



AFP Practical Guide on identification evidence (ACT Policing)

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1. Disclosure and compliance

This document is classified **UNCLASSIFIED** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the [AFP National Guideline on disclosure of information](#).

Compliance

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth).

2. Acronyms

AFP	Australian Federal Police
PROMIS	Police Real-time Online Management Information System
DPP	Director of Public Prosecutions

3. Definitions

Crime scene identification – means an identification of a suspect made to police, either:

- at or near the crime scene soon after the offence
- at a secondary crime scene connected to the offence
- committing an act in connection with the offence.

Facial and body mapping – is a range of techniques to compare two or more video, photographic or other images, or images to a 'live' person, to determine whether the image is of the 'live' person.

Identification – means an assertion made by a witness that the suspect was either:

- the person they observed commit a particular act/offence
- a person at or near the crime scene at or about the time the act/offence was committed

after either:

- observing the suspect
- examining a photograph or voice recording of the suspect.

Identification evidence – means evidence of an identification and includes:

- picture identification evidence
- recognition evidence
- visual identification evidence
- video evidence
- any report (whether oral or in writing) of such identification evidence.

Identification material – in relation to a person, means a photograph, video recording, voice recording, digital image, hand writing sample or prints of the person's hands, fingers, feet or toes either:

- taken or made by police at a time when the person was a suspect
- taken by persons other than police (e.g. bank hold-up photos/videos)
- kept by police for the purpose of attempting an identification, but does **not** include:

- a tape recording made for the purposes s. 23U or 23V of the [Crimes Act 1914](#) (Cth) or
- forensic material taken under Part 1D of the *Crimes Act 1914* or the [Crimes \(Forensic Procedures\) Act 2000](#) (ACT) (bearing in mind s. 5(3)(b) of that Act).

Identification parade – means a parade of the suspect and at least 8 other persons resembling the suspect in general appearance which is arranged by police. The parade is viewed by a witness for the purpose of attempting an identification.

Magistrate – includes a judge.

Morphology – is a technique to evaluate bodily features and profiles through comparison and qualitative analysis to determine visual similarities.

Photo-anthropometry – is a technique to compare proportional qualities of a photo to another to determine metric, rather than visual, similarities (e.g. comparing a surveillance photo of an armed robber with a lawfully obtained photograph of a suspect).

Photo board – means a pictorial identification parade, being a board or sheet containing a photograph of the suspect and photographs of at least 8 other persons resembling the suspect in general appearance, prepared by police and examined by a witness for the purpose of attempting an identification.

Photograph – includes a picture or other visual representation of a person.

Picture identification evidence – means evidence of an identification based on examination of a photograph of the suspect either in photographic form or video form.

Recognition evidence – is evidence that a witness recognised the person they observed at or near the crime scene at or about the time of the alleged offence because of some prior familiarity (dealings with or knowledge) of that person.

Suspect – means a person either:

- arrested for the offence
- suspected by police as having committed the offence
- in the context of an identification procedure, who is identified by a witness or suspected by police as committing the offence.

Video photo board – means a series of photographs (as per a photo board) stored or recorded on video tape, computer or disk for the purpose of attempting an identification.

Visual identification – means evidence based partly or wholly on what the person saw and includes identification parades and 'in-court' identifications. It does not include picture identification evidence.

Voiceprint identification and forensic voice comparison – is aural and spectrographic comparison of one or more known voices with unknown voices to identify or eliminate suspects or witnesses.

4. Guideline authority

This guideline was issued by the Chief Police Officer for the ACT using power under s. 37(1) of the [Australian Federal Police Act 1979](#) (Cth) as delegated by the Commissioner under s. 69C of the Act.

5. Introduction

This guideline outlines the policies and procedures for appointees to lawfully collect admissible suspect identification evidence from witnesses per the [Crimes Act 1900](#) (ACT) and the [Evidence Act 1995](#) (Cth).

6. Descriptions

Appointees should, as soon as practicable:

- obtain a detailed description of the offender from all witnesses
- record it in writing
- provide it to the case officer.

To comply with s. 237 (Descriptions) of the [Crimes Act 1900](#) (ACT), appointees must record descriptions of suspects provided to them and retain the descriptions until the completion of any offence proceedings.

Descriptions must be recorded in an:

- official AFP notebook, fieldbook, diary or
- authorised AFP computer system such as PROMIS.

7. Identification material - adults

Appointees should note that different rules apply when taking identification material from adult suspects who are incapable of managing their own affairs (per ss. 230 (5), (7) and (8), of the [Crimes Act 1900](#) (ACT)).

Appointees who take identification material from an adult capable of managing their own affairs must do so:

- with that person's written consent (after informing them they may refuse consent) per s. 230(2)(b) of the [Crimes Act 1900](#) (ACT)
- without consent only if the person is in lawful custody for an offence and where authorised by either:
 - a police sergeant
 - a more senior ranking officer
 - an officer in charge of a police station (including the ACT Watch House Sergeant).

After obtaining consent or authorisation, appointees should obtain identification material if:

- the identification material is prints of the person's fingers or photographs of the person and
- the authorising officer believes on reasonable grounds it is necessary to either:
 - identify the person

- identify the person as the person who committed the offence
- provide evidence of, or relating to, the offence
- obtain evidence identifying the person as the person who committed another offence or of providing evidence of, or relating to, another offence.

8. Identification material - children and young persons

Appointees must not take identification material from a child or young person, per the [Crimes Act 1900](#) (ACT) or the [Children and Young People Act 2008](#) (ACT).

Appointees may, in relation to Commonwealth offences only, take certain identification material from a child or young person per s.3ZJ and related sections of the [Crimes Act 1914](#) (Cth).

Appointees must apply to a magistrate per Part 2.5 of the [Crimes \(Forensic Procedures\) Act 2000](#) (ACT) to take a forensic sample (e.g. fingerprints or a photograph) from a child or young person to prove or disprove guilt in relation to an offence, or for use in a formal identification procedure (such as a photo board), regardless of whether or not they are in custody.

Appointees must obtain the consent of a parent, guardian or other responsible person (not a police officer) for a suspect who is a child or young person to participate in an identification parade.

Additionally, any child or young person who is requested to assist police in an identification parade as a participant must also have consent provided by a parent, guardian or other responsible adult to participate.

s37(2)(b)

9. Destroying identification material

Identification material must be destroyed unless a suspect is:

- convicted or
- a magistrate approves further retention.

The identification material must be destroyed:

- as soon as proceedings are finalised or
- where no proceedings are instituted, within 12 months after obtaining the material.

10. Recording identification material

Appointees must, to prove evidence material was lawfully taken and retained, record the:

- sequential number allocated to the material
- name and date of birth of the suspect
- time, date, and place the material was taken
- name, rank and number of the member taking the material

reason the identification material was taken (e.g. for specific investigative purposes, court order, Watch House identification photographs, etc.).

11. Recognition evidence

As per s. 114(3)(d) of the [Evidence Act 1995](#) (Cth) appointees need not hold an identification parade (or use a subsequent photo board) if they are satisfied that the identifying witness has 'recognised' the suspect on the basis of sufficient familiarity. The basis and degree of the recognition/familiarity by the identifying witness of the suspect must accord with evidentiary requirements (i.e. statement format, be credible and verifiable, etc.).

Where possible, the practice of using a suspect that is known to the witness in an identification parade, should be avoided. However, this practice, under certain circumstances, may be necessary and in these instances advice should be sought from DPP.

In situations where the identifying witness knows the suspect, even if only by sight, it may not be practical, beneficial or fair to line this suspect up against a number of individuals unknown to the identifying witness. In such situations, further advice should be sought from DPP.

12. Identification evidence

Members must consider that evidence of a photo board identification is likely to be excluded where either:

- holding an identification parade would have been reasonable and was not refused by the suspect
- the witness was previously shown a photograph of the suspect
- the photo board included a photograph of any other suspect
- the photograph of the suspect used in the photo board was either:
 - taken or retained without lawful authority
 - taken before the suspect was arrested or became a suspect (except if the suspect's appearance changed significantly since the offence or it was not lawful or reasonably practicable to take another photograph)
- the photographs suggest the subjects were in custody at the time
- the persons in the other photographs did not resemble the suspect
- the photo board was examined by multiple witnesses at the same time.

13. Identification parades

Appointees must obtain consent from an adult suspect capable of managing their own affairs in order to hold an identification parade. If the suspect requests an identification parade, appointees must arrange one if it is not unreasonable to do so (see s. 15).

To obtain a suspect's agreement to participate in an identification parade, appointees must first inform the suspect in an audio recorded conversation that:

- they may refuse to participate in the identification parade
- evidence of a refusal may be given and picture identification may be attempted

they may have a legal representative present during the identification parade.

If the suspect is a child or an adult unable to manage their own affairs, a parent, guardian or other responsible adult (not a police officer) must be present for the giving of information and the identification parade.

s37(2)(b)

14. Identification parade requirements

s37(2)(b), s47E(d)

Prior to the witness(es) viewing the parade, the appointee in charge must:

- ensure no participants are dressed in a distinctive and unique way
- allow the suspect to choose where to stand in the line
- cause sequential numbers to be placed above the parade participants

- inform participants not to move or speak unless directed to do so.

Prior to the witness(es) viewing the parade, the appointee in charge must inform the witness that:

- they must not speak to any participants
- if they wish a participant to move, speak or adopt a particular pose they must inform the appointee conducting the parade
- the person they witnessed at or near the crime scene may or may not be in the parade
- if they can identify the person they witnessed at or near the crime scene with reasonable certainty, they must say the number located above that person
- if they cannot identify any person with reasonable certainty they must say so.

If more than one witness views a parade:

- each witness must view it independently
- witnesses must not communicate with each other
- the suspect may change places in the parade after each viewing.

A suspect who is a capable adult may have present at the parade a lawyer or other person of their choice.

A suspect who is a child, young person or adult incapable of managing their affairs must have present at the parade:

- a parent or guardian or
- if a parent or guardian is not acceptable to the suspect, another responsible adult who is acceptable (not a police officer).

s37(2)(a), s47E(d)

s37(2)(b), s47E(d)

15. Identification parade deemed unreasonable

Holding an identification parade is considered unreasonable if doing so would be either:

- unfair to the suspect
- not reasonably practicable.

An identification parade may be considered unfair to the suspect where either the:

- required number of persons (minimum 8) resembling the suspect in age, height and general appearance cannot be arranged
- victim views the parade from a place where he or she cannot be seen by the suspect and no lawyer or other person acceptable to the suspect is available to be present with the witness
- suspect has requested a lawyer or other acceptable person be present and the attendance

of such person is not reasonably practicable. In this case there is a statutory presumption that it was not reasonable to have an identification parade at the time (per s. 114(5) of the [Evidence Act 1995](#) (Cth)) and therefore other identification procedures, such as a photo board, can be undertaken

- suspect agrees to a parade without being informed the witness has previously identified or recognised the suspect
- suspect is a child or adult incapable of managing their own affairs and no parent, guardian or other responsible adult acceptable to the suspect (not a police officer) is available to attend and observe the parade.

If the suspect has an unusual or distinguishing characteristic (e.g. has a body deformity) which would be more obvious in an identification parade than in a photo board, photo identification may be fairer to the suspect than an identification parade.

An identification parade may be considered as not reasonably practicable

s37(2)(b), s47E(d)

16. Requesting a photo/video board

Appointees requesting a photo board or video photo board must complete and submit an 'ACT Photoboard Request' form from within a PROMIS task

s37(2)(b), s47E(d)

The request must include:

- the suspect's full name
- the suspect's date of birth
- the offence for which the photo board is required
- an indication that the suspect has been offered an opportunity to participate in an identification parade and has refused to do so or that the holding of an identification parade would be:
 - unfair to the suspect or
 - unreasonable in the circumstances
- details and descriptions of any co-offenders
- the number of witnesses that will view the photo board(s) or video photo board(s)
- the description of the suspect(s) as provided by the witness(es)
- the log number in the PROMIS case pertaining to the relevant witness statement
- the full name, rank, AFP identification number and contact telephone numbers of the appointee making the request and of their team leader.

s37(2)(b), s47E(d)

17. Photo board preparation

s37(2)(b), s47E(d)

Immediately before conducting a photo board identification appointees **must** check whether the suspect was taken into custody for any other matter (occurring after the offence subject of the identification procedure). If so, they must, per s. 115(3) of the [Evidence Act 1995](#) (Cth), then ensure the photograph of the suspect they plan to use was taken during the suspect's current (most recent) time in custody, regardless of delay. The only exceptions to this are, per s. 115(4) of the Act:

- the suspect's appearance has changed significantly from the time when the offence (to which the identification procedure pertains) was committed and the time when the suspect was most recently taken into custody or
- it was not reasonably practical to photograph the suspect after the suspect was most recently taken into custody.

18. Photo board examination

Investigating appointees should consider using an appointee not involved in the investigation to conduct the photo board or video photo board process.

Appointees must audio and video record the process of showing a witness a photo board or video photo board. They must also inform the witness that the photo board or video photo board they will examine:

- is marked for identification
- contains at least 9 separate persons
- may or may not contain a photograph of the person they saw at or near the crime scene.

Appointees must also ask the witness to carefully examine the photographs and:

- if able to identify the suspect, verbally indicate the number under the suspect's photograph
- for photo boards, have them sign across the border of the selected photograph (without obscuring the face)
- for video photo boards, print the selected image and have them sign across the border of the photograph (without obscuring the face)
- if unable to identify a suspect, say so.

Appointees must:

s37(2)(b), s47E(d)

- treat as exhibits both the:
 - photo board or video photo board
 - audio and video recording of the process
- copy the original photo board or video photo board for retention
- make the copy available for inspection by the suspect or legal representative (per s. 235(2)(h) of the [Crimes Act 1900](#) (ACT)).

Suspects and/or their legal representatives may inspect hardcopy or electronic photo board or video photo board copies (including individual photographs that comprise the photo boards) on AFP premises, but **must not** be provided with copies for retention.

19. Multiple identification procedures

s37(2)(b), s47E(d)

20. Pre/post-detention investigation

Investigators must distinguish between the pre-detection of a suspect and the post-detection of a suspect.

Post-detection of a suspect occurs where:

- a definite suspect has been identified and/or
- an arrest has been made.

In these circumstances appointees should conduct an identification parade once police know the identity of whom they seek.

Pre-detection of a suspect occurs where:

- no person has been arrested and
- no definite suspect has been identified.

s37(2)(b), s47E(d)

21. Subsequent visual identification

s37(2)(b), s47E(d)

s37(2)(b), s47E(d)

22. Delays in photo identification

Appointees should:

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s37(2)(b), s47E(d)

Members should avoid equivocal evidence, which is evidence of a person 'looking like' or 'possibly being' an alleged offender as it does not amount to a positive identification. Equivocal evidence may be circumstantial evidence and per s. 137 of the [Evidence Act 1995](#) (Cth) may have reduced probative/increased prejudicial weight and be deemed inadmissible.

23. Police evidence of identification

Appointees have no special status as identification witnesses but may identify suspects from their direct observations of offences. Off-duty appointees who witness an offence must (other than any initial action or exercise of powers):

- not become involved in subsequent investigations
- be treated as a witness
- participate in identification procedures as an ordinary witness
- not receive any special privileges because of their appointee status.

To introduce into evidence an appointee's identification of the suspect/defendant (e.g. in viewing closed circuit television footage, etc.) where that officer has had prior dealings with and knowledge of the suspect/defendant (for any reason), that appointee must make a Police statement that:

- indicates they recognise the person
- refers to an annexure of that statement
- includes in the annexure the full details of the appointee's dealings with the person identified, including dates and circumstances (e.g. PROMIS incidents) which can be used as evidence to support the assertions of familiarity.

For example: '...I recognised the male person as John Smith (see Annexure A)'. Annexure A would outline all relevant information per above.

The annexure is an attachment to the statement and must be as comprehensive as possible.

24. Expert identification evidence

Appointees must consider if unusual and extenuating circumstances warrant requesting and using forensic identification services, including expert opinions on:

- fingerprints
- handwriting

- facial and body mapping (photo-anthropometry and morphology)
- voiceprint identification and forensic voice comparison.

When requesting these, appointees must:

- consider the availability of these services
- consider their likely acceptance by courts
- be satisfied that ordinary identification procedures are impractical or unreasonable
- consult with team leaders and forensic service providers.

25. Further advice

Queries about the content of this guideline should be referred to the Superintendent Criminal Investigations.

26. References

Legislation

- [*Australian Federal Police Act 1979*](#) (Cth)
- [*Children and Young People Act 2008*](#) (ACT)
- [*Crimes \(Forensic Procedures\) Act 2000*](#) (ACT)
- [*Crimes Act 1914*](#) (Cth)
- [*Crimes Act 1900*](#) (ACT)
- [*Evidence Act 1995*](#) (Cth).