



## Fact Sheet

# Trees on Boundaries

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.

## Trees in the ACT

Some trees in the ACT are protected under the [Tree Protection Act 2005 \(ACT\)](#). The *Tree Protection Act* establishes an [ACT Tree Register](#) to protect individual trees (known as registered trees) and [Tree Management Precincts](#) to protect trees in declared built-up urban areas (known as regulated trees). To read more about how the *Tree Protection Act* works, read the EDO ACT Trees Factsheet.

Other laws apply to trees in the ACT, including:

- [Nature Conservation Act 2014 \(ACT\)](#): Includes offences relating to native trees and vegetation on leased and unleased land;
- [Trespass on Territory Land Act 1932 \(ACT\)](#): 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 (section 7);
- [Heritage Act 2004 \(ACT\)](#): Applies to trees which are registered for their heritage value. See the EDO ACT Heritage factsheet for more information.
- [Public Unleased Lands Act 2013 \(ACT\)](#) 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 a number of 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 to see whether the tree you want to trim is registered or regulated first. This is because modification of protected trees (that is, trees that are registered or regulated) requires approval from the Conservator prior to work. If the tree is protected, you must complete an [Application to Undertake a Tree Damaging Activity](#) form on the Transport Canberra and City Services website and receive approval for works from the Conservator before you modify a tree. It is an offence to remove, trim or damage a protected tree without permission.

If the tree that you want to trim is not a protected tree, or you have permission to modify, 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.

### **Tree roots, damage to fences, soil contamination**

A nuisance is something that stops another person using or enjoying land they own or occupy. Trees sometimes cause an interference on neighbouring properties that might be called a nuisance, for example, tree roots that damage neighbours' fences or walls, overhanging branches that interfere with growing gardens or drop leaves and fruit, contaminating soils.

## **Trees and solar panels**

Large trees on boundaries can impact on 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 (see EDO ACT'S Introduction to Planning Law Factsheet).

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). (Note that "solar access" does not, in this instance, exclusively refer to a solar panel's access to the sun. Instead, it refers to access to sunlight on the entire leased block).

### ***Trees on neighbouring private property***

Large trees on neighbouring properties can impact on 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 before you can do so.

### ***Trees on neighbouring public land***

Under the *Tree Protection Act*, residents must not remove public trees unless they have written approval to do so. The ACT Government 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](#).

## **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. You should 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. 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](http://www.crs.org.au) ([www.crs.org.au](http://www.crs.org.au)) provides free or low-cost mediation and is recommended by the ACT government and can help with disputes involving common boundaries and tree maintenance.

## 2. 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.

Note that before you go to ACAT, you must try to resolve this dispute with your neighbour first. In addition to meeting with your neighbour, you can send a letter of demand that:

- Says that it is a letter of demand;
- Set out the issues;
- States what you are demanding;
- Gives a timeframe within which you would like the matter resolved.

Remember to keep a copy of your letter of demand.

## Civil dispute applications in ACAT

ACAT handles a number of matters involving trees on boundaries. They are civil matters (dealing with nuisance), and administrative matters (dealing with administrative decisions 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 ACAT

You can appeal a decision by the Conservator to refuse approval to modify a tree. You can ask for a review of the decision, and you can provide the reasons why you feel a different decision is necessary. Further information is available from the [ACAT website](#).

### Case Study: [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:



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### 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*.

### Case study: *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 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.



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