



2018-19 Annual Review



Contents

About us.....	4
Independence.....	6
Tribunal leadership and effective management.....	10
Fair treatment.....	11
Accessibility.....	12
Professionalism and integrity	14
Accountability.....	17
Efficiency	19
Client needs and satisfaction	21
In prospect and acknowledgement.....	23
Statistics and performance information.....	25
Year at a glance.....	25
Overall workload and outcomes.....	25
Appeals.....	26
Administrative review.....	27
Civil, retirement villages and unit titles disputes.....	32
Discrimination.....	34
Guardianship and management of property.....	36
Mental health.....	37
Occupational and professional regulation.....	39
Residential tenancies disputes.....	41
Utilities – energy and water.....	43



About us

The ACT Civil and Administrative Tribunal (the ACAT or the tribunal) was established under the *ACT Civil and Administrative Tribunal Act 2008* (the ACAT Act). It commenced operation in February 2009. The tribunal is administered by ACT Courts and Tribunal within the Justice and Community Safety Directorate.

The ACAT is located on Level 4, 1 Moore Street, Canberra City. Contact details are provided on the tribunal's website at www.acat.act.gov.au.

The ACAT considers and resolves applications lodged by individuals, businesses, government agencies and occupational regulatory authorities on a wide range of issues. The subject matter of applications extends from the review of multi-million dollar planning and taxation decisions to the disconnection of essential services. Regardless of the subject matter, each case is important to the participants and sometimes to sectors within the ACT community. Applications can be made about:

- the review of a range of administrative decisions
- discrimination complaints
- guardianship, financial management and enduring powers of attorney
- mental health treatment and care
- residential tenancies disputes
- energy and water hardship and complaints/investigations
- civil disputes valued at under \$25,000
- unit titles and retirement villages disputes
- liquor licensing
- compliance with some long service leave obligations
- the discipline and regulation of many occupations including construction occupations, security guards, real estate agents, teachers, veterinarians and the health and legal professions.

Different types of cases require different procedural responses to ensure that the objects of the tribunal's legislation and the principles by which the tribunal operates are met. A pro-active case management approach is taken to all cases, with directions being set and followed up by the tribunal to minimise delays in progressing cases to resolution.

At the end of the reporting period there were 54 members of the ACAT. They are supported by a registry of 29 staff, employed by the ACT Government under the Justice and Community Safety Directorate.

ABOUT THIS REVIEW

Each year, the ACAT publishes a review of its activities, achievements and challenges. This report covers the tribunal's 10th full year of operation. Reports on performance, financial management and strategic indicators for the financial year are set out at Output 3.1 in the annual report of the Directorate for 2018–19. This annual review provides more detailed information about the tribunal's case workload and outcomes in the 2018–19 financial year.

TRIBUNAL EXCELLENCE FRAMEWORK

This annual review has been structured by reference to the Australia and New Zealand Tribunal Excellence Framework published by the Council of Australasian Tribunals (COAT), particularly the eight areas of tribunal excellence: independence, leadership and effective management, fair treatment, accessibility, professionalism and integrity, accountability, efficiency, and client needs and satisfaction.

TEN YEAR ANNIVERSARY CELEBRATIONS

On 2 February 2019, the ACAT celebrated its 10 year anniversary. The milestone was celebrated at a reception with the Attorney-General, Gordon Ramsay MLA, and representatives of the legal community at the conclusion of a training day for all tribunal members.

Independence

"A tribunal's degree of independence will influence public perception about the extent of the impartiality of the decision-making within the tribunal."

– COAT, Australia and New Zealand Tribunal Excellence Framework, June 2017, p11

The ACAT is an independent body established under the ACAT Act which contains provisions establishing the tribunal, giving it jurisdiction and powers, and dealing with appointments and procedures. Other Acts giving jurisdiction to the ACAT (known as authorising laws) confirm the independence of the tribunal.

PRINCIPLES AND OBJECTS

Section 7 of the ACAT Act provides that when it carries out its functions, the tribunal must ensure that its procedures are as simple, quick, inexpensive and informal as is consistent with achieving justice. It must observe natural justice and procedural fairness.

The objects of the ACAT Act are set out in section 6. They are to:

- provide for a wide range of matters arising under legislation to be resolved by the tribunal
- ensure that access to the tribunal is simple and inexpensive
- ensure that applications are resolved as quickly as is consistent with achieving justice
- ensure that tribunal decisions are fair
- enhance the quality of decision-making under legislation
- encourage, and bring about, compliance in decision-making under legislation
- encourage tribunal members to act in a way that promotes the collegiate nature of the tribunal
- identify and bring to the Attorney-General's attention systemic problems in relation to the operation of authorising laws.

The ACAT maintains its independence from Government, while working with Government to suggest legislative amendments and to bring to the Attorney-General's attention systemic problems in its authorising laws.

TRIBUNAL MEMBERS

Members are appointed by the Executive. Transparency of the appointment process and independence of members is facilitated by a clear statutory framework.

The President is responsible for the orderly and prompt discharge of all ACAT business and ensuring that its decisions are made according to law. The President allocates members to deal with applications, reviews all internal appeals and referrals to the Supreme Court, and has a number of other statutory functions relating to the operation of the ACAT.

In 2018–19, Graeme Neate AM continued in his full-time appointment as ACAT President. Presidential Members Geoffrey McCarthy and Mary-Therese Daniel and Senior Member Heidi Robinson continued in their full-time appointments, while Presidential Member Elizabeth Symons continued in a part-time capacity. During the financial year, Presidential Member Symons' appointment was renewed for a 12 month period which will expire on 2 April 2020.

In addition, the tribunal had 49 sessional, non-presidential members at the beginning of the reporting period. There were no new appointments in the reporting period, and no appointments expired in the reporting period. A sessional member recruitment process will be undertaken during 2019–20 as a high number of current appointments expire at the beginning of 2020. At the end of the reporting period there were 49 sessional non-presidential members.

The names of all members the reporting period are set out below.

The requirements for appointment, and terms of appointment for all members, are detailed in Part 9 of the ACAT Act. Members must give an undertaking to the Territory before exercising any function as a member. Presidential members give an undertaking before a judge of the Supreme Court and non-presidential members give an undertaking before a presidential member. The terms of the undertaking are set out in the ACAT Act as follows:

I, [name] undertake to the Territory that I will well and truly serve in the office of [presidential member/ non-presidential member/assessor] and that I will do right to all people, according to law, without fear or favour, affection or ill-will.

The appointment of a non-presidential member may be ended by the Executive as set out in section 99 of the ACAT Act for misbehaviour, physical or mental incapacity, or failure to disclose a material interest. Presidential members may only be removed from office, like judicial officers, in accordance with the provisions of the *Judicial Commission Act 1994*.

Remuneration of members is determined by the ACT Remuneration Tribunal. The relevant determinations for the reporting period are numbers:

- 19 of 2017, effective from 1 November 2017
- 12 of 2018, effective from 1 November 2018.

Presidential members cannot engage in remunerative employment or accept an appointment to another statutory position without the Attorney-General's written consent.

Members are required by section 50 of the ACAT Act to disclose any material interest they have in a matter in an application. They must not take part in the tribunal dealing with the application unless each party consents. The President can direct a member not to deal with an application, even where the parties give consent. The President provides the Attorney-General with a written report about each disclosure after the end of each financial year.

Many sessional members have specialised knowledge or experience about the areas in which the tribunal works. About 30 sessional members are regularly involved in tribunal work. The core group includes lawyers, psychiatrists, mediators, people with expertise in planning and related matters and a number of people who sit on hearings as members of the community. Community members are allocated to mental health, guardianship, utilities and occupational discipline matters. Sessional members provide an invaluable service to the ACT community. Their work is valued, and the presidential members and staff of the tribunal acknowledge them.

ACAT members, along with their appointment and appointment periods, during 2018–19 were:

Presidential Members

NEATE , Graeme	President	2 January 2017 to 1 January 2024
DANIEL , Mary-Therese	Presidential Member	1 January 2016 to 31 December 2022
MCCARTHY , Geoffrey	Presidential Member	1 January 2016 to 31 December 2022
SYMONS , Elizabeth	Presidential Member (Part-time)	1 April 2012 to 2 April 2020
SPENDER , Peta	Presidential Member (Acting)	3 February 2016 to 2 February 2023
ORR , Robert PSM QC	Presidential Member (Acting)	1 January 2016 to 31 December 2022

Non-Presidential Members

ROBINSON , Heidi	Senior Member (Full-time)	1 January 2016 to 31 December 2020
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Sessional Senior Members

ANFORTH Allan
BEACROFT Laura
BIGINELL Nigel
BOYLE Alysoun
BRENNAN Mary
BRODRICK Frank
BYRNE Donald
CORBY Wilhelmena
CREYKE Robin
DAVEY Adrian
DONOHUE Louise
DREW Leslie
FAUNCE Thomas
FERGUSON Elspeth
FOLEY Anthony James
HERRICK Stephen
HUGHSON Bernard
LENNARD Jann
LOVELL Denis
LUBBE Katherine
LUNNEY Graeme
MATHESON Marie
MEAGHER Bryan
NORRIE Peter
ORR Robert
PEGRUM Roger
QUAID Jack
SINCLAIR Michael
SPENDER Peta
SUTHERLAND Peter
TRICKETT Graeme
WILLIAMS Leanne

Sessional Ordinary Members

DAVIES Robyn
DELAHUNT Anne-Marie
GREAGG Jane
LANCKEN Stephen
LUCAS Dianne
MAYES Leasa
MORRIS Athol
MULLIGAN Dominic
MURRAY Moira
NEWMARCH Eileen
PEARCY William
STEEPER Elizabeth
TRICKETT Elizabeth
VASSAROTTI Rebecca
WARWICK Theresa
WEDGWOOD Robert
WILLIAMS Athol
WRIGHT Graham

VALE THOMAS FAUNCE

Professor Thomas Faunce, an ACAT sessional Senior Member, died suddenly on 7 July 2019. Professor Faunce was an expert in health law, bioethics, nanotechnology, the environment and international trade, and held joint appointments in the ANU College of Law and the ANU Medical School. Beyond campus, he also practised medicine and law and had won five Australian Research Council Discovery Grants. Senior Member Faunce was one of the founding members of ACAT 10 years ago and he sat on medical practitioner occupational discipline matters. His contribution to the tribunal is acknowledged.

Tribunal leadership and effective management

"Strong leadership within a tribunal requires the creation of a highly professional management group which is able to focus on innovation and continuous improvement as well as anticipate changes in society which may influence demands within the tribunal."

– COAT, Australia and New Zealand Tribunal Excellence Framework, June 2017, p14

ACAT LEADERSHIP TEAM

The ACAT Leadership Team comprises the President, Presidential Members, full-time Senior Member, Principal Registrar, Registrar and Deputy Registrar, supported by the Senior Manager, Operations Manager and ACAT Team Leaders. The following groups meet regularly to progress work, collaborate and share information around the ACAT's administration, with the aim of improving the quality and responsiveness of the ACAT's services:

- Presidential Members Group
- ACAT Executive Group
- ACAT Team Leaders Group

The ACAT Registrar and Senior Manager also participate as members of the ACT Courts and Tribunal Executive Group.

STRATEGIC STATEMENT 2017–2020 AND CORPORATE PLAN

During the reporting period the ACAT updated its Strategic Statement to guide the tribunal for three years. The strategic statement sets out the purpose of the tribunal, its values and behaviours, and priorities and goals for the next three years. The ACT Courts and Tribunal Corporate Plan 2017–20 sets out the ACAT's strategic statement and can be found on the [ACAT website](#).

The stated purpose of the ACAT is to promote the rule of law for civil and administrative justice in the ACT by:

- providing accessible systems that encourage people to resolve disputes themselves
- making authoritative and timely decisions to resolve disputes when needed
- adopting fair procedures and processes which enable people to be heard
- applying the law equally and treating people equally and with respect, regardless of their circumstances
- being responsive to the needs of each case
- working in a way that attempts to heal relationships rather than harm.

The ACAT priorities for 2018–19 were:

- monitor and effectively respond to trends in matters brought to the ACAT and to new and changing laws
- strengthen engagement with key stakeholders
- provide easy access to useful information that assists parties to represent themselves
- continue to build the capability of the ACAT registry staff through skills development and training
- continue to work to implement the new ICMS Case Management System
- upgrade the ACAT web site
- strengthen data collection and the use of data in planning processes
- ensure ACAT's future premises are suited to its purpose and provide an appropriate balance of informality and professionalism.

The activities undertaken to meet these priorities are set out in this annual review.

Fair treatment

"A fair hearing involves the opportunity for each party to put their case – the right to be heard – and have the case determined impartially and according to law. It involves identifying the difficulties experienced by any party, whether due to lack of representation, unfamiliarity with the law, language, culture, disability or any other matter, and finding ways to assist parties through the tribunal process."

– COAT, Australia and New Zealand Tribunal Excellence Framework, June 2017, p16

The ACAT provides opportunities for each party to be heard and to have their case determined impartially and according to law. The procedures used by the tribunal vary, being adapted to the different types of matters before the tribunal and, to some extent, the circumstances of individual cases. Applications in the tribunal's civil, residential tenancies, unit titles, discrimination, administrative review and occupational regulation work areas are resolved using types of alternative dispute resolution (ADR) such as mediation or conferencing and, only where necessary, hearings.

Energy and water complaints are mostly resolved using investigative, conciliation and referral techniques. A very small number of matters proceed to hearing.

Applications in the energy and water hardship, mental health and guardianship work areas are usually resolved in hearings because of the nature of those cases and the need for authoritative decisions to be made quickly.

Professional development provided to members during 2018–19 focussed on self-represented litigants, procedural fairness and conflicts of interest.

Accessibility

"Access to justice is a fundamental human right and a core principle of the rule of law. Tribunals as well as courts have an obligation to provide the community they serve with access to a fair hearing."

– COAT, Australia and New Zealand Tribunal Excellence Framework, June 2017, p17

WEBSITE AND COMMUNICATION

Access to the ACAT is enhanced by its website which contains information about the tribunal's operations, the types of applications that can be made to the tribunal, forms to be completed, hearing dates and times, and tribunal decisions.

In June 2019, the ACAT launched its new website with re-designed information architecture and refreshed and expanded content with the aim of assisting tribunal users to better access ACAT information and services.

The updated website has been designed for easy accessibility, has updated and new information written in plain English, and can be translated into 103 different languages (using Google translate). An online survey is available on the new website to gather feedback from website users.

In addition, the first ACAT video outlining the ACAT conferencing process was published on the new website during 2018–19. More videos will follow in 2019–20.

REVIEW OF THE ACAT PROCEDURAL DIRECTIONS

During the year the ACAT undertook a review of the ACAT Procedural Directions and Rules, which involved developing updated rules and suggesting a range of legislative amendments to better support processes.

The Procedural Directions is a notifiable instrument that guides practice and procedure in ACAT. The Procedural Directions cover matters such as use of forms, starting an application, representation, serving documents, use of dispute resolution, adjournments and taking part other than in person.

The Procedural Directions were issued in 2009 and required update as there had been jurisdictional and procedural changes since their issue. The new Directions and revised Rules are expected to be released during 2019–20, and implementation work will be ongoing.

ACAT ACCOMMODATION

Consultations with government continued during the reporting period in relation to the ACAT's future accommodation needs. An updated functional design brief was developed by Project Control Group Pty Ltd in December 2018, to inform decisions about the ACAT's accommodation design needs to enhance the ACAT's accessibility and service to the ACT community. Decisions are expected during 2019–20.

WARM REFERRALS TO LEGAL ASSISTANCE

To better assist the high number of self-represented parties before the ACAT obtain legal advice, warm referral processes were developed with the ACT Legal Aid Office. Under this scheme, ACAT Registry staff are able to obtain the permission of a party to provide their contact and application details to the free legal services in the ACT, who contact the party to discuss their case. During the reporting period, 12 matters were referred by the ACAT under this program for administrative review, civil and residential tenancies disputes. Warm referrals were made to ACT Legal Aid, Canberra Community Law, the Tenants Union and the Debt Enforcement Clinic.

MENTAL HEALTH AND GUARDIANSHIP HEARINGS AT HOSPITALS

The tribunal continued holding hearings of mental health matters each Monday and Thursday at The Canberra Hospital Adult Mental Health Unit and at, or by video link to, Calvary Hospital Older Persons Mental Health Unit. Other hearings are at the tribunal premises.

In 2018–19, the tribunal continued to hold guardianship hearings at The Canberra Hospital and Calvary Hospital, and commenced hearings at the new University of Canberra Hospital for inpatients. The hearings occur each Friday morning, week about, at each hospital. The tribunal acknowledges and thanks the social work teams at each hospital who provide significant structural support to enable the hearings to occur. Seventy-three guardianship hearings were held at hospitals in 2018–19.

The hospital guardianship hearings have produced many important benefits. As at 30 June 2019, attendance rates for the proposed protected persons are approximately 92%. The attendance of the subject person greatly improves the value and effectiveness of the hearing. The period between lodgement of a completed application and hearing is approximately 16 days, which often enables earlier discharge of the subject person (which benefits their health and well-being) and, consequentially, very significant savings to each hospital's costs.

In December 2018, staff of ACAT and ACT Health were finalists in the 2018 Chief Minister's Inclusion Awards, being nominated for the Guardianship at the Hospital initiative.

ACCESS TO INTERPRETERS FOR TRIBUNAL USERS

From the beginning of 2018–19, the ACAT funds the provision of interpreters to parties with limited or no English to promote access to justice and equality for parties before the tribunal.

Procedures and website information for clients have been developed and implemented, including ACAT interpreter cards in 13 languages, posters in English and seven other languages, a language identification chart depicting 41 languages and staff information and training. These resources are available on the ACAT website. The website also features Google translate with the ability to convert webpages into 103 languages.

Member guidelines for working with interpreters are expected to be further developed and implemented during 2019–20.

SECURITY AT ACAT

The ACAT's ability to respond to security issues was enhanced through a project conducted during 2017-18. The project arose out of a 2016 risk assessment of the ACAT which identified a number of issues for staff and members, primarily in relation to managing vulnerable clients. During 2018-19 a review found that issues raised in the 2016 risk assessment have either been met, or have been substantially progressed including in the areas of staff and member training, the formation of a management response team, and the development and implementation of safe operating procedures, particularly in the areas of managing high risk matters and managing duress alarms for both staff and members.

There will be an ongoing focus in this area to maintain a security culture within the ACAT, with further staff training planned for 2019-20.

Professionalism and integrity

"... the Tribunal Framework recognises the importance of a competency framework for members by ensuring professionalism of those members appointed for a fixed term without tenure.

Competency standards and associated performance benchmarks are one means of ensuring that members are aware of their obligations."

– COAT, Australia and New Zealand Tribunal Excellence Framework, June 2017, p20

PARTICIPATION IN NATIONAL WORK

President Neate serves on the executive committee of COAT and Presidential Member McCarthy serves on the executive committee of the Australian Institute of Administrative Law (AIAL), along with Senior Members Peter Sutherland, Robert Orr QC and Robyn Creyke AO.

The President or his nominee presidential member participates in bi-annual meetings of the Australian Guardianship and Administration Council and in meetings of heads of tribunals relating to health practitioners, mental health matters and guardianship matters. The President participates in meetings of the Australian and New Zealand Energy and Water Ombudsman Network (ANZEWON) and attended ANZEWON meetings in Hobart, Sydney and Melbourne during 2018-19.

The ACAT is fortunate to be part of the collegiate network of Australasian tribunals, and has had the benefit of the support of civil and administrative tribunals in the States and the Northern Territory. The ACAT Registrar and Presidential Member Daniel participate in the National ADR Network, and the ACAT Registrar and Senior Manager participate in the Australasian Tribunal Administrators Group. Both groups are aimed at information sharing and problem solving. They meet regularly to talk about innovative work being undertaken across all jurisdictions.

PARTICIPATION IN ACT WORK

President Neate participates in monthly meetings of the ACT Joint Rules Advisory Committee, and is a member of the steering committee for the review of Russell Fox Library. The ACAT Registrar attends the monthly meetings of the ACT Law Society's Civil Litigation Committee meeting. Presidential Member Daniel participates as a member of the committee of the Resolution Institute (ACT Chapter).

MEMBERS' PROFESSIONAL DEVELOPMENT

As noted earlier, members of the ACAT have a wide range of qualifications, specialised knowledge and experience about areas in which the tribunal works. Actions were taken during the reporting period to enhance members' competence to perform statutory functions and, by participating in national and other bodies, representatives of the tribunal sought to assist other tribunals.

The COAT *Practice Manual for Tribunals* (Fourth Edition) is provided as a resource for new members. Training in dealing with vexatious litigants was delivered by Dr Grant Lester to members in early 2018–19.

Members participate in training about major changes in the law and in discussion groups about the tribunal's operations in particular areas such as residential tenancies, unit titles and utilities work. Members are regularly advised of new decisions and developments in relevant areas of the law.

An all member meeting was held on 2 February 2019, to coincide with the ACAT's tenth anniversary. Topics discussed included dealing with self-represented litigants, ADR at the ACAT, conflicts of interest and procedural fairness.

During 2018–19, some ACAT members participated in the following conferences as attendees or speakers:

- COAT NSW Conference 2018
- Resolution Institute Mediation Conference 2018
- National Judicial College Conference 2019 "Judges: Angry? Biased? Burned Out?"
- Australian Guardianship and Administration Council Conference 2019
- National Access to Justice and Pro Bono Conference 2019
- National Mediation Conference 2019
- COAT National Conference 2019.

STAFF PROFESSIONAL DEVELOPMENT

During 2018–19, ACAT Registry staff attended specialised security response and behaviour de-escalation training developed for the ACT Courts and Tribunal and delivered by the Sheriff's Office. Tailored training was also delivered by Dr Grant Lester on querulous and vexatious litigants.

Non-listing days were trialled during 2018–19 to allow staff meetings and training to occur. Three non-listing days in the first half of 2019 allowed staff to participate in training on interpreter arrangements at ACAT, complaint handling, and white ribbon accreditation processes across the JACS directorate.

Internal staff training was also provided about payment orders, common boundaries – types of fence disputes and notice requirements, complaint handling, a mock residential tenancies hearing and warm referrals. Many of these training sessions were conducted on three non-listing days.

COMMUNICATION WITH MEMBERS

During the year the tribunal continued to communicate with members by a regular Members Newsletter. The newsletter is aimed at enhancing the professionalism and integrity of members by outlining legislative changes, significant decisions, changes to procedures and other ACAT developments.

MATERIAL INTERESTS

The President reported to the Attorney-General in writing about disclosures of material interests made by tribunal members under section 50 of the ACAT Act, as required by section 51 of the Act.

Accountability

"An effective complaints mechanism is an important means of ensuring that the public's expectation of members and staff are met... Regular stakeholder and community engagement and reporting tribunal performance helps ensure that the tribunal is accountable to the public it serves".

– COAT, Australia and New Zealand Tribunal Excellence Framework, June 2017, p22

CUSTOMER SERVICE CHARTER AND COMPLAINTS MECHANISMS

Throughout the reporting period the ACT Courts and Tribunal promoted the availability of its service charters and complaints and feedback policies, including those of the ACAT. These documents are available on the [ACAT website](#).

In 2017, the ACT Judicial Council was established to consider complaints about the conduct of judicial officers. Most tribunal members are outside the scope of the Council. Complaints about a tribunal member, or a Registrar carrying out judicial functions, are referred to the President for investigation and action. Complaints relating to the President and presidential members of the ACAT are referred to the ACT Attorney-General, who appoints a suitably qualified person to consider the complaint under the *Judicial Commission (Complaints – ACAT Presidential Members) Approved Protocol 2017 (No 1)*. During 2018–19, one complaint was received and dealt with under the Protocol.

During 2018–19, 44 complaints were received about ACAT services or members, which represents less than 1% of the ACAT overall workload.

RESERVED DECISIONS AND WRITTEN DECISIONS

ACAT members work to a benchmark timeframe for the delivery of tribunal decisions of three months from the date a decision is reserved. A protocol guides inquiries from parties about delays in the delivery of a decision. In 2018–19, three enquiries were received under the reserved decision protocol and 116 written decisions were published.

STUDENTS AND INTERNS

The tribunal continued its engagement with law students at the Australian National University and University of Canberra by offering observation opportunities, internships of between 10 and 20 days duration, and research projects. Twenty-two interns attended ACAT during 2018–19. Their presence encourages a culture of learning within the tribunal and expands the knowledge base of young lawyers about the practical aspects of the administration of the law and the work of the tribunal. Their contribution is gratefully acknowledged.

SYSTEMIC ISSUES

The Attorney-General and his directorate were advised of a small number of amendments that could usefully be made to several authorising laws. Comments were made on many proposed legislative reforms and extensions to the tribunal's areas of work, including the following:

- *Animal Welfare Act 1992*
- *Birth, Deaths and Marriages Registration Act 1997*
- *Controlled Sports Act 2019*
- *Government Procurement Act 2001*
- *Motor Accident Injuries Act 2019*
- *Residential Tenancies Act 1997*
- *Retirement Villages Act 2012*
- *Unit Titles (Management) Act 2011*
- *Veterinary Practice Act 2018*
- *Victims of Crime Act 1994*

Efficiency

"Tribunals should provide an efficient dispute resolution service in the sense that the tribunal is affordable and resolves disputes in an appropriate and timely way. Many tribunals have within their enabling legislation the object of facilitating the just, quick and cheap resolution of disputes. It is the speed of the tribunal that is the heart of this measure."

– COAT, Australia and New Zealand Tribunal Excellence Framework, June 2017, p24

STATISTICS AND PERFORMANCE INFORMATION

Efficiency can be evaluated in different ways. The Statistics and Performance Information part of this annual review contains detailed information about the numbers of applications lodged and matters completed during the reporting period. It also describes the different types of work undertaken by the tribunal, and the factors that affect the ways and speed with which disputes are resolved. Work was undertaken throughout the reporting period to develop more detailed reports drawn from the Integrated Courts Management System (ICMS).

ALTERNATIVE DISPUTE RESOLUTION (ADR)

In keeping with the tribunal's objects, mediation (both purely facilitative and blended) and preliminary conferencing (which can employ both conciliation and neutral evaluation techniques) are available to the parties in most matters. Even for matters that are not resolved, these restorative methods assist parties to narrow the issues between them and to better understand each other's perspective.

Unlike a hearing, which can attract hearing fees, ADR is provided at no cost to the parties. ADR is usually undertaken at an early stage, before parties have commenced preparation for a hearing, but can occur at any stage of a matter where this is requested and is considered by the tribunal to be an appropriate allocation of resources.

A number of tribunal members are accredited mediators. Twelve members and three staff have undertaken ADR training. Matters are referred to members for mediation rather than to external mediators. Because members are familiar with the subject matter, and tribunal processes, they are better able to provide feedback in a private session when a blended process is used. Members allocated to a preliminary conference can themselves proceed to make directions or undertake assessments of quantum and make orders to finalise applications. This allows the tribunal to deal with matters in a more effective and timely way and avoids delays connected with referrals to external agencies or other members.

It is difficult to report upon the success of ADR in a purely statistical way. A matter may be formally resolved on the day of a mediation or conference, or may be resolved weeks later because of the time taken to draw up consent orders, or a continuation of negotiations commenced at the ADR session. If a matter is not resolved at ADR, the issues may be narrowed and the ultimate hearing is quicker and less expensive for the parties. It is currently not possible to obtain data on the more qualitative benefits of ADR.

Consistent with approaches taken in other jurisdictions, ACAT reports matters in administrative review, discrimination and occupational regulation jurisdictions as 'resolved at ADR' where the matter is finalised within 28 days of the ADR event, and there is no final hearing. It records as 'resolved after ADR' those matters which are finalised more than 28 days after the ADR event, but prior to a final hearing, and 'proceeded to hearing' those matters which proceeded to at least the first day of a final hearing.

During 2018–19, Deputy Registrar Steel commenced a review of current alternative dispute resolution procedures at the ACAT, with a focus on the complexities of the existing legal framework, the resource implications of conducting mediations, whether changes should be made to processes such as intake prior to mediations, the effect of the National Mediator Accreditation System practice standards, and whether improvements could be made to increase the efficiency and effectiveness of mediations at ACAT. The project report will be delivered during 2019–20 and will consider improvements to the procedure for managing mediations and other dispute resolution at the tribunal. That report will inform a deeper review of dispute resolution at the ACAT in 2019–20.

INTEGRATED COURTS MANAGEMENT SYSTEM (ICMS)

ICMS has been used to manage the ACAT's cases since December 2015. It continued to support all case management for the ACAT except energy and water hardship applications and complaints. During 2018–19 a decision was made to delay the implementation of ICMS for energy and water cases pending an assessment of work area requirements. Work on online services continued over the period, and the ACAT civil disputes online form is expected to be implemented during late 2019 with other forms to follow in 2020.

ACAT JURISDICTIONAL CHANGES

Legislative changes implemented over the last year continue to increase and change ACAT's jurisdiction. New reviewable decisions were created under a range of legislation, including the *Government Procurement (Secure Local Jobs) Amendment Act 2018* which commenced in January 2019. Some legislative amendments required changes to processes and communication with stakeholders.

In 2018–19, the ACAT started to prepare for the implementation of changes to the ACAT's jurisdiction under the *Residential Tenancies Act 1998* which includes amendments relating to rental increases, special and minor modifications to rental premises, and disputes around tenants keeping pets. These amendments will commence in 2019–20 and are expected to increase the numbers and types of rental property disputes coming to the ACAT.

Amendments to the *Retirement Villages Act 2012* and the *Discrimination Act 1991* to commence in 2019–20 will grant the ACAT jurisdiction to make orders based on conciliation agreements.

The ACAT's jurisdiction will expand to include Motor Accident Injuries applications from February 2020 when the *Motor Accident Injuries Act 2019* commences.

Work on IT and procedural changes commenced during the period.

RULING TRIBUNAL DECISION

A Ruling Tribunal to consider a question of law referred from within the tribunal was convened under section 77 of the ACAT Act in February 2017. The question of law related to whether legal and other costs incurred by an owners corporation in pursuing the recovery of unpaid unit title levies can be recovered in proceedings before the ACAT as 'expenses' under section 31 of the *Unit Titles (Management) Act 2011*.

The question of law affected 42 applications named in the schedule to the Ruling Tribunal decision as well as 1117 others in which the same or similar issues arose which were held in abeyance pending the decision of the Ruling Tribunal.

The decision of the Ruling Tribunal was handed down in August 2017 and at the end of June 2018, 117 matters remained outstanding and 68 of these matters remained pending greater than 12 months. These figures had a significant effect on the total number of ACAT pending matters at the end of 2017–18. These applications were all finalised during 2018–19, which is reflected in the pending figures as at 30 June 2019.

The *Unit Titles (Management) Act 2011* was amended in April 2018 to expressly provide that 'expenses' under that Act include a reasonable legal expense reasonably incurred, including a legal expense relating to a proceeding in the ACAT.

Client needs and satisfaction

"Public trust and confidence in the administration of justice are essential for the acceptance by users of an individual decision that affect them. Therefore for a tribunal to be effective its users have to be satisfied that the procedures and processes adopted by the tribunal are fair. The tribunal needs to know what its users think about its procedures and processes."

– COAT, Australia and New Zealand Tribunal Excellence Framework, June 2017, p26

REGULAR COMMUNITY STAKEHOLDER ENGAGEMENT

Stakeholder meetings were held with people interested in specific aspects of the work undertaken by the tribunal. In particular, Unit Titles and a Residential Tenancies stakeholders meetings were hosted by the ACAT and were attended by a broad spectrum of tribunal stakeholders.

Education programs on the work of the ACAT were delivered by Presidential Member Daniel to the ANU/EDO ACT Environmental Law Clinical Program, and a presentation was made to the ACT Law Society Continuing Professional Development (CPD) program by Senior Member Robinson and Registrar Soper on the ACAT's civil jurisdiction.

In February 2019, the ACAT held a mock hearing at Pilgrim House for stakeholders of the ACAT in its residential tenancies jurisdiction, to assist them in understanding the procedures around ACAT hearings. The role of presiding member was played by Senior Member Jann Lennard. The roles of tenants, agent and lessor were played by staff of the ACT Government Solicitors Office. Around 85 people attended and feedback about the event was overwhelmingly positive.

ACT ENVIRONMENT DEFENDERS OFFICE (EDO) FACTSHEETS

During 2018–19, the ACT Environment Defenders Office (EDO) worked with the ACAT to develop a number of factsheets in relation to a number of ACAT jurisdictional areas relevant to their practice, including:

- Dogs – Your Responsibilities
- Cats – Your Responsibilities
- FOI ACT
- Planning Appeals in the ACT
- Neighbourhood disputes
- Trees on Boundaries
- Common Boundaries and Fences
- Third Party Standing in Planning Matters.

The factsheets are available on the [ACT EDO website](#).

FEEDBACK ON ACAT PERFORMANCE

Tribunal user feedback is sought and received on a range of activities. During 2018–19, planning commenced on a client satisfaction survey, including the development of a survey instrument, to be conducted in 2019–20. Feedback on the new ACAT website is actively sought, including through a short feedback survey available through the website. Feedback is used to inform improvements and upgrades as necessary. As noted above, the ACT Courts and Tribunal promotes the availability of its service charters and complaints and feedback policies, including those of the ACAT, through the ACAT website.

In prospect and acknowledgement

LOOKING AHEAD

ACAT priorities for 2019–20 year ahead include:

New Motor Accident Injuries jurisdiction: The ACAT's jurisdiction will expand to include Motor Accident Injuries applications from February 2020. The *Motor Accident Injuries Act 2019* will give a new jurisdiction to ACAT in regard to the disbursement of death benefits, review of specified decisions by insurers, review specified decisions of the MAI Commissioner, review significant occupational impact reports, and determine applications for future treatment payments. During 2018–19 a project officer was engaged to develop ACAT processes and procedures to deal with this new work.

Implementation of the revised ACAT Procedural Directions: The ACAT procedural directions were reviewed during 2018–19, and work to implement the new procedural directions and Rules will continue into 2019–20. In particular, the ongoing project will develop approaches and procedures, and consider legislative and ICT implications to progress implementation. A project officer resource will be funded to undertake this work during 2019–20.

Member engagement, support and development: A project will commence during 2019–20 to develop a competency framework for members and identify member training needs, a framework for regular performance review and feedback to members on performance and resources for members such as an induction package and ACAT benchbook.

Review of Dispute Resolution at the ACAT: An evaluation of current ACAT Alternative Dispute Resolution (ADR) processes will be undertaken during 2019–20, including an exploration of alternative ADR processes and an investigation of the issues around the implementation of Online Dispute Resolution (ODR) at the ACAT.

Online lodgement of ACAT applications: ICMS functionality to accept some civil disputes applications electronically will be available during 2019–20. Work is underway to develop policies and procedures to facilitate the implementation of the online form into ACAT before the end of 2019–20.

Legislative amendments: Whilst this is an area of continual change and adjustment for the ACAT, changes to the *Residential Tenancies Act 1997*, the *Retirement Villages Act 2012* and the *Discrimination Act 1991* commencing during 2019–20 are expected to impact on ACAT processes and work has commenced to adapt procedures and ICT to facilitate these changes.

Proposed client survey: During 2018–19, planning commenced for a satisfaction survey with ACAT users to obtain feedback about tribunal services, facilities and processes. The survey will be conducted during 2019–20 and results will be used to inform service delivery at the ACAT.

ACAT accommodation: The ACAT has occupied its premises at 1 Moore Street, Canberra since its commencement in 2009. Government is currently considering options for relocation, design and fitout of new accommodation for ACAT to meet current and future business needs. It is anticipated that a decision will be taken about the ACAT's future accommodation during 2019–20.

Thank you

The work of the tribunal is diverse and demanding. It draws on the resources and cooperation of many people inside and outside the organisation.

The full-time, part-time and sessional members of the tribunal work hard and skilfully to perform their functions efficiently and well. They are assisted greatly by the staff of the tribunal who provide essential services to members of the public and parties, as well as to the members. Each person has a vital role in the overall functioning of the tribunal and our capacity to serve the community. I thank them all for their service.

I also thank the Principal Registrar, and staff of the Courts and the Justice and Community Safety Directorate for their ongoing support.

The tribunal is assisted by members of the legal profession and others, including stakeholder bodies, who provide advice and support to parties appearing before the tribunal. Their support to parties and feedback to the tribunal helps us perform our statutory functions. Their contributions are gratefully acknowledged.

It has been a privilege to work with tribunal members and staff to help parties resolve their disputes by agreement or to make decisions about these disputes.

The work of the tribunal is challenging. The tribunal has met these challenges for a decade, and I hope that this annual review can inform us in our endeavours for the year ahead.

Graeme Neate AM

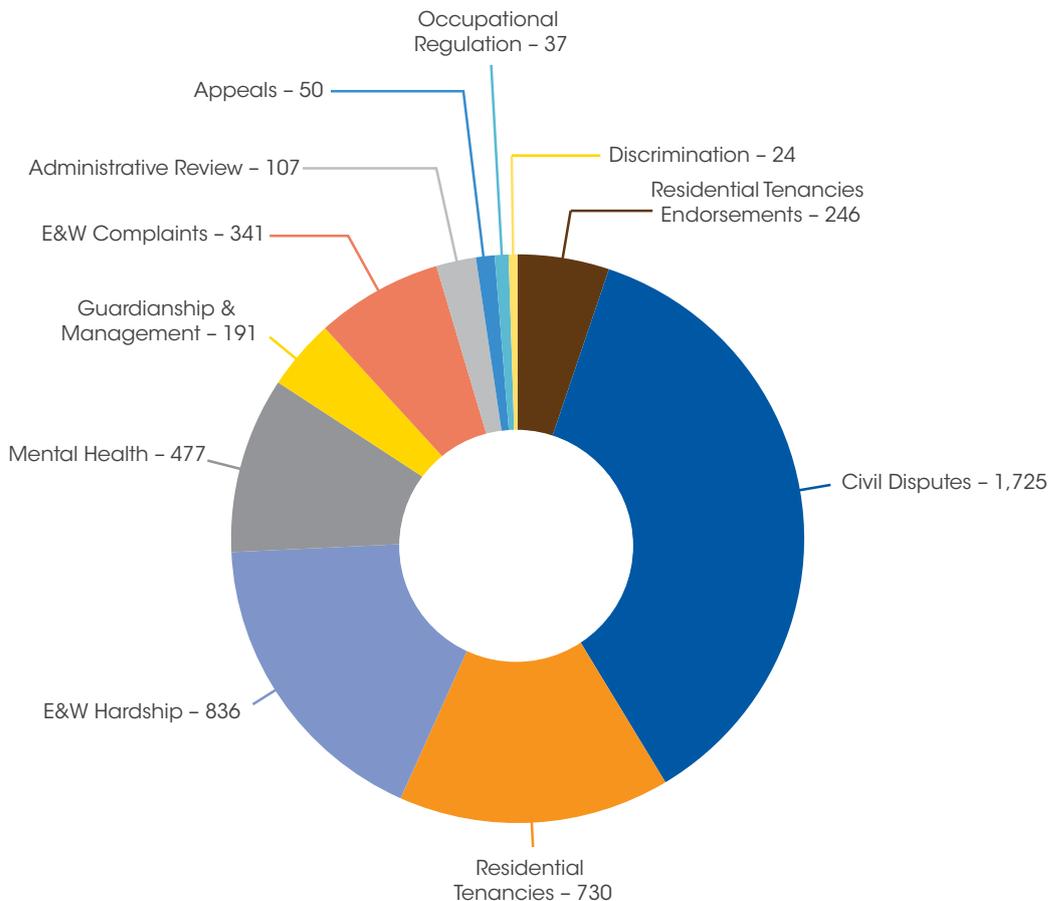
President

August 2019

Statistics and performance information

YEAR AT A GLANCE

New applications received by subject matter 2018–19



OVERALL WORKLOAD AND OUTCOMES

The number of new applications stabilised during the reporting period, with most work areas reporting stable or increased numbers. A large reduction in residential tenancies applications was due to a change of policy by the ACT Commissioner for Social Housing, which saw the Commissioner making fewer applications to the tribunal.

Pending matters more than 12 months old decreased in the reporting period, due to finalisation of 68 civil dispute applications under section 31 of the *Unit Titles (Management) Act 2001* pending for more than 12 months. These applications related to the referral of questions of law to a ruling tribunal convened under section 77 of the ACAT Act. At 30 June 2019, the total number of pending matters aged greater than 12 months was 31, which is 0.65% of total lodgements.

	2014-15	2015-16	2016-17	2017-18	2018-19
Applications lodged*	5,535	4,794	4,587	5,051	4,764
Files finalised*	4,627	4,359	3,859	4,133	4,037
Applications pending#	1,025	1,056	979	1,178	1,025
Pending > 12 months#	28	23	94	96	31
Clearance rate#	100%	104%	95%	94%	104%
Reviews held^	2,509	2,363	1,987	2,090	1,909

Notes:

* includes applications for endorsement of inconsistent terms;

does not include mental health, guardianship and utilities files;

^ reviews held on tribunal's own initiative in mental health, guardianship and utilities cases.

The table below compares the number of tribunal resolution events for each of the past five years. There was a changeover between case management systems during 2016-17, and a change to how matters were counted in previous years, making comparisons with earlier years difficult.

Resolution Events – All Work Areas	2014-15	2015-16	2016-17	2017-18	2018-19
Mediation/preliminary conferences	1,294	1,465	1,106	1,102	1,142
Interim hearings	130	149	194	199	211
Motions hearings	296	319	130	145	140
Substantive hearings (includes resumed hearings)	6,428	6,522	4,737*	7,037	6,495

Notes: * does not include in-chambers orders.

APPEALS

A party to an original application, may, for most cases, lodge an application for appeal within the tribunal on a question of fact or of law, once the tribunal has decided the original application. There is no internal appeal process for decisions made under the *Heritage Act 2004*, the *Planning and Development Act 2007* and the *Tree Protection Act 2005*. Parties in these matters may only appeal to the Supreme Court on a question of law.

In the reporting period, 50 applications for appeal were lodged with the tribunal and 41 applications were finalised.

Internal Appeals	2014-15	2015-16	2016-17	2017-18	2018-19
Applications lodged	56	61	52	47	50
Applications finalised	58	54	60	57	41

Type of Appeals	2014-15	2015-16	2016-17	2017-18	2018-19
Civil disputes	11	19	18	13	24
Residential tenancies	19	26	17	23	14
Unit titles	0	0	1	2	3
Occupational regulation	3	4	1	0	1
Administrative review	11	5	6	6	3
Discrimination	5	0	2	0	3
Mental health	1	3	2	1	1
Guardianship	2	1	3	2	1
Energy and water	1	1	2	0	0
Extension of Time	3	2	8	4	4

Note: Extensions of time will also be counted under the subject area they relate to. For this reason, the table adds up to a number greater than total lodgements.

The tribunal may refer questions of law and original applications or appeals to the Supreme Court. There were two referrals of questions of law during the period.

Five applications for appeal from an ACAT decision were lodged with the Supreme Court. No applications were received for removal of matters to the Supreme Court under section 83 of the ACAT Act. Of the four appeals to the Supreme Court that were completed in the reporting period, all were discontinued or dismissed.

The Supreme Court also continued its consideration of appeals filed in earlier years in four matters. Two of the four were dismissed and two are ongoing.

ADMINISTRATIVE REVIEW

The tribunal reviews a diverse range of administrative decisions made by government entities.

The President allocates members with relevant experience or expertise to hear each application. Where no member with necessary expertise is available, the President may appoint an assessor under section 97 of the ACAT Act to ensure the tribunal has the requisite specialist or technical advice available to it. No assessors were appointed during 2018-19.

The tables that follow show the number of applications made and finalised over the previous five years and the type of decisions for which review has been sought. Decisions with similar subject matter have been grouped together.

Administrative Review	2014-15	2015-16	2016-17	2017-18	2018-19
Applications lodged	125	91	79	103	107
Applications finalised	132	102	91	88	106

Decision Type	2014-15	2015-16	2016-17	2017-18	2018-19
Cases subject to 120 day limit					
Planning and development	19	22	29	30	28
Heritage	2	1	0	0	1
Tree protection	2	4	2	4	2
Other Cases					
Building and construction	7	4	2	2	4
Revenue ¹	62	27	23	28	39
Licences and permits	2	12	9	19	12
Dog matters	4	2	2	10	12
Freedom of Information	6	4	2	3	1
Public housing allocation/ rental rebate	15	5	9	2	1
Victims of crime	-	-	-	-	2
Miscellaneous	6	10	1	5	1

1. Applications concerning the same, or a substantially similar, decision may be heard together. The 107 new applications lodged related to 97 decisions.

Each application is individually case-managed by a Presidential Member, at an initial directions hearing and through the making of directions in chambers. ADR is utilised in the majority of matters, at an early stage, to enable the parties to explore the issues in a confidential setting and, where possible, reach an outcome by agreement before the cost of preparing for hearing has been incurred. The tribunal obtains the parties' views on ADR at the first directions hearing and the parties may be directed to participate in purely facilitative or blended mediation, or a preliminary conference conducted within a conciliation or neutral evaluation framework. Where agreement is reached, orders finalising the matter are usually made the same day, or later in chambers so that the parties are not required to attend the tribunal on a further occasion.

Of the 56 matters referred to mediation in the reporting period, 23 (41%) were resolved at ADR, 11 (20%) were resolved after ADR and 22 (39%) proceeded to hearing. Two matters underwent a preliminary conference and both failed to resolve through ADR and proceeded to hearing.²

There were 45 active administrative review matters at the end of the reporting period.

The tribunal aims to have all applications completed in less than twelve months. The table below shows the age of matters not yet finalised at the end of the current and prior years. At the end of the reporting period, no pending matters were older than 12 months. Of the six matters older than 6 months, all had been heard and decisions reserved.

² For an explanation of the parameters applied for ADR reporting see *Efficiency* in the front section of this document.

Age of pending applications for administrative review as at 30 June 2019

Age of files	0–3 months	3–6 months	6–9 months	9–12 months	12 months+	Total
2018–19						
No of files	31	7	5	1	0	44
% of files	68.89%	15.56%	11.11%	4.44%	0.00%	100%
2017–18						
No of files	27	8	4	0	5	44
% of files	61.36%	18.18%	9.09%	0	11.36%	100%

Section 22P of the ACAT Act requires applications made under the *Heritage Act 2004*, the *Planning and Development Act 2007* and the *Tree Protection Act 2005* to be decided within 120 days after the date the application is made. This time limit is difficult to meet if there are more than two parties, if parties need additional time to obtain experts' reports, or if a collateral or interlocutory issue interrupts the tight preparation schedule. Because of the technical and often expert evidence, most matters arising under this legislation require a reserved decision, with further time taken by the tribunal in preparing written reasons.

The time for deciding the application may be extended by the President if satisfied that the extension is in the interests of justice. Time was extended for eight applications during the reporting period. In most cases the hearing was conducted just within the 120 day period, but further time was required for the tribunal to consider the issues and provide written reasons for its decision. The information provided below explains the circumstances in which each extension was granted:

Warwick Bruce Costin v Act Planning And Land Authority

AT 20/2018 – time extended by 40 days. Heard with AT 21/2018 *Andrew Pyke v ACT Planning and Land Authority*. The application was filed in early March 2018. The hearing date was adjourned to allow the parties to file further submissions. The hearing was listed for three days after the 120 day period had passed. A decision was handed down on the last day of hearing. Reasons for decision were provided later.

Andrew Pyke v Act Planning And Land Authority

AT 21/2018 – time extended by 40 days. Heard with AT 20/2018 *Warwick Bruce Costin v ACT Planning and Land Authority*. The application was filed in early March 2018. The hearing date was adjourned to allow the parties to file further submissions. The hearing was listed for three days after the 120 day period had passed. A decision was handed down on the last day of hearing. Reasons for decision were provided later.

Caroline Ambrus v Conservator Of Flora And Fauna

AT 34/2018 – time extended by six days. The application was filed in April 2018. The hearing was listed for two days shortly before the end of the 120 day period. On the first day of hearing the decision was reserved and the second day of hearing was vacated. The tribunal’s decision was delivered in August 2018.

Kevin Glover v Conservator Of Flora And Fauna

AT 37/2018 – time extended by 23 days. The application was filed in early May 2018. This initial directions hearing was adjourned to allow people to make an application to be joined to the proceedings. The hearing was listed for two days after the 120 day period had passed. On the first day of hearing the applicant discontinued his application and the decision under review was confirmed.

Noah’s Ark Resource Centre Incorporated v Act Planning And Land Authority

AT 10/2017 – time extended by 458 days. The application was filed in late February 2017. In May 2017 an interim application was made seeking that the hearing dates be vacated pending a decision being made in AT 70/2016. Orders were made to this effect. The AT 70/2016 decision was handed down in June 2017 and, as a result, this matter was set down for a further directions hearing. The hearing was listed for a total of three days and on the last day of hearing the matter was adjourned for a further day of hearing. After hearing, the tribunal reserved its decision. In April 2018, the parties made a request that they be granted a further opportunity to make submissions after a decision was handed down in AT 44/2016 and AT 43/2016. The tribunal agreed to list the matter for a further day of hearing in May 2018 to consider submissions in regards to the implication of the AT 44/2016 and AT 43/2016 decision. The tribunal’s decision was delivered on 28 September 2018.

Angela Mcgrath v Act Planning And Land Authority

AT 29/2018 – time extended by 79 days. The application was filed in early April 2018. The hearing was listed for two days before the end of the 120 day period. On the last day of hearing the decision was reserved. The tribunal’s decision was delivered in October 2018.

Andrew Hamilton v Act Planning And Land Authority

AT 23/2018 – time extended by 143 days. The application was filed in March 2018. The hearing was listed for two days shortly before the end of the 120 day period. At the conclusion of the second day, the matter was set down for a further day of hearing in July and parties were directed to file further written submissions prior to that date. Due to a party’s unavailability, the further day of hearing was adjourned to September 2018. At the end of the hearing the decision was reserved. The tribunal’s decision was delivered in December 2018.

Lynnette Williams v Act Planning And Land Authority

AT 62/2018 – time extended by 48 days. The application was filed in late June 2018. The hearing was listed for three days shortly before the end of 120 day period. On the second day of hearing the decision was reserved. The tribunal’s decision was delivered in December 2018.

Frances Ann Nichols v Act Planning And Land Authority

AT 39/2018 – time extended by 149 days. Heard with AT 40/2018 *The Foreshore (ACT) Pty Ltd v ACT Planning and Land Authority* and AT 41/2018 *Belinda Robson v ACT Planning and Land Authority*. The application was filed in May 2018. The parties sought, on three separate occasions, an adjournment of the directions hearing to allow them time to receive information that would potentially lead to a new application being made to ACTPLA. At the directions hearing in February 2019, the tribunal made orders by consent setting aside the decision under review and substituting it with another decision.

The Foreshore (Act) Pty Ltd v Act Planning And Land Authority

AT 40/2018 – time extended by 149 days. Heard with AT 39/2018 *Frances Ann Nichols v ACT Planning and Land Authority* and AT 41/2018 *Belinda Robson v ACT Planning and Land Authority*. The application was filed in May 2018. The parties sought, on three separate occasions, an adjournment of the directions hearing to allow them time to receive information that would potentially lead to a new application being made to ACTPLA. At the directions hearing in February 2019, the tribunal made orders setting aside the decision under review and substituting it with another decision.

Belinda Robson v Act Planning And Land Authority

AT 41/2018 – time extended by 146 days. Hear with AT 39/2018 *Frances Ann Nichols v ACT Planning and Land Authority* and AT 40/2018 *The Foreshore (ACT) Pty Ltd v ACT Planning and Land Authority*. The application was filed in May 2018. The parties sought, on three separate occasions, an adjournment of the directions hearing to allow them time to receive information that would potentially lead to a new application being made to ACTPLA. At the directions hearing in February 2019, the tribunal made orders setting aside the decision under review and substituting it with another decision.

Purdon Planning v Act Planning And Land Authority

AT 86/2018 – time extended by 108 days. The application was filed in August 2018. The initial directions hearing was adjourned to late January 2019 after the tribunal was advised that there was a related matter regarding the same development in the Supreme Court. It was further adjourned until late February 2019 and, subsequently, early April 2019 as the parties were waiting for the Supreme Court decision to be handed down. Following the Supreme Court decision, the matter was discontinued and dismissed in April 2019.

Curtin Residents Association v Act Planning And Land Authority

AT 4/2019 – time extended by 25 days. The application was filed in January 2019. The hearing was listed for three days commencing in June after the 120 day period had passed. The applicant discontinued these proceedings prior to the hearing and the matter was discontinued and dismissed.

CIVIL, RETIREMENT VILLAGES AND UNIT TITLES DISPUTES

The ACAT decides applications relating to civil disputes about contracts, damages, debt, goods, nuisance, trespass, debt declarations, common boundaries (fences) and other matters that are stated to be civil dispute applications in an authorising law, valued under \$25,000.

Most civil applications are resolved at ADR conferences before the scheduled hearing. The tribunal seeks to ensure that conferences and hearings are listed with minimal delay. Preliminary conferences are usually held within three or four weeks of receipt of a response document. Hearings are usually listed within six to eight weeks of an unsuccessful conference.

	2014-15	2015-16	2016-17	2017-18	2018-19
Civil applications lodged*	1,537	1,326	1,428	1,716	1,767
Common boundaries applications lodged	12	27	20	29	24
Unit titles applications lodged	52	43	25	33	32
Retirement villages	1	1	1	4	0
Applications finalised	1,547	1,528	1,273	1,649	1,805

The types of civil dispute applications received, as identified at the lodgement of the application, are:

Type of application	2016-17	2017-18	2018-19
Australian consumer law	20	14	20
Common boundaries	20	29	24
Contract	59	74	81
Damages	193	204	193
Debt	1,060	1,316	1,283
Debt declaration	9	6	1
Goods	68	74	66
Nuisance	7	12	17
Trespass	3	3	4
Other	9	13	4
Total	1,448	1,745	1,693

The amounts sought in civil dispute applications in 2018–19 were as follows:

Amount of claim	2016–17	2017–18	2018–19
\$3,000 and under	617	759	787
\$3,001 to \$15,000	754	820	766
\$15,001 and over	77	166	140
Total	1,448*	1,745	1,693

Notes: * The jurisdictional increase from \$10,000 to \$25,000 took effect from 15 December 2016.

The civil jurisdiction of the ACAT was increased from \$10,000 to \$25,000 on 15 December 2016. Parties can consent to the tribunal dealing with applications for sums greater than \$25,000. The number of claims lodged with the ACAT for more than \$10,000 was 279 in 2018–19 compared to 316 in 2017–18.

The number of new civil dispute applications remained stable over the period. In 2018–19, the average number of days elapsed between the opening of a file and the closing of a file was 156 days, an increase from 145 days in 2017–18. This result is due to the increasing complexity of some applications now before the tribunal. Measures employed to manage these timeframes include restricting adjournments of conferences, increasing focus on ensuring parties are prepared for hearings to further reduce the frequency of adjournments, reviewing the effectiveness of different ADR techniques and tribunal procedures, regularly reviewing files that have been open for more than six months and using members to conduct preliminary conferences.

In August 2017, a Ruling Tribunal handed down a decision on a question of law referred from within the tribunal under section 77 of the ACAT Act. The question of law concerned some 159 applications and related to whether legal and other costs incurred by an owners corporation in pursuing the recovery of unpaid unit title levies can be recovered in proceedings before the ACAT as 'expenses' under section 31 of the *Unit Titles (Management) Act 2011*. In September 2018, the remaining 117 matters were finalised, which had an impact on ACAT pending matter numbers for the reporting period.

Applications can be made to the ACAT under the *Retirement Villages Act 2012* to resolve disputes arising within a retirement village. Disputes about the rights of residents, operators' obligations in relation to maintenance and financial matters, and residents' involvement in village management may be brought to the ACAT. No applications were filed in the reporting period.

The *Unit Titles (Management) Act 2011* empowers the tribunal to hear a range of applications about unit titles holdings. There were 32 applications in the reporting period, a similar number to the previous reporting period. Unit title and retirement village disputes are often complex and can include many parties with competing interests. Directions hearings are held in the first instance so that a member can identify the issues in dispute, identify any additional parties that need to be joined and determine the best procedure for dealing with the particular case. Some matters lend themselves to early mediation, while others require interim determinations and quick hearings.

DISCRIMINATION

The tribunal hears discrimination complaints under the *Human Rights Commission Act 2005*. Discrimination complaints are referred to the ACAT by the Human Rights Commission. Twenty-four new referrals were received by the tribunal in the reporting period, and 24 matters were finalised.

The ACAT also registers agreements reached at the Commission in complaints relating to discrimination. As shown in the table below, 32 conciliation agreements were registered by the ACAT in the reporting year.

Discrimination	2014-15	2015-16	2016-17	2017-18	2018-19
Complaints referred	7	11	13	17	24
Complaints finalised	11	11	8	9	24
Agreements registered	20	22	18	32	32

The 24 matters involved 23 complainants. The primary grounds of complaint were as follows:

Primary ground of complaint – 2018-19 discrimination matters	Number
Association with a person	1
Disability	10
Physical characteristics	1
Pregnancy	1
Race	5
Sex	1
Sexuality	2
Status as a parent or carer	1
Spent conviction	2
Total number of matters	24

The 24 new referrals reflect an increase of approximately 100% more than the recent average number of referrals in this area. This trend, if it continues, has the potential to significantly affect the tribunal's resources. While the tribunal's processes are flexible and designed for parties to represent themselves, discrimination cases can be complicated. Most parties in this jurisdiction would benefit from expert assistance with the preparation and presentation of their case.

Most complainants and many respondents in discrimination matters do not have legal representation or assistance in the preparation of their case. For this reason, the tribunal usually adopts a step-by-step approach to the preparation of a matter for hearing, bringing the parties together for a directions hearing at the conclusion of each step. This approach enables each stage of preparation to be understood and undertaken without a self-represented litigant becoming overwhelmed.

In some cases, where a party is unable to comply with directions to provide written witness statements or particulars of the complaint, the tribunal will conduct the hearing by way of oral evidence and submissions, over separate days. That process allows adequate time for the other party to respond to the case.

ADR is offered in all discrimination matters, giving the parties the option to explore the issues in a confidential setting and, where possible, reach an outcome by agreement at an early stage. In many matters, the parties do not wish to participate in ADR at the tribunal because the complaint has previously been the subject of conciliation before the Discrimination Commissioner. The tribunal obtains the parties' views on participating in ADR at the first directions hearing and the parties may be directed to participate in purely facilitative mediation, or a preliminary conference conducted within a conciliation or neutral evaluation framework. Where an agreement is reached, orders finalising the matter are usually made the same day, or later in chambers so that the parties are not required to attend the tribunal on a further occasion.

Of the 15 matters referred to mediation in the reporting period, seven (47%) were resolved at ADR, five (33%) were resolved after ADR and three (20%) proceeded to hearing.³

The tribunal aims to resolve all discrimination complaints within 12 months. The timeframe to finalisation can vary greatly, depending upon the resources available to the parties and whether a party's preparation for hearing is delayed by reason of disability, health or a lack of literacy.

During the reporting period, the number of pending complaints awaiting finalisation remained stable.

Age of pending files for discrimination matters as at 30 June 2019

Number of complaints	0-3 months	3-6 months	6-9 months	9-12 months	12 months+	Total
2018-19	3	2	5	1	4	15
2017-18	10	2	0	0	3	15

There are five matters more than nine months old. Of these, two related matters are awaiting the outcome of referral of a question of law to the Supreme Court, two separate matters are stayed pending appointment of a litigation guardian for each complainant, and the fifth is awaiting infant settlement approval before consent orders can be finalised.

³ For an explanation of the parameters applied for ADR reporting see *Efficiency* in the first section of this document.

GUARDIANSHIP AND MANAGEMENT OF PROPERTY

The *Guardianship and Management of Property Act 1991* gives the ACAT power to make orders appointing guardians and financial managers for adults who have impaired decision-making ability.

The tribunal may also make orders about enduring powers of attorney and about people for whom a guardian or manager has been appointed. Orders can be made to provide consent for prescribed medical procedures; to address a situation of emergency; to revoke enduring powers of attorney or remove attorneys; to make a declaration about the interpretation or effect of an enduring power of attorney or the decision-making capacity of a principal; to give direction or advice to a guardian, manager or attorney, and to adjust some financial transactions.

This is a protective jurisdiction with a strong inquisitorial process. Tribunal staff request reports from health professionals, care providers and the Public Trustee and Guardian of the ACT (PTG) to provide information for hearings. The priority is the interests of the subject person.

Applications in proper form are listed for hearing within three to six weeks of receipt. Most matters are finalised on the first listing date. A few matters are adjourned to allow further information to be obtained. Hearings may be held at short notice in circumstances of urgency, and, as noted in the first part of this Review, may take place at a hospital or elsewhere to enable the subject person to attend and participate in the hearing.

The role of the tribunal continues after orders are made. Each order must be reviewed on the tribunal's own initiative at least once in each three year period. An order may be reviewed at any time if an application for review is made. Reviews on the tribunal's own initiative are scheduled for any time from three months to three years after an order is made depending on the nature of the condition that leads to the impairment of decision-making and the life circumstances of the protected person.

Review hearings on the tribunal's own initiative are usually conducted 'on the papers', based on information gathered from the protected person, the guardian or manager and any carer or other interested party. Full hearings are scheduled at the request of the protected person, or if the information provided (or not provided, as the case may be) indicates that there has been (or might have been) a change in circumstances.

Managers are required to lodge annual accounts with the PTG regarding their administration of the protected person's assets and money. The PTG reports to the tribunal about the outcome of examinations of the accounts and about any failure to submit accounts. The tribunal reviews the appointments of managers who do not comply with the obligation.

Guardianship and management of property orders	2014-15	2015-16	2016-17	2017-18	2018-19
Applications lodged	357	313	285	190	191
Own motion reviews of orders	556	480	570	495	404
Emergency appointments	18	24	31	16	6

The table below records the primary condition affecting people the subject of new applications using four categories recognised internationally. Other Australian guardianship tribunals keep the same data. The category 'Acquired brain injury' includes people who have had strokes or other illness such as meningitis, as well as those who have sustained traumatic injury in accidents.

Conditions affecting subject people	2014-15	2015-16	2016-17	2017-18	2018-19
Dementia	34%	50%	38%	37%	49%
Mental illness	28%	18%	18%	21%	14%
Intellectual disability	19%	17%	27%	26%	24%
Acquired brain injury	19%	15%	17%	17%	13%

The most striking aspect of the year's work is the evolving debate about the extent to which supported decision-making should prevail over substituted decision-making (i.e. the appointment of a guardian and/or manager) and, where an appointment is made, the kinds of powers that ought to be given to a guardian and/or manager.

The tribunal has also heard disputes about enduring powers of attorney, especially on the question of whether a principal had capacity at the time he or she appointed an attorney. These matters can involve high levels of conflict between family members and require longer hearings, more detailed preparation and greater gathering of evidence. It is difficult to obtain empirical reports about this issue because, in most cases, disputes about the appointment of an attorney arise in the context of an application for orders appointing a guardian or manager and are recorded as such in the case management system. It is expected that disputes about powers of attorney will become more common because of their increased use in the community and their ease of execution.

The ACAT acknowledges the considerable assistance it receives from staff of the PTG. Their reports in relation to each matter before the tribunal are invaluable, contributing constructively to the tribunal's determination of originating applications and reviews of existing appointments of guardians and/or managers. Particularly in contested applications, staff from the PTG fulfil an invaluable role as a contradictor to submissions that have been put, and assist the tribunal in identifying important legal principles relevant to determination of applications.

MENTAL HEALTH

The *Mental Health Act 2015* focuses on whether a person with a 'mental illness' or a 'mental disorder', as defined in the *Mental Health Act*, has capacity to make decisions about their treatment, care and support, with assistance if needed. Guardians can make decisions about treatment for people who do not have capacity to make their own decisions and who do not refuse treatment.

The tribunal may make orders authorising the assessment of a person's mental health. It can order the involuntary treatment of a person with a mental illness or mental disorder, including under a psychiatric treatment order, a community care order or a forensic mental health order. Most orders are reviewed on the tribunal's own initiative before they expire.

In appropriate cases, where statutory criteria are satisfied, the tribunal authorises extensions of periods of emergency detention and the administration of electro-convulsive therapy.

In addition, the tribunal considers matters referred to it by courts. The tribunal may determine and report to a court about whether a person charged with a criminal offence has a mental impairment. The tribunal may also make mental health orders in relation to people who are required by courts to submit to the jurisdiction of the tribunal because they are unfit to plead, or have been found not guilty by reason of mental impairment, or have had charges summarily dismissed. The tribunal can also review orders for detention and impose conditions on release from detention of a person found not guilty of a criminal offence by reason of mental impairment.

Procedures under the *Mental Health Act* set tight time frames and statutory obligations that govern workflow. As noted earlier, the tribunal sits at The Canberra Hospital each Monday afternoon and Thursday morning for applications involving inpatients, and at the tribunal's premises each Monday morning and Thursday afternoon for people living in the community. Hearings are sometimes held at the Older Persons Mental Health Unit at Calvary Hospital. Some hearings are conducted by video-link.

Mental health	2014-15	2015-16	2016-17	2017-18	2018-19
Applications for mental health orders ²	346	246	447	437	477
Psychiatric treatment orders made			637*	607	608
Community care orders made			10	4	13
Restriction orders made			9	4	13
Electro-convulsive orders made			21	29	37
Conditional release orders made			8	11	20
Applications dismissed			17	22	17
Reviews of existing orders where no further order was made			76	70	48
Applications for extension of emergency detention	262	334+	380+	448	488
Emergency detention orders made			384**	454	510
Forensic referrals	22	22	13	21	21
Applications for ECT	10	14	23	25	37
Own motion reviews of orders	851	917	678	530	488
Requests for revocation	156	254+	163+	133	145

Notes:

+ This data comes from the Chief Psychiatrist's records.

* Psychiatric treatment orders can be made in response to an original application, or on review of an existing psychiatric treatment order, hence the number of orders exceeding the number of applications.

** Emergency detention orders can be made on application or on review of an existing order.

4 To date, the tribunal has not received an application for a forensic mental health order, or made such an order.

The issues that must be considered under the *Mental Health Act* before making a mental health order have increased both the amount of detail required in reports from psychiatrists in support of an application for an order and also the length of hearings, which normally now occupy 30–50 minutes. The changes have also required a substantial increase in the time needed by members and registry staff to prepare orders, which must be accompanied by written statements that set out how the criteria for making the order were met. These many requirements have put pressure on the resources of the hospitals and the tribunal.

Files in this jurisdiction relate to the subject person rather than to the discrete application or review relating to them. The file technically remains open, unless the person who is the subject of the application dies.

The tribunal's ability to meet its statutory obligations is greatly assisted by the work of ACT Health's Tribunal Liaison Officers, the doctors who prepare reports in relation to applications for mental health orders, the duty lawyer service operated by Legal Aid ACT and the work of the Public Advocate of the ACT and Victim Support ACT. These services are vital for ensuring procedural fairness for people who are the subject of applications and reviews. The tribunal acknowledges their important contributions.

OCCUPATIONAL AND PROFESSIONAL REGULATION

The ACAT makes orders for the regulation and discipline of people in a wide range of professions and occupations including health professionals, legal practitioners, liquor licensees, security guards, real estate agents, veterinarians, teachers and various construction occupations. Applications may be made by a regulatory authority seeking orders to discipline a licensee or a registered person. Applications may also be made by a licensee or registered person for the review of a decision that affects their licence or registration. The latter applications are dealt with as occupational regulation cases rather than administrative review matters.

Thirty-seven new applications were received, and 30 matters were finalised. The tables below show the number of applications received and completed by category.

Total matters	2014–15	2015–16	2016–17	2017–18	2018–19
Applications lodged	41	31	24	24	37
Applications finalised	52	40	32	19	30

By occupation	2014–15	2015–16	2016–17	2017–18	2018–19
Health practitioners	12	6	3	4	8
Lawyers	6	12	6	5	7
Liquor licensees	2	0	1	0	1
Security guards	4	2	0	1	1
Construction occupations	7	2	5	0	4
Long Service Leave Authority	2	0	0	4	5
Working with vulnerable people	3	3	2	7	2
Agents	-	-	-	-	7
Miscellaneous	5	6	7	3	2

The Australian Health Practitioner Regulation Agency has asked tribunals throughout Australia to provide more detailed information in annual reviews about applications relating to health practitioners. Of the eight new applications relating to health practitioners, five related to a medical practitioner, one to a nurse, and two to a psychologist. The categories of notification were as follows:

Category of notification of ACAT occupational regulation matters relating to health practitioners	Number
Boundary violation	2
Clinical care	1
Health impairment	1
National law breach	2
Pharmacy/medication	2
Total number of matters	8

The tribunal aims to have all applications completed in less than 12 months. There is some variability in the time taken to finalise an occupational regulation application. Some applications require several interlocutory events and final hearings of several days,⁵ while other applications are completed within a shorter timeframe and with only a brief hearing.

The case management of an occupational discipline or regulation application (including the use of ADR, and level of preparation for, and formality of, the hearing) is dictated by the relevant legislation and the particular issues in the case. The best pathway for any particular matter is discussed with the parties at the first directions hearing, when the timetable for preparation and hearing is put in place.

At the first directions hearing the tribunal will always consider whether ADR in the form of mediation or a preliminary conference should be scheduled, to enable the parties to explore the issues in dispute in a confidential setting. If the parties agree on an appropriate disciplinary outcome after mediation or conference, a joint submission is made to the tribunal so that it may consider all relevant factors before deciding whether to make orders in terms of the agreement reached. Because occupational discipline and regulation matters are protective of the public, parties may be required to attend the tribunal to elaborate on the joint submission or provide further information relevant to the exercise of the tribunal's discretion, before final orders are made.

Of the 13 matters referred to mediation in the reporting period, eight (62%) were resolved at ADR, two (15%) were resolved after ADR and three (23%) proceeded to hearing. One matter underwent a preliminary conference and was resolved at ADR.⁶

⁵ For example, in disciplinary applications under the *Legal Profession Act 2006* where the rules of evidence apply the parties prepare their evidence by way of affidavit, and there may be preliminary hearings seeking further particulars or for objections to evidence to be heard and decided.

⁶ For an explanation of the parameters applied for ADR reporting see *Efficiency* in the front section of this document.

The number of active applications in this work area increased over the reporting period from six to 20. The single matter more than one year old had been remitted to the tribunal after a successful appeal in the Supreme Court. The two oldest matters were brought under the *Legal Profession Act 2006*.

Age of pending applications for occupational regulation as at 30 June 2019

Age of files	0-3 months	3-6 months	6-9 months	9-12 months	12 months+	Total
2017-18						
No of files	4	0	0	1	1	6
% of files	66.6%	0%	0%	16.7%	16.7%	100%
2018-19						
No of files	9	6	2	2	1	20
% of files	45.0%	30.0%	10.0%	10.0%	5.0%	100%

RESIDENTIAL TENANCIES DISPUTES

The ACAT has jurisdiction under the *Residential Tenancies Act 1997* to hear and determine disputes arising from tenancies and occupancy agreements in relation to private and public housing.

The tribunal also considers applications for endorsement of inconsistent terms of tenancy agreements and holds negotiation conferences for matters referred from the Office of Rental Bonds.

The number of new applications about disputes dropped by around 31% from the previous year. This is due to a change of policy by the ACT Commissioner for Social Housing, which saw the Commissioner making fewer applications to the tribunal.

The average number of days elapsed between the opening of a residential tenancies file and the closing of that file is 54 days, which is a similar result to 2017-18. Applications for endorsement also decreased slightly during the period.

Residential tenancies	2014-15	2015-16	2016-17	2017-18	2018-19
Applications lodged	1,191	1,175	1,093	1,068	730
Applications finalised	1,152	1,176	1,108	1,039	1,767
Endorsement applications	374	358	381	335	246
Endorsement applications completed	429	328	401	302	271

The types of residential tenancies dispute applications received, as identified at the lodgement of the application, are:

Type of application	2015-16	2016-17	2017-18	2018-19
Abandoned before expiry of fixed term	3	0	0	0
Abandoned following notice	1	0	0	0
By lessor for access to inspect	251	246	192	82
By lessor for compensation	36	49	33	35
By lessor for rental arrears	87	72	46	49
By lessor for rental increase	0	2	0	0
By tenant for review of rental increase	1	4	9	6
By tenant for compensation	53	53	59	42
By tenant for rent reduction	10	15	0	1
By tenant for rent refund	5	2	4	4
By tenant terminate tenancy	3	0	0	3
Reinstate - wrongful eviction	0	1	2	2
Rental bond dispute	374	348	379	266
Terminate tenancy Family Violence Order or Personal Protection Order	-	-	10	4
Termination and possession	317	272	291	184
Other	34	29	43	52
Total	1,175	1,093	1,068	730

The tribunal issued 47 warrants for eviction during the reporting year, compared to 63 warrants issued in 2017-18.

The outreach project for public housing tenancy matters with Canberra Community Law (CCL), continued throughout the period, with the tribunal providing office space one morning a week for CCL to advise and assist tenants attending the tribunal for termination and possession matters. CCL runs the Street Law project, aimed at assisting people who are homeless or who are at risk of becoming homeless.

UTILITIES – ENERGY AND WATER

The ACAT:

- has jurisdiction under the *Utilities Act 2000* to determine applications for hardship assistance for energy and water customers who cannot afford to pay their bills and are facing disconnection or restriction of supply (hardship applications);
- investigates and determines complaints made by customers and consumers against energy and water utilities licensed in the ACT, including complaints about the Feed-in Tariff (complaint applications); and
- performs the role of Energy Ombudsman for the ACT and works in conjunction with the Australian Energy Regulator in this area.

Energy and water hardship applications

On receipt of a hardship application, an initial hearing is held in which members consider the financial circumstances, utility usage and needs of the applicant. Orders are made requiring regular payments of amounts sufficient to meet ongoing usage costs and make a contribution to reducing any existing debt over a reasonable period of time. Hardship applications are case-managed for so long as the applicant remains under threat of disconnection due to debt. Orders are reviewed by a Deputy Registrar and staff at three or six month intervals according to the client's circumstances, payment record and any other case-management directives issued by the tribunal. Staff may refer cases to members for further hearing or prepare revocation orders or orders discharging debt for consideration by a senior or presiding member.

New applications

In the reporting period, there was a steady increase in the number of new hardship applications. New applications continue to be more complex, often involving high levels of debt and energy needs (often connected to illness) that exceed the consumer's capacity to pay. These cases require longer-term case management.

Home visits

A home visit is offered to clients who have mobility issues – physical, psychological or age related. Typically, a senior member or presiding member undertakes these visits accompanied by a registry staff member. After the initial home visit, reviews are often conducted by telephone. Three home visits were conducted during the reporting period.

Review of orders

In 2018–19, 5,830 orders were reviewed by staff and 1,107 orders were listed for a review hearing before members. Debts valued at around \$435,887 were discharged for 933 cases.

Hardship applications	2014–15	2015–16	2016–17	2017–18	2018–19
Applications lodged	938	852	546	758	836
Reconnection orders	122	70	78	98	150
Initial hearings	754	541	375	673	625
Discharge orders	1,120	1,016	890	788	904
Home visits	5	5	0	6	3
Staff reviews	6,840	7,318	4,328	4,587	5,830
Review hearings	1,102	966	739	1,065	1,107
Applications finalised	1,018	836	686	710	656

Energy and water complaint applications

There was an increase in complaint applications from 290 in 2017–18 to 341 in 2018–19. Detailed information is provided about the complaints because this review report also assists to meet the tribunal's reporting obligations to regulators.

Complaints process

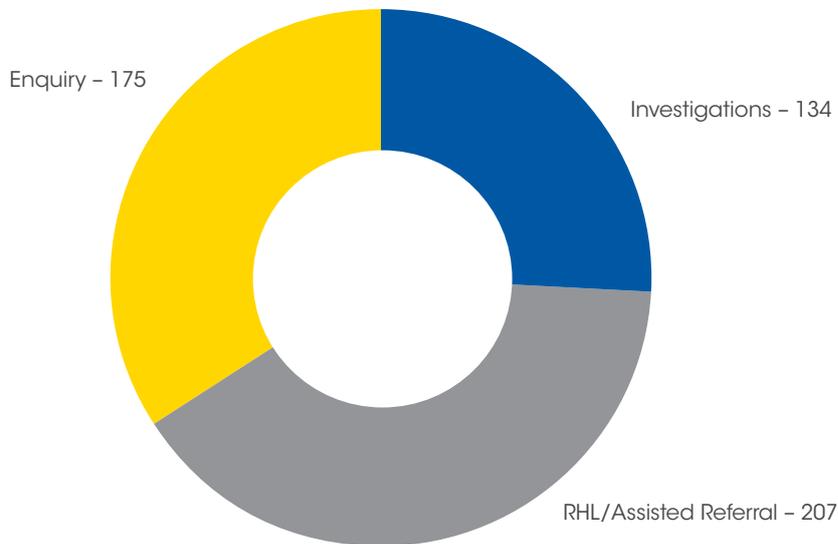
The ACAT is the jurisdictional energy ombudsman for the ACT pursuant to the *National Energy Retail Regulations*.⁷ It has the role under the *Utilities Act 2000* (ACT) of considering and resolving water and sewerage complaints against Icon Water.

The ACAT Energy and Water complaint process has an emphasis on informal resolution, and wherever possible provides a process similar to energy and water ombudsman schemes in other jurisdictions. The majority of complaint applications are finalised in the early resolution processes. When a complaint is received, the tribunal registry assesses the complaint and determines the appropriate resolution pathway. These actions can include:

- **Unassisted referral/enquiry** – referring the customer back to the utility;
- **RHL/assisted referral** – referring the complaint to a higher level within the utility and requesting it contact the customer;
- **Investigation** – notifying the utility of the complaint and requesting a written response and information from the utility. Once the response is received, a process of conciliation occurs which includes the customer having an opportunity to provide a response and further information;
- **Conference and hearing** – if the parties cannot agree on a resolution, or the ACAT considers that the matter does not require further investigation, the customer will be provided the option of proceeding through the formal processes of the tribunal, being conference, directions and/or hearing by a tribunal member.

⁷ *National Energy Retail Regulations* under the *National Energy Retail Law* and section 12 of the *National Energy Retail Law (South Australia) Act 2011*.

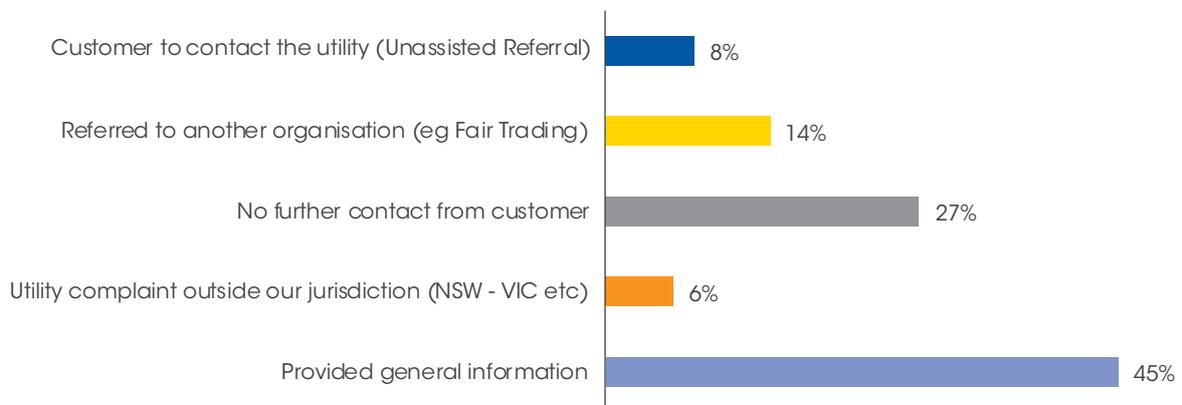
Table 1: How complaints were handled



New enquiries

In 2018-19 financial year ACAT recorded 174 enquiries, compared with 173 enquiries in the 2017-18 financial year. Enquiries are identified as contact by a customer who may have an energy or water related issue, but the contact is not dealt with as a complaint application to ACAT. This may include customers requiring general information, advice regarding utilities, or details on how to submit a complaint directly with the utility. It also includes situations where the ACAT directs customers back to the utility as they have not attempted to resolve the complaint with their utility in the first instance. Complaints which do not fall under the ACAT's jurisdiction are also recorded in this area for statistical purposes.

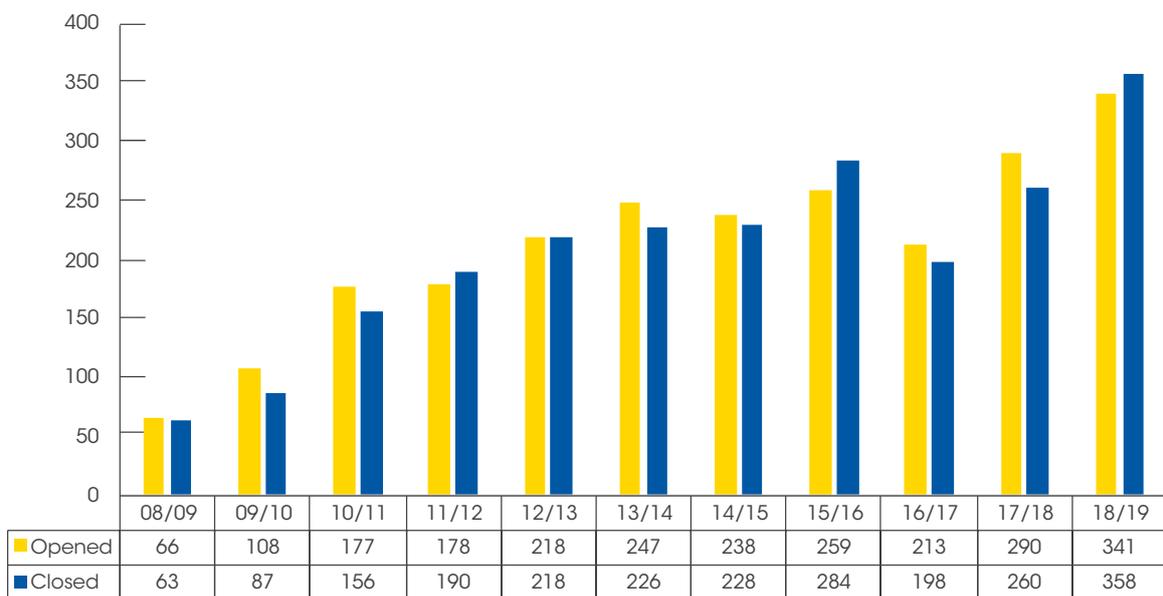
Table 2: How Enquiries were dealt with



New complaints

The 2018–2019 financial year saw an 18% increase in complaint applications from the previous year. The ACAT received 341 complaints during the financial year, compared to 290 complaints during 2017–2018. A 27% increase in complaints was recorded in 2017–2018, indicating an upward trend in complaints. This may be associated with increased media coverage of the energy market, and decreased customer confidence in the utilities. Out of the 341 complaints in 2018–19, 207 complaints were referred to the utility through the RHL process and 134 complaints were investigated.

Table 3: Total complaints opened and closed



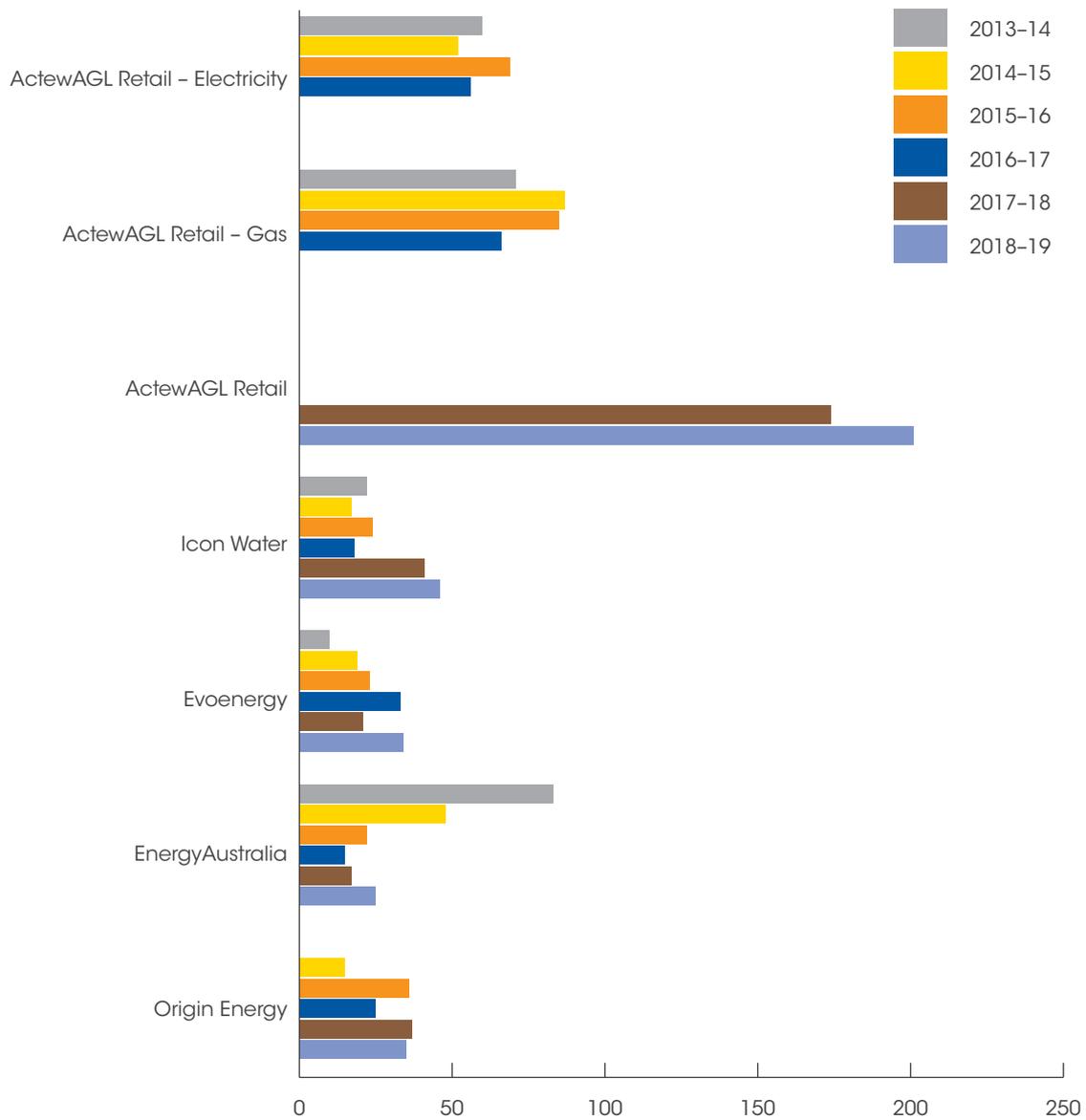
ActewAGL Retail remained the utility for which the ACAT received the most complaint applications. This reflects their market size in the ACT. There was a 16% increase in ActewAGL Retail complaints in comparison to the previous financial year, however this appears to be in line with increased total number of complaint applications received by the ACAT.

Evoenergy and EnergyAustralia experienced the largest percentage increase in total complaint applications. Evoenergy received 62% more complaints than the previous financial year, and EnergyAustralia 47%. While these appear to be significant increases, the starting base for complaints was relatively low.

Origin Energy recorded a small reduction in complaints overall. A large increase in electricity complaints was offset by a reduction in gas complaints, leading to an overall net reduction. Again, both of these figures came from a relatively low starting base.

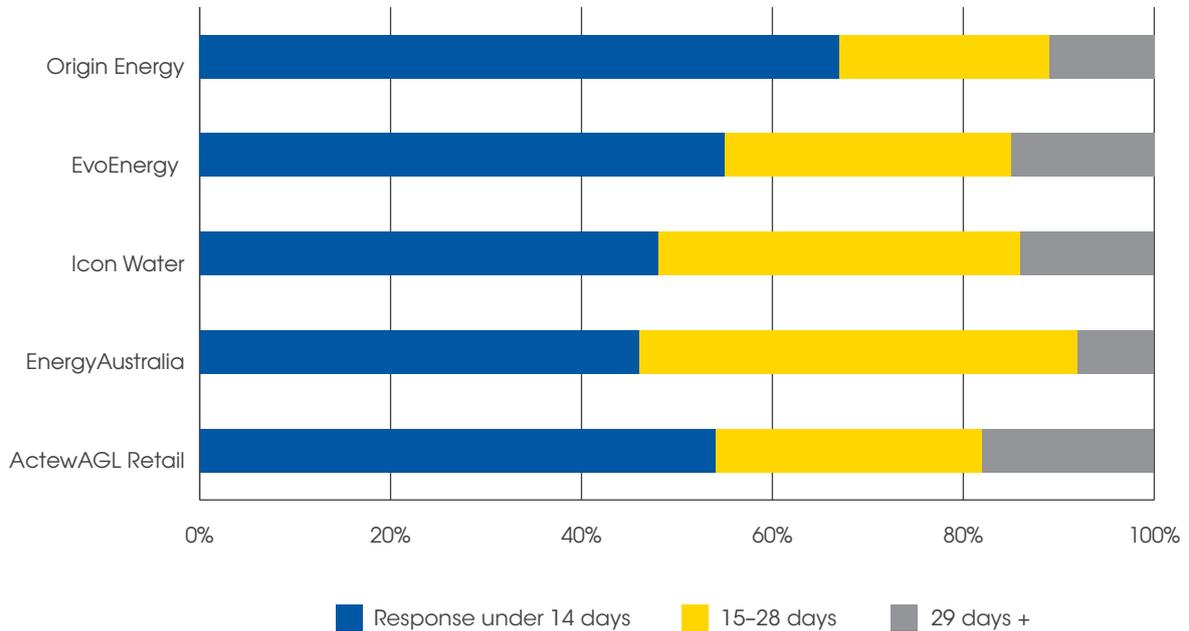
Complaints regarding Icon Water were similar to the previous financial year, and were low overall considering Icon's monopoly status in the market.

Table 4: New complaints by utility



Note: 2017-2018 was the first full financial year that ActewAGL Retail managed their gas and electricity accounts solely in Canberra. In previous years, gas complaints for ActewAGL Retail were managed by AGL in Melbourne. ActewAGL Retail gas and electricity complaints are now be reported together in line with other utilities. Evoenergy changed its trading name from ActewAGL Distribution on 01/01/2018.

Table 5: Utility response times to investigations



Complaint issues

As in previous years, billing remains the most complained about issue, however it only increased slightly from the previous year. Complaints regarding credit and customer service remained high and continued to trend upward beyond the overall 18% increase of total complaint applications received by the ACAT.

Table 6: Complaints by issues

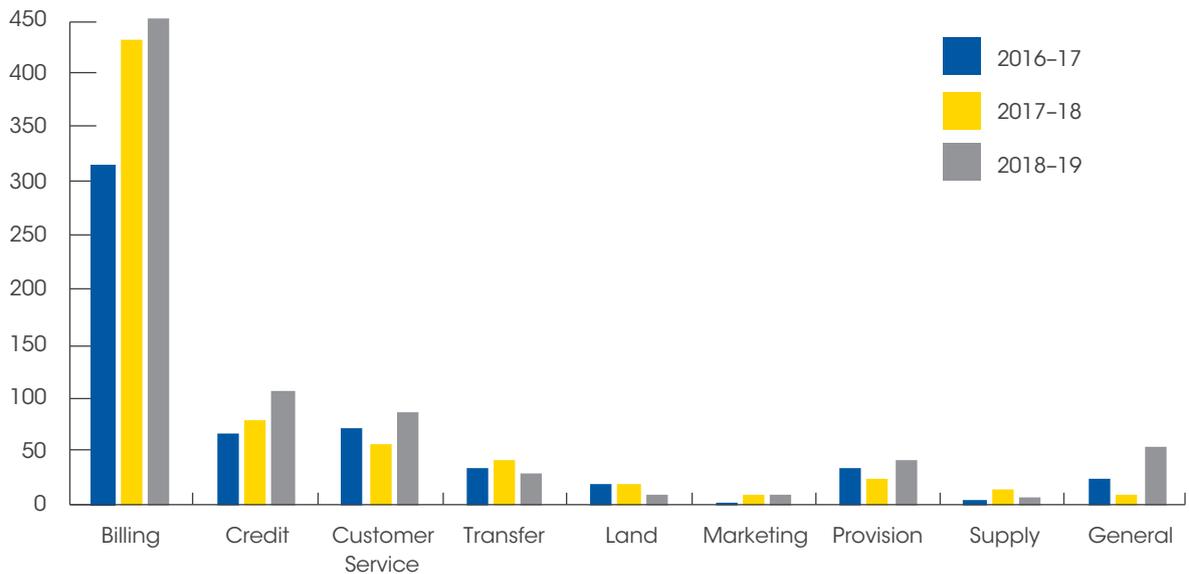


Table 7 records the issues most complained about in the 2018–2019 financial year and compares it with the previous financial year. In total, 804 issues were recorded for all matters including enquiries, RHLs and investigations. Consistent with previous financial years, high billing was the most recorded issue representing 25% of the total 804 issues. In the 2017–18 financial year 'Credit rating affected' was in the top five most complained about issues, however this year 'Contacted by debt collectors' has replaced it. The increase in these complaints may be a result of expanded credit collection activities by utilities to recover outstanding historical debts. There was also a large increase in complaints regarding poor service. This may have been affected by different recording methods used by the ACAT, however there was a decreased number of poor service complaints in the previous financial year.

Table 7: Type of issue most complained about

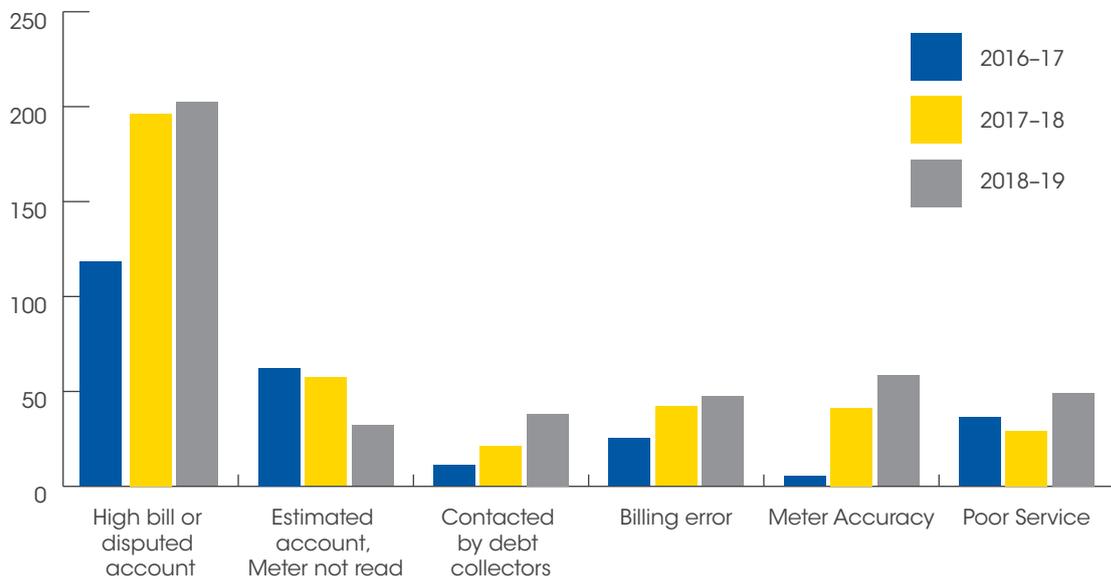


Table 8: All issues raised in complaints (including enquiries)

	Electricity Retailers			Gas Retailers			Water	Distribution		Total
	ActewAGL Retail	EnergyAustralia	Origin Energy	ActewAGL Retail	EnergyAustralia	Origin Energy	Icon Water	Evoenergy (Electricity)	Evoenergy (Gas)	
Billing										
High bill or disputed account	88	7	9	56	2	9	31			202
Tariff (time of use, prices)	3	0	1	0	0	0	1			5
Solar Credits	8	3	1							12
Billing error	19	4	6	13	1	2	2			47
Delayed bill or bill not received	8	1	2	4	0	0	12			27
Direct Debit/Even Pay	2	0	1	5	0	0	0			8
Fees and charges	8	0	1	7	1	0	2			19
Estimated account, meter not read	4	1	1	16	0	4	6			32
Backbilling	4	2	0	4	0	0	8			18
Delay in issuing refund or refund not received	0	0	0	0	1	1	0			2
Meter accuracy or fault	22	2	5	14	0	4	11			58
Debt transferred from another account	1	0	0	0	0	1	0			2
Common hot water system issue				4	1	2				7
Dear Customer	1	0	1	2	0	0	0			4
Concessions	0	3	9	0	0	0	1			13
Other	4	2	0	2	0	0	2			10
Category Total	172	25	37	127	6	23	76			466
Credit										57.96%
Facing disconnection due to non-payment	5	0	9	4	1	0	0			19
Disconnected/Restricted due to non-payment	0	1	1	4	0	1	0			7
Contacted by debt collectors	19	3	5	9	0	2	0			38
Credit rating affected	19	1	1	6	0	1	0			28
Payment difficulties	4	0	0	2	0	1	1			8
Arrears requiring ACAT protection (hardship)	0	0	0	1	0	0	0			1
Arrears requiring payment plan	2	0	0	1	0	0	1			4
Category Total	49	5	16	27	1	5	2			105
Customer service										13.06%
Poor service	22	2	5	16	0	0	2	0	2	49
Failed to respond	11	2	2	2	0	0	0	0	2	19
Incorrect advice or information provided	5	2	0	5	0	0	2	0	1	15
Privacy concern or breach	1	0	0	0	0	0	1	0	0	2
Category Total	39	6	7	23	0	0	5	0	5	85
Transfer										10.57%
Contract (eg variation, fees)	2	0	1	0	0	0	0			3
Transferred without consent	1	1	0	1	1	0	0			4
Site ownership issues	0	0	1	1	1	1	0			4
Transferred in error	0	1	0	0	0	0	0			1
Cooling cancellation not-actioned	0	2	0	0	0	0	0			2
Delay in issuing bill after transfer	0	0	0	0	0	0	0			0

Billing problems on transfer	3	0	0	3	0	1	0			7
Request for new account/transfer rejected	1	0	1	1	0	0	0			3
Other	4	0	1	0	0	0	0			5
Category Total	11	4	4	6	2	2	0	0	0	29
Land										3.61%
easement (access, other)							0	0	1	1
vegetation management							0	2	0	2
network assets (health & safety, maintenance, placement)							0	4	2	6
other (general, property damage/restoration)							0	0	0	0
Category Total							0	6	3	9
Marketing										1.12%
information	2	0	0	1	0	0	0			3
misleading	0	0	0	0	0	0	0			0
non account holder	1	0	0	0	0	0	0			1
other	2	1	0	0	0	0	2			5
pressure sales	0	1	0	0	0	0	0			1
Category Total	5	2	0	1	0	0	2	0	0	10
Provision										1.24%
Common hot water system									5	5
disconnection/restriction (error, meter access, safety/defect)							0	2	2	4
existing connection (de-energisation, energisation/connection, interference, meter removal, repair, safety, supply upgrade, other)							2	11	14	27
solar - network connection issues								4	0	4
new connection (capital contribution, delay, information, other)								1	0	1
restriction (error, meter access, safety/defect)							0	0	0	0
Category Total							2	18	21	41
Supply										5.10%
off supply-planned (damage/loss, duration, frequency, health & safety, inconvenience, information/notice, other)							0	0	0	0
off supply-unplanned (damage/loss, delivery delay, duration, frequency, health & safety, inconvenience, information/notice, loadshed)							0	1	0	1
quality (colour, health/safety, pressure, taste/odour, other)							0			0
sewer/stormwater overflow/blockage							3			3
variation (damage/loss, frequency, health & safety, inconvenience, information)							1	1	0	2
Category Total							4	2	0	6
General Enquiry										0.75%
energy/water - non complaint enquiry	4	0	0	2	0	0	0	0	0	6
energy/water - out of jurisdiction or non utility	2	0	0	0	0	0	0	0	0	2
not a licensed utility										45
Category Total	6	0	0	2	0	0	0	0	0	53
										6.59%
Retailer Total	282	42	64	186	9	30	91	26	29	804

Complaint clients

Table 9: Types of clients

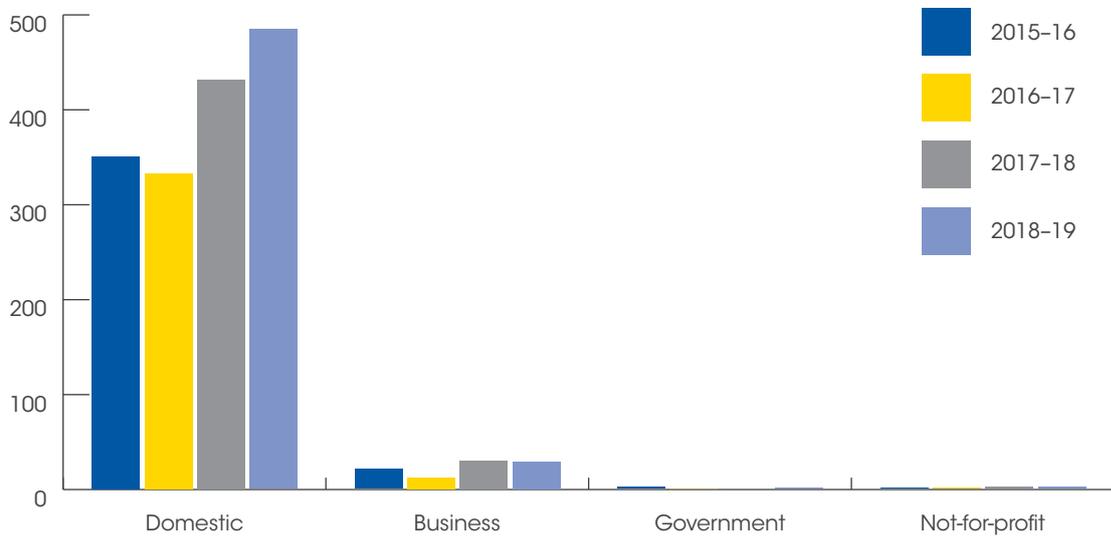


Table 10: Gender of clients

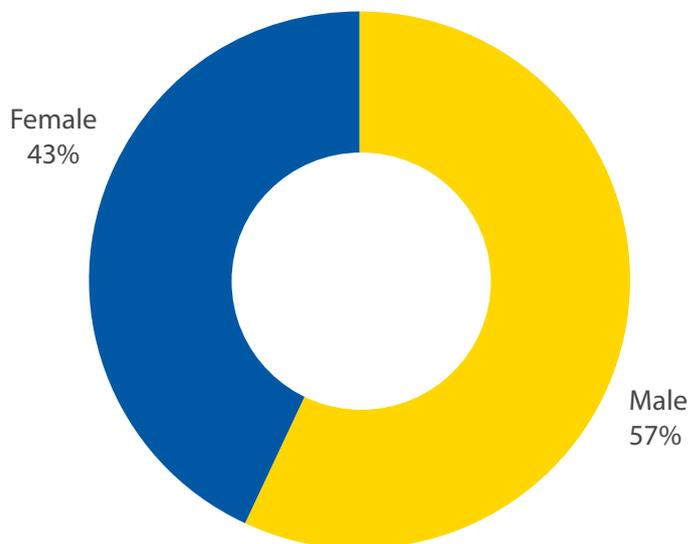
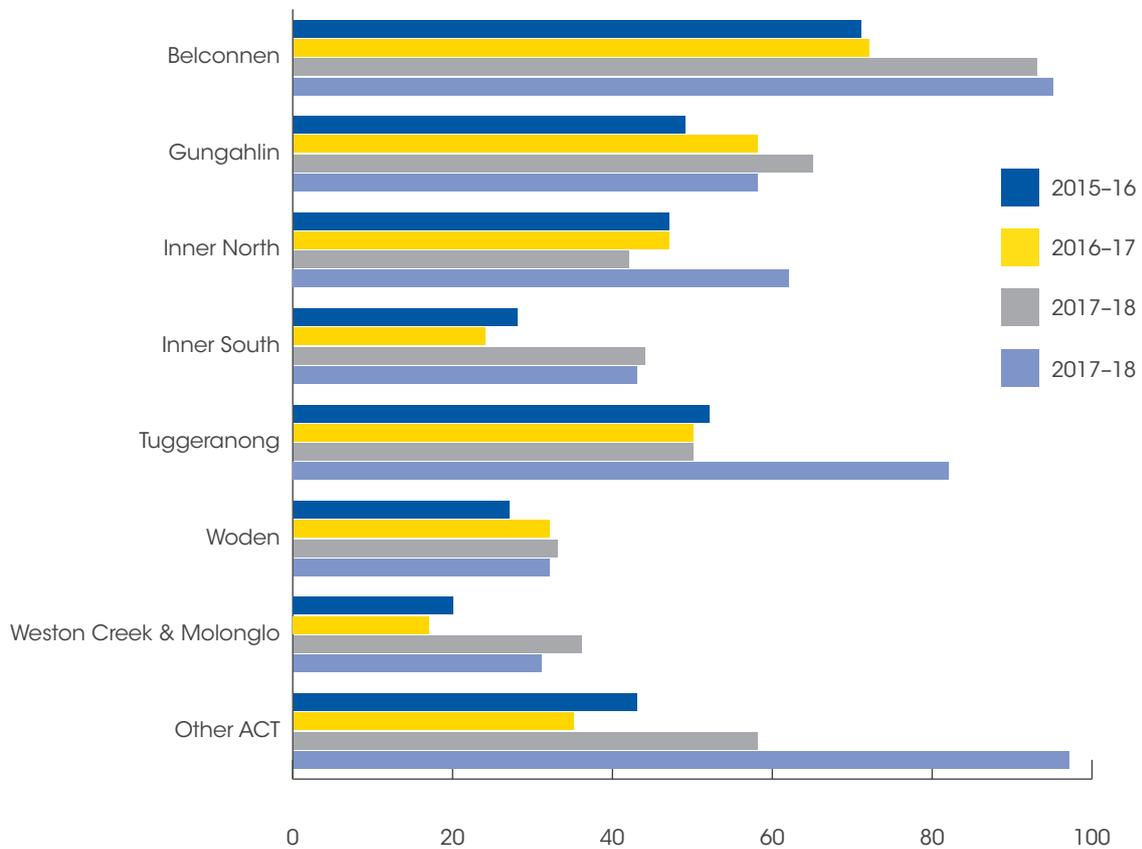


Table 11: Client location in ACT



Note: Other ACT includes complaints outside the identified areas or unknown but in the ACT. Unknown but in the ACT is generally recorded when a customer makes an enquiry and does not provide their address. Known interstate complaints or complaints that cannot be identified as from the ACT are excluded.

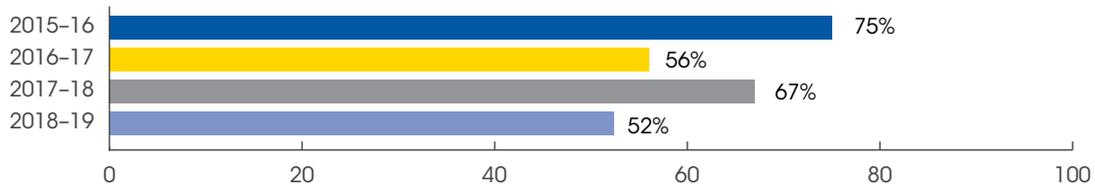
Outcomes

In the 2018-19 financial year 358 complaint applications were closed. This is a 38% increase from the 2017-2018 financial year where 260 complaints were closed.

Of the complaints closed, 222 were closed after being referred to the utility by a RHL. This represented the majority of complaint closures, however this figure does not indicate that the referrals were successful (ACAT provides data on the success of RHLs at Table 12).

Outcome of RHLs

Table 12: Percentage of complaints successfully resolved following an assisted referral (RHL) to utility



Of the 222 RHL complaint applications referred to a higher level within the utility, 52% were closed at this stage without the need for further ACAT investigation. In the 2017-18 financial year the comparable figure was 67%.

Though not recorded separately, ActewAGL Retail declined a number of RHLs during the financial year, and determined the complaints be most appropriately handled as investigations. This may have contributed to the decrease in the overall success rate of the RHL process. The ACAT initially refers the majority of complaints to utilities as RHLs to give them a reasonable opportunity to resolve their customer's concerns, with minimal external involvement. The ACAT encourages utilities to use this process to re-connect with their customer, resolve the issue, and restore the relationship, which is generally beneficial to all parties.

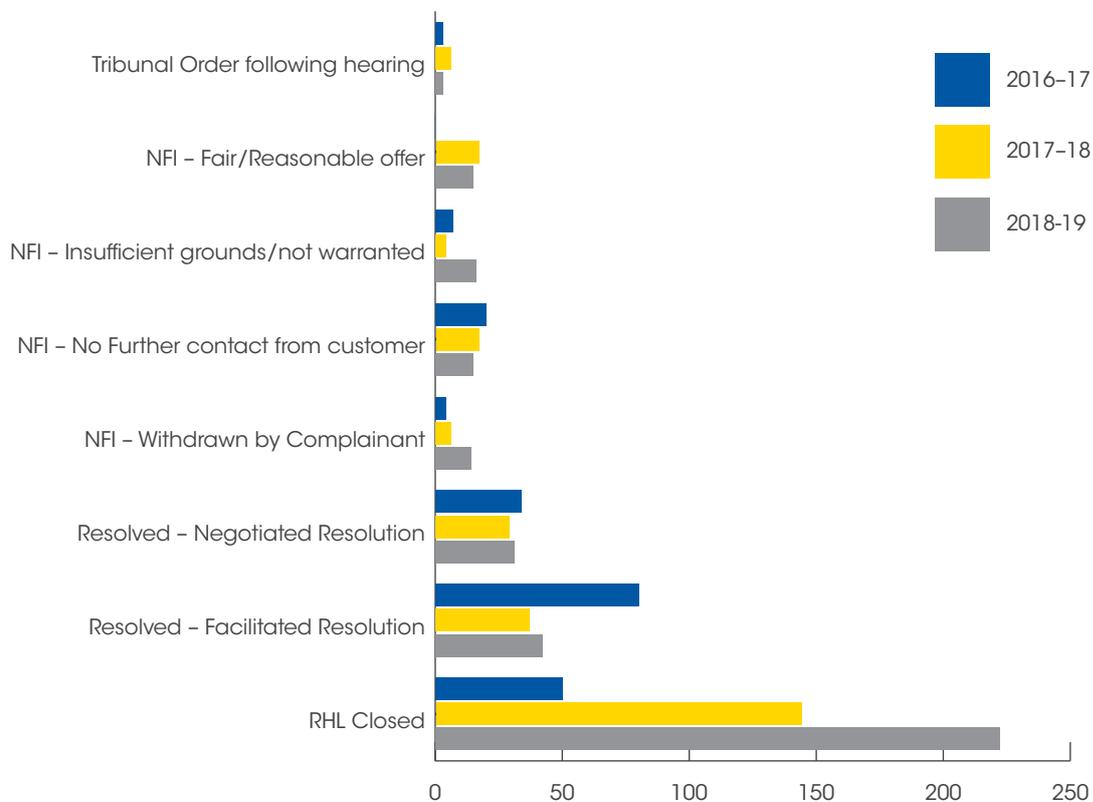
Outcome of investigations

During 2018-2019, 38% of complaints were closed following investigations or hearings:

- 20% of complaints through the ACAT facilitating a resolution between the parties or by ACAT actively negotiating a resolution.
- 8% of complaints were closed due to clients abandoning or withdrawing their application.
- 4% of complaints were closed due to ACAT reviewing the complaint and identifying that the complaint had no grounds, and the customer did not proceed further in the process.
- 4% of complaints were closed when the ACAT considered that the utility's offer was fair and reasonable, and the customer did not proceed further in the process.
- 1% of complaints were closed after the tribunal convened a hearing and made orders binding on the parties.

Note: If the tribunal forms the view that the complaint has no grounds or the utility's offer is fair and reasonable, this is not binding on the parties and the customer can still choose to proceed to a formal tribunal hearing.

Table 13: Outcome of total complaints



Other issues

Observations on utility complaint management practices

Individual utilities demonstrated different attitudes towards complaint resolution. The ACAT notes that Icon Water has demonstrated a very proactive approach in trying to resolve complaints to the satisfaction of the customer. Also of benefit to the customer is Icon Water's general avoidance of a litigious approach to complaint resolution. Despite having a monopoly position in the market, Icon Water have generally shown a willingness to accept or carefully consider recommendations made by the ACAT on how to resolve complex complaints.

The ACAT also recognised an increased level of collaboration with ActewAGL Retail, and welcomed its suggestion of monthly meetings to assist with the resolution of complex complaints. ActewAGL Retail also assisted the ACAT by demonstrating a number of backend business processes within the energy market, and showed an eagerness to provide the ACAT with any other information it required.

Origin Energy and EnergyAustralia, have generally shown a pragmatic attitude to complaint resolution, which may be a result of their practices being synced with industry ombudsman schemes interstate.

In ACAT's experience, effective complaint managers tend to focus on finding practical and pragmatic resolutions, particularly at the early stages. Evoenergy appears to take more litigious approach to complaint management, with cases often referred to their internal legal section early, and responses are not provided in a manner that will assist in resolving the customer's concerns. This can be a daunting and frustrating experience for members of the ACT community. The ACAT registry has made offers to meet with Evoenergy complaint managers (this year and in previous years) to establish relationships, clarify procedures and suggest alternative approaches which may be beneficial to customers. To date no meeting has been scheduled.

During the financial year, the ACAT became aware of a possible systemic administration error in the administering of the ACT Government's Feed-in Tariff (FiT) payment to ACT customers. Further details can be found in the *Reported systemic issues* section later in the Review. When this was first identified, ACAT requested information from Evoenergy on possible affected customers. This request was declined on privacy grounds and on the basis that ACAT did not have jurisdiction to deal with this issue.

The ACAT notes that other utilities have in the past proactively advised ACAT of systemic issues they have identified (such as billing system issues), provided non-identified information to ACAT on the number of affected customers, consulted and advised on what steps they were taking to rectify the issue, and advised ACAT when the matter was resolved. This is a model approach to take when dealing with issues and presents an open and transparent approach to the issues that will occur from time to time in the complex energy and water sector.

Credit default listings concerns

Sixteen complaints regarding utility-applied default listings were closed during the financial year, comprising of 23 individual default listings. A default remain on a person's credit file for a period of five years, and can negatively impact a person's ability to obtain credit for such things as a home loan or even a mobile phone plan. Due to the potential adverse financial outcomes a default listing can have, great care should be taken by utilities to ensure they have been applied correctly.

Table 14: Outcome of default listing complaints

	Origin Energy	ActewAGL Retail	ICON Water	Total
Defaults challenged by customers	3	16	4	23
Defaults removed for goodwill	0	3	0	3
Defaults removed for compliance concerns	2	7	4	13
Total defaults removed				16
Percentage of defaults removed	67%	63%	100%	70%

Of those 23 default listings, three were applied by Origin Energy, and 20 by ActewAGL Retail (ActewAGL Retail is contracted as Icon Water's billing agent and applied the four default listings on Icon Water's behalf).

Of the 20 default listings applied by ActewAGL Retail, three were removed as goodwill gestures, and 11 were removed due to concerns regarding their compliance with the legislative scheme. This occurred through either recommendation by the ACAT or further internal review by ActewAGL Retail. The majority of these complaints had already been internally reviewed by ActewAGL Retail before they were referred to the ACAT by the customer.

Due to the number of default listings being removed by ActewAGL Retail, there is a concern as to whether enough care is being taken in ensuring the necessary steps are being followed by ActewAGL Retail or their collection agents before a customer is listed with a credit reporting agency. ACAT notes Origin's percentage was high, but this is off a low base and ongoing analysis is required to determine whether it is a trend or a statistical anomaly. ACAT will focus on monitoring this situation over the course of the 2019–20 financial year and work with the appropriate regulators as necessary.

Reported systemic issues

Section 174 of the *Utilities Act* requires the ACAT to report issues of a systemic nature to the relevant Minister and to the Independent Competition and Regulatory Commission (ICRC). As a number of systemic issues relate to areas regulated by the Australian Energy Regulator (AER), the ACAT may also report these concerns to the AER.

In the last financial year the ACAT referred to the ICRC a possible systemic administration error in the administering of the ACT Feed-in Tariff (FiT) by Evoenergy. ACAT investigators identified the error, which involved an incorrect interpretation by Evoenergy of the relevant legislation, resulting in compliant renewable energy generators being removed from the FiT scheme. This resulted in customers losing their premium FiT rate.

The ICRC was able to identify through Evoenergy an additional 18 customers who were affected by the issue, however the ICRC did not consider the matter to be systemic. The affected customers had their solar generators returned to the scheme, and received compensation for lost revenue. This represented substantial customer benefit to those affected.

Other activities

Working with other Ombudsman schemes

ACAT is a member of the Australian and New Zealand Energy and Water Ombudsman Network (ANZEWON), represented by the ACAT President. ANZEWON membership allows the ACAT to expand its expertise in the energy and water jurisdiction and where possible, provide a service which is consistent with other ombudsman schemes.

The President attended ANZEWON meetings in Hobart in November 2018 and Sydney in March 2019 and Melbourne in May 2019.

Reports, submissions and information

During the financial year, the ACAT:

- Met with ICRC regarding the Consumer Protection Code (CPC) review. The CPC is an ACT industry code that sets out practices, standards, and other matters about the provision of a utility service, and mostly applies to water in this jurisdiction.
- Made a submission to the ICRC regarding the Consumer Protection Code Review.
- Submitted a response to AER Issues Paper – “Standardised statements for use in customer hardship policies”.
- Submitted a response to AER Position Paper – “Default Market Offer Price”.
- Reported to the AER instances where it appeared retailers had not met timeframes for the installation and repair of meters for small customers.
- Provided quarterly reports to ANZEWON.
- Provided requested data to the Australian Energy Market Commission for the Retail Competition Review.

Participation with industry and community

During the financial year, the ACAT:

- Participated in AER tri-annual Ombudsman teleconferences.
- Met regularly with representatives of ActewAGL Retail.
- Met with representatives of Icon Water.
- Met with Evoenergy Consumer Engagement Manager and Customer Outcome Lead.
- Attended the Evoenergy Annual Planning Report Launch.
- Attended the Energy Efficiency Improvement Scheme (EEIS) stakeholder forum in Canberra.
- Attended the Energy Consumers Australia (ECA) Board Stakeholder Forum in Canberra, which allows the ECA to meet ACT advocates, industry and officials to discuss issues of concern to consumers.
- Met with Environment, Planning and Sustainable Development Directorate to discuss energy policy.
- Joined the newly formed the ICRC Consumer Consultative Committee (CCC), which met on 12 June 2019.



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