



Fact Sheet

Third party standing in planning and environment matters in the ACAT

Members of the public often want to challenge an environment or planning decision made by the ACT Government in the ACT Civil and Administrative Tribunal (ACAT). However, not every decision is a decision that ACAT can review, nor is everyone, or every organisation, entitled to seek review of a decision.

- To have a decision reviewed in ACAT, it must have jurisdiction to hear the matter. An *authorising law* gives ACAT the power to make a decision about a matter. This factsheet discusses where to find reviewable decisions in planning and environment matters in the ACT.
- To have the right to go to ACAT, you need to have *standing*. This factsheet addresses the rights of third parties to have standing in planning and environment matters in ACAT. The Environmental Defenders Office ACT (EDO ACT) have produced a factsheet on Appealing Planning Decisions in ACAT if you would like more information on the appeals process in ACAT generally.

What is a third party?

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 - you are a third party or party joined to that decision. There are specific standing rules for third parties.

What is standing?

Standing is the right to appeal a decision or have an issue heard before a court or tribunal. Traditionally, standing was only available to a 'person aggrieved' or a person whose 'interests are affected' by a decision. In the past, only a person directly affected by a decision or an action had standing. Third parties (such as environmental groups) often had difficulty showing that their interests were directly affected by a decision or action. Recognising that third parties are sometimes impacted by decisions, many environment and planning laws include a list of parties who can appeal decisions (that is, who have standing), including third parties, provided they fulfill specific criteria.



Am I person whose interests are affected by a decision?

Some laws (listed later in this factsheet) state that a person has standing in ACAT if their *interests are affected* by the relevant decision. Section 22Q

[ACT Civil and Administrative Tribunal Act 2008 \(ACT\)](#) (ACAT Act) explains what this means:

- ACAT may decide whether or not your interests are affected by a decision, and ACAT's decision is conclusive (section 22Q(4)).
- A person whose interests are affected by a decision includes an unincorporated body, the Territory, the Commonwealth, a territory authority or Commonwealth authority (section 22Q(1));
- 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 (section 22Q(2), before the decision was made (section 22Q (3)).

What if I am part of a group? The meaning of *objects or purposes*

For your group to have standing, 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 (section 22Q(1) ACAT Act), 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 review a decision. For more information, see EDO ACT's [Incorporation Factsheet](#).

Do I have standing under the [Planning and Development Act 2007 \(ACT\)](#) (PD Act)?

Under section 408A of the PD Act, an "eligible entity" for a reviewable decision may apply to ACAT for review of a decision. Column 3, Schedule 1 of the PD Act lists "eligible entities" for reviewable decisions under the Act. For you to identify whether you have standing in a matter, you must first check to see whether the decision you want to review is a reviewable decision set out in Column 2, Schedule 1 of the PD Act. See EDO ACT's [Appealing Planning Decisions in ACAT](#) for more information.

In Column 2, Schedule 1 of the PD Act, the only decisions able to be reviewed in ACAT by third parties are:

- Item 4: a decision under s 162 to approve a development application in the merit track (unless the application is exempted by the *Planning and Development Regulations 2008*);
- Item 6: a decision under s 162 to approve a development application



in the impact track (unless the application is exempted by the *Planning and Development Regulations 2008*);

- Item 12: decision under s 193 (1)(b)(i) on reconsideration, unless the development application to which the reconsideration relates is exempted by regulation.

To have standing for any these reviewable decisions, you must have:

- a) made a representation under section 156 about the development proposal or had a reasonable excuse for not making a representation; AND
- b) the approval of the development application may cause you to suffer material detriment.

What is material detriment?

You are taken to suffer *material detriment*:

- if the decision has, or is likely to have, an adverse impact on your use or enjoyment of the land (section 419(1)(a));
- if you are in a group that has objects or purposes—the decision relates to a matter included in your objects or purposes (section 419(1)(b)). See above for an explanation of objects or purposes.

Note: You will not be taken to suffer material detriment because the decision increases, or is likely to increase, direct or indirect competition with your business or your business partner, close friend or family (section 419(2), (3) PD Act).

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' which had suffered 'material detriment' under the *Planning and Development Act 2007*.

A group or 'body' is deemed to have suffered 'material detriment' if the decision *related to a matter included in its objects or purposes* (s 22Q of the *ACAT Act*). The NCCC's objects in its constitution involved the use of land for community and social purposes. The NCCC particularly 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, and therefore had standing to appeal this matter.





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 the decision 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 *PD Act*.

This case was interesting because the question **as to the date that standing is considered** was addressed. 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 the GFA had changed its objects after the decision was made, its standing was considered under its previous objects.

Did the objects of the 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 the proposed national park. The Tribunal noted that the standing provisions have a 'wide operation' and, consistent with other cases, found that the decision related to the GFA's objects and purposes.

Do I have standing under the [Environment Protection Act 1997 \(ACT\) \(EP Act\)](#)?

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, 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 in 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 the 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* per section 22Q ACAT Act.

Do I have standing under the [Heritage Act 2004 \(ACT\) \(Heritage Act\)](#)?

A reviewable decision in the Heritage Act is a decision listed in Schedule 1, Column 3, next to the corresponding section in column 2. Under section 114, 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. This definition does include some third parties, including people who have made nomination applications for a place or object, or urgent provisional registration applications for the place or object. In addition, if you have submitted a comment during a public consultation period about a decision to register, or not register, a place or object which has been provisionally registered under section 40 by the Council, or to cancel or cancel a registration of place or object under section 49, you are classed as an "interested person" (section 13(1)(g) and (h) and section 13(2)(a) and (2)(b) of the Heritage Act).



Do I have standing under the [Tree Protection Act 2005 \(ACT\)](#) (TP Act)?

The TP Act contains a list of entities that may seek an internal review of the reviewable decisions listed in Part 1.1 Schedule 1. The only third party to a decision that can apply for an internal review is a representative Aboriginal organisation (Items 1 and 3, Schedule 1).

Do I have standing under the [Water Resources Act 2007 \(ACT\)](#) (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, entities listed in schedule 1, column 4 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 Schedule 1, column 4 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 the decision under section 96(b). See above for more on people whose *interests are affected* per section 22Q ACAT Act.

Do I have standing under the [Nature Conservation Act 2014 \(ACT\)](#) (NC Act)?

A reviewable decision in the NC Act is a decision listed in Schedule 1, column 3, under a provision of the Act mentioned in Column 2. According to section 362 NC Act, either an entity mentioned in schedule 1, column 4 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 Schedule 1, column 4 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 the decision under section 362(b) of the NC Act. See above for more on people whose *interests are affected* per section 22Q ACAT Act.

Where can I find out more information?

For more information, you can look at the information on the [ACAT website](#) or contact them on (02) 6207 1740. You can also look at the information on the [EDO ACT website](#), or contact us on (02) 6243 3460.

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.