

## Defending kangaroos in the ACT: offences, penalties, rangers' powers

This fact sheet is for general information purposes and is not legal advice. It provides a brief overview only of this area of the law. If you require legal advice relating to your particular circumstances you should contact a solicitor.

### Can I enter an ACT nature reserve that has been closed for shooting kangaroos during a 'cull'?

It is an offence in the ACT to enter a nature reserve that has been declared closed.<sup>1</sup> If you enter a closed reserve you could be issued with an on-the-spot fine, or 'infringement notice', of \$1,500.<sup>2</sup> Or you could be prosecuted and face a penalty of up to \$7,500.

**Case:** In 2014 a person was apprehended on a nature reserve that was closed for kangaroo shooting. Signs stating that firearms were in use and that entry to the reserve was prohibited had been erected around the reserve. The person was later charged with contravening a requirement on a sign at the entry of a reserve and with entering a reserve where entry was prohibited.<sup>3</sup> A court sentenced the person to a 12-month good behaviour order.



A notice about the closure of the reserve must be published on an ACT government website or in a newspaper, and be displayed at a conspicuous place at the reserve.<sup>4</sup>

### Can rangers make me leave a reserve?

Yes. If you are found by rangers on a reserve that has been closed for kangaroo shooting, they can order you to leave the reserve immediately if they believe on reasonable grounds that you have committed, are committing, or are about to commit an offence. This is known as a 'leave reserve direction'.<sup>5</sup> You must comply with a leave reserve direction, but only if the rangers show you their ID card and tell you that it is an offence to fail to comply with the direction.<sup>6</sup> The rangers may issue a fine of \$300 if you fail to comply with the direction.<sup>7</sup> Alternatively, you could be prosecuted and face penalties of up to \$1,500.

### Do I have to provide my name and address to rangers?

Yes. If a ranger reasonably believes that you have committed, or are committing, or are about to commit an offence (such as entering a reserve that has been closed during kangaroo shooting), or that you could help in an investigation of an offence, then the ranger can direct you to state your full name and home address.<sup>8</sup> The ranger can also direct you to provide evidence of your name and address if he or she reasonably believes that the information you have provided is false or misleading. The ranger must tell you that it is an offence not to comply with these directions.<sup>9</sup> If you fail to comply with either type of direction (giving your name and address, or providing evidence), you could be fined \$150.<sup>10</sup> If prosecuted, you could face penalties of up to \$750 if convicted.

<sup>1</sup> Subsection 260(1), *Nature Conservation Act 2014* (ACT) ("the Act"). This offence is a strict liability offence. This means it does not have to be shown that you knew you were going on to a reserve that has been closed.

<sup>2</sup> Item 34, Schedule 1 to the *Magistrates Court (Nature Conservation Infringement Notices) Regulation 2015* (the Regulation); up from \$100 in 2014. Section 120 of the *Magistrates Court Act 1930* allows conservation officers to serve infringement notices if they believe, on reasonable grounds, that a person has committed an offence.

<sup>3</sup> Subsections 65(2) and 63(3) of the *Nature Conservation Act 1980* (ACT) ("the 1980 Act").

<sup>4</sup> Subsection 259(4) of the Act.

<sup>5</sup> Subsection 325(2) of the Act. You can also be given a leave reserve direction for acting in 'an offensive way' or for creating a 'public nuisance' (s325(1)(b)(i)).

<sup>6</sup> If the ranger does both of these things, it is an offence not to comply with his or her direction: s 326(1) of the Act.

<sup>7</sup> Item 44, Schedule 1 to the Regulation.

<sup>8</sup> Section 319 of the Act. You do not have to provide any other information.

<sup>9</sup> Subsections 319(3) and (4) of the Act. It is an offence under s 320(1) to fail to comply with either type of direction. In the ACT it is a general criminal offence to give false or misleading information: Part 3.4 of the *Criminal Code 2002* (ACT); maximum penalty \$15,000, or 1 year jail, or both (s 338(1)).

<sup>10</sup> Item 41 in Schedule 1 to the Regulation.

**Case:** A person was found on an ACT nature reserve that was closed during a kangaroo killing period in 2014. The person provided a name that they use regularly, but that was different from their formal name. The ranger believed the person was committing an offence (being on a closed nature reserve), so the person was charged for failing to provide their 'full name' when requested by the officer. The charge was subsequently dropped.



## Do rangers have to show me their ID card?

Yes. If a ranger asks you to provide your name or address, or requires you to leave a reserve, then the ranger must show you his or her ID card. If the ranger does not show you the card, you do not have to comply with the requests.<sup>11</sup> Note, however, that it is up to you to prove that the ranger did not show you his or her ID card (and not up to the ranger to prove that he or she did show it).<sup>12</sup>

## Can rangers touch me?

Under the Act, rangers are not vested with the power to touch you in exercising any of their functions described in this fact sheet. However, like any other individual, rangers can perform a citizen's arrest on anyone they suspect is committing an offence.<sup>13</sup> When conducting a citizen's arrest, a reasonable amount of force may be applied, which can include touching you. A reasonable amount of force may also be applied in detaining you, for example while a ranger waits for police assistance.

## What if I'm outside a nature reserve, can I still be arrested?

Public land other than nature reserves can also be closed during kangaroo kills. It is an offence under ACT law to enter 'unleased Territory land' if it has a sign prohibiting trespass.<sup>14</sup>

**Case:** During the 2014 kangaroo kill a person was allegedly found on 'unleased Territory land' in Belconnen ACT. The ACT Government claimed that signs had been placed around it prohibiting trespass. In 2015 the person was charged with trespass under the *Trespass on Territory Land Act 1932* (ACT). In 2016 the matter went to court, but the court dismissed the charges because the prosecution could not prove that a sign had been erected or that the person was on the land in question.

If you are outside a nature reserve but are considered to be hindering the shooters or rangers in killing kangaroos, you could be charged with 'obstructing' or 'hindering' a territory official in the exercise of his or her functions as a public official.<sup>15</sup> The maximum penalty is \$30,000 or 2 years imprisonment, or both.

**Case:** In 2016 the ACT Magistrates Court found a person guilty of knowingly hindering a public official because the person had blown a whistle at night outside a nature reserve and the shooting had stopped for 45 minutes to investigate. The Court's decision was later overturned by the ACT Supreme Court, which found that the cull was not carried out under a valid licence so the person could not have unlawfully hindered an invalid cull.

## Are there any defences to the offences outlined in this fact sheet?

Yes. It is a defence to a prosecution for an offence of entering a closed reserve if reasonable steps were taken to prevent the contravention.<sup>16</sup>

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<sup>11</sup> Paragraphs 320(3)(a) and 326(3)(a) of the Act. This also applies to other directions given under the Act: ss 328(3) and 330(3) of the Act.

<sup>12</sup> See the legislative notes to ss 320(3) and 326(3).

<sup>13</sup> *Crimes Act 1900*, s 218. See also: <https://police.act.gov.au/crime/citizens-power-arrest>.

<sup>14</sup> *Trespass on Territory Land Act 1932* (ACT), s 4.

<sup>15</sup> Section 361 of the *Criminal Code 2002*.

<sup>16</sup> Subsection 260(3) of the Act. The 1980 Act listed situations that constituted a defence, including being on the reserve due to an emergency, or where it was unavoidable by taking reasonable care, or if the person had no reasonable grounds for suspecting that entry into the reserved area was prohibited: s 63(4). It is unclear what 'reasonable steps' may mean in s 260(3) of the 2014 Act.

### DISCLAIMER

While all care has been taken in preparing the information on this fact sheet, it is not a substitute for legal advice. For any specific questions we recommend you seek legal advice. The Animal Defenders Office accepts no responsibility for any loss or damage suffered by people relying on the information on this fact sheet.