



Trees on Boundaries 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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Living in a leafy, tree-filled community like Canberra gives us a range of benefits. Trees are a beautiful and integral part of our neighbourhoods. Yet conflicts can and do arise between neighbours and local government as a result of trees on boundaries.

N.B. The EDO can provide free legal advice in relation to public interest environmental law matters. The EDO does not provide legal advice on private disputes between neighbours, including disputes about overhanging trees or vegetation. If you require legal advice about a private dispute between you and your neighbour, see “[Where can I go for more information](#)” below.

Trees in the ACT

Some trees in the ACT are protected under the [Tree Protection Act 2005 \(ACT\)](#) (**Tree Protection Act**). The [Tree Protection Act](#) establishes an [ACT Tree Register](#) to protect **protected trees**, which are defined as:¹

- **Registered trees**, individual trees that are registered under part 7 of the Tree Protection Act;² and
- **Regulated trees**, trees within Tree Management Precincts that also have particular physical characteristics, and which are regulated by the [Tree Protection \(Tree Management Precincts\) Declaration 2009](#).³

Under the Tree Protection Act, it is a criminal offence to damage **protected trees** without the prior approval of the ACT Conservator of Flora and Fauna (**the Conservator**).⁴

¹ [Tree Protection Act 2005 \(ACT\)](#), s 8 (**Tree Protection Act**).

² *Ibid*, s 9.

³ *Ibid*, s 10.

⁴ *Ibid*, ss 15-19.

'Damage' includes poisoning, felling or removing, cutting branches, lopping, pollarding and major pruning.⁵ However, you can apply to damage a protected tree.⁶

Visit: Access Canberra's website to complete an [Application to Undertake a Tree Damaging Activity form](#)

Other laws apply to trees in the ACT, including:

- [Nature Conservation Act 2014 \(ACT\)](#), which includes offences relating to native trees and vegetation on leased and unleased land;
- [Trespass on Territory Land Act 1932 \(ACT\)](#), which applies to trees on unleased Territory land and land occupied by the Territory. It is an offence to damage or destroy trees on unleased Territory land or land owned by the Territory without a reasonable excuse;⁷
- [Heritage Act 2004 \(ACT\)](#), which applies to trees which are registered for their heritage value; and
- [Public Unleased Lands Act 2013 \(ACT\)](#), which applies to trees overhanging, causing obstruction, or otherwise endangering the safety of anyone using public unleased land.

Common issues with trees on boundaries

There are numerous common issues that arise involving trees on boundaries:

Overhanging trees

If a neighbour's tree grows over into your property, you are entitled by law to trim the branches as far as they overhang. However, you must check first to see whether the tree you want to trim is registered or regulated. As explained earlier in this factsheet, damage to protected trees requires approval from the Conservator prior to work. If the tree is protected, you must apply to the Conservator to damage the tree and receive approval from the Conservator before you modify the tree. As noted above, it is an offence to damage a protected tree without permission.

If the tree that you want to trim is not a protected tree, or you have permission from the Conservator to modify the tree, then you must trim the branches from your own property. You may not enter a neighbour's property unless that neighbour has given you permission to do so. Out of courtesy, you should talk to your neighbour before you trim any trees on boundaries, to ensure there is no issue with you pruning or maintaining an overhanging tree.

⁵ Tree Protection Act, s 10.

⁶ Ibid, s 22.

⁷ [Trespass on Territory Land Act 1932 \(ACT\)](#), s 7.

Trees and solar panels

Large trees on boundaries can impact the efficiency of solar panels on your property. Solar access in the ACT is regulated by building setback limits in the Territory Plan, and Development Codes under the Territory Plan.

Under Schedule 1 Item 1(1)(e) of the [Tree Protection \(Approval Criteria\) Determination 2006 \(No 2\)](#), the Conservator may give approval to damage a regulated tree when:

“the tree is substantially affecting solar access to the lessee’s lease, or neighbouring lease, during winter between the hours of 9am to 3pm and pruning is not sufficient to remedy this (excluding remnant eucalypts)”.

N.B. In this instance, “solar access” does not exclusively refer to a solar panel’s access to the sun. Instead, it refers to access to sunlight on the entire leased block.

(a) Impact on solar panels from trees on neighbouring private property

Large trees on neighbouring properties can impact the efficiency of solar panels on your property. The laws on modification of protected trees are explained earlier in this factsheet and apply in this situation – this means that if you wish to modify a protected tree because it impacts on your solar panels, you will need to seek permission from the Conservator before you can do so.

(b) Impact on solar panels from trees on neighbouring public land

You must also not remove public trees unless you have written approval from Transport Canberra and City Services (**TCCS**).

TCCS is the ACT Government Directorate responsible for the management of trees on urban public land and (most) trees on leased land. TCCS has specified that, while it promotes the use of solar panels, it will not assist in removing a tree in a public place to improve the efficiency of a residential solar panel.

If you feel as though your personal circumstances warrant the removal or pruning of a public tree, contact [Access Canberra](#) or fill in a [tree removal application form](#).

Whose responsibility is it to remove or prune overhanging trees/vegetation?

In the ACT, landowners have rights and responsibilities in relation to fixtures on their land, which includes trees: [Young v Hammond \(Civil Dispute\) \[2012\] ACAT 30](#) at [54] (**Young v Hammond**). This responsibility includes a responsibility to ensure that trees are not unreasonably interfering with neighbouring properties and are not causing any damage to neighbouring properties or threatening the safety of neighbours or their properties.

Trees that cause an interference on neighbouring properties can sometimes be called a 'nuisance'. A nuisance is something that causes an 'unreasonable interference' with another person using or enjoying land they own or occupy or causes material damage to another person's property as a result of the interference.

The following examples *could*, in some circumstances, be considered a nuisance:

- tree roots that damage a neighbour's fence or walls;
- overhanging branches that interfere with a neighbour's ability to grow a garden; and/or
- overhanging branches that drop leaves and fruit and contaminate a neighbour's soil.

For example, in *Young v Hammond*, the canopy of a large and diseased tree located on the respondents' land extended over the applicant's property. The ACT Civil and Administrative Tribunal (**ACAT**) found that the tree posed a real and imminent risk of both serious personal injury to occupants and visitors on the applicants' land, and damage to the applicants' property from either the entire tree or individual branches falling. The ACAT observed at [58]:

'a substantial and unreasonable interference with the use of the land... arising from the imminent threat of danger to the land is enough to constitute a nuisance'.

If a landowner's tree or vegetation causes 'unreasonable interference' with their neighbour's use and enjoyment of their property, or if the tree or vegetation causes material damage to the neighbour's property as a result of the interference, then the landowner *could* be liable to their neighbour in nuisance.

Whether or not the landowner is liable in nuisance depends on the circumstances. It requires balancing, on one hand, of the rights of one owner or occupier to do as they like with their land, against the right of another not to have their enjoyment of their land interfered with.⁸

However, there is no law in the ACT that legally compels a landowner to take steps to prune or remove a tree from their land.⁹ The only way a landowner could be legally compelled to prune or remove a tree on their land would be if their neighbour commenced proceedings (a civil dispute) against the landowner in ACAT for nuisance, and ACAT made an order for the landowner to prune or remove the tree.

If you have a dispute with your neighbour about an overhanging tree or vegetation, read [Handling neighbourhood disputes](#) below.

For a summary of *Young v Hammond*, see '[Case Studies](#)' the end of this factsheet.

⁸ [Topsy Bull Pty Ltd v Foundry Enterprises Pty Ltd Trading as Hopscotch Bar \(Civil Dispute\) \[2019\] ACAT 51](#) at [25].

⁹ [Young v Hammond \(Civil Dispute\) \[2012\] ACAT 30](#) at [55].

Handling neighbourhood disputes

If there is an issue between you and your neighbour regarding the impact of a tree on a boundary, you should speak to your neighbour first about the issue – especially if your actions are likely to affect them. Give your neighbour a chance to acknowledge your concerns and take their views into consideration when deciding what to do next.

N.B. Write down discussions with your neighbour so that you have a record of what has happened.

If a discussion does not resolve your concerns and you do not have an agreed way forward, there are a number of steps you can take.

1. Letter of demand

You can send a letter of demand to your neighbour. A letter of demand is a letter that:

- says that it is a letter of demand;
- sets out the issues;
- states what you are demanding; and
- gives a timeframe within which you would like the matter resolved

N.B. Remember to include the date in your letter of demand and keep a copy of your letter of demand for your records.

2. Mediation

If your neighbour is being unreasonable or unhelpful, or if you cannot reach an agreement, you can try mediation. Mediation is a discussion facilitated by an independent person who has been trained in resolving conflict. The Conflict Resolution Service provides free or low cost mediation and is recommended by the ACT government – especially for disputes involving common boundaries and fences.

Visit: Conflict Resolution Service [website](#) for mediation services.

3. ACAT

The ACT Civil and Administrative Tribunal (**ACAT**) is an independent body with jurisdiction to hear and determine civil disputes in the ACT for amounts up to \$25,000. If you cannot resolve a dispute through discussions with your neighbour or by mediation, ACAT may be able to hear the dispute. Depending on your issue, you can make a civil dispute or administrative review application in ACAT.

Before you go to ACAT, we recommend that you try to resolve this dispute with your neighbour first, for example by sending a letter of demand – see '[1. Letter of demand](#)' above.

Civil dispute applications in ACAT

ACAT handles several matters involving trees on boundaries. They are civil matters (dealing with nuisance), and administrative matters (dealing with decisions made by the ACT Government related to tree modification):

- *Trees and nuisance*

You can lodge a [civil dispute application](#) in ACAT for nuisance to deal with an interference of use or enjoyment of land. You can ask for an order to deal with this interference, such as an order to repair a broken fence or pipe as a result of a tree on a neighbouring property. You can also seek compensation for any damages you have experienced. Further information is available from the [ACAT website](#).

- *Administrative review application in the ACAT*

You can appeal a decision by the ACT Government – for example, a decision made by the Conservator to refuse approval to modify a tree – by lodging an '[application for review of decision](#)' in the ACAT. You can ask for a review of the decision, and you can provide the reasons why you feel a different decision is necessary.

Read: EDO factsheet on [Appealing Planning and Environment Decisions in the ACAT](#) for more general information about administrative review in ACAT.

Case studies

[Young and Hammond \(Civil Dispute\) \[2012\] ACAT 30 \(9 May 2012\)](#)

In this case, a diseased tree was in danger of falling onto a neighbouring property. The respondents were the owners of the block where the tree was located. The applicants were neighbours and the tree partly hung over on to their land and was likely to fall onto their property.

The applicants wanted the tree removed. The ACT Conservator had given permission for the tree to be removed under the [Tree Protection Act](#). The respondents refused to pay for the tree to be removed because they argued that tree was owned by the government. Amongst other issues, ACAT considered the following:

Nuisance

- Two forms of private nuisance were identified:
 - (i) Unreasonable interference with the use and enjoyment of the neighbour's property, or;
 - (ii) Material damage suffered as a result of the interference.
- The ACAT found that there did not need to be any actual damage to the neighbour's land – it is enough that there was substantial and unreasonable interference with the use of the land. The threat of the tree falling on the land was enough to be a nuisance.
- The remedy available was abatement, where the nuisance is removed by the person who is causing the nuisance.

Trespass

As an alternative, ACAT discussed trespass. Trespass involves the direct and intentional interference with another person's possession of land. There is no requirement to prove damage or loss as a result of trespass. ACAT considered that the overhanging branches were a trespass.

Negligence

- ACAT recognised that there is an overlap between nuisance and negligence.
- If the tree fell and damaged property or caused an injury, then an action for negligence could be brought.

The respondents were ordered to permit the applicants to access their property to remove the tree and to pay the invoice for removal of the tree.

The following case study demonstrates that there may not be a sufficient ground for removal of trees where trees block light to solar panels, unless the tree is shadowing the entire lease, or there are other breaches of the *Tree Protection Act*.

Wickerson v Conservator of Flora and Fauna [2018] ACAT 43

The applicant had originally applied to have a tree on his property removed. When that application was refused, the applicant lodged an application to ACAT to reconsider the refusal to have the tree on removed. His grounds for the application were that:

- the tree caused unacceptable risk to public and private safety;
- it was in an inappropriate position considering growth potential and size; and

- it had a serious impact on the solar access of the lease.

ACAT found that for a tree to be removed on grounds of solar access, it had to substantially affect solar access to the whole lease, and not just the house or a small section. It was added that high heating bills would not be taken into account when considering the removal of a tree for solar access.

Where can I find more information?

You can find out more information through the following:

- [Access Canberra](#) (in particular, see [Trees on private property](#));
- [Conflict Resolution Service](#);
- The [ACAT](#) website;
- The [ACT Law Handbook](#) factsheet on '[Tree Protection](#)';

For legal advice on public interest environmental law matters relating to trees for example:

- trees that are at risk of destruction from a significant development application;
- trees that are culturally significant to Aboriginal or Torres Strait Island people; or
- trees that are registered for heritage value

You can request legal advice from the EDO on our [Get Advice](#) page. For more information about the EDO, visit our [website](#).

For legal advice on a private dispute between you and your neighbour about overhanging trees or vegetation, you can request legal advice from Legal Aid ACT by calling the Legal Aid Helpline on 1300 654 314.

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If you have any concerns or suggestions regarding this factsheet, please fill out the Legal Resources evaluation form by clicking [here](#) or scanning the QR code below:

