



# Environmental Defenders Office

## A Guide to Legal Research in the ACT

*Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice please visit our [website](#).*

*While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.*

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### How do I find the law that applies to my matter?

In Australia, there are two main sources of law:

- **Legislation** – created by acts of parliament. This can be primary or secondary legislation;
- **Case law** – created through decisions by the courts and tribunals.

#### Legislation

The Australian Constitution provides for the Commonwealth Parliament to make laws at a federal (or national) level, and for states and territories to make laws at a state or territory level. A piece of legislation can also be called a law, a statute or an act of parliament, or more simply, an act. The words “law” and “act” are used interchangeably in this factsheet.

A legislative instrument is a subordinate, or secondary, source of law, and include a regulation, rule or by-law. These are generally created by an entity (such as a Minister or Directorate) under a power delegated by parliament. They usually provide further detail to primary legislation.

#### Case Law

Case law, also known as “judge-made law” or “common law”, is created through courts or tribunals interpreting and applying the law to facts before them. When a legal dispute comes before a court or tribunal, a tribunal member or judge (sometimes on their own or in a group) will decide how legislation and/or case law will be interpreted and applied to the facts of a case.

A court or tribunal’s decision, called a judgment, is legally binding and the reasoning in the judgment becomes “precedent”, meaning that it must generally be followed by other courts or tribunals. Courts and tribunals may depart from precedent in certain circumstances, including where the facts of a matter are different. Precedent is important, as it provides certainty and fairness, allowing you to research how the courts and tribunals have previously interpreted and applied the law in cases similar to your own.

## What is jurisdiction?

Before commencing any research, it is important to determine the correct jurisdiction for your matter. “Jurisdiction” means the powers and authority of a court or tribunal to hear a type of case. There are two main components to determining jurisdiction: location, and nature of the issue. Courts and tribunals in the same state as the matter will usually have jurisdiction to hear it. Similarly, the nature of the issue will influence which court or tribunal can hear it.

In the ACT for instance, the ACT Civil and Administrative Tribunal (**ACAT**) can hear matters about civil disputes (for example, contracts, debts, trespass, consumer law) where the amount claimed is \$25,000 or less, reviewable decisions made by the ACT Government (such as a merits review on some planning, heritage and tree protection decisions), rental property disputes, fence disputes, guardianship, as well as other matters provided for in authorising law.<sup>1</sup> If your matter is in NSW, it is related to environmental law and is a matter that can be reviewed, the NSW Land and Environment Court may hear it.<sup>2</sup>

It is important to be aware of the jurisdiction you are in when researching so that you look for and find the correct legislation and case law, as only law from the respective jurisdiction or superior courts will be binding on a matter. Note that materials from other jurisdictions, such as cases, although not binding, may still be persuasive.

## How do I find legislation?

When taking a matter to a court or tribunal, it is important that you understand the law that applies to your matter. You must be able to search for the relevant law.

Legal dictionaries and encyclopedias are available to help understand legal terminology and these can often be found at public libraries and online. Once you have identified the areas of law relevant to your issue, you are able to begin searching for legislation and case law.

To find legislation (also referred to as an ‘Act’), you can use the Commonwealth (Australia-wide), State or Territory registers of legislation, depending on whether your matter involves Commonwealth, State or Territory law.

Visit: [ACT Legislation Register](#) for ACT’s laws, regulations and subordinate legislation.  
[Federal Register of Legislation](#) for Australia-wide laws (because sometimes Commonwealth law is applied in the ACT).

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<sup>1</sup> [ACT Civil and Administrative Tribunal Act 2008 \(ACT\)](#) s 9. For the list of authorising laws, see [acat.act.gov.au/about-acat/legislation-and-authorising-laws](http://acat.act.gov.au/about-acat/legislation-and-authorising-laws).

<sup>2</sup> [Land and Environment Court Act 1979 \(NSW\)](#) Div 1, ss 16–21C.

The ACT legislation register is shown in [Figure 1](#) below.



Figure 1

You can search for legislation using the search bar in the link circled in red above. Alternatively, you can search current Acts in alphabetical order, by Directorate (government agency or department) or by year as shown in [Figure 2](#).

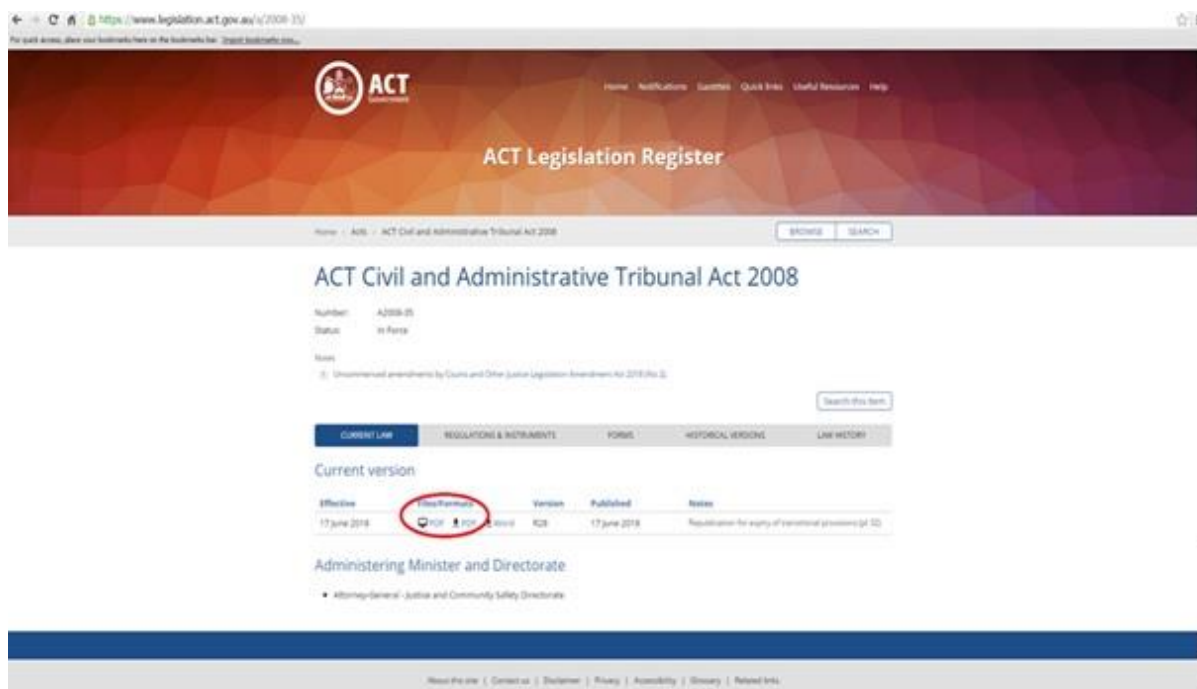


Figure 2

You can also search repealed Acts (these are laws that are no longer in force but may have been in force when your matter arose).

## Once I find a law – what do I do with it?

Once you have found the law you are looking for, you then open the webpage that contains the text of the law. You can view a PDF version on your screen or download a PDF or word version.

In [Figure 3](#) below, the webpage for the [ACT Civil and Administrative Tribunal Act 2008](#) (ACT) is shown.

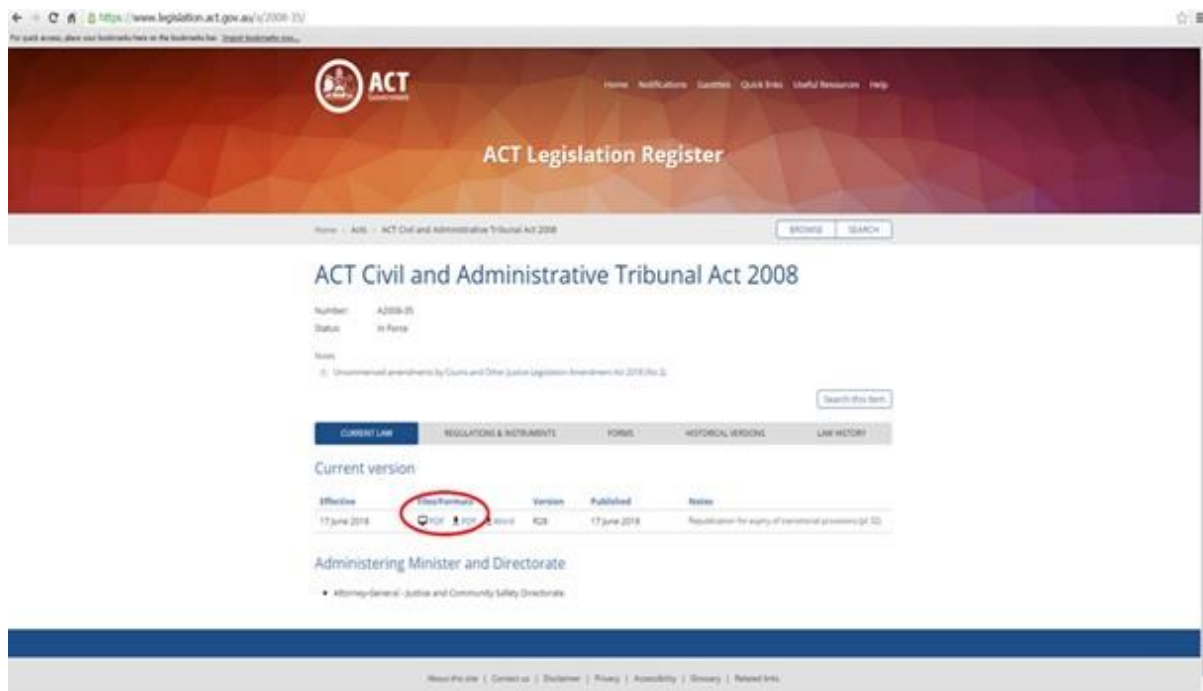


Figure 3

You will see that you can search this piece of law through the “Current Law” subheading, but that you can also view subordinate legislation such as the ACT Civil and Administrative Procedure Rules 2009 (No. 2) (under “Regulations and Instruments”), as well as “Forms”, “Historical Versions” and “Law History”.

### Which version of the Act should I use?

The legislation register provides you with the current version of the law, the law that is “in force”, as well as previous versions of the law. In general, you should ensure that you are reading the most up-to-date version of the law, though depending on your circumstances, you may need to seek legal advice about the law applicable at the time your matter arose. As you can see in [Figure 3](#) above, the Act tab specifies which link is the current version of the Act. To see previous versions of the law, click on the “Historical Versions” tab.

### How to use the table of contents

Once you have found the law you are looking for, you should read the contents of the Act. The contents of the Act are directly below the title. In the contents table, you can review the different chapters, parts, divisions and schedules of the Act. You can find relevant

sections by reading through the contents of the Act. You can also see how the law is structured and search the relevant parts of the law either by the number of the section (if you know the number) or the heading of each section. You will need to read any relevant sections in the context of the entire Act, and not in isolation. For this reason, you should also read the surrounding sections and the objects of the Act. Often sections of the Act will reference other sections, or other Acts and/or regulations. It is important to read the Act thoroughly and other referenced material.

### How to use the Explanatory Statement

If you want to understand the reasoning and purpose of the law, including particular sections of the act, you can read the Explanatory Statement. You can access the Explanatory Statement by clicking the 'Law history' tab (see Figure 3 above), then clicking on 'Bill' and then 'Explanatory Statement' in the Act index on the register.

### How do I find case law?

As a member of the public, you can find and read through Australian cases by using free databases such as AustLII (Figure 4), Jade or ACAT's database of decisions.

Visit: [AustLII's case and statute law database](#)  
Jade's [browser](#)  
ACAT decisions

The homepages of AustLII and Jade have a general search bar you can use to browse. However, if you are trying to research a specific type of judgment, you should use the 'advanced search' to filter the relevant results.

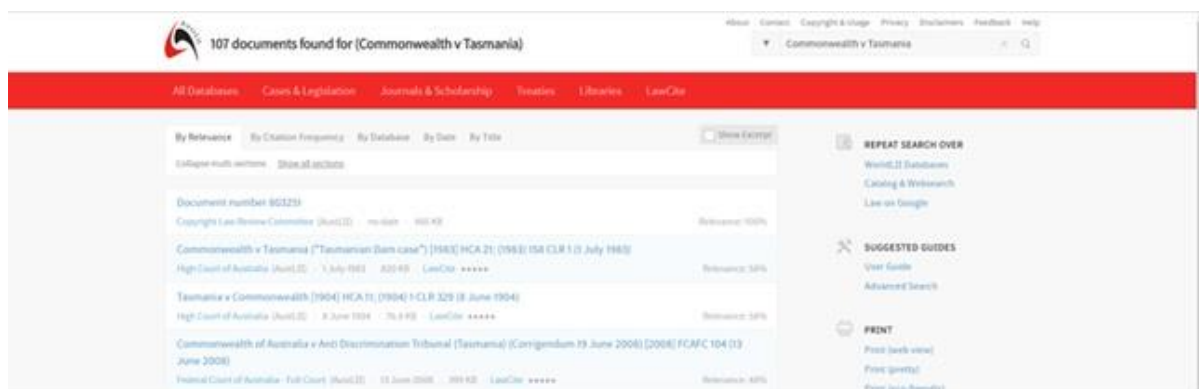


Figure 4

In AustLII, you can bring up an advanced search by clicking the drop-down arrow next to the search bar and selecting 'advanced search' (see Figure 4 above). Along with standard search filters, the advanced search gives you the option to filter out certain databases. If

you are looking for a case, you may want to uncheck the databases for legislation and secondary sources, and then continue the search by phrase, date or case citation.

To further improve the advanced search tools in these databases, you may use search connectors. Search connectors are keywords or symbols, added to a search, that improve the accuracy and relevancy of results. Each database may use different connectors, so it is important to check each website. However, there are several connectors that may commonly be used. Importantly these connectors need to be capitalized to work properly.

- **AND** – Combines two words, only results containing both key words will appear in the search e.g. cats AND dogs.
- **OR** – Broadens a search, by including results that contain one of the key words or both e.g. cats OR dogs.
- **NOT** – Excludes results that may be related, but irrelevant to the search e.g. cats NOT dogs.

#### **Example**

The full citation for an ACAT case is: *Maurer & Ellis v ACT Planning and Land Authority & Ors* [2016] 106.

The full citation features the names of each party (applicant v respondent), the year, jurisdiction (that is, which court or tribunal made the decision) and reference for the case.

Click [here](#) to try searching for this case in AustLII, using the tips outlined above.

A decision sets out how legislation or case law will be interpreted and applied to the facts of a case. It is important to understand the facts of a case, as well as the decision and the reasoning behind the decision to determine whether a case is relevant to you.

Final conclusions are usually found in a logical structure toward the end of a judgment. If there is more than one decision maker, the decision of each will be set out. If you find a case discussing issues similar to your own, you should read the entire case. Where a case is particularly helpful with your matter, you should write down the full citation of the case, the decision and the main reasons behind the decision (see the Example above for how to write a full citation).

If you find cases to support your argument, be prepared to discuss the cases and reasoning before a court or tribunal. The strongest arguments in courts or tribunals often depend on the party having analysed and prepared a list of supporting judgments, so it is important to keep a record of cases while you research.

## What else can I use to help me understand the law?

While primary sources of the law are crucial for researching your matter, you can also use secondary sources such as journal articles and policy commentary to enhance your understanding of how the law treats your matter. AustLII has access to legal databases that provide for a range of journal articles and other secondary materials accessible by the same search principles when researching cases and legislation.

Visit: [Google Scholar](#) for books, journal articles and other academic literature.

Australian Law Reform Commission (**ALRC**) [website](#) for publications such as Inquiry reports, information sheets and the ALRC *Reform Journal*.

Parliament of Australia's [Hansard](#) page for transcripts of parliamentary debates.

For free legal advice in the ACT, please refer to the list of resources at the [end of this factsheet](#).

## Legislative Materials for jurisdictions outside the ACT

- New South Wales – <https://www.legislation.nsw.gov.au/>
- Queensland – <https://www.legislation.qld.gov.au/>
- Victoria – <http://www.legislation.vic.gov.au/>
- Western Australia- <https://www.legislation.wa.gov.au/>
- South Australia – <https://www.legislation.sa.gov.au>
- Tasmania – <https://www.legislation.tas.gov.au/>
- Northern Territory – <https://legislation.nt.gov.au/>
- Commonwealth – <https://www.legislation.gov.au/>

There are a range of legal services in the ACT that may be able to assist you, depending on the nature of your matter.

## Where can I go for help?

### **Legal Aid ACT**

Website: [www.legalaidact.org.au](http://www.legalaidact.org.au)

Legal Aid ACT Helpline: 1300 654 314

### **ACT Law Society Pro Bono Clearing House**

Website: [www.actlawsociety.asn.au/for-the-public/legal-help](http://www.actlawsociety.asn.au/for-the-public/legal-help)

Phone: (02) 6274 0300

### **ACT Law Society**

Website: [www.actlawsociety.asn.au/for-the-public/legal-help](http://www.actlawsociety.asn.au/for-the-public/legal-help)

Phone: (02) 6274 0300

### **Care**

Website: [www.carefcs.org/](http://www.carefcs.org/)

Community education & loans: (02) 6257 1788

Consumer law: (02) 6143 0044

Financial counselling: 1800 007 007

### **Canberra Community Law**

Website: [www.canberracommunitylaw.org.au/](http://www.canberracommunitylaw.org.au/)

Phone: (02) 6218 7900

### **Youth Law Centre ACT**

Website: [legalaidact.org.au/what-we-do/youth-law-centre](http://legalaidact.org.au/what-we-do/youth-law-centre)

Phone: (02) 6173 5410

### **Aboriginal Legal Service (NSW/ACT)**

Website: [www.alsnswact.org.au](http://www.alsnswact.org.au)

Phone: (02) 9213 4100

Toll-free (for police charges and court matters): 1800 765 767

Toll free (for care and protection and family matters): 1800 733 233

### **Women's Legal Centre**

Website: [www.womenslegalact.org](http://www.womenslegalact.org)

Phone: (02) 6257 4377