

Policy statement

Decision to charge a person in the ACT

The purpose of this policy statement is to set out the principles and considerations which govern a decision by an officer of ACT Policing to charge a person with a criminal offence against ACT law¹. A reference to a decision to charge means deciding to lay an information or file a court attendance notice to commence criminal proceedings against a person.

The discretion to charge

A police officer has a duty to enforce the criminal law, however they are afforded a wide discretion in how that is achieved. A police officer is not obliged to charge a person with a criminal offence.

The exercise of the power to charge a person is discretionary power of police. In each case, an officer must exercise their professional judgment to determine whether to lay a charge, having regard to the individual facts and circumstances of the case.

Legal framework

Reasonable suspicion is the minimum threshold for laying charges in the ACT.

Section 26 of *Magistrates Court Act 1930* (ACT) provides that:

An information may be laid before a magistrate in any case where a person has committed or is suspected of having committed, in the ACT, an indictable offence or an offence that may be dealt with summarily as provided in section 19.

Section 41C(1) of the *Magistrates Court Act 1930* (ACT) provides:

If an authorised person suspects, on reasonable grounds, that a person has committed an offence, the authorised person may serve a court attendance notice on the person.

The threshold for arrest in the ACT is also that a police officer suspects on reasonable grounds that a person has committed, or is committing an offence².

It is therefore appropriate that, once a reasonable suspicion is held, the decision to charge requires further consideration, and for a charge to be laid only where there is reasonable basis to do so having regard to the factors set out below.

¹ This policy document only applies to charging for ACT offences. Members considering charging a person with a Commonwealth offence in the ACT should refer to [the Prosecution Policy of the Commonwealth](#).

² *Crimes Act 1900* (ACT) s 212(1)

Should charges be laid?– factors for consideration

In exercising the discretion as to whether or not to lay a charge, an officer should take into account the following (non-exhaustive) considerations:

A. The sufficiency of the evidence against the person

- the truth and reliability of the available evidence, including:
 - the nature and extent of any corroborative evidence such as eyewitnesses, audio visual recordings, images, forensic evidence, complaint evidence and evidence of consistent statement
 - any evidence which shows a complainant or another witness's evidence to be unreliable, and
 - any evidence which is exculpatory, that is, evidence which is inconsistent with the person having committed the offence.
- an assessment of the evidence as a whole:
 - evidence should not be assessed in a fragmented way by looking at each individual piece of evidence in isolation.
- an objective consideration of the evidence, excluding:
 - bias
 - imagination
 - speculation
 - suspicion, and
 - surmise.

B. The exclusion of improper purposes

In making a decision to charge, police must act in accordance with the [AFP Values and Code of Conduct](#). A person should only be charged with an offence for the purpose of having them put before a court to be dealt with according to law.³

- A decision to charge or not to charge should not be made for a collateral purpose, including:
 - only for the purpose of questioning or conducting a forensic procedure
 - obtaining a tactical benefit in an unrelated proceeding or investigation, or
 - for political advantage or to avoid disadvantage or embarrassment to the Government.
- A decision to charge or not to charge a person must *never* be motivated, influenced, or affected, in any way or to any extent, by factors such as:
 - personal feelings concerning the alleged offender including:

³ [New South Wales v Robinson](#) (2019) 266 CLR 619.

- a desire to harm the person
 - a desire to cause the person ill-will or suffering
 - a desire to intimidate or harass the person
 - feelings of spite or malice towards the person
 - a grudge held against the person
- a previous personal or professional association between the officer and the person
- personal feelings concerning the complainant
- opinions expressed by others generally, and by journalists or media commentators in particular, about the person, be those opinions about the person's guilt or otherwise.
- A decision to charge or not to charge must also not be influenced by inappropriate reference to the:
 - race
 - religion
 - gender identity
 - sexual orientation
 - national origin
 - political associations, activities or beliefs

of the person or any other person involved.

C. The wishes of the complainant or victim

Police should act in accordance with applicable governance on victim's rights, and should consider any request that an offence be referred for restorative justice.

D. The availability and likely effectiveness of diversionary measures

In determining whether to exercise their discretion to lay a charge the officer should also consider whether in all of the circumstances, one of the following actions might be appropriate:

- taking no formal action
- a police caution (see [Standard Operating Procedures on Police Criminal Cautions](#))
- referral to a restorative justice process (see [Standard Operating Procedure on Diversionary Conferencing/Restorative Justice](#)); or
- referral to a drug diversion program (see [Standard Operating Procedure on Alcohol and Other Drug Diversion Referral Procedures](#))
- issue of an infringement notice for an infringement notice offence (see [Standard Operating Procedure on Criminal Infringement Notices](#)), or
- if the person is intoxicated in a public place, taking the person to a Sobering Up Shelter (see [Better Practice Guide on Sobering Up Shelter](#))