One above),
2. The police have failed to address it at all or have unsatisfactorily address the complaint, and
3. You have already contacted the police with your concerns about the handling of your complaint and they have failed to provide more information or appropriately justify the handling of your complaint.

You can lodge a complaint with the Ombudsman either by using their online form or telephoning them, which can be accessed via their [website](#).

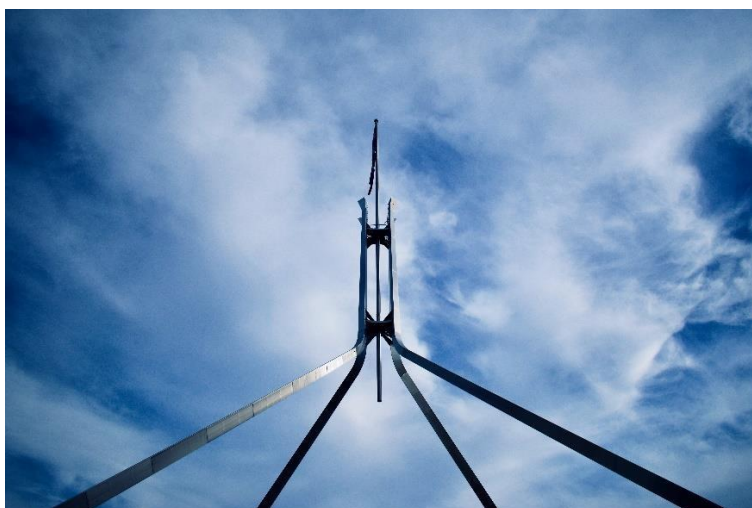
### **Using the online form**

On the Commonwealth Ombudsman website there is a portal for ACT-specific complaints, under the ACT Ombudsman. Alternatively, there is also an ACT Ombudsman Website which has a direct link to the same complaints form. On this [ACT Ombudsman online form](#), ACT Policing complaints appears on the drop-down menu on the first page. The form will ask for contact details of the complainant, as well as details of the complaint.

### **By telephone**

A telephone number is also available to contact the Ombudsman: 1300 362 072.

This may be used if you require an interpreter or the National Relay Service.



## **Resources**

**Australian Federal Police, Complaints and Compliments Website**

<<https://police.act.gov.au/report-and-register/complaints-and-compliments>>

**Australian Federal Police, Complaints Form**

<[https://forms.afp.gov.au/online\\_forms/complaints\\_form](https://forms.afp.gov.au/online_forms/complaints_form)>

**Australian Federal Police, Anonymous Complaints Form**

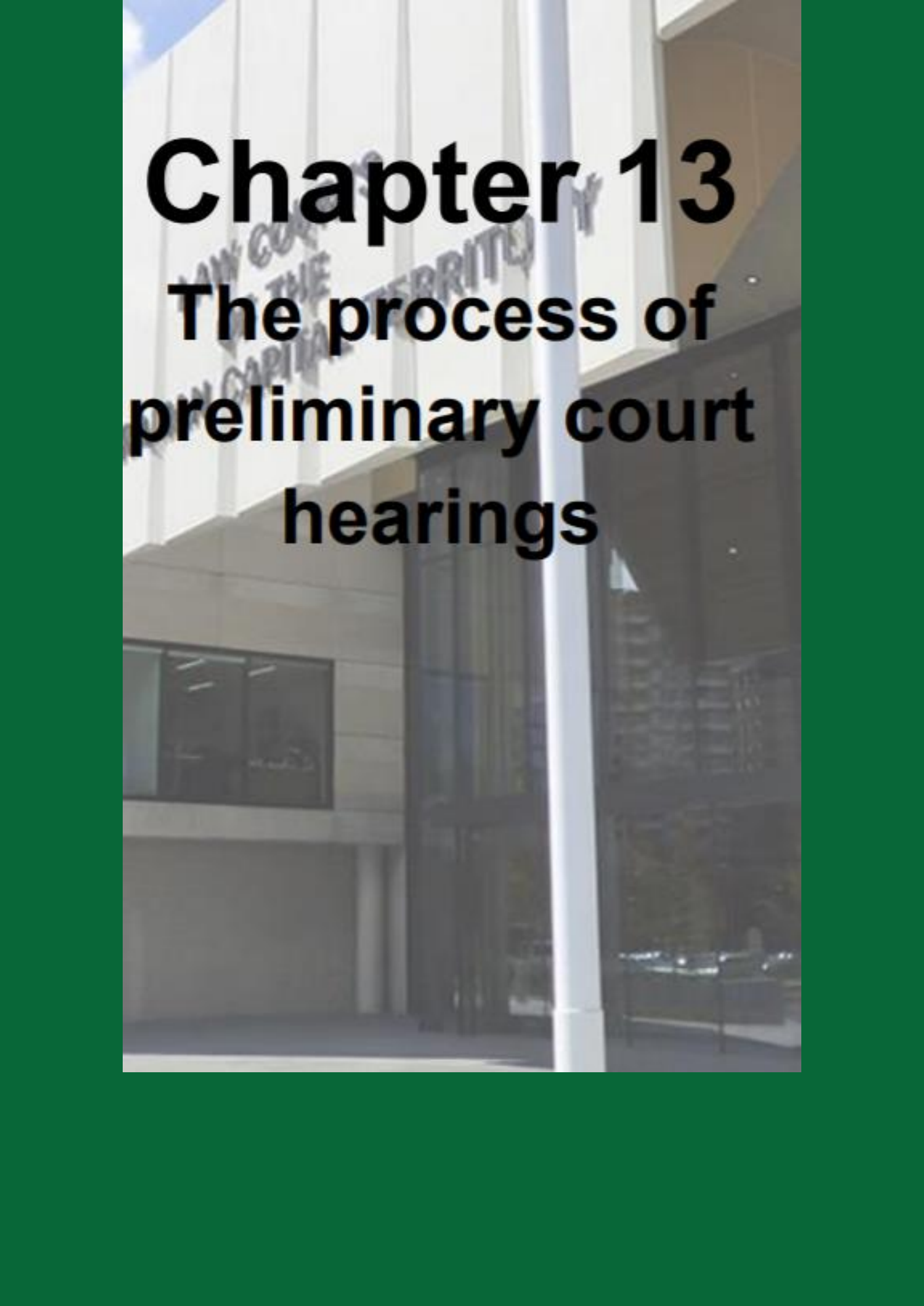
<[https://forms.afp.gov.au/online\\_forms/complaintsform\\_anonymous](https://forms.afp.gov.au/online_forms/complaintsform_anonymous)>

**Commonwealth Ombudsman, Website**

<<https://www.ombudsman.gov.au/>>

**Commonwealth Ombudsman, Complaints Form**

<<https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=act-complaint-form>>



# **Chapter 13**

## **The process of preliminary court hearings**

## Chapter 13: The process of preliminary court hearings

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If the police charge you with an offence, they will either keep you in custody and bring you directly to court, or you will be granted bail and given an order to appear before court on a certain day. It is an offence to fail to appear before court if you are ordered to do so. You can also be required to appear in court to face a charge if police issue you with a Court Attendance Notice.

If you are granted bail then you will have time to seek legal advice and prepare for court, see Chapter 9 for more details, especially regarding ACT Legal Aid's duty lawyer program. Legal Aid duty lawyers can provide support to you at the court, even if you have not had the chance to organise legal advice, representation or support before arriving at court.

A lawyer will be able to tell you how your appearance in court is likely to proceed based on the charges laid against you and other circumstances (for example your age). They will be able to give you advice on what to plead (for example guilty or not guilty) and also help you gather the forms and other documents you need for court.

The documents you will need to bring to a hearing depend on the nature of the offence you are charged with, your personal circumstances, and whether or not you intend to plead guilty or not guilty.

If you are pleading not guilty then your case will not be finalised when you first come to court. Instead, the matter will need to be adjourned for a later hearing of the charge or charges against you (see more information below).

It can be useful to know what court hearings involve so you know what is likely to happen if you, or a member of your organisation, is charged with an offence.



## ***A guide to a first appearance in Court***

In general, a first appearance at court will proceed as follows:



1. You arrive at court on the date listed on the court summons/information. Lawyers and legal assistance providers usually recommend that you turn up to court early in the morning.
2. You register yourself at the court office. At the court office you can re-confirm the time and courtroom number for your hearing.
3. You wait in the courtroom (or close by) until your case number is called. It can be useful to watch the cases before yours to get an understanding of the hearing process.
4. When your number, and/or name, is called, you stand and go to the Bar table (the long table in front of the Magistrate).
5. The magistrate will then ask for your name and may read out your charge/s.
6. The Magistrate will ask you what you wish to do – you have three options:
  - 1) adjourn the charges;
  - 2) enter a plea of guilty; or
  - 3) enter a plea of not guilty.
 Each of these options are explained in detail below.
7. The Magistrate may also ask you for your supporting documents (character references, etc.). You will usually hand these to the Magistrate's assistant. They may also ask you if you would like to say anything to explain yourself or express remorse.

### ***Option 1: Adjourn the charge/s for up to three weeks***

The court date will be put off until a later date. **You can ask for an adjournment (a delay) of up to three weeks for your court hearing.** This can be useful if:

- You have not sought legal advice at the time of your first appearance, and would like to do so,
- You need time to gather documents for the Magistrate to appropriately decide your sentence. This can include character references,



- You intend to plead not guilty and need to prepare for a trial, or
- You would like to apply for Legal Aid and have not had time to do so.

Generally, you can only seek one adjournment. Magistrates will only grant more than one adjournment in exceptional circumstances. It is recommended you discuss with a lawyer whether you can seek an additional adjournment. If it is not your first appearance the magistrate may still allow you to adjourn if you provide good reasons.

## ***Option 2: Enter plea of guilty***

If you do this your case may be finalised on the day. This will depend on whether the court has all of the information it needs and whether you have all of the documents you need to rely on. If the case does proceed, the prosecutor will read out the statement of facts and will tell the Court about your criminal history.

If you plead guilty to an offence you have the opportunity to provide a **plea in mitigation**. You can use a plea in mitigation to explain your particular circumstances to the Court and they may choose to reduce your sentence as a result. A plea in mitigation should include things like your age, any mental health issues, the circumstances of the offence, and character references, more information is provided at the end of this Chapter. You can also find detailed information at the [Legal Aid ACT website](#).

If you plead guilty to an offence but the Magistrate decides that they need more time to determine your sentence, the Magistrate will tell you so. They will then set a date for the sentencing. They will usually ask you if this date is convenient.

## ***Option 3: Enter plea of not guilty***

The matter will be heard after 10 or more weeks. At the later hearing witnesses may be called to Court.

If you want to plead not guilty it is important to speak to a lawyer to discuss whether it is likely that you will be successful.

The ACT Magistrate's court process for not-guilty pleas is similar, but not identical, to the process in other states and territories. In the ACT, if you enter a plea of not guilty, you will need to attend court on a minimum of three occasions: your first appearance; a case management hearing; and a final hearing.

If the charge against you is more serious, then it may be that it can only be finalised in the Supreme Court. If this is the case then your case will be 'committed' (transferred) to the Supreme Court for a trial. Should your case be

serious enough to go before the Supreme Court, you will almost certainly need legal representation.

The process of a **not guilty plea** is as follows:

## Your first appearance

As outlined above, you may request an adjournment (delay) for up to three weeks to obtain legal advice and representation. **It is strongly advised you make this request if you have not yet been provided with legal advice.** It is also important for organisers to be aware of the adjournment process and support individuals to seek adjournment so they are able to get legal advice. The Magistrate may also set the subsequent date for the committal or final hearing (the third step), but this date could also be set at the case management hearing.

In your first appearance you will not be expected to present your case. However you can request key documents from the prosecution and it is advised either your lawyer or you do so, including:

- A copy of the statement of facts, and
- A copy of your criminal record.

## A case management hearing

A case management hearing is slightly different to other types of hearings. The aim of a case management hearing is to focus on what is being disputed and identify the witnesses and other evidence the prosecution intends to present to prove their case. Case management seeks to reduce the cost and complexity of court cases, in order to reduce the strain on courts.

The types of things that will be discussed in a case management hearing are:

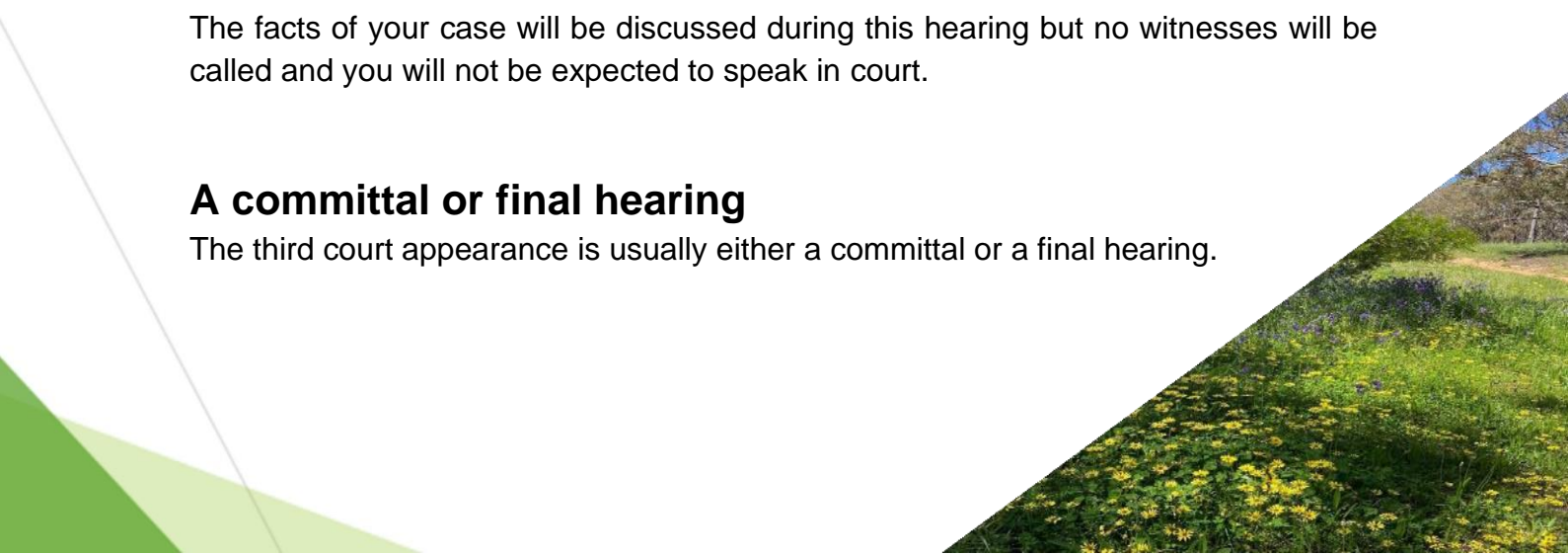
- What the agreed facts of the case are,
- Which matters are relevant to the case,
- Which parties are relevant to the case (for example witnesses, other people involved in the crime), and
- Which court level the case should be heard at.

Normally, your lawyers will be involved in this process and be able to guide you through the case management hearing.

The facts of your case will be discussed during this hearing but no witnesses will be called and you will not be expected to speak in court.

## A committal or final hearing

The third court appearance is usually either a committal or a final hearing.



In a committal, the Magistrate assesses the evidence and decides whether or not the case should be put to a trial in the Supreme court. If a case is committed to the Supreme Court, a different set of rules and procedures will apply to the trial, which will be set for a later date. However, a committal will only happen for serious crimes (indictable offences). More minor offences that participants of NVDAs are likely to be charged with are unlikely to be committed to the Supreme Court. See Chapter 3 for likely offences.

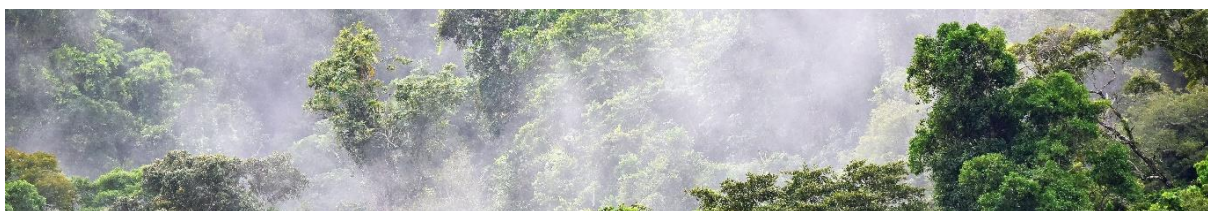
If you are charged with an indictable offence you **may be entitled to legal representation**, and it is highly recommended you ensure you are represented before attending court.

A final hearing is a more likely scenario for participants of NVDAs pleading not guilty for minor offences. In a hearing it is likely the following will happen:

1. The Magistrate will guide the proceedings,
2. Witnesses will give their statements and evidence (as a defendant you may also give evidence but you are not required to as you are presumed innocent until the prosecution proves beyond reasonable doubt that you committed the offence, and
3. All other forms of evidence will be read and discussed (such as police reports),
4. If there are any legal issues, they will also be argued, and
5. The Magistrate will either find you guilty or not guilty.

If you are found not guilty then the charge will be dismissed and you will be free to go. That is the end of the matter.

If you are found guilty then the Magistrate will need to sentence you. The sentence may be finalised on that day or another day may be set for a sentencing hearing.



## ***Judicial Discretion and Sentencing***

As discussed in Chapter 4, ACT and Commonwealth law imposes a range of maximum penalties for offences. It is up to the individual judge of court to decide if your sentence is the maximum penalty or lesser.

A penalty may range from a dismissal without conviction through to conviction with a fine, a good behaviour bond (which may include a community work order), suspended sentence, intensive correction order, or sentence of imprisonment.

A judge will consider a range of factors when it comes to imposing a sentence. This includes the nature of the offence itself, whether the offence caused harm to other people and property, and your personal circumstances.

If you have been convicted of an offence, an important part of sentencing is mitigating circumstances. This is your opportunity to argue why your sentence should be reduced or less than the maximum penalty.

## **Mitigating Circumstances in Sentencing Procedures**

A mitigating circumstance is information or evidence regarding the defendant or the circumstances of a crime which may result in either reduced charges or a lesser sentence.

Factors to be taken into account include the harm caused by the offence, provocation, whether the offender was acting under duress, criminal background (or lack thereof), character, likelihood of reoffending, likelihood of rehabilitation, remorse, age, disability, plea of guilty, *see Crimes (Sentencing) Act 2005 (ACT)* for more details.

The court is not required to have regard to mitigating factors, nor do the presence of mitigating factors require the court to reduce the sentence for the offence. Intoxication cannot be taken into account if it was self-induced (meaning you decided to take the substance).

## ***How long will it take for my case to finalised?***

Your case will only be finalised on your first appearance in court if:

1. If you wish to plead guilty;
2. You have all the documents and evidence you wish to rely on;
3. The prosecutor is ready; and
4. The court has time.

**If your case is finalised on first appearance** the Magistrate will read your supporting documents and determine an appropriate sentence. They will tell you what they have decided and they (or your lawyer) will direct you to where you need to go, or who you need to talk to next (this will change depending on what the sentence is).

While offences that participants in NVDAs are most likely to be charged with are relatively simple, it is still possible that hearings could be split across two or more days in Court. This can make the court process more expensive if you decide to engage a private lawyer.

For more information about the process of a first appearance you can visit the [Legal Aid resources](#).

## Resources

### **Legal Aid NSW, Going to Court Guide to the Local Court for Defendants**

<<https://www.legalaid.nsw.gov.au/publications/factsheets-and-resources/going-to-court-guide-to-the-local-court-for-defendants>>

### **Legal Aid NSW, Who's who in the Local Court**

<<https://publications.legalaid.nsw.gov.au/PublicationsResourcesService/PublicationImprints/Files/192.pdf>>

### **Legal Aid ACT, Key Court Documents – Character References**

<<https://www.legalaid.nsw.gov.au/publications/factsheets-and-resources/character-references>>

### **Legal Aid ACT, First time in court? Are you entering a plea of guilty?**

<[http://www.legalaidact.org.au/sites/default/files/files/publications/First\\_time\\_court\\_plea\\_guilty.pdf](http://www.legalaidact.org.au/sites/default/files/files/publications/First_time_court_plea_guilty.pdf)>

### **Legal Aid ACT, Video of Process of First Time in Court**

<<https://www.youtube.com/watch?v=7RAEeEAchW0>>

### **AustLII Communities, ACT Law Handbook**


< <http://austlii.community/foswiki/ACTLawHbk/ACTLawHandbook>>

### **Legislation**

*Crimes (Sentencing) Act 2005 (ACT)*

< <https://www.legislation.act.gov.au/a/2005-58/>>





# **Chapter 14**

## **Criminal records and their impact**

## Chapter 14: Criminal records and their impact

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Criminal offences other than serious offences will generally only be on your record for 10 years. If:

- it has been 10 years since the date of conviction,
- your period of imprisonment was no more than 30 months,
- you have not re-offended during the 10 years (or 5 for juveniles), and
- no exclusions apply.

If you satisfy these requirements your conviction becomes a **spent conviction**. This means it is no longer on your record. See the [Australian Federal Police information on Spent Convictions](#). For further information, see s 12 and s 13 *Spent Convictions Act 2000* (ACT).

Having a criminal record may impact your employment prospects, travel abilities, and access to certain services such as loans. However, it is important to get legal advice related to your specific situation, as there are very few black or white rules in this area.

### ***Some things to consider:***

If you have a criminal record, you may face **barriers to employment**. Certain areas of employment routinely consider previous convictions (even if they are 'spent') and **may** decide not to employ you/not to register you on the basis of that conviction.

These areas include holding public offices, the defence forces, and the legal profession. Generally in the process of employment an employee is under a duty to respond if an employer asks a specific question about criminal history and that history is relevant to the employment.

Note, however, that once a conviction reaches the **10-year period** and is 'spent', you are not required to disclose it to any person for any purpose (exceptions apply for certain types of employment such as law enforcement and instruction of minors).

**Travelling may be made more difficult.** However, it is a myth that you can never travel to the USA with a criminal record - you just need to make sure you apply for a visa and provide details of your conviction. You will need to appear for an interview to determine whether you are eligible for a visa. Whether you will be issued the visa depends on the nature and severity of the offence and the punishment. A similar process applies for the UK and Canada. You can call the relevant embassy to get more detailed information.

A criminal record may **affect your ability to get a loan**, such as a mortgage.

A criminal record check is part of the application for a **Working with Vulnerable People Card (WWVP)**. This check is done in order to ensure that there are no patterns of abusive or inappropriate behaviour and that you present no risk to vulnerable people. The assessor is able to review 'spent' offences. An assessor considers information especially in regard to 'relevant offences'. Relevant offences include offences against property. There are a number of factors that the assessor will consider in determining whether to register you for a WWVP, including the nature and gravity of the offence.

It's important to be aware of these risks before involving yourself in situations where you are likely to be arrested for the purposes of environmental and/or social activism.



## Resources

### **Australian Federal Police, Spent Convictions Scheme**

<<https://www.afp.gov.au/what-we-do/services/criminal-records/spent-convictions-scheme>>

### **Activist Rights, Impact of Criminal Record on Employment**

<<https://www.activistrights.org.au/employment>>

### **Activist Rights, Impact of Criminal Record on Going Overseas**

<[https://www.activistrights.org.au/going\\_overseas](https://www.activistrights.org.au/going_overseas)>

### **Access Canberra, Overview of Applying for WWVP**

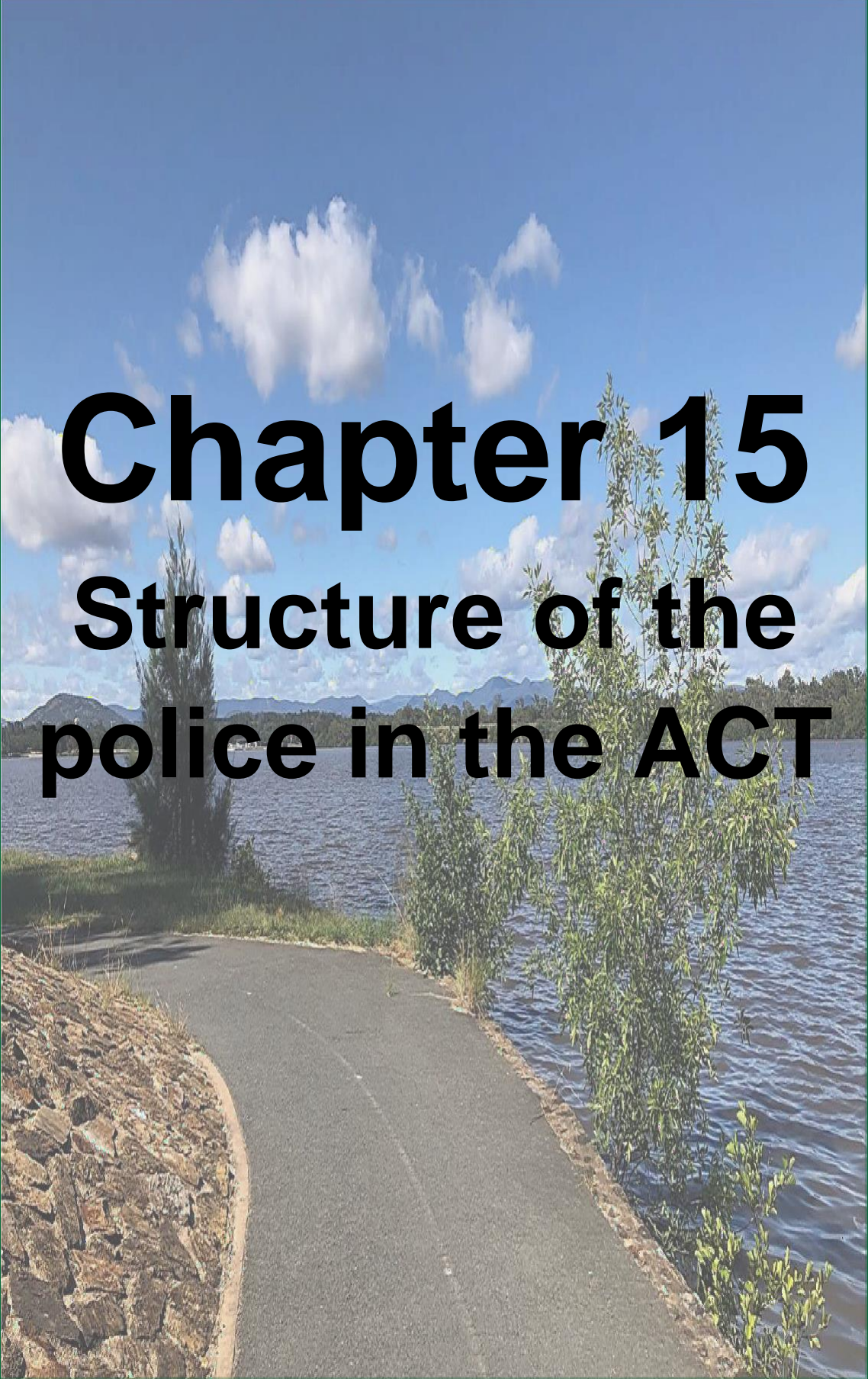
<[https://www.accesscanberra.act.gov.au/app/answers/detail/a\\_id/1804/~/working-with-vulnerable-people-%28wwvp%29-registration#!tabs-7](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1804/~/working-with-vulnerable-people-%28wwvp%29-registration#!tabs-7)>

### **Legislation**

*Spent Convictions Act 2000 (ACT)*

*Working with Vulnerable People (Background Checking) Act 2011 (ACT)*





# **Chapter 15**

## **Structure of the police in the ACT**



# Chapter 15: Structure of the police in the ACT

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## ***Difference between ACT Police and the AFP***

The AFP is an authority established by the Australian Government under the *Australian Federal Police Act 1979*. The AFP is the primary law enforcement agency of the Australian Government and is the main body to investigate very serious crime and represent Australian law enforcement on an international level. Relevantly for protestors, the AFP:

- Provides community policing services to the Australian Capital Territory under contractual agreement; and
- Provides a national protection capability to ensure the protection of specific individuals, establishments and events identified by the Australian Government as being at risk.

ACT Police is an authority which operates in partnership with the AFP as their community policing arm. ACT Police is the primary body for delivering frontline police work in the ACT and its actions are dictated by various agreements with the ACT Government and the Australian Government. ACT Police aims to:

- Reduce crime,
- Increase public safety, and
- Increase community and partner engagement.

The differences between the AFP and ACT Police are summarised below:

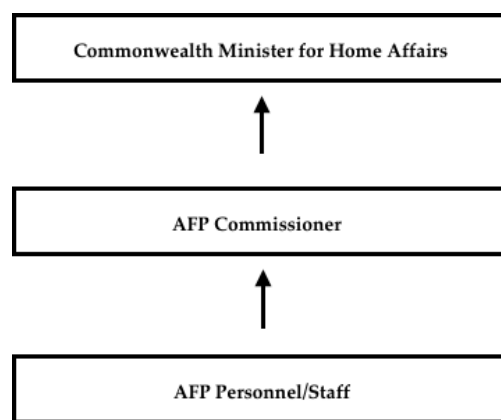
	<b>Australian Federal Police</b>	<b>ACT Police</b>
<b>Establishment</b>	Established by the Australian Government and reports to the Australian Government.	Established as a local police force which eventually became the community policing arm of the AFP. <b>They report to the ACT Government.</b>
<b>Goals</b>	Australia-wide goals such as preserving Australia's national security, with a lesser focus on community police service in Australia as well.	Community-based goals such as reducing crime, increasing public safety and increasing community and partner engagement.

Both organisations may be present at NVDA's in the ACT.

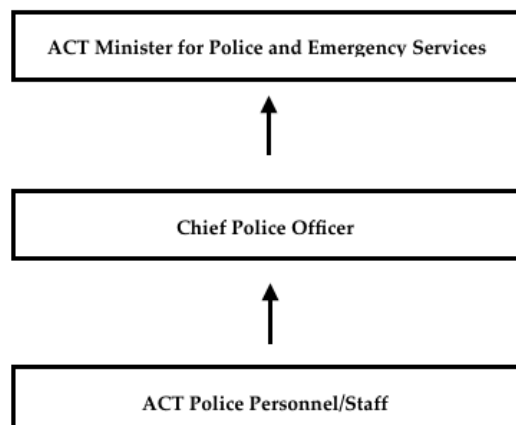
## ***What is the internal structure of ACT Police and the AFP?***

Although ACT Police is considered a 'branch' of the AFP, it does not directly report to the AFP. The two policing organisations have separate internal structures and command chains.

The AFP is a part of the Home Affairs portfolio, and thus the AFP Commissioner (the head of the AFP) reports to the Minister for Home Affairs (the head of the Department of Home Affairs):



In contrast, ACT Police is a part of the Police and Emergency Services portfolio, and thus the Chief Police Officer (the head of ACT Police) reports to the ACT Minister for Police and Emergency Services:



## ***Uniforms and Equipment of ACT Police and AFP***

This is a picture of a typical ACT police officer. Please note that all police officers (AFP and ACT) must have their identification number clearly visible when wearing their uniform:





Figure 2: AFP Badge



Police may also employ the use of body-worn cameras (BWCs) when attending NVDAs. Police officers can manually activate BWCs in public places to record the turn of events.

Police use BWC's to provide clear and accurate details of events and increase the quality of evidence submitted in court to speed up the trial process.

A lawyer will be able to request footage from BWCs on your behalf.

## AFP Rank Insignia

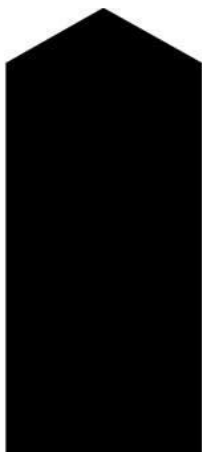


Figure 3: Constable (PC)

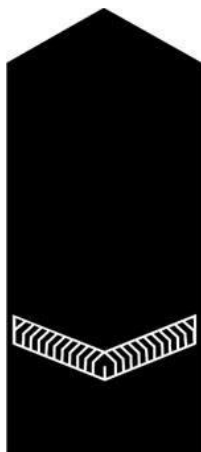


Figure 4: First Constable (1C)



Figure 5: Senior Constable (SC)



Figure 6: Leading Senior Constable (LSC)



Figure 7: Sergeant (SGT)

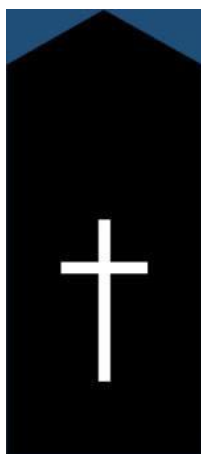


Figure 8: Chaplain



Figure 9: Inspector (INSP)



Figure 10: Superintendent (SUPT)





Figure 11: Commander (CMD)



Figure 12: Assistant Commissioner (AC)



Figure 13: Deputy Commissioner (DC)



Figure 14: Commissioner (COM)

## ***Working with Police at a Protest***

The police are an inevitable part of any peaceful protest or group event, even if you do not intend to engage in civil disobedience. It is very important for organisers to be aware of the police and the impact they may have on an action. Strategies that take into account police use of force, arrest or possible use of violence need to be developed when planning an action.

It is also important to consider how police discretion may impact different groups of people involved.

If you believe police intervention in your NVDA is a possibility, appointing someone to liaise with the police prior to the event is a sensible strategy. A police liaison can serve to present a respectable face to police, build trust to gain important information, and initiate negotiation on minor details of the action without disrupting the entire protest.

Another person to consider assisting you would be a legal observer. Legal observers act as an independent third party who observe police behaviour in order to keep police accountable for their actions. Legal observers can write incident reports articulating police misconduct and compile reports after the event, and as they are ‘observers’ not participants this is the best way to ensure objectivity in compiling such reports.

For more information on potential strategies to minimise risks of police, see Chapter 8.

## **Resources**

### **Australian Federal Police, Badges and Insignia**

<<https://www.afp.gov.au/about-us/our-organisation/customs-and-traditions/afp-shoulder-patch-and-rank-insignia>>

### **Australian Federal Police, 90 Years of ACT Policing**

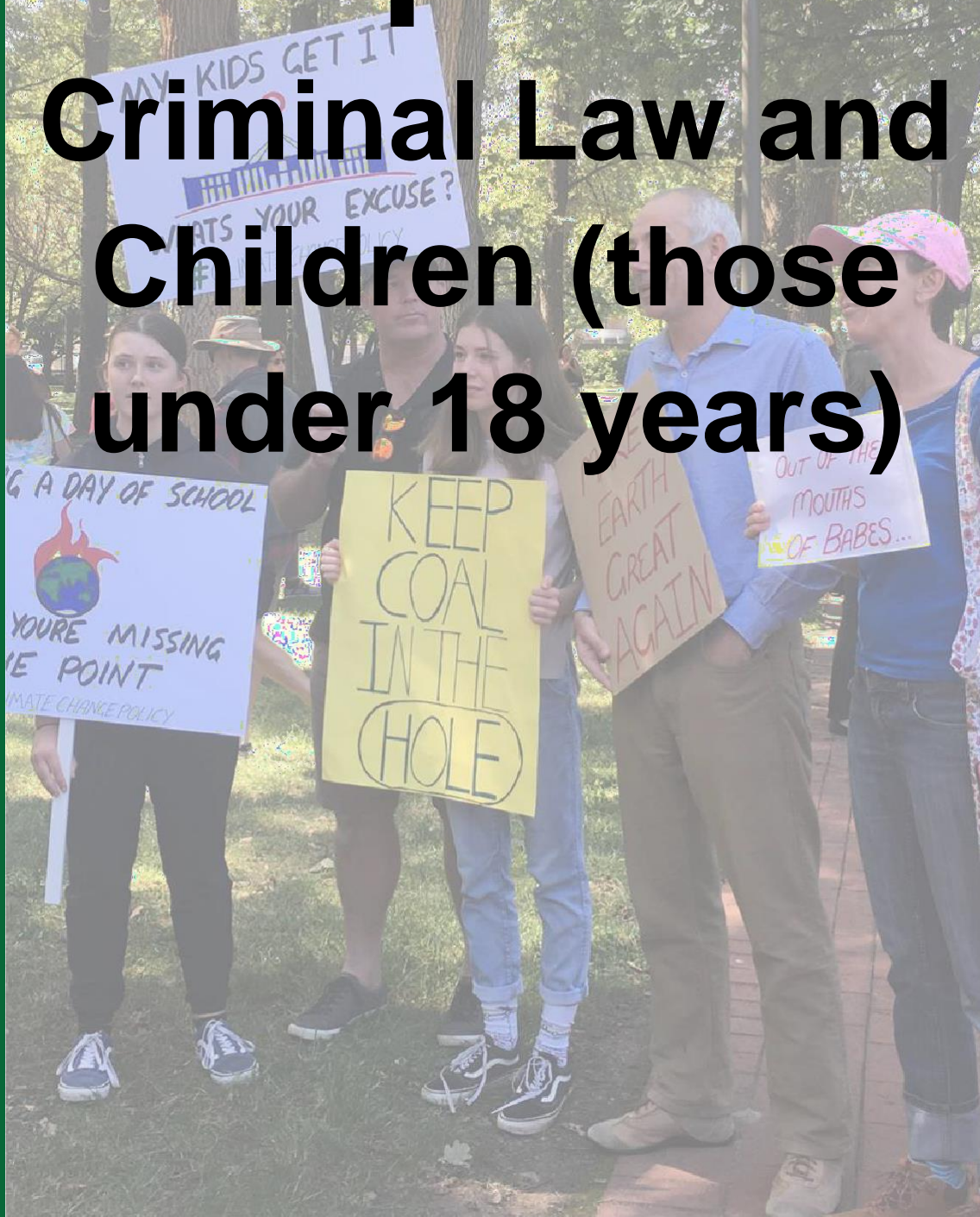
<<https://policenews.act.gov.au/news/90-years-act-policing/then-and-now-general-duties>>

### **Australian Federal Police, Organisational Structure**

<<https://www.afp.gov.au/sites/default/files/PDF/senior-exec-structure-13052019.pdf>>

# Chapter 16

## Criminal Law and Children (those under 18 years)



# Chapter 16: Criminal Law and Children (those under 18 years)

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## *How does the law apply to people under 18 and under 16 during protests and arrests?*

A person's age is a decisive factor in how they are treated in the Australian legal system. If the child is under the age of 10, they **cannot be charged** with a criminal offence and **cannot be arrested**.

If a child is between the ages of 14 and 18, there is no presumption that they cannot commit a crime. This means children between 14 and 18 can be arrested, charged and found guilty of the crimes detailed in Chapter 3 of this Guide.

If the child is between the ages of 10 and 14, they may be charged with a criminal offence but there is a presumption that they are incapable of committing a crime. This means a child between 10 and 14 may be arrested but it may be less likely they will be charged with a crime. The presumption that a child aged between 10 and 14 cannot commit a crime can be rebutted and children of this age can be found guilty and convicted. For a crime to be proven, it is up to the prosecution to prove the child knew that they were committing a crime, and then all the elements of the crime itself.. Do not assume a child will not be arrested or charged with a crime if they are between 10 and 14 years of age.

However, there are additional safeguards during the arrest, investigation and court process to help protect children between the ages of 10 and 18. It is important parents and guardians know about these processes and tell their children about their rights. The police are under an obligation to follow these safeguards, but may not always do so.

## *Children and the Process of Arrest*

If the child is over the age of 10, and is able to be arrested, the child can be arrested through the same process as an adult. See Chapter 6 for more details.

Police are able to use reasonable force to arrest a child as they would an adult, although it would be expected that a police officer will generally use less force or no force to arrest a child, especially if they do not resist arrest.



## ***Children and Police Searches***

Children under the age of 10 cannot be strip searched. A child under 18 can only be strip searched if they have been arrested or the police have a court order.

Children over 10 can be searched by police and they can be strip searched by police in the ACT, see s 228 *Crimes Act 1900* (ACT). More details about strip searches are provided in Chapter 5.

However in addition to other requirements for strip searches, the child's parent/guardian should be informed of the strip search and be present during the strip search. The search should be done in a private area and an officer of the same sex as the child should perform the strip search if possible.

## ***Children and Police Investigations***

Children can only be held without charge at a police station for up to **2 hours**, however it is important to note that some parts of the process will not count towards this timeframe (see Chapter 7).

The police must attempt to contact a parent, relative, guardian or another responsible adult to sit with the child during the interview. The child can normally ask for the adult support they prefer. If the child does not know an adult, the police must contact an 'Interview Friend' who is an independent adult. This highlights how important an adult support is for children during this process.

Police cannot interview children or do anything relating to the investigation (such as collecting forensic evidence), without appropriate adult support.

Children cannot have forensic evidence obtained from them unless police have obtained an order from a magistrate, see Division 5 of the *Crimes Act 1914* (Cth). However, police can interview a child if they believe on reasonable grounds that it is necessary to avoid the risk of death or serious injury to someone, or serious damage to property.

Police must take all reasonable steps to ensure the parents of a child know about the restraint or arrest of said child. If the child is charged with an offence at a police station, the person who charged them must take all reasonable steps to inform their parents.

## ***Children and the Court Process***

If the child is under 18 years of age and charged with an offence, their matter will be heard and decided in the Children's Court. The Children's Court modifies the court process to ensure children and young people are offered a greater level of support during the trial.



The Children's Court is not open to the public during hearings. This means that the media are not allowed into the court. Additionally, it is an offence to publish an account or report of proceedings in the Children's Court if the account discloses the identity of the child or allows the child's identity to be determined.

Generally, judges in the Children's Court will also recognise that the child is more vulnerable and less likely to understand the process of the hearing. They will likely explain aspects of the trial to the child and limit aggressive tactics by the prosecutor.

Further details can be found at the [ACT Children's Court website](#).

## ***How to minimise risks to juvenile protestors***

If a child wishes to participate in a NVDA, organisers should consider taking these precautions:



1. Encourage children to participate in the types of NVDA that have a low risk of arrest,
2. Ensure you have accurate records of the ages of all people under the age of 18. If the person is over the age of 18 at the time of the NVDA they will not be treated as a child,<sup>2</sup>
3. Prior to the NVDA, ensure you have contact details for a person or entity that can assist the child if they are arrested, charged with a criminal offence and/or their rights are violated in this process,
4. Ensure that the child has permission from their parents or guardian to participate in the NVDA and if possible, ensure the parent or guardian is always accompanying the child at the NVDA, and
5. If you have legal observers or other arrestee support mechanisms, ensure they are specifically briefed on all children participants and know the procedure for protecting children that are arrested (even if you do not anticipate any children will be arrested).

You should also separately brief children on police actions at NVDA's and their rights and discourage children from participating in risky actions. Being arrested is a traumatic incident for anyone, but children are especially vulnerable to the emotional impacts of being arrested and the risk of abuse by authorities or other entities they may come into contact with while being arrested, investigated and processed.

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<sup>2</sup> Please note this does not apply in Queensland, where all participants over the age of 17 will be treated as adults if arrested during a NVDA.

## ***Legal help for children***

More detail about Legal Aid and other support options are provided in Chapter 9.

In the ACT, it is important to remember that the Youth Law Centre at Legal Aid ACT is specially designed to support young people coming into contact with law, especially the criminal justice system. This service is a free legal service for those aged between 12 and 25, which provides confidential legal advice. Their contact details are as follows:

- Phone: (02) 6173 5410
- Email: [ylc@legalaidact.org.au](mailto:ylc@legalaidact.org.au)



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## ***Resources***

**Youth Law Centre, Youth Law Matters: A Legal Guide for Young People in the ACT**

<<http://legalaidact.org.au/sites/default/files/files/publications/Youth%20Law%20Matters%20May%202020.pdf>>

**ACT Children's Court, Website**

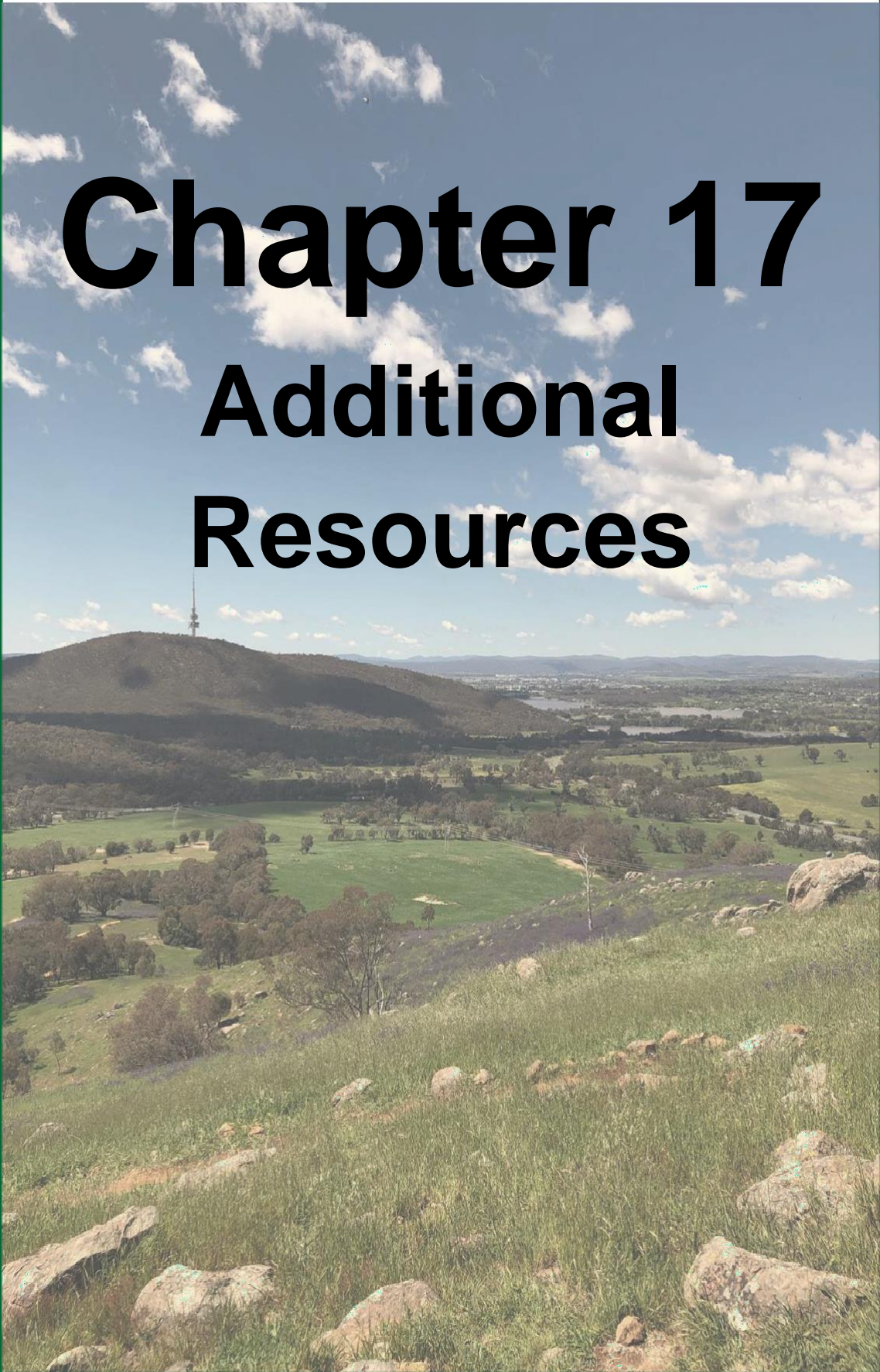
<<https://www.courts.act.gov.au/magistrates/o/courts/723>>

**Youth Law Centre ACT, Website**

<<https://www.legalaidact.org.au/what-we-do/youth-law-centre>>

# **Chapter 17**

## **Additional Resources**





# Chapter 17: Additional Resources

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The following resources provide additional information and support for NVDA participants and organisers. There are also resources lists at the end of each Chapter that relate specifically to each Chapter.

**Environmental Defenders' Office ACT, Non-Violent Direct Action on Commonwealth Land**

<<https://www.edo.org.au/publication/non-violent-direct-action-on-commonwealth-land/>>

**Environmental Defenders' Office ACT, Non-Violent Direct Action on ACT Land**

<<https://www.edo.org.au/publication/non-violent-direct-action-on-act-land/>>

**Environmental Defenders' Office ACT, Environmental Law Handbook**

<<https://www.edo.org.au/publication/act-environmental-law-handbook-3rd-edition/>>

**Legal Aid ACT, Legal Aid ACT Criminal Practice**

<[http://www.legalaidact.org.au/sites/default/files/files/publications/our\\_criminal\\_practice\\_0.pdf](http://www.legalaidact.org.au/sites/default/files/files/publications/our_criminal_practice_0.pdf)>

**AustLII Communities, ACT Law Handbook**

<<http://austlii.community/foswiki/ACTLawHbk/ACTLawHandbook>>

**Youth Law Centre, Youth Law Matters: A Legal Guide for Young People in the ACT**

<<http://legalaidact.org.au/sites/default/files/files/publications/Youth%20Law%20Matters%20May%202020.pdf>>

**Melbourne Activist Legal Network, Website**

<<https://melbactivistlegal.org.au/>>

**Fitzroy Legal Service, Activist Rights Resources**

<<https://www.activistrights.org.au/>>

**Action Ready Queensland, Website**

<<https://www.actionreadyqld.com/>>

**Extinction Rebellion UK, Legal Information**

< <https://extinctionrebellion.uk/act-now/resources/legal-info/>>



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