

YOUR RIGHTS - A SHORT GUIDE FOR YOUNG ACTIVISTS IN THE NT

RIGHT TO PROTEST

Our rights to protest, demonstrate and take part in political activities are recognised by the International Declaration of Human Rights (1948) as well as the International Covenant on Civil and Political Rights (1966) and other covenants.

This does not mean, however, that the police can't stop you if they believe you have broken the law while carrying out protest activities. The police in the Northern Territory have a broad range of powers that they can use to direct you to move on from a public place and stay away for certain amount of time, arrest you for obstructing traffic or for disorderly behaviour.

This short guide is designed to help you understand your rights, your responsibilities and police rights and powers. If you get in trouble and you need legal advice you should contact the numbers at the end of this guide.

YOUR RIGHTS

Remain silent	Get medical treatment
Have an adult present if you are under 18	Call a lawyer, friend or relative
Know the reason why you are under arrest	Have access to an interpreter

WHAT INFORMATION DO YOU HAVE TO GIVE POLICE?

The Police have the right to ask you your name and your address if they believe on reasonable grounds that you may be able to assist them with their inquiries regarding an offence.¹ They must tell you why they want your name and address.

It is a criminal offence to refuse to give the police your name and address, or to give them false information.² You can be charged with an offence and a fine if you refuse to give them your name and address or provide them with false information.

You aren't required to carry photo I.D. on you (unless you are driving a car or require I.D. for another purpose) but if you have I.D. with you if arrested, it may speed up processing.

DO I HAVE TO ANSWER POLICE QUESTIONS?

Generally speaking you have the right to remain silent, and anything you do say can be used by police against you. If you decide to exercise your right to silence it is important you tell the police this clearly and then do *not* answer any further questions. It is important not to answer some questions and not others.

¹ *Crimes Act* (NT) s134

² *Crimes Act* (NT) s134(2)

The big exception to this rule is if the police ask for your name and address. As per the section above, if the police reasonably believe you have committed an offence you are required to provide this information.

CAN THEY TELL ME TO ‘MOVE ON’?

Yes. In the NT there are a range of ‘public order’ offences, and police powers which allow officers to direct you to move on from public places.

‘Loitering’ is when the police have formed a view that you are in a public place for no good reason, and you have been directed to leave by police but have failed to do so.³ The offence itself says you can be charged with loitering if you fail to give a “*satisfactory account of himself when requested so to do*” and then fail to leave an area when directed to by police. You can be charged with a fine or imprisonment of up to 6 months.⁴

In the NT, the Commissioner of Police also has the power to ‘close’ public places. If 12 or more people gather at a public place and engage in physical violence or damage to property, the Commissioner of Police can direct (orally or in writing) that the place be closed to the public for a period of time.⁵ It then becomes an offence for you to remain there if you have been directed to leave.⁶

WHAT COULD THEY CHARGE ME WITH?

There are a number of different offences that can be charged as ‘**Trespass**’ in the NT. Criminal trespass is governed by the Trespass Act⁷ and governs situations where a person enters private property without permission and when a person fails to leave property after a direction to do so. Trespass is an offence usually punished with a fine.

Resist police

It is an offence to resist a police officer who is going about their lawful duty as a police officer. It is also an offence to encourage or help another person to resist a police officer in these circumstances⁸ [*Police Administration Act* s158]. Trying to shrug off a police officer who is making a lawful arrest will usually make a person guilty of this offence.

Hinder police

Similarly to resisting police, it is an offence to hinder or obstruct a police officer who is going about their lawful duty as a police officer (or, again, to assist or encourage another person to do this)

Failure to provide name and address

Police officers are entitled to ask a citizen for their name and address if they reasonably believe that the person may be able to assist in the investigation of an offence. Police making these requests must inform

³ *Summary Offences Act* s47A, see also s47B

⁴ *Summary Offences Act* s47A(1)

⁵ *Crimes Act* (NT) S148(1) ad (2)

⁶ *Crimes Act* (NT) s148(3)

⁷ *Trespass Act* (NT)

⁸ *Police Administration Act* s158

the person of the reason for the request. A person who fails to comply with a proper request for their name and address will be guilty of an offence and may be fined.⁹ [*Police Administration Act* s134].

The offence of '**offensive conduct**' in the Northern Territory is very broad. It includes "riotous, offensive, disorderly or indecent behaviour, or of fighting, or using obscene language, in or within the hearing or view of any person in any road, street, thoroughfare or public place" or "disturbing the public peace."¹⁰ These offences can attract a term of imprisonment, but most commonly are dealt with by way of a fine. First or second offences for low level peaceful nonviolent actions have never attracted prison time.

More serious, are the offences of **riot and unlawful assembly**. These are also very broad offences and can attract significant penalties, however should be unlikely in peaceful protest, if policed fairly. An unlawful assembly is when three or more people get together in a public place with the intention of doing something together, and they behave in such a way that members of the public fear on reasonable grounds that they will disturb the peace.¹¹ The unlawful assembly becomes a riot (another offence) when people act in such a way that the peace is actually disturbed.

A person taking part in a riot involving 12 or more people may be charged with a much more serious offence if they damage property or fail to comply with a police order to move on. Failure to follow these police orders can attract up to 14 years' imprisonment.¹²

Other common offenses include using offensive language, resist arrest, hinder police and assault police. **Offences against police are taken very seriously in the NT and often attract a term of imprisonment.** It is therefore extremely important that you do not physically resist or interfere with police in any way. Remember, if you think you are being treated unfairly, you can always make a complaint about police conduct at a later time.

CAN THEY STOP AND SEARCH ME?

Sometimes. In limited circumstances the police can stop and frisk or search you without a warrant if they reasonably believe that the situation is serious and urgent, you have something in your possession that was stolen or is connected with a serious offence, that you are carrying an offensive weapon, a dangerous drug or associated paraphernalia.¹³

The police can seize the object, or anything else they believe is evidence, if they find it.

There are a number of different types of searches the police can conduct, and different rules apply to the different types. If you are female, you should only be searched by a police officer of the same gender as you.¹⁴

⁹ *Police Administration Act*

¹⁰ *S47 Summary Offences Act*

¹¹ *Criminal Code* s63(4)

¹² [Criminal Code](#) s66(1) and (4)

¹³ *S116, Police Administration Act (NT)*

¹⁴ *Police Administration Act (NT)* s120E

In some urgent situations, the police are able to conduct a search of you, your clothing or your home without a warrant.¹⁵ They may also apply for an urgent search warrant from a Justice of the Peace in order to search you or your home.

If you are placed under arrest and taken to the police station, the police are allowed to search you. They are only allowed to remove items of clothing if they believe this will provide them with evidence of an offence and they provide you with adequate replacement clothing.¹⁶

Police are allowed to use any “reasonable force” to search you.¹⁷ Therefore it is important you state if you think the police do not have the right to search you or your home, but it is also important not to resist or try to obstruct a search or you could be charged with obstructing or hindering police. If you believe you have been unlawfully subjected to a search you can contact NAAJA or Legal Aid NT afterwards and seek legal advice.

If you are under 18 years old you must not be searched without a support person present¹⁸ unless there are urgent circumstances that require a search immediately. You must only be searched by a person of the same gender as you.¹⁹

Generally, the police will need your consent (if you are over 18) or a warrant to take samples of DNA, saliva swabs, fingerprints or conduct any intimate procedures. You should request to speak to a legal aid lawyer immediately if the police ask you to provide any of the above.

CAN I FILM POLICE?

Yes, if you are in a public place you are allowed to film or photograph events. You can also ask police for their name, rank and station.

WHAT HAPPENS IF I'M ARRESTED?

If you are placed under arrest the police can require you to go to the police station with them. If the police ask you to go to the police station, you should always ask whether you are under arrest. You do not have to go unless you are under arrest.

The police do not have to warn you that they are going to arrest you, but they must always tell you when they place you under arrest. This could be as simple as saying ‘you are under arrest’ and putting their hand on your shoulder. They do not have to put you in handcuffs for you to be under arrest.

SHOULD I DO A POLICE INTERVIEW?

If you are under 18 the police *should not* ask you any questions unless a parent or adult independent person is present.²⁰ You should advise the police that you are under 18 and want a responsible adult present. You should not be interviewed if you are drunk or unwell.

¹⁵ *Police Administration Act* (NT) s119

¹⁶ *Police Administration Act* (NT) s144

¹⁷ *Police Administration Act* (NT) s120D

¹⁸ *Youth Justice Act* NT 2015 s19

¹⁹ *Youth Justice Act* NT 2015 s20

²⁰ *Youth Justice Act* 2005 NT s18(2)

You should decide with your responsible adult whether you want to agree to be interviewed by police, but remember you have a right to silence and do not have to participate in an interview. You have a right to a lawyer. You have a right to have things explained to you, and to be interviewed, in a language and in a manner you understand.²¹

WILL I BE CHARGED AND HOW DO I GET BAIL?

After you are arrested, a number of things may happen.

You could be charged with an offence and released on police bail	You could be charged with an offence and remanded until you can appear in court
You might not be charged with an offence at all, in which case you will be told you are free to go	You could be issued with an infringement notice or caution
Referred to a youth diversion program	

If you are arrested and you are over the age of 18 years old, the police can detain you for four hours before laying charges or letting you go (unless you are intoxicated in which case they can hold you for longer).²² After that time has expired they either need to let you go, charge you and release you on bail, release you and issue you with an infringement offence, conduct further investigations or detain you and bring you before a court as soon as is reasonably practicable.²³

If the police indicate that they are not going to grant you bail you should ask to speak to a legal aid lawyer immediately. It is possible to make bail applications to a Magistrate over the phone in most jurisdictions.

If you are released on bail, you could be released with or without conditions. You should make sure you understand whether there are any conditions you are meant to comply with before you leave the police station.

WHAT DO I DO IF THE POLICE HURT ME?

The police must not use any more force than is necessary to arrest you. They must treat you with dignity and respect. If you are hurt and you need medical attention you should ask to see the nurse at the police station immediately.

If the police hurt you it is important to go to the doctor and get them to record the nature and extent of your injuries as soon as possible. Make sure someone takes photos of your injuries as soon as possible.

You can make a complaint about police conduct (if they hurt you, are rude to you, you are concerned you were wrongfully arrested or detained etc.) by contacting the NT Ombudsman. You can do that here: <https://www.ombudsman.nt.gov.au/complaints/police>. NAAJA or NT Legal Aid should be able to help you with this.

²¹ Youth Justice Act 2005 NT s15

²² Police Administration Act 1978 s133AB(2)

²³ s133AB and s137 Police Administration Act 1978

THINGS TO REMEMBER - FOUR Cks:

- **CHOICE:** It is always your choice what protest or activist activities you participate in. Only you can assess what activities align with your values, and what risks the criminal justice system presents to you.
- **(K)EEP YOUR COOL:** The most important thing when interacting with police is to keep your cool. This means avoiding getting angry, swearing, flailing or otherwise behaving in a way that may attract additional charges.
- **CALL FOR HELP:** You have the right to a lawyer, a responsible adult if you are under 18 and to talk to family or a support person. Ask the police to make a call to any of these people if you are placed under arrest so they can provide you with support.
- **(K)EEP QUIET:** You have the right to remain silent. The only questions from police you have to answer are your name and address. Remember, they can't pressure you into giving them information or answering their questions! If you don't want to, exercise the other three C's and wait for a lawyer to give you advice.

WHO TO CALL:

Contact NAAJA if you are Aboriginal or Torres Strait Islander and need help:

<http://www.naaja.org.au/naaja/contact-us/>

- Darwin: 1800 898 251
- Throughcare: 1800 321 201
- Katherine: 1800 897 728
- Alice Springs: 1800 636 079

Contact NT Legal Aid if you need help: 1800 019 343 (Lines open Monday to Friday from 8am to 4:30pm)