



## Fact Sheet

# Neighbourhood disputes

Disputes often arise between neighbours about environmental issues including light pollution, noise pollution, and pollution from smoke, dust, odour and fumes. This factsheet will look at these issues specifically, but also the general issue of neighbourhood disputes, including what you can do to resolve these disputes and when you can take a matter to the ACT Civil and Administrative Tribunal (ACAT).

## General environmental duty

There is a general environmental duty in the [Environment Protection Act 1997 \(ACT\) \(EP Act\)](#), that every person must take steps that are practicable and reasonable to prevent or minimise environmental harm or environmental nuisance caused, or likely to be caused, by an activity conducted by that person (section 22(1) EP Act).

“Environmental nuisance” is defined in the EP Act as *“unreasonable interference with the enjoyment by the public, a section of the public or a person of a place or area, if the interference caused or likely to be caused by (a) dust, fumes, light, noise, odour or smoke; or (b) an unhealthy, unsightly or otherwise offensive condition because of pollution”*.

The duty set out in the EP Act is a good starting point for neighbourhood environmental disputes – it means that you and your neighbours each have a responsibility to make sure that you do not cause environmental harm or nuisance to the other.

## Light pollution

Light pollution is where artificial light illuminates areas that not intended to be lit. An example of light pollution could be artificial lights shining into a neighbour’s window, or overly bright lights which illuminate a larger area than is appropriate.

### Outdoor lighting

There are special standards for outdoor lighting. Outdoor lighting is permanently installed exterior lighting and interior lighting systems which emit light that impacts on the outdoor environment. All outdoor lighting must comply with [Australian Standard 4282 – Control of the obtrusive effects of outdoor lighting \(AS 4282 – 1997\)](#). The guidelines generally apply to new light installations; however, some apply to remedial measures for existing light installations (section 1). AS 4282 - 1997 does not apply to road lighting, advertising signs and lighting systems that are cyclic or flashing.

## Noise pollution

Noise generated in residential areas is a common cause of complaints. The Environmental Defenders Office ACT (EDO ACT) has a [Noise Pollution Factsheet](#) with detailed information about noise in the ACT.

In general, noise in the ACT is regulated by the EP Act and accompanying



regulations. The EP Act does not cover some types of noise (including noise from trains, aeroplanes, animals and cars on the road).

Under the EP Act, the ACT is divided into noise zones. There is a different standard of noise allowed in each noise zone. Different standards apply for residential and commercial noise.

## Smoke, odour and fumes

Smoke, odour and fumes may be an environmental nuisance or harm under the EP Act. A pollutant being emitted into the air from a fire is taken to *not* cause environmental harm unless burning the substance burned in the fire, or the lighting, using or maintaining of the fire, is an offence under any of the following sections (Section 13 of the *Environment Protection Regulation 2005 (ACT)*):

- Open-air fires prohibited except in certain circumstances (section 9);
- Burning certain substances requires environmental authorisation (section 10);
- Fire bans in bad weather (section 11);
- Indoor fires prohibited unless harm minimised (section 12).

## Unit title property (strata)

If you live in an apartment, unit or townhouse - special rules probably apply to you. Most apartments, units or townhouses are held under unit title (also called strata title). Unit title is a system where common areas are owned and maintained collectively by all occupiers. All owners of unit title property automatically become members of the owner's corporation. All owners corporations have rules that set out your obligations in relation to a range of issues – including environmental nuisance issues. The rules apply to all occupiers within a unit titles plan, including tenants and owners. Ask your owners corporation manager for a copy of the rules if you do not already have one. In the absence of a rules document, default rules as contained in [schedule 4, Unit Titles \(Management\) Act 2011 \(ACT\)](#) apply.

## My neighbour is causing an environmental nuisance – what should I do?

1. You should begin by speaking with your neighbour 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. You should write down what was said in discussions with your neighbour so that you have a record of what has been discussed and agreed upon (or not);
2. **Mediation:** If you cannot reach an agreement with your neighbour, you can try mediation. Mediation is a discussion facilitated by an independent person who has been trained in resolving conflict. The Conflict Resolution Service ([www.crs.org.au](http://www.crs.org.au)) is recommended by the ACT government and can help with disputes between neighbours.
3. **Lodge a complaint:** You can lodge a complaint by writing to the Environment Protection Authority (EPA). This process is summarised in the flow chart below.



4. Nuisance Application in ACAT: A nuisance application is an application for relief of a nuisance. You can make a civil dispute application to deal with a nuisance (section 15, 16 and 17 ACAT Act) or an application to deal with interference with use or enjoyment of land. You can apply for particular orders to deal with the interference. You can also apply for monetary damages and/or an order to stop the interference or grant other legal relief (section 22 ACAT Act, which gives ACAT the powers of the Magistrates Court in its civil jurisdiction). For more information about going to ACAT, please see the information about lodging a civil dispute application on the [ACAT's website](#).

### Lodge a complaint

You can lodge a complaint by writing to the Environment Protection Authority (EPA) (through Access Canberra).

The EPA will send a letter to your neighbour to informing them of their duty to not cause environmental nuisance or harm.

### If not resolved, further complaint

The EPA will conduct its own investigations to determine if environmental nuisance or harm has been caused.

### If EPA finds that environmental harm has been caused, warning letter or fine

If the EPA finds that the lighting amounts to environmental nuisance or harm, your neighbour may be issued with a warning letter or fine.

In more serious cases, they may be served with an Environmental Protection Order (EPO). Contravening an EPO is a serious matter and may result in a large penalty and in some circumstances, proceedings in the Magistrate's Court.



**Example: [Chyb & Damiani \(Civil Disputes\) \[2010\] ACAT 13 \(23 March 2010\)](#)**

The applicant filed a nuisance application in ACAT against his neighbour (the respondent). Shortly beforehand, the applicant lodged complaints with the EPA about noise and light pollution. The EPA had investigated the respondent and given him a warning and infringement notice. The applicant's nuisance application raised the following issues:

**1. Noise from pool equipment and a reverse cycle air conditioner**

The respondent had been investigated by the EPA in regards to the pool equipment. After the EPA investigation, the respondent erected a fence around the pool equipment which reduced the noise to the level required by the EPA. The respondent had also been given a warning and an infringement notice by the EPA for the air conditioner noise. Following this, he had fitted the air conditioner with an acoustic enclosure and used it between 7am and 10pm only in accordance with the EPA guidelines. ACAT found that following the EPA involvement, the respondent had done everything possible to remedy the noise pollution.

**2. External lights on the walls of the house which faced the applicant's property**

The respondent received a warning from the EPA about light pollution, and he subsequently modified the lights. ACAT found that there was no nuisance caused by them.

**3. Illegal development of a cubbyhouse on a raised platform surrounded by raised decking**

A development application for the raised cubbyhouse was being sought and was outstanding at the time the matter was in ACAT.

**4. The respondent was taking photographs of the applicant from the cubbyhouse and the house**

ACAT noted that the positioning of a camera by the applicant to film a neighbouring house on an ongoing basis, together with light and sound recording devices was an actionable nuisance: *Raciti v Hughes* (1995) 7 BPR 14,837 confirmed in *Gee v Burger* (2009) NSW 149. However ACAT found that in this case there was not enough evidence to show that an actionable nuisance had been caused – especially because both parties had been filming each other. The ACAT member said: *'I accepted his advice but advised both parties that they should desist in such behaviour which I found to be creepy to say the least.'*

ACAT did not make any binding orders because it might adversely affect the sale of the respondent's house and that this would be unjust in the circumstances. ACAT accepted undertakings by the respondent addressing the pool pump noise, water tank noise and lights. If the respondent breached these undertakings, ACAT would have considered making formal orders.

## Where can I find more information?

You can find out more information through the following:

- [Access Canberra](#) (in particular, see [Light Pollution](#); [Noise Pollution](#); and [Air Pollution](#));
- [Conflict Resolution Service](#);
- The Legal Aid ACT Helpline (1300 654 314);
- The EDO ACT at [www.edoact.org.au](http://www.edoact.org.au).

**Disclaimer:** The law described in this fact sheet is current at 30 June 2018. This fact sheet has been designed to give readers plain English background information in planning and environmental law in the ACT. It is brief, for general information purposes only and does not replace the need for professional legal advice in individual cases. To request free initial legal advice, please contact us on (02) 6243 3460. While every effort has been made to ensure the information is accurate, the EDO ACT does not accept any responsibility for any loss or damage resulting from any error in this fact sheet, or reliance or use of this work. Duplication and reproduction of the information is permitted with acknowledgment of the EDO ACT. This fact sheet was produced with the assistance of funds made available by the ACT Government through the Justice and Community Services Directorate.