

Trees

This factsheet provides basic information only. This factsheet should not be substituted for legal advice. You should seek legal advice about what to do in relation to your matter.

Is it illegal to damage or modify a tree?

Damaging or modifying a tree, for example by cutting, pruning, trimming, poisoning, or removing the tree could be illegal if:

- The tree is a 'protected tree'
- The tree is on public land or ACT leased land
- The tree is on private property belonging to someone else.

Legal Aid ACT Civil Law Duty Service

Phone: **1300 654 314**

Email: legalaid@legalaidact.org.au

Protected Trees

Protected trees include 'restricted trees' and 'regulated trees.' In the ACT, registered trees are listed on the ACT tree registry. You can check if a tree is a protected tree by looking at the ACT Tree Registry, available on the Access Canberra website or by calling Access Canberra on 13 22 81. Restricted trees are any tree in the ACT that meets the following criteria:

- 12 metres or more in height; or
- 1.5 metres or more in circumference at 1 metre above ground level; or
- with two or more trunks and the total circumference of all the trunks, 1 metre above ground level, is 1.5 m or more, or
- 12 metres or more in crown width.

Modifying or Damaging a Protected Tree

It is an offence to modify or damage a protected tree unless you have received prior approval. This includes protected trees that are on your own property. Approvals to remove or cut a protected tree are provided by the Conservator. To get approval from the

Conservator, you must complete an application form, available on the Access Canberra website. The Conservator may give approval to modify or damage a protected tree in the following circumstances:

- the tree is in decline and its life expectancy is short
- the tree represents an unacceptable risk to public or private safety
- the tree is shown to be causing or threatening to cause substantial damage to a building, structure or service
- the location of the tree is inappropriate given its potential size and growth habit
- the tree is substantially affecting solar access
- the tree is causing an allergic reaction to an occupant of the lease, or neighbouring lease, and the claim can be supported by certification from a relevant medical specialist
- where the tree is part of a close planting of a number of trees, the removal of the tree will allow the other trees to develop.

Even if one or more of the circumstances above apply to your application, an application to damage or modify a protected tree may only be approved if all other reasonable measures to mitigate the problems caused by the tree are ineffective. This means that if there is an alternative way to resolve the concerns that you have regarding the tree, without damaging or modifying the protected tree, the Conservator may not grant the approval.

If the Conservator grants approval, you will be issued with a notice confirming the approval. The notice will tell you how long the approval is valid for. After the approval expires, you will be required to re-apply for approval to undertake any future modification to the tree. If the conservator does not grant approval, you may be able to appeal this decision.

Trees

Trees on public land

If you would like to remove or modify a tree that is located on public land, you must obtain approval first. This is regardless of whether the tree is a protected tree. To request approval to modify or damage a tree on public land, contact Access Canberra on 13 22 81.

Trees on neighbouring private property

If you have received approval to damage or modify a protected tree that is located on neighbouring private property, you must only make the modifications from within the boundary of your own property. This means if the tree is located in a neighbouring property, you are not permitted to enter your neighbour's property to modify the tree, without the express consent of your neighbour.

If the tree you want to modify is **not** a protected tree, you may modify any branches that are overhanging into your property, but only so far as they overhang into your property. You do not need approval from the Conservator or Access Canberra to do this. Again, you are not permitted to enter your neighbour's property to carry out the modifications. To avoid disputes, you should let your neighbour know of your intentions to modify a tree if it is on their property, even if you are only cutting it so far as it overhangs into your property.

Resolving a dispute about a boundary tree

If you are having a dispute about a boundary tree with your neighbour, you should take steps to resolve the issue directly with your neighbour first through safe discussions. If you are unable to resolve the matter through discussions, you may wish to consider inviting your neighbour to a mediation. The Conflict Resolution Service may provide free or discounted mediation services for disputes of this nature.

In some circumstances, a dispute arising around boundary trees may be determined by ACAT. If you are unable to resolve your dispute with your neighbour

through discussions and through mediation, you should get legal advice about whether your matter can be dealt with in ACAT. The Legal Aid Civil Law Duty Service may be able to provide you with free legal information and advice about the process of applying to ACAT.

Legal Aid ACT Civil Law Duty Service
Phone: **1300 654 314**
Email: legalaid@legalaidact.org.au

Trees that interfere with the enjoyment of your property

Sometimes your boundary tree may unreasonably interfere with your use and enjoyment of property. In these circumstances, the tree may be considered a 'nuisance.' Examples of where tree growth may be a nuisance may include:

- Where tree growth causes damage to fencing, drains or retaining walls
- Where tree droppings damage the soil of your land
- Where tree growth interferes with the general use of your land.

If the growth of a neighbour's tree is a nuisance, as described above, ACAT may order that the tree be modified; that the tree be removed; or that you be compensated for any damage or expenses caused by the tree growth. It is always a good idea to get legal advice before applying to ACAT.

Safety concerns

If the growth of a tree is causing an immediate risk to life or safety, and you believe it needs to be urgently removed or modified, you should contact Access Canberra straight away. Access Canberra may be able to help you by either:

- arranging for you to obtain urgent approval to remove or modify the tree; or

Trees

- arranging for a qualified tree surgeon to remove or modify the tree, where removal or modification poses a danger.

Get Help

Legal Aid ACT Civil Law Duty Service

Phone: **1300 654 314**

Email: LegalAid@LegalAidACT.org.au

Address: **2 Allsop St, CANBERRA CITY ACT 2601**

Access Canberra

Phone: **13 22 81**

Conflict Resolution Service

Phone: **(02) 6189 0590**

Email: admin@crs.org.au

ACT Civil & Administrative Tribunal (ACAT)

Phone: **(02) 6207 1740**

Factsheet reviewed 22 November 2021