



ACAT: How to Appeal Planning and Environment Decisions

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](#).

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Overview

The ACT government makes a wide range of decisions on planning and environmental matters. Many government decisions have an impact on applicants and the public, depending on the nature of the decision. Some, but not all, government decisions are reviewable by the ACT Civil and Administrative Tribunal (**ACAT**).

ACAT has the power to review some decisions made by ACT government decision-makers, including some decisions about:

- planning and development (under the [Planning Act 2023 \(ACT\)](#) (**Planning Act**));
- environment protection (under the [Environment Protection Act 1997 \(ACT\)](#) (**EP Act**));
- heritage (under the [Heritage Act 2004 \(ACT\)](#) (**Heritage Act**));
- tree protection (under the [Urban Forest Act 2023 \(ACT\)](#) (**UF Act**));
- water (under the [Water Resources Act 2007 \(ACT\)](#) (**WR Act**)); and
- nature conservation (under the [Nature Conservation Act 2014 \(ACT\)](#) (**NC Act**)).

Please note that this factsheet discusses government decisions that are reviewable by ACAT. Some government decisions are not reviewable by ACAT, however they may be reviewable by the ACT Supreme Court. For more information on appeals in the Supreme Court you can find our factsheet on the [EDO website](#).

If you are not sure whether a government decision is reviewable by ACAT or the ACT Supreme Court, you are welcome to contact our [National Intake](#) service.

What is the ACT Civil and Administrative Tribunal?

ACAT is an independent body with jurisdiction to hear and determine disputes in the ACT. It is created under the [ACT Civil and Administrative Tribunal Act 2008 \(ACT\)](#) (**ACAT Act**).

ACAT has many functions including the power to review some ACT government decisions. When making decisions, ACAT stands in the shoes of the decision-maker and decides whether the correct or preferable decision has been made. This is called ‘merits review’.

What can ACAT do?

When ACAT reviews a government decision (“original decision”), it can exercise any function the original decision-maker can exercise under an Act. This means that once the ACAT has reviewed a decision, it has the power to:

- confirm the original decision;¹
- vary the original decision;²
- set aside the original decision and make a substitute decision;³ or
- set aside the original decision and send the matter back to the original decision-maker for reconsideration, with a direction or recommendation.⁴

Which decisions can ACAT review?

ACAT only has jurisdiction to review a matter if the decision is a ‘reviewable decision’.⁵ A ‘reviewable decision’ is a decision that ACAT is specifically allowed to review under an *authorising law* (this is a law that gives authority for ACAT to review the decision).

Visit: ACAT’s [Legislation and authorising laws](#) page to see the list of authorising laws for reviewable decisions

Reviewable decisions under the [Planning Act](#)

Reviewable decisions under the Planning Act are listed in column 2, Part 5.2 of Schedule 5 of the Planning Act. Some of the decisions ACAT can review are:

- a decision made under section 185 to approve (with or without conditions) or refuse a development application that is not exempted from a public notification requirement (item 2);
- a decision made under section 199(1)(b) to approve (with or without conditions) a development application on reconsideration that is not exempted from a public notification requirement (item 6); and
- a decision made under section 206 to amend (with or without conditions) a development approval that is not exempt from public notification (item 8).

¹ [ACAT Act](#), s 68(3)(a).

² [ACAT Act](#), s 68(3)(b).

³ [ACAT Act](#), s 68(3)(c)(i).

⁴ [ACAT Act](#), s 68(3)(c)(ii).

⁵ [ACAT Act](#), s 22A.

Reviewable decisions under the [EP Act](#)

Reviewable decisions under the EP Act are listed in column 3, Schedule 3 of the EP Act. Some of the decisions ACAT can review are:

- a decision by the Environment Protection Authority (**EPA**) under section 21(1) of the EP Act to refuse to exclude making certain information available for public inspection (Item 1);
- a decision by the EPA under section 49 of the EP Act to grant, or refuse to grant, an environmental authorisation (Items 5-8); and
- a decision by the EPA under section 110(4) of the EP Act to dispose of a seized thing (Item 36).

Reviewable decisions under the [Heritage Act](#)

Reviewable decisions under the Heritage Act are listed in column 3, Schedule 1 of the Heritage Act. Some of the decisions ACAT can review are:

- a decision by the ACT Heritage Council under section 40 of the Heritage Act to include, or not include, a provisionally registered place or object on the heritage register (Item 1);
- a decision by the ACT Heritage Council under section 49 of the Heritage Act to cancel, or not cancel, the registration of a place or object (Item 2); and
- a decision by the ACT Heritage Council under section 67A of the Heritage Act to give a direction to repair damage to a place or object that has heritage significance (Item 6).

Reviewable decisions under the [UF Act](#)

Reviewable decisions under the UF Act are listed in column 3, Part 1.2 of Schedule 1 of the UF Act. Some of the decisions ACAT can review are:

- a decision under section 44 to give a tree protection direction (Item 1);
- a decision by the Conservator of Flora and Fauna (**Conservator**) under section 60 to register or not register a provisionally registered tree (Item 3); and
- a decision by the Conservator under section 66 to cancel, or refuse to cancel, registration of a tree (Item 4).

Reviewable decisions under the [WR Act](#)

Reviewable decisions under the WR Act are listed in column 3, Schedule 1 of the WR Act. Some of the decisions ACAT can review are decisions by the EPA to refuse to issue a licence or to impose a condition on a licence, including for example:

- a licence to take water (sections 30 and 31) (Items 3 and 4);
- a driller's licence (sections 35 and 36) (Items 5 and 6);
- a bore work licence (sections 39 and 40) (Items 7 and 8); or
- a waterway work licence (sections 44 and 45) (Items 9 and 10).

Reviewable decisions under the NC Act

Reviewable decisions under the NC Act are listed in column 3, Schedule 1 of the NC Act. Some of the decisions ACAT can review are:

- a decision by the Conservator under section 229(2) to issue a direction to repair damage to a person who has caused damage to a reserve or ACT property on a reserve (Item 2);
- a decision by the Conservator under section 299(3) to take regulatory action against a person who holds a nature conservation licence (Item 15); and
- a decision by the Conservator under section 331(2) to issue a direction to the occupier of land about the protection or conservation of native species, ecological community or habitat of a native species or ecological community that is on the land (Item 17).

Standing in ACAT

To challenge an ACT government decision that is a reviewable decision, you must have 'standing' to be eligible to apply for a review of the decision.

N.B. 'Standing' is the right to start proceedings in a court or tribunal. Depending on the situation, this may mean the right:

- to apply to a tribunal for review of a decision;
- to appeal a decision to a court or tribunal; or
- to have an issue heard before a court or tribunal.

Generally, there are two parties involved in government decisions – an applicant and a decision maker. A third party is a person or group who is not directly involved in the decision. For example, if you are a group or an individual trying to challenge the approval of a development, and you are not the applicant for the development application, you are a third party or party joined to that decision.

N.B. Applicants almost always have standing to seek review of an ACT government decision.

Third parties have standing for some, but not all, government decisions.

Third party standing in ACAT

Recognising that third parties are sometimes impacted by decisions, many environment and planning laws in the ACT include a list of parties who can appeal decisions (that is, who have standing), including third parties, provided they fulfil specific criteria.

For example, some laws (see [below](#) for examples) state that a person has standing in ACAT if their interests are affected by the relevant decision.

Section 22Q of the [ACAT Act](#) provides that:

- ACAT may decide whether your interests are affected by a decision, and ACAT's decision is conclusive;⁶
- A person whose interests are affected by a decision can be an unincorporated body, the Territory, the Commonwealth, a territory authority or Commonwealth authority;⁷
- A body has interests that are affected by a decision, if the decision relates to a matter included in the objects or purposes of the body before that decision was made.⁸

If you are part of a group, you will need to show that the decision relates to a matter included in your group's '[objects or purposes](#)'. You do not need to be an incorporated association to have standing,⁹ but it can be helpful because incorporated associations must have a constitution where their objects and purposes are stated.

If you are an incorporated association, '[objects or purposes](#)' refers to the objects or purposes stated in your constitution. You should make sure that the objects in your constitution clearly relate to the issue that you are working on so that you can prove that your '[interests are affected](#)' by a decision, and you can argue that you have standing to apply to ACAT for a review of a decision.

Do I have standing under the [Planning Act](#)?

Schedule 5 of the Planning Act lists the decisions that ACAT can review, and *who* can apply to ACAT for a review. Entities who are eligible to apply to ACAT for review of the decision are described as 'eligible entities'.¹⁰ Eligible entities for each reviewable decision are also listed in Schedule 5 of the Planning Act.¹¹

Schedule 6 of the Planning Act specifies matters where third parties cannot apply for ACAT review, and only the applicant in the development approval can apply for ACAT review. These matters include territory priority projects,¹² and the putting up of signs or advertisements on land, a building or other structure on land.¹³

To have standing, you need to show that you are an eligible entity for the reviewable decision.

As an example, if you want to apply to ACAT for a review of a decision under section 185 of the [Planning Act](#) to approve a development application that is not exempted from a public

⁶ [ACAT Act](#), s 22Q(4).

⁷ [ACAT Act](#), s 22Q(1).

⁸ [ACAT Act](#), s 22Q(2)-(3).

⁹ [ACAT Act](#), s 22Q(1).

¹⁰ [Planning Act](#), s 506.

¹¹ [Planning Act](#), s 504.

¹² [Planning Act](#), Schedule 6 Part 6.2 item 1.

¹³ [Planning Act](#), Schedule 6 Part 6.2 item 7.

notification requirement, then to show you are an eligible entity to apply for ACAT review, you will need to prove that:

1. you previously made a representation under section 180 of the [Planning Act](#) about the development application when it was open for public comment or had a reasonable excuse for not making a representation; AND
2. the approval of the development application may cause you to suffer ‘material detriment’.¹⁴

‘Material detriment’ is defined in the Planning Act.¹⁵ If you are an individual, *material detriment* means detriment suffered because of a government decision which has or is likely to have an adverse impact on your use or enjoyment of the land. If you are a group or organisation, *material detriment* means detriment suffered because of a government decision which:

- has or is likely to have an adverse impact on your use or enjoyment of the land; or
- relates to a matter included in your entity’s objects or purposes.

Importantly, you will not be taken to suffer material detriment if detriment is suffered only because of a decision that increases (or is likely to increase) direct or indirect competition with your business or your business partner, close friend or family.

The case studies below discuss situations where a decision was found to relate to a matter included in the entity’s objects or purposes.

Case Study: [North Canberra Community Council v ACT Planning and Land Authority & Canberra District Rugby League Football Club Limited \(Administrative Review\) \[2014\] ACAT 1](#)

The North Canberra Community Council (**NCCC**) sought the review of a decision by the ACT Planning and Land Authority (**ACTPLA**) to vary a lease and remove its concessional status. To have standing, the NCCC needed to show that it was an ‘eligible entity’ that had suffered ‘material detriment’ under the *Planning and Development Act 2007* (ACT) (**PD Act**) (repealed).

The NCCC’s objects in its constitution involved the use of land for community and social purposes. The NCCC relied on its object ‘*to protect, promote and enhance the ... social and environmental well-being of the North Canberra resident community ...*’ to argue that the decision to remove the concessional status of a lease related to the physical and social planning of North Canberra. Even though the NCCC’s objects were broad, they were read down to be geographically confined and distinguished from the interest of the general public. ACAT decided that this decision related to a matter included in NCCC’s objects.

¹⁴ [Planning Act](#), Schedule 5 Part 5.2 item 2 column 3.

¹⁵ Planning Act, Schedule 5, Part 5.1.

Case study: [Ginninderra Falls Association Inc v ACTPLA \(Administrative Review\) \[2017\] ACAT 108](#)

As in *North Canberra Community Council* (above), the Ginninderra Falls Association (**GFA**) had to prove that a decision by ACTPLA to approve a development application was *related to a matter included in its objects or purposes*, in order to have suffered ‘material detriment’ and satisfy the definition of an ‘eligible entity’ under the now repealed PD Act.

ACAT found that the proper date upon which to consider whether the decision related to an entity’s objects or purposes was the date that the decision was made. Because GFA had changed its objects after the decision was made, its standing was considered under its previous objects.

Did the objects of GFA relate to the decision?

The GFA’s objects included the creation of a national park. The relevant decision was a decision to approve a development near a proposed national park. ACAT noted that the standing provisions have a ‘wide operation’ and, consistent with other cases, found that the decision related to GFA’s objects and purposes, and therefore that GFA had standing.

Do I have standing under the [EP Act](#)?

A reviewable decision in the [EP Act](#) is a decision listed in column 3, Schedule 3, next to the corresponding section in column 2. According to section 136D of the EP Act, ‘eligible entities’ listed in column 4 Schedule 3 of the EP Act or ‘*any other person whose interests are affected by the decision*’ have standing to apply to ACAT for review.

Third parties are not explicitly listed in column 4, Schedule 3 of the EP Act. However, section 136D(b) of the EP Act states that you may apply to ACAT for review of a reviewable decision if, you are ‘*any other person whose interests are affected by a decision*’. You will need to show that your *interests are affected* by the decision. See above for more on people whose interests are affected pursuant to section 22Q of the [ACAT Act](#).

Do I have standing under the [Heritage Act](#)?

A reviewable decision in the Heritage Act is a decision listed in column 3, Schedule 1 next to the corresponding section in column 2. Under section 114 of the Heritage Act, you need to be an ‘*interested person*’ to apply to ACAT for review of a decision. The meaning of interested person is set out in section 13 of the Heritage Act. For example, you would be considered an ‘*interested person*’ if you submitted a written comment to the ACT Heritage Council about the decision before the end of the public consultation period for a decision by the ACT Heritage Council:

- to include, or not include, on the heritage register, a provisionally registered place or object, under section 40 of the Heritage Act;¹⁶ and

¹⁶ [Heritage Act](#), s 13(2)(a).

- to cancel a registration of a place or object under section 49 of the Heritage Act.¹⁷

Case Study: [Taglietti v Act Heritage Council \(Administrative Review\) \[2011\] ACAT 14](#)

The Flynn Primary School Parents and Citizens Association Inc (**P&C**) was one of the applicants seeking review of a decision by the ACT Heritage Council not to provisionally register the Flynn Primary School, Pre-School, Health Centre and relevant parts of the George Simpson Park in the ACT Heritage Register.

To have standing, the P&C needed to show that it was an ‘interested person’ under section 13 of the Heritage Act. Section 13 of the Heritage Act contains a list of people considered to be an ‘interested person’, which includes the ‘occupier of the place’.¹⁸

Flynn Primary School had closed in 2006 and no longer existed at the time of the tribunal hearing. Although the P&C formerly occupied the place, ‘occupier of the place’ under section 13 of the Heritage Act only applies to current occupiers and does not apply to former occupiers.

Therefore, the P&C was not an interested person and did not have standing to apply for review of the decision.

Do I have standing under the [UF Act](#)?

The UF Act contains a list of entities that may seek ACAT review of reviewable decisions at column 4, Part 1.2 of Schedule 1.¹⁹

For example, if a representative Aboriginal organisation gave advice in relation to a decision under section 60 of the UF Act, to register or not register, a provisionally registered tree, that representative Aboriginal organisation may seek ACAT review of the decision.²⁰

Do I have standing under the [WR Act](#)?

A reviewable decision in the WR Act is a decision listed in column 3, Schedule 1 next to the corresponding section in column 2. According to section 96 of the WR Act, entities listed in column 4, Schedule 1 or ‘*any other person whose interests are affected by the decision*’ have standing to apply to ACAT for review. Third parties are not explicitly listed in column 4, Schedule 1 of the WR Act. However, if you can show that your interests are affected by the decision, you may be able to apply for a review of a decision under section 96(b) of the WR Act. See above for more information on people whose *interests are affected* pursuant to section 22Q of the [ACAT Act](#).

¹⁷ [Heritage Act](#), s 13(2)(b).

¹⁸ [Heritage Act](#), s 13(1)(d)(ii).

¹⁹ [UF Act](#), s 136.

²⁰ [UF Act](#), Schedule 1, Part 1.2, column 4, item 3 and s 61(f).

Do I have standing under the [NC Act](#)?

A reviewable decision in the NC Act is a decision listed in column 3, Schedule 1 under a provision of the Act mentioned in column 2. According to section 362 of the NC Act, either an entity mentioned in column 4, Schedule 1 has standing to apply to ACAT for review of a decision, or *‘any other person whose interests are affected by the decision’*.

Third parties are not explicitly listed in column 4, Schedule 1 of the NC Act. However, if you can show that your interests are affected by the decision, you may be able to apply for a review of a decision under section 362(b) of the NC Act. See above for more information on people whose interests are affected per section 22Q of the [ACAT Act](#).

How to do I apply to ACAT for review of a decision?

When do I need to apply to ACAT?

There are special timing rules for filing an application in ACAT.

[Planning Act](#)

If you are not the person applying for the development application, and you want a review of a development application decision under the Planning Act, you need to lodge your application within 20 working days after you were given notice of the decision.²¹ A working day is a day that is not a Saturday or Sunday, or a public holiday in the ACT. ACAT cannot extend this time period for making an application.²²

Other environmental laws in the ACT

The EP Act, Heritage Act, UF Act, WR Act and NC Act do not specify a time period for applying to ACAT. To apply for review of decisions made under these laws, the general rule is that an application to ACAT for review of a decision must be made within 28 calendar days after the day the decision is made.²³

How do I apply to ACAT?

To make an application for ACAT to review a planning decision, you need to:

1. Fill in the [Application for review of a decision](#) form.
2. Lodge the form:
 - by email to: ACATAdminReview@act.gov.au; or
 - by post to: GPO Box 370
Canberra ACT 2601; or
 - in-person at the ACAT Registry.

²¹ [Planning Act](#), s 507(2).

²² [Planning Act](#), s 507(4).

²³ [ACAT Act](#), s 10(2).

3. Pay the lodgement fee.

Visit: ACAT's [Forms](#) page to download the [Application for review of a decision](#)

ACAT's [Lodge or serve documents](#) page for more information on lodging documents with ACAT

ACAT's [ACAT fees](#) page for more information on lodgement fees

What happens after I lodge my application?

The general steps in ACAT are as follows:

1. ACAT receives your application

After you lodge your application, the Registrar will decide what steps to take. You may be referred to a conference or mediation. You will receive written notice of the steps and the date, time and location of the next conference or hearing.

2. Conference

The Registrar may conduct a pre-hearing conference. The purpose of the conference is to understand what issues are in dispute, make sure that you have tried to resolve the dispute and assess how long a hearing would take. Many disputes are dealt with through the tribunal's conference and mediation determination process.

If this is unsuccessful, you will proceed to a hearing. If you reach an agreement, the terms of the agreement can be lodged with ACAT. If you do not reach an agreement, you may go to a hearing.

3. Hearing

You will receive written notice advising the date, time and location of the hearing. At the hearing, you will be asked if you have any further information or evidence to that already presented in the application or the response.

Visit: ACAT [website](#) for more information

How long will it take for ACAT to get back to me?

If the original decision being reviewed by ACAT was made under the Heritage Act, the Planning Act, or the UF Act, ACAT has 120 days to decide on your application. However, this time can be extended in some circumstances.²⁴

²⁴ [ACAT Act](#), s 22P.

The ACAT Act does not specify a time for deciding applications under the EP Act, WR Act or NC Act.

How much does merits review in the ACAT cost?

There are fees for lodging an administrative review application with ACAT. In general, each ACAT party will pay for the cost of their own application, lawyers and other fees (section 48 of the [ACAT Act](#)). However, if ACAT finds in your favour, it can ask that the other party pay for the cost of your application fee and other tribunal fees you incurred (section 48(2)(a) of the ACAT Act).

If ACAT thinks that you have caused an unreasonable delay, or your application is frivolous or vexatious, it can order you to pay costs (section 48(2)(b) of the [ACAT Act](#)). If your application for review of a decision is under the [Heritage Act](#), [Planning Act](#), or [UF Act](#) and ACAT makes an order under section 32(2) (Dismissing or striking out applications), ACAT may order you to pay the reasonable costs of the other party (section 48(2)(d) of the ACAT Act).

What if I think the ACAT decision is incorrect?

If the ACAT decision relates to the EP Act, WR Act or NC Act

If the ACAT decision relates to the EP Act, WR Act or NC Act, and you think it is incorrect on a question of fact or law, you may be able to appeal the decision within ACAT.²⁵

N.B. A question of fact relates to the finding of facts or inferences arising from facts and may include the weight given to evidence.

A question of law is if you think there is an error of law which affects the legality of the decision.

To appeal the decision within ACAT, you need to:

1. Fill in the [Application for appeal](#) form.
2. Attach a copy of the ACAT order which sets out the decision being appealed.
3. Lodge the form:
 - by email to: ACATAdminReview@act.gov.au; or
 - by post to: GPO Box 370
CANBERRA ACT 2601; or
 - in-person at the ACAT Registry.
4. Pay the lodgement fee (unless you have an exemption, waiver or deferral).

²⁵ [ACAT Act](#), s 79.

An appeal must be lodged within 28 days after the ACAT decision is made.

Visit: ACAT's [Appeal an ACAT decision](#) page for more information.

ACAT's [Lodge or serve documents](#) page for more information on lodging documents with ACAT

ACAT's [ACAT fees](#) page for more information on lodgement fees

N.B. If the ACAT Appeal Tribunal makes a decision that you think is wrong on a [question of fact or law](#), you may apply for leave to appeal to the ACT Supreme Court.²⁶

You can read the factsheet on Appealing Planning and Environment Decisions in the ACT Supreme Court on the [EDO website](#).

If the ACAT decision relates to the Planning Act, Heritage Act or UF Act

If the ACAT decision relates to the Planning Act, Heritage Act, or UF Act, and you think it is incorrect on a [question of law](#), you may apply for leave to appeal to the ACT Supreme Court.²⁷

You can read the factsheet on Appealing Planning and Environment Decisions in the ACT Supreme Court on the [EDO website](#).

Do I need to be represented by a lawyer in ACAT?

You do not need a lawyer to make an application for merits review before ACAT. ACAT is less formal than a court and is designed for people to represent themselves.

N.B. The EDO may assist you if your matter involves public interest environmental law issues

Where can I go for more information?

- Visit the ACAT [website](#).
- Read factsheets about the ACT on the [EDO website](#).
- [Request legal advice](#) from the EDO through our National Intake service.

²⁶ [ACAT Act](#), s 86(1)(a)(i), s 86(4).

²⁷ [ACAT Act](#), s 86(2), s 86(4).

