



HUMAN RIGHTS &  
DISCRIMINATION COMMISSIONER  
ACT Human Rights Commission

# Factsheet

## Right to Freedom of Movement (s.13)

Section 13 of the *Human Rights Act 2004* says that:

Everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT.

Note: Under the Act, all rights may be subject to reasonable limits (section 28). The nature of the right is relevant when considering what is reasonable.

*This factsheet is not intended to be a substitute for legal advice.*

### Scope of the Right

This right means that people have the right to move freely within the Australian Capital Territory, to enter and leave the ACT, and have the freedom to choose where to live.

The right to freedom of movement developed because of the forced displacement of people in Europe and elsewhere in the early part of the twentieth century, where ‘unwanted’ people were moved out. This has led to the important rule that governments have to act within the law if they restrict people’s freedom of movement.

In the ACT today, this right is relevant in circumstances involving people’s access to public spaces, laws relating to trespass, and court orders (such as restricted bail orders) and powers to direct people’s movements in times of emergency.

The right to freedom of movement applies only to persons who are lawfully within the ACT. People will not be lawfully in the ACT if they are classified as ‘unlawful non-citizens’ under the *Migration Act 1958* (Cth) – for example if they have overstayed their visitor’s visa, or if they have entered the ACT in defiance of legal restrictions in another jurisdiction (for example a court order not to leave NSW).

### Right to move freely with the ACT

The right to move freely within the ACT means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular location. The right includes freedom from physical and procedural impediments, such as the requirement for prior authorisation before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public authority actively curtails a person’s freedom of movement (for example through ‘move on’ police powers, orders excluding adolescents from a licensed premises, orders made under the *Mental Health (Treatment and Care) Act 1994* (ACT) or orders that subject a person to strict surveillance or reporting obligations before or when moving.

### Right to enter and leave the ACT

The right to be free to enter and leave the Territory is also protected by section 92 of the Australian Constitution, which guarantees freedom of ‘interstate intercourse’, including the movement of both goods and people. This was confirmed by the High Court in *Nationwide News P/L v Wills* (1992) 177 CLR 1. Restrictions on the right to enter and leave the ACT must be proportionate to a legitimate and sufficiently important government aim under both the *Human Rights Act* and the Constitution.

## Right to choose where to live

The right to choose where to live may be engaged by laws relating to trespass or protected areas such as national parks. It may also be affected by court orders or orders under statutory regimes such as the *Mental Health (Treatment and Care) Act* to direct where people on bail or under supervision may reside.

## When can freedom of movement be limited?

International case law provides examples of reasonable restrictions on freedom of movement, including lawful detention, guardianship orders, involuntary treatment orders, Parole Board orders, family violence intervention orders, residence conditions on persons suspected of terrorist activities, and restrictions on leaving the country where judicial proceedings are pending.

## Examples

The following two examples come from Victoria:

- A supervision order placed on a convicted person who had already served his term of imprisonment was found to be a reasonable limitation on his freedom of movement because of the risk of him committing another offence: see *Secretary, Department of Justice v AB* [2009] VCC 1132 (28 August 2009).
- A man with a mild intellectual disability was subject to an order which only allowed him to leave his psychiatric facility if accompanied by staff members. The Tribunal concluded that the only less restrictive option – voluntary treatment – was not appropriate given his history of violent outbursts, and so upheld the order: see *AC (Guardianship)* [2009] VCAT 1186 (8 July 2009).

## Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights. Section 13 could be engaged by activities that:

- Limit the ability of a person to choose where to live in the ACT;
- Restrict the movement of people as part of the criminal process, for example, the imposition of bail conditions;
- Allow for an intervention order against a person, or enables their detention;
- Propose surveillance of an individual;
- Empower public authorities to restrict people's movement based on national security considerations;
- Compel someone to provide information (for example, a subpoena);
- Regulate access to land based on quarantine considerations, or eligibility requirements permitting exclusion from public land or premises;
- Affect the conduct of public protests.



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