



AUSTRALIAN CAPITAL TERRITORY
CIVIL & ADMINISTRATIVE TRIBUNAL

The background of the cover is a collage of three circular images. The largest, central image shows a long-exposure photograph of star trails in a dark blue night sky, with the trails curving across the frame. The top-right circular image shows a silhouette of a radio tower on a hill against a bright, hazy sunset or sunrise sky. The bottom-left circular image shows a night-time view of a city, likely Canberra, with lights reflecting on water and a prominent illuminated bridge or walkway in the foreground.

**Annual
Review**
2020
-21

Contents

About us.....	4
Independence.....	6
Tribunal leadership and effective management.....	10
Fair treatment.....	12
Accessibility	13
Professionalism and integrity	16
Accountability.....	19
Efficiency.....	21
Client needs and satisfaction	24
In prospect and acknowledgement.....	24
Statistics and performance information	26
Year at a glance.....	26
Overall workload and outcomes.....	26
Appeals.....	27
Administrative review	28
Civil, retirement villages and unit titles disputes.....	32
Discrimination	35
Guardianship and management of property.....	37
Mental health.....	40
Motor Accident Injuries.....	42
Occupational and professional regulation	43
Residential tenancies disputes.....	45
Utilities – energy and water.....	47

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 made by the ACT Government
- discrimination complaints
- guardianship, financial management and enduring powers of attorney
- mental health treatment and care
- residential tenancies (rental property) disputes
- energy and water hardship and complaints/investigations
- civil disputes valued at \$25,000 and under
- unit titles and retirement villages disputes
- motor accident injuries
- 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 60 members of the ACAT. They are supported by a registry of 35 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 twelfth full year of operation. Reports on the tribunal's 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 2020–21. This Annual Review provides more detailed information about the tribunal's case workload and outcomes in the 2020–21 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.

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, p. 11

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; and
- implemented in a way that facilitates the resolution of the issues between the parties so that the cost to the parties and the tribunal is proportionate to the importance and complexity of the subject matter of the proceeding.

The tribunal 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 2020–21, Graeme Neate AM continued in his full-time appointment as ACAT President. Presidential Member Thena Kyprianou was appointed to the ACAT in August 2020 and resigned from her appointment for health reasons in May 2021. Heidi Robinson was appointed as her successor as a Presidential Member for a term of seven years, having formerly held the appointment of full-time Senior Member. Presidential Members Geoffrey McCarthy and Mary-Therese Daniel, and Senior Member Kristy Katavic continued in their full-time appointments. Michael Orlov commenced a five-year appointment as a full-time Senior Member in June 2021.

In addition, the tribunal had 57 sessional non-presidential members at the beginning of the reporting period. At the end of the reporting period there were 54 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:

- 9 of 2019, effective from 1 November 2019
- 9 of 2020, effective from 1 November 2020.

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 utilities and occupational discipline matters. Sessional members provide an invaluable service to the ACT community.

ACAT members, along with their appointment and appointment periods, during 2020–21 were:

Presidential Members

NEATE , Graeme AM	President	2 January 2017 to 1 January 2024
DANIEL , Mary-Therese	Presidential Member	1 January 2016 to 31 December 2022
KYPRIANOU , Thena	Presidential Member	24 August 2020 to 5 May 2021
MCCARTHY , Geoffrey	Presidential Member	1 January 2016 to 31 December 2022
ROBINSON , Heidi	Presidential Member	6 May 2021 to 5 May 2028
ROBINSON , Heidi	Presidential Member (Temporary)	13 November 2020 to 5 May 2021
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 5 May 2021*
KATAVIC , Kristy	Senior Member (Full-time)	1 February 2020 to 31 January 2025
ORLOV , Michael	Senior Member (Full-time)	6 June 2021 – 5 June 2026

* Senior Member Robinson's Senior Member appointment was suspended for the duration of her appointment as a temporary Presidential Member.

Sessional Senior Members

ANFORTH Allan

BAILEY Robyn

BEACROFT Laura

BIGINELL Nigel

BOYLE Alysoun

BRENNAN Mary

BYRNE Donald

CORBY Wilhelmena

CREYKE Robin OM

DAVEY Adrian

DONOHUE Louise

DREW Leslie (to 9 November 2020)

FERGUSON Elspeth

FOLEY Anthony James

HERRICK Stephen

HYMAN Mark

KERSLAKE David

LANCKEN Stephen

LENNARD Jann

LOVELL Denis

LUBBE Katherine

LUNNEY Graeme

MATHESON Marie

MEAGHER Bryan

MULLIGAN Dominic

NORRIE Peter

ORR Robert

ORLOV Michael (to 5 June 2021)

PEGNUM Roger

SINCLAIR Michael

SPENDER Peta

SUTHERLAND Peter

TRICKETT Graeme

TURNER Graeme

WARWICK Theresa

WILLIAMS Leanne

Sessional Ordinary Members

BENNETT Elizabeth

DAVIES Robyn

DELAHUNT Anne-Marie

GREAGG Jane

HATAMI Parastou

HAWKINS Walter

KELLER Sheridan

LUCAS Dianne

MAYES Leasa

MCGLYNN Lisa

MORRIS Athol

NEWMARCH Eileen

PEARCY William

SELBY Hugh

STEEPER Elizabeth

TRICKETT Elizabeth

VASSAROTTI Rebecca (to 24 October 2020)

WEDGWOOD Robert

WILLIAMS Athol

WILSON Mirjana

WRIGHT Graham

Resignation of some members

Full-time Presidential Member Thena Kyprianou resigned her appointment on 5 May 2021 for health reasons. In her relatively short period with the tribunal, Thena endeared herself to her colleagues, provided valuable insights into key aspects of our work and made significant contributions to the developing practice and application of the new motor accident injuries scheme.

Two longstanding sessional members also resigned during the period covered by this report. Ordinary Member Rebecca Vassarotti, a member of the ACAT since 2015, was involved in guardianship, mental health and energy and water matters. She resigned in October 2020 on her election as a member of the ACT Legislative Assembly. Dr Les Drew AM served as a sessional Senior Member on mental health matters since 2009, providing insights as a senior psychiatrist. He resigned for health reasons in November 2020.

We acknowledge the valuable contributions that each made to the work of the ACAT and wish them well.

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, p. 14

ACAT LEADERSHIP TEAM

The ACAT Leadership Team comprises the President, Presidential Members, full-time Senior Members, Principal Registrar, Registrar and Deputy Registrars, supported by the Senior Director, 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:

- Full-time Members Group
- ACAT Executive Group
- ACAT Team Leaders Group.

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

STRATEGIC STATEMENT 2020–21 AND CORPORATE PLAN

The ACAT Strategic Statement sets out the purpose of the tribunal, its values and behaviours, and priorities and goals. During the reporting period work was undertaken to update the Strategic Statement for the coming year. The ACT Courts and Tribunal Corporate Plan 2020–21 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 2020–21 were:

- monitor and effectively respond to trends in matters brought to the ACAT and to new and changing laws
- implement processes for the smooth operation of new legislation conferring jurisdiction on the ACAT
- provide easy access to useful information that assists parties to represent themselves
- develop and implement a performance framework for members
- ensure the 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 the first section of 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, p. 16

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 often 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.

The majority of parties at the tribunal are self-represented. The ACAT developed and distributed to members a document titled "Guidance for tribunal members about how to respond to the needs of self-represented parties". This is a practical guide that focusses on ensuring fair treatment for self-represented litigants developed by the ACAT President.

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, p. 17

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, applicable fees, hearing dates and times, and the published reasons for tribunal decisions.

During 2020–21, five new videos were produced and published on the ACAT website aimed at providing information to tribunal users on particular aspects of the tribunal's work. This brings the total number of videos to nine. The new videos are:

- *Do I need to be represented at ACAT?*
- *Lodging and serving documents*
- *Preparing a witness statement*
- *Preparing a timeline*
- *How to prepare a submission*

Two videos, *Conferences at ACAT* and *Hearings at ACAT*, are currently being translated into twenty different languages. It is anticipated that these videos will be published on the ACAT website in the first half of 2021–22.

ACAT website content is continually updated to reflect any procedural changes, including when the ACAT's jurisdiction changes as a result of new or amended laws.

ENERGY AND WATER COMPLAINTS ONLINE FORM

During 2020–21, an online complaint form was introduced to assist ACAT clients with the lodgement of complaints relating to utilities. The form collects all the required information to assist the ACAT with investigating and resolving complaints in a timely manner. The energy and water complaint form can be found on the [ACAT website](#).

NEW OR AMENDED ACAT FORMS

During 2020–21, the following forms were introduced or amended to accommodate new processes, legislative amendments or to streamline the form:

- *Rental Bond or Security Deposit Claim*
- *Application – Unit Titles (Management) Act 2011*
- *Application – Unit Titles Act 2001*
- *Application for Resolution of a Dispute under the Residential Tenancies Act 1997*
- *Late application for an occupancy complaint to be heard*
- *Request for a free audio recording or written transcript of ACAT proceedings*
- *Notice to discuss fence*
- *Fence dispute application*
- *Request about payment of fees*
- *Application for a warrant for eviction form*

ACAT ACCOMMODATION

Work to fitout new premises for the ACAT at Allara House in Canberra City continued. It is anticipated that the ACAT's move to its new premises will occur early in 2022. It is expected that the new ACAT premises will enhance the ACAT's accessibility and service to the ACT community.

THE IMPLICATIONS OF COVID-19 RESTRICTIONS

The main barriers to personally accessing the tribunal were a consequence of the COVID-19 restrictions in operation during the reporting period. Those restrictions affected who could come to the tribunal's premises from time to time, whether mediations, conferences and hearings could be conducted face-to-face or had to be conducted remotely (by telephone or WebEx), and what restrictions had to be observed by members, staff, parties and their representatives when on ACAT premises.

In March 2020, in response to the COVID-19 crisis, the ACAT closed its counter to the public, adjourned non-urgent listings and commenced hearings by telephone, WebEx and video-link. A staged return to operations plan, informed by public health orders and guidelines, guided the ACAT's practice during the pandemic. Case managing members, with the support of the registrar and registry, adapted work practices to suit the new environment and new ways of hearing matters were developed.

Toward the end of 2020–21, plans were developed to complete the staged return to operations, considering lessons learned from the experience and adopting new ways of working as appropriate. There is an increased use of telephone and WebEx for certain listing events, taking into consideration the needs of the parties, the presiding member and COVID-19 restrictions. Implementation work has commenced and will continue into 2021–22. It includes the development and refocusing of communications, adjusting procedures, adjusting hearing room and waiting area layouts, ensuring the availability of personal protective equipment and managing the numbers of tribunal users onsite at any time.

WARM REFERRALS TO LEGAL ASSISTANCE

To better assist the high number of self-represented parties before the ACAT to obtain legal advice, 'warm referral' processes continued to operate during the reporting period. 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, 13 matters were referred by the ACAT under this program. The matters involved administrative review, occupational regulation, discrimination, civil claims and residential tenancies disputes. Warm referrals were made to ACT Legal Aid, Canberra Community Law, and ACT Disability, Aged and Carer Advocacy Service.

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. The ACT Health Tribunal Liaison Officers facilitate these hearings and their work is acknowledged. Other hearings are held at the tribunal premises on those days.

The tribunal continued to hold guardianship hearings at The Canberra Hospital, Calvary Hospital and the 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. Other guardianship hearings are held at the tribunal premises each Tuesday.

These initiatives are an important example of the tribunal meeting its objects and providing access to justice for vulnerable groups. In the case of guardianship hearings in particular, hospital hearings benefit the health and well-being of the subject person and result in very significant cost savings to the ACT's health system.

ACCESS TO INTERPRETERS FOR TRIBUNAL USERS

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 are available, including ACAT interpreter cards in 13 languages, posters in English and seven other languages, and a language identification chart depicting 41 languages. These resources are available on the [ACAT website](#). Work is underway to translate some ACAT videos into a number of languages. It is anticipated that these videos will be published on the ACAT website in the first half of 2021–22.

Interpreter protocols were issued by the ACT Supreme Court, ACT Magistrates Court and the ACAT in February 2020. These guidelines provide guidance to judicial officers, tribunal members, registrars, court and tribunal staff, interpreters, agencies and legal practitioners about the use of interpreters in the context of the ACT Courts and Tribunal, including for registry enquiries and in hearings. The interpreter protocols can be accessed on the [ACAT website](#).

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, p. 20

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* (Fifth Edition) was published in July 2020 and is provided as a resource for ACAT members.

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, civil disputes, unit titles and utilities work. Members are regularly advised of new decisions and developments in relevant areas of the law.

During 2019–20, some ACAT members participated in the following conferences as attendees or speakers:

- ACT Law Society Wills and Estates Conference, September 2020
- COAT NSW Webinar Conference, November 2020
- COAT National Conference, June 2021.

ACAT MEMBER COMPETENCY FRAMEWORK

During 2020–21, an ACAT Member Competency Framework was developed and adopted to guide and assess member performance, identify areas for development and guide professional development activities for members. The framework was developed using COAT guidelines, examples from other Australian tribunals and direct input from ACAT members. Work to implement the framework will continue into 2021–22.

POLICY ON WORKPLACE CONDUCT BY ACAT MEMBERS

During the reporting period, the ACAT developed and adopted the *Policy to guide workplace conduct by ACAT members*. The policy sets out tribunal members' obligation to treat all colleagues and other stakeholders of the tribunal with respect and to avoid inappropriate workplace conduct or unwelcome behaviour towards others. The policy also provides information to staff subjected to inappropriate conduct on how to raise concerns about such conduct. The policy sets out the expectation that tribunal members behave at all times in a way that fosters the objectives of the ACAT.

STAFF PROFESSIONAL DEVELOPMENT

In January 2020, ACAT managers and team leaders participated in a Wellbeing Masterclass focussed on assisting managers to foster wellbeing practices within their teams and to assist them to empower their staff to take personal and team responsibility for supporting wellbeing.

In April 2021, all ACAT staff participated in Behaviour De-escalation training. This is regular training provided to new staff and as a refresher to existing staff. Staff are trained in self-management techniques for escalation prevention.

During 2020–21, key ACAT staff also participated in Domestic and Family Violence for Managers training. This is an ACT Government program to address the incidence and impacts of domestic and family violence in our community, and all ACT Public Service Employees will receive Domestic and Family Violence training during the course of 2021.

Training was provided to staff internally, including in relation to a range of legislative changes that had an impact on the tribunal's work.

COMMUNICATION WITH MEMBERS

During the year the tribunal continued to communicate with members through 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.

MEMBERS' PORTAL

During the reporting period, work was carried out on the development of an ACAT members' portal. The portal will bring together bench materials, training materials, guidelines, policies and other resources into an intranet site accessible by both full-time and sessional members. A training video to assist members to navigate the portal is currently under development. The portal is a dynamic and practical tool designed to support members in their daily work. It is anticipated that the portal will be launched during 2021–22.

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.

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 Robert Orr and Robyn Creyke. Presidential Member Daniel participates as a member of the Facilitative Committee of the Resolution Institute.

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 participated in meetings of the Australian and New Zealand Energy and Water Ombudsman Network (ANZEWON) during 2020–21.

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 Director have participated in the Australasian Tribunal Administrators Group. Both groups are aimed at information sharing and problem solving. They meet 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 or a Deputy Legal Registrar attends the monthly meetings of the ACT Law Society's Civil Litigation Committee meeting. During the period under review, Presidential Member Daniel was chair of the committee of the Resolution Institute (ACT Chapter).

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, p. 22

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 2020–21, no complaints were received under the Protocol.

During 2020–21, 30 complaints were received about ACAT services or members, which represents less than one per cent of ACAT applications. Complaints about members are referred to the President for investigation and response. Complaints about staff and facilities are referred to the ACAT Registrar for investigation and response.

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 any delays in the delivery of a decision. In 2020–21, 130 written decisions were published and 20 enquiries were received under the reserved decision protocol.

STUDENTS AND INTERNS

The tribunal continued its engagement with law students at the Australian National University and University of Canberra by offering observation opportunities and internships of between 10 and 20 days duration. Eight interns attended the ACAT during 2020–21. This is a reduction in numbers from earlier years and is as a result of the suspension of the program from March to September 2020 in response to COVID-19 restrictions. The program resumed in September 2020 with reduced numbers of interns on site. The presence of interns 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 AND LEGISLATIVE CHANGE

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:

- *ACT Civil and Administrative Tribunal Act 2008*
- *Births Deaths and Marriages Registration Act 1997*
- *Civil Law (Wrongs) Act 2002*
- *Common Boundaries Act 1981*
- *Domestic Animals Act 2000*
- *Fair Trading (Australian Consumer Law) Act 1992*
- *Guardianship and Management of Property Act 1992*
- *Human Rights Commission Act 2005*
- *Mental Health Act 2015*
- *Planning and Development Act 1997*
- *Plastic Reduction Act 2020*
- *Residential Tenancies Act 1997*
- *Retirement Villages Regulation 2013*
- *Sexuality and Gender Identity Conversation Practices Act 2020*
- *Unit Titles (Management) Act 2011*
- *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, p. 24

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 perspectives.

ADR is usually undertaken at an early stage, before parties have commenced preparation for a hearing. However it can occur at any stage of a matter where this is requested and/or is considered by the tribunal to be an appropriate allocation of resources, including close to a scheduled hearing date.

A number of tribunal members and staff are accredited mediators. Twenty members and five 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 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 an ADR session, 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, the 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.

REVIEW OF DISPUTE RESOLUTION AT THE ACAT

During 2020–21, a project was progressed to examine dispute resolution at the ACAT. The project evaluated current ADR processes, explored alternative ADR processes and investigated the issues around the implementation of Online Dispute Resolution (ODR) at the ACAT. A draft report has been prepared and will be progressed during 2021–22.

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.

ENERGY AND WATER ICT SYSTEMS

A project was undertaken during the period to investigate the replacement of the Lotus Notes database system currently used by the Energy and Water hardship and complaints teams. Support and technical updates for Lotus Notes are no longer provided by the vendor. A business analyst was engaged to scope a replacement system that is fit for purpose and designed to meet the specific needs of the energy and water functions. The next stage of this project is to determine a future state solution and develop a business case to seek funding for this business-critical system.

ACAT JURISDICTIONAL CHANGES

Legislative changes implemented during 2020–21 continue to increase and change the ACAT's jurisdiction. New reviewable decisions were created under a range of legislation, and new functions were given to ACAT under the *Sexuality and Gender Identity Conversation Practices Act 2020*.

There were a number of legislative amendments to existing jurisdictions, including to the:

- *Guardianship and Management of Property Act 1992* which give the ACAT the power to order compensation if guardians or managers do not comply with the Act. The amendments commenced in August 2021.
- *ACAT Act and Common Boundaries Act 1981* to address a range of procedural issues.
- *Unit Titles (Management) Act 2011* which introduced new kinds of decisions that can be reviewed by the ACAT, as well as a number of new orders that can be made.
- *Victims of Crime Act 1994* which introduces new obligations on the ACAT with respect to victims of crime. These reforms ensure victims are treated appropriately in the justice process and are provided with information and opportunities to participate wherever possible.

Throughout 2020-21 changes were made to the ACAT's jurisdiction under the *Residential Tenancies Act 1997*, requiring changes to processes and communication with stakeholders. The changes related to payment orders, co-tenants and occupancy agreements. A referral pathway to the ACAT has also been provided from the Human Rights Commission for occupancy disputes. A series of *Residential Tenancies (COVID-19 Emergency Response) Declarations* put in place arrangements around evictions and rental arrears in the context of COVID-19.

Implementation work occurred on changes to support amendments to the *Births Deaths and Marriages Registration Act 1997*, which commenced in August 2021. This Bill sets up a mechanism for children under 16 to apply to the ACAT for leave to apply to Registrar-General for registration of a change of the person's given names, alteration of the record of the person's sex in the birth registration or a recognised details certificate without parental consent.

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, p. 26

REGULAR COMMUNITY STAKEHOLDER ENGAGEMENT

Regular stakeholder meetings are held with people interested in or affected by specific aspects of the work undertaken by the tribunal. The tribunal also delivers educational programs about its work. During 2020–21 there was reduced opportunity to deliver stakeholder forums and educational programs, in the context of COVID-19 restrictions. Meetings with individual stakeholders were held during the year. It is anticipated that this important work will resume during 2021–22.

FEEDBACK ON ACAT PERFORMANCE

Tribunal user feedback is sought and received on a range of activities. During 2020–21, development work continued on a client satisfaction survey. The survey was delayed until 2021–22 due to the unfolding COVID-19 situation. 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 2021–22 include:

Implementation of the ACAT Members Competency Framework: A project will commence during 2021–22 to implement the competency framework for members and identify member training needs to provide a framework for regular performance review and feedback to members on performance.

Legislative amendments: This is an area of continual change and adjustment for the ACAT. Work to adapt procedures and ICT to facilitate these changes is ongoing.

Proposed client survey: During 2021–22 a client satisfaction survey will be conducted and results will be used to inform service delivery at the ACAT.

ACAT accommodation: Extensive work is underway to fitout new accommodation at Allara House in Canberra city for the ACAT to meet current and future business needs. This will continue into 2021–22.

THANK YOU

The work of the tribunal is diverse and demanding, and our jurisdiction and powers continue to expand as legislation is amended and new legislation is enacted. That is part of the tribunal's appeal to those of us who do that work.

The usual challenges have expanded in the past year as a consequence of restrictions in relation to COVID-19 and the changing environment which the pandemic continues to provoke. We continue to adapt to current circumstances while drawing on those experiences to refine our practices to best suit what we anticipate the new normal will be and to use the enhanced facilities of our new accommodation.

We are determined not to simply revert to the pre-COVID-19 way of performing our functions but to build on lessons learned to be more effective and efficient in the interests of the parties and in conformity with our statutory objectives. Doing so means drawing on the resources, insights and cooperation of many people inside and outside the organisation.

The full-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 and improve our practices. 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 even in these unusual circumstances.

Graeme Neate AM

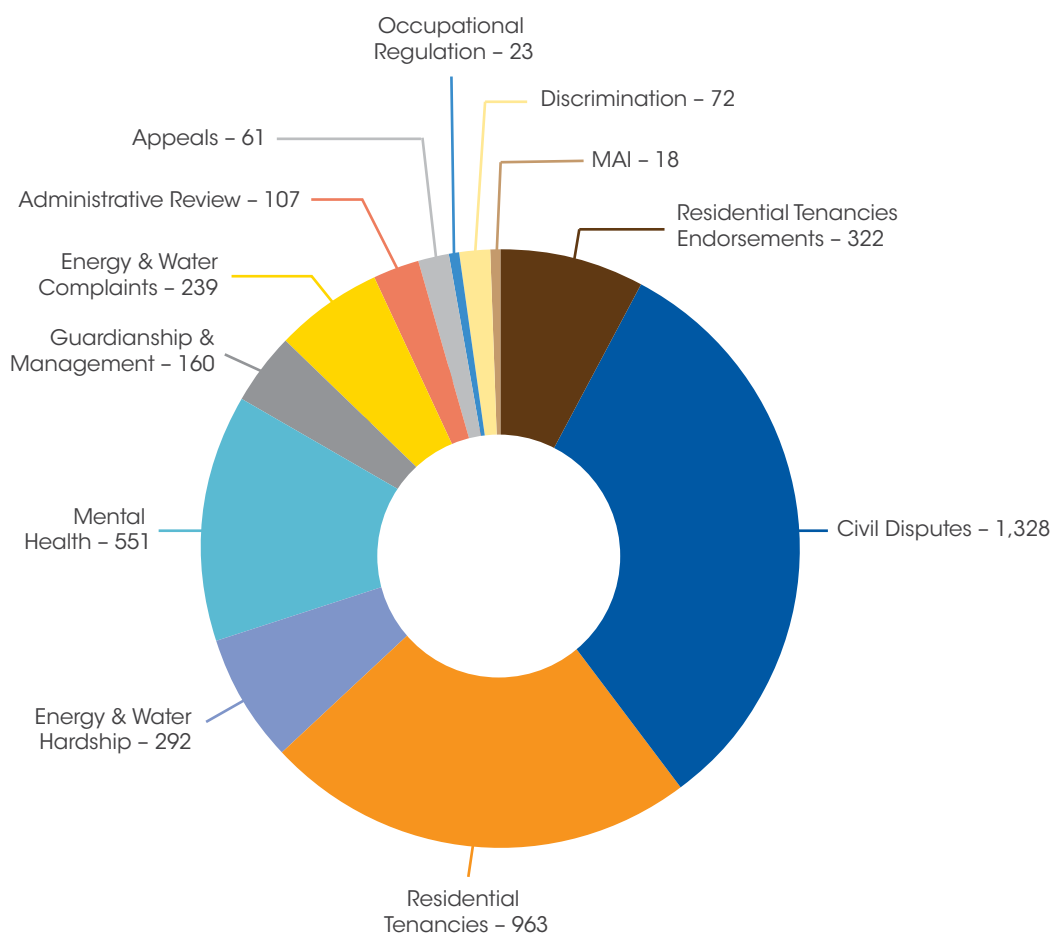
President

October 2021

Statistics and performance information

YEAR AT A GLANCE

New applications received by subject matter 2020-21



OVERALL WORKLOAD AND OUTCOMES

The number of new applications varied across different parts of the tribunal's work during the reporting period. By comparison with 2019-20, the number of civil dispute applications decreased, but there were increases across mental health, guardianship and appeals.

Although the total number of applications decreased by 547 (11%), the number of files finalised rose by 261 (7%). Pending matters less than 12 months old decreased during the reporting period by 355 matters due mainly to measures undertaken to handle a backlog of applications attributable to the ACAT's COVID-19 response. At 30 June 2021, the total number of pending matters aged greater than 12 months was 56, which is 1.35% of total lodgements.

	2016-17	2017-18	2018-19	2019-20	2020-21
Applications lodged*	4,587	5,051	4,764	4,683	4,136
Files finalised*	3,859	4,133	4,037	3,777	4,038
Applications pending#	979	1,178	1,025	1,310	955
Pending > 12 months#	94	96	31	38	56
Clearance rate#	95%	94%	104%	91%	111%
Reviews held^	1,987	2,090	1,909	1,801	1,706

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	2016-17	2017-18	2018-19	2019-20	2020-21
Mediation/preliminary conferences	1,106	1,102	1,142	1,273	1,243
Interim hearings	194	199	211	193	230
Motions hearings	130	145	140	110	470
Substantive hearings (includes resumed hearings)	4,737*	7,037	6,495	6,138	6,357

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, 61 applications for appeal were lodged with the tribunal and 43 applications were finalised.

Internal Appeals	2016-17	2017-18	2018-19	2019-20	2020-21
Applications lodged	52	47	50	44	61
Applications finalised	60	57	41	49	43

Type of Appeal	2016-17	2017-18	2018-19	2019-20	2020-21
Civil disputes	18	13	24	17	20
Residential tenancies	17	23	14	15	19
Unit titles	1	2	3	1	5
Occupational regulation	1	0	1	4	3
Administrative review	6	6	3	1	5
Discrimination	2	0	3	1	6
Mental health	2	1	1	3	0
Guardianship	3	2	1	2	1
Energy and water	2	0	0	0	2
Extension of time	8	4	4	7	1

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 no referrals of questions of law in the period.

Four applications for appeal from an ACAT decision were lodged with the Supreme Court and one application was received for removal of a matter to the Supreme Court under section 83 of the ACAT Act. Of the five appeals to the Supreme Court that were completed in the reporting period, three were discontinued or dismissed. One is ongoing and one was remitted to the ACAT for re-hearing.

ADMINISTRATIVE REVIEW

The ACAT 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 ACAT has the requisite specialist or technical advice available to it. No assessors were appointed during 2020-21.

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	2016-17	2017-18	2018-19	2019-20	2020-21
Applications lodged	79	103	107	108	107
Applications finalised	91	88	106	112	112

Decision Type	2016-17	2017-18	2018-19	2019-20	2020-21
Cases subject to 120-day limit					
Planning and development	29	30	28	37	31
Heritage	0	0	1	0	0
Tree protection	2	4	2	4	3
Other Cases					
Building and construction	2	2	4	3	7
Revenue ¹	23	28	39	21	19
Licences and permits	9	19	12	11	11
Dog matters	2	10	12	27	24
Freedom of Information	2	3	1	0	0
Public housing allocation/ rental rebate	9	2	1	0	2
Victims of crime	-	-	2	0	2
Miscellaneous	1	5	1	4	8

¹ Applications for review of decisions about change of use charges, motor vehicle duty, payroll tax, rates, land tax, stamp duty and first homeowners' grants have been grouped together under the classification "Revenue".

Applications concerning the same, or a substantially similar, decision may be heard together. The 107 new applications lodged related to 70 decisions.

Each application is individually case-managed by a 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. This enables 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 ACAT 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 ACAT on a further occasion.

Of the 32 matters referred to mediation in the reporting period, 12 (38%) were resolved at ADR, six (21%) were resolved after ADR and 14 (36%) proceeded to hearing. Thirteen matters, representing 11 decisions underwent a preliminary conference, with four settling prior to hearing and the remaining six proceeding to hearing.²

The ACAT aims to have all applications completed in less than 12 months. On average, matters finalised during the reporting period were completed in 114 days from being commenced and involved between three and four tribunal events.³

There were 30 active administrative review matters at the end of the reporting period. The table below shows the age of matters not yet finalised at the end of the reporting period and the previous year.

² For an explanation of the parameters applied for ADR reporting see *Efficiency* earlier in this Review.

³ A tribunal event is an attendance by the parties upon the tribunal such as a directions, final or interlocutory hearing, mediation, return of subpoena, etc. Each day of a hearing is counted as a separate event.

At the end of the reporting period, three pending matters were older than 12 months. Of those, one had been heard and the decision reserved, and one was adjourned pending the outcome of related criminal proceedings. The third matter involved review of a decision about payroll tax and was awaiting a decision on a related application, the review of which would be conducted jointly.

Age of pending applications for administrative review as at 30 June 2021

Age of files	0–3 months	3–6 months	6–9 months	9–12 months	12 months+	Total
2020–21						
No of files	17	6	6	0	1	30
% of files	56.67%	20.00%	20.00%	0.00%	3.33%	100%
2019–20						
No of files	19	6	3	5	3	36
% of files	52.78%	16.67%	8.33%	13.89%	8.33%	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. The time for deciding the application may be extended by the President if satisfied that the extension is in the interests of justice. The time limit is difficult to meet in matters in which there are more than two parties, when parties ask for additional time to obtain experts' reports or when a collateral or interlocutory issue interrupts the tight hearing preparation schedule.

Time was extended for several applications during the reporting period. Requests to extend time were either made jointly or were not opposed. For some matters, parties were required to file brief submissions explaining why the extension sought was in the interests of justice. The information provided below explains the circumstances in which each extension was granted:

Hobbs v ACT Planning and Land Authority

AT 93/2019 – time extended by 178 days. The application was filed in mid-October 2019. At the final directions hearing on 17 February 2020 the tribunal considered an application to vary the timetable and vacate the hearing date. This request was granted and the hearing was vacated. The hearing was listed after the 120 day period had passed. The decision was reserved on 9 April 2020 and the tribunal set a timetable for the filing of further submissions. The tribunal's decision was handed down on 7 August 2020.

St Landco No.1 Pty Ltd v Commissioner for ACT Revenue

AT 73/2019 – time extended by 290 days. The application was filed in late August 2019. In October 2019 the applicant sought to move the hearing dates set in December 2019. The tribunal could not set a new date suitable for both parties until the end of January 2020. The matter was listed for three days of hearing after the 120 day period had passed. The decision was reserved on the final day of hearing. The tribunal's decision was handed down on 9 October 2020.

Empire Global Developments No.3 Pty Ltd v Commissioner for ACT Revenue

AT 32/2020 – time extended by 95 days. The application was filed in late May 2020. A consent agreement was reached on 16 July 2020 in relation to the notice of assessment and the second, third and fourth hearing dates were vacated. The matter remained listed for the first day of hearing in September 2020 in relation to the question of remissions. The matter proceeded to hearing on 14 September 2020. The tribunal reserved its decision on the final day of hearing and gave the parties leave to have the matter re-listed when a decision in *St Landco No.1 Pty Ltd v Commissioner for ACT Revenue* was handed down. The matter was re-listed in October 2020, but no further orders were made. The tribunal's decision was handed down on 22 December 2020.

Patel v Conservator of Flora & Fauna

AT 41/2020 – time extended by 60 days. The application was filed in early June 2020. The matter proceeded to hearing on 21 September 2020 and was three days in duration. The tribunal reserved its decision on the final day of hearing. The tribunal's decision was handed down on 9 December 2020.

Aussie Buggy Adventures Pty Ltd v ACT Planning and Land Authority

AT 47/2020 – time extended by 43 days. The application was filed in mid-June 2020. The matter proceeded to hearing on 6 October 2020. The tribunal reserved its decision on the first day of hearing and vacated the second and third days of hearing. The tribunal's decision was handed down on 9 December 2020.

Village No 22 Pty Limited v ACT Planning and Land Authority

AT 7/2020 – time extended by 325 days. The application was filed in early March 2020. The matter proceeded to a preliminary mediation on 20 April 2020 and a further mediation on 2 June 2020. The matter did not settle at mediation, but the parties did reach a consent agreement regarding a timetable for the proceedings. The hearing date was not able to be set until the 120 day period had passed. The matter proceeded to hearing on 16 October 2020 for a duration of 11 days. On the ninth day of hearing the members made orders for the filing of further submissions and set the matter down for two additional days of hearing at a later date. Due to delays and errors in the transcript the parties were unable to complete their submissions in the ordered timeframe. The timetable was varied, and the adjourned hearing moved to December 2020. The adjourned hearing proceeded on 9 December 2020 for a duration of two days. The tribunal reserved its decision on the final day of hearing. The tribunal's decision was handed down on 21 May 2021.

4thD Planning & Design Pty Ltd v ACT Planning and Land Authority

AT 85/2020 – time extended by 102 days. The application was filed late November 2020. The matter proceeded to hearing on 3 March 2021 and was three days in duration. The tribunal reserved its decision on the final day of hearing. The tribunal's decision was handed down on 30 June 2021.

CIVIL, RETIREMENT VILLAGES AND UNIT TITLES DISPUTES

Civil dispute applications, and applications about retirement villages and unit titles are case-managed in the civil part of the registry. In the reporting period there was a notable reduction in the number of civil dispute applications lodged (down 21%), and a significant increase in the number of unit titles applications lodged (up 18%). There was one retirement village application lodged in the reporting period.

	2016-17	2017-18	2018-19	2019-20	2020-21
Civil applications lodged	1,428	1,716	1,767	1,625	1,281
Unit titles applications lodged	25	33	32	40	47
Retirement villages applications lodged	1	4	0	0	1
Applications finalised	1,273	1,649	1,805	1,542	1,600

Civil disputes

The ACAT decides applications relating to civil disputes about contracts, damages, debt, goods, nuisance, trespass, debt declarations, Australian consumer law and common boundaries and other matters that are stated to be civil dispute applications in an authorising law. Applications may be made for amounts up to \$25,000. Parties can consent to the tribunal dealing with applications for sums greater than \$25,000.

The types of civil dispute applications received in the reporting period, as identified at the lodgement of the application, were:

Type of application	2016-17	2017-18	2018-19	2019-20	2020-21
Australian consumer law	20	14	20	37	58
Common boundaries	20	29	24	24	25
Contract	59	74	81	74	79
Damages	193	204	193	230	251
Debt	1,060	1,316	1,283	1,183	780
Debt declaration	9	6	1	8	5
Goods	68	74	66	48	56
Nuisance	7	12	17	13	18
Trespass	3	3	4	3	3
Other	9	13	4	5	6
Total	1,448	1,745	1,693	1,625	1,281

The reduction of civil dispute applications lodged during the reporting period compared to the previous year can be seen to be due to a reduction in the number of debt applications lodged.

The amounts sought in civil dispute applications in 2020–21 were as follows:

Amount of claim	2016–17	2017–18	2018–19	2019–20	2020–21
\$3,000 and under	617	759	787	714	584
\$3,001 to \$15,000	754	820	766	767	577
\$15,001 and over	77	166	140	144	120
Total	1,448*	1,745	1,693	1,625	1,281

Note: * The jurisdictional increased 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. The ACAT records the number of applications above and below \$10,000 so as to assess any impacts on resources. This shows that the proportion of matters lodged in the increased jurisdiction remains steady at around 17% of overall civil dispute applications.

Amount of claim	2016–17	2017–18	2018–19	2019–20	2020–21
\$10,001 and over	143	316	279	283	222
Total	1,448	1,745	1,693	1,625	1,281

Civil dispute applications follow different pathways depending upon the nature of the matter and the amount of the claim. For unopposed matters where no response is filed, a default judgment process is available under the ACAT rules. Applications for which no step is taken in a year are administratively closed.

In all disputed applications, ADR is considered as the first approach. Straightforward matters under \$3,000 in value and suitable common boundaries applications are listed for a conference and immediate determination (CID). The matter receives a one-hour preliminary conference and, if the matter is not resolved, an immediate hearing and determination later the same day. Contested matters over \$15,000 in value and more complex matters are listed for a half day conference and evaluation. All other contested applications are listed for a one-hour preliminary conference. If a matter does not resolve at conference and evaluation or preliminary conference, it is listed for hearing on another day and directions are made for the filing of evidence.

Over 50% of civil applications are resolved at ADR before the scheduled hearing. Of the 48 CID conferences held during the reporting period, only nine matters proceeded to hearing. In the reporting period 327 preliminary conferences were conducted, 53 matters were adjourned for further preliminary conference, and 32 conference and evaluations were conducted. One matter was referred to mediation. There were 179 final hearings held, with an additional 42 adjourned days of hearing.

The tribunal seeks to ensure that civil dispute conferences and hearings are listed with minimal delay. CID conferences are listed as quickly as can be arranged with regard to the parties' need to provide further information. Preliminary conferences and conferences and evaluations 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.

In 2020–21, the average period for an application to be finalised was 197 days, an increase from 162 days in 2019–20. This delay was due to the deferred processing of non-urgent applications during the COVID-19 crisis. A callover of all civil matters affected by the ACAT's deferral of non-urgent matters during COVID-19 was held between September and November 2020 to review matters lodged but not yet progressed.

Average days to finalisation	2018–19*	2019–20	2020–21
Civil disputes	156	162	197

* Data for periods prior to 2018–19 is not available.

Unit Titles

The *Unit Titles (Management) Act 2011* and *Unit Titles Act 2001* empower the tribunal to hear a range of applications about a dispute in relation to an owners corporation or units plan. There were 47 applications in the reporting period, an increase of around 17% on the previous reporting period.

Unit titles applications have effectively doubled in number over the past five years. This sustained increase affects tribunal resources due to the complexity of the disputes and the need for individual case management.

Owners corporation and unit titles disputes are often legally complicated and can include many parties with competing interests. Directions hearings are held in the first instance so that the tribunal 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. A matter involving complex procedural steps or issues may require several directions hearings. Some matters lend themselves to early mediation, or a half day preliminary conference, while others require interim determinations or quick final hearings.

There were 71 directions hearings, 14 applications for interim or other orders and 16 final hearings (with four additional adjourned days of hearing) conducted during the reporting period. Three mediations were held, 19 preliminary conferences and one adjourned preliminary conference.

In 2020–21, the average age of a finalised application was 146 days, an increase from 89 days in 2019–20 but still slightly shorter than the period in 2018–19.

Average days to finalisation	2018–19*	2019–20	2020–21
Unit titles	152	89	146

* Data for periods prior to 2018–19 is not available.

Retirement villages

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. One retirement village application was lodged and finalised in the reporting period.

One directions hearing and one mediation were held in the period, with the mediation being successful.

In 2020–21, the average age of a finalised application was 66 days, an increase from 12 days in 2019–20. This variability is to be expected due to the small number of matters.

Average days to finalisation	2018–19*	2019–20	2020–21
Retirement Villages	259	12	66

* Data for periods prior to 2018–19 is not available.

DISCRIMINATION

The ACAT hears discrimination complaints under the *Human Rights Commission Act 2005* which are referred to it by the Human Rights Commission (HRC). Thirty-nine new referrals were received in the reporting period, and 43 matters were finalised.

The ACAT also receives a copy of conciliation agreements reached at the HRC. In the reporting period the tribunal received 32 conciliation agreements from the HRC. A party to a conciliation agreement may apply to the ACAT for orders to give effect to the agreement. During the reporting period no applications for orders were received.

Amendments to the *Human Rights Commission Act 2005* during the period allow for the HRC to initiate discrimination complaints with the tribunal, and one such application was received.

Discrimination	2016–17	2017–18	2018–19	2019–20	2020–21
Complaints referred	13	17	24	36	39
Complaints finalised	8	9	24	28	43
HRC-initiated matter	-	-	-	-	1
Conciliation agreements registered	18	32	32	33	32
Application for orders in relation to conciliation agreement ⁴	-	-	-	1	1

⁴ This data was collected from 2019–20 onwards.

The 39 referred complaints involved 29 complainants. The primary grounds of complaint for referred complaints and conciliation agreements were as follows:

Primary ground of complaint 2020–21 discrimination matters	Complaints	Conciliation agreements	HRC referrals (s. 53)	Total
Age	2	1		3
Disability	18	14		32
Race	6	6		12
Religion or political	1	0		1
Professional or trade organisation	3	1	1	5
Vilification	4	0		4
Sex	2	5		7
Sexuality	1	1		2
Spent conviction	1	0		1
Status as a parent or carer	1	3		4
Subjection to domestic or family violence	0	1		1
Total	39	32	1	72

The 39 referred complaints continues the pattern of increased referrals which, due to the resource intensive nature of this litigation, has a significant impact on the ACAT's resources despite the apparently low number of cases.

While the ACAT's processes are flexible and designed for parties to represent themselves, discrimination cases can be complicated. The ACAT usually adopts a step-by-step approach to the preparation of a discrimination 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. However this approach has a distinct impact on the ACAT's resources: discrimination complaints finalised in the reporting period averaged close to four tribunal events per matter.⁵

Most parties in this jurisdiction would benefit from expert assistance with the preparation and presentation of their case. In some cases, where a party is unable to comply with directions to provide written witness statements or particulars of the complaint, the ACAT 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 opportunity 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 ACAT because the complaint has previously been the subject of conciliation before the Discrimination Commissioner.

⁵ A tribunal event is an attendance by the parties upon the tribunal such as a directions, final or interlocutory hearing, mediation, return of subpoena, etc.

The ACAT 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 at ADR, orders finalising the matter are usually made the same day, or later in chambers so that the parties are not required to attend the ACAT on a further occasion.

Of the 20 matters referred to mediation in the reporting period, eight (40%) were resolved at ADR, one (5%) was resolved after ADR and 11 (55%) proceeded to hearing. Seven matters underwent a preliminary conference, with two (29%) settling at ADR, one (14%) settling prior to hearing and the remaining four (57%) proceeding to hearing.⁶

The ACAT aims to resolve all discrimination complaints and applications for orders relating to conciliation agreements 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 other accessibility issues.

During the reporting period, the number of pending discrimination complaints awaiting finalisation has remained steady. This is attributable to the sustained number of complaints referred. There was also delayed preparation of applications for hearing during the COVID-19 crisis.

Age of pending files for discrimination matters as at 30 June 2021

Number of complaints	0–3 months	3–6 months	6–9 months	9–12 months	12 months+	Total
2020–21	1	5	4	3	8	21
2019–20	8	5	6	2	5	25

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 or manager about the exercise of their powers, 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 tribunal gives priority to the interests of the subject person.

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

Applications in proper form are listed for hearing usually 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 earlier in this Review, may take place at a hospital or elsewhere to enable the subject person to attend and participate in the hearing. Hospital hearings are held as promptly as possible to avoid delay in a patient's discharge.

Eighty-five guardianship hearings were held at the Canberra, Calvary and University of Canberra Hospitals in 2020–21. During that period, approximately 86% of proposed protected persons attended their hearings. The attendance of the subject person greatly improves the value and effectiveness of the hearing. For COVID-19 reasons, hearings needed to be held by conference telephone for a significant part of the year. Whilst many subject persons participated by telephone, the effectiveness of the hearing was diminished because the tribunal was less able to assess the nature and extent of the person's impaired decision-making ability, their understanding of what the application for guardianship entailed or their views and wishes about the proposed appointees as guardian and/or manager. Fortunately, the opportunity for review of an appointment at any time alleviates this disadvantage.

For hospital hearings, the period between lodgement of a completed application and hearing was approximately 12.9 days, which often enabled earlier discharge of the subject person. This benefitted the health and well-being of the person. It also resulted in beds becoming available earlier and very significant savings to each hospital's costs. During the period, the tribunal also held hearings at several aged care accommodation facilities, again to enable participation of the subject person.

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 also be reviewed at any time on the tribunal's own initiative or on application by anyone. 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 circumstances of the protected person.

Three-yearly 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, any carer or other interested party and by reference to reports from the PTG. 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 its 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 to lodge annual accounts. Ongoing non-compliance can sometimes lead to the revocation of a manager's appointment.

Guardianship and management of property orders	2016-17	2017-18	2018-19	2019-20	2020-21
Applications lodged	285	190	191	151	159
Own motion reviews of orders	570	495	404	470	538
Emergency appointments	31	16	6	14	4

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 brain injury in accidents.

Conditions affecting subject people	2016-17	2017-18	2018-19	2019-20	2020-21
Dementia	38%	37%	49%	54%	58%
Mental illness	18%	21%	14%	19%	15%
Intellectual disability	27%	26%	24%	11%	21%
Acquired brain injury	17%	17%	13%	16%	6%

When deciding whether to appoint a guardian and/or manager and, if so, the powers that should be given, the tribunal necessarily participates in 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. Comment on this subject, and the competing considerations, is contained in the tribunal's decision *In the Matter of Jane* [2019] ACAT 18.

During the reporting period, the tribunal also needed to consider applications to empower a guardian to give consent to restrictive practices. This topic has been the subject of much debate in the Australian community which has led to much regulation at the Commonwealth level of service providers under the National Disability Insurance Scheme and of aged care service providers. Whilst Commonwealth legislation regulates the providing of services, the tribunal has an important role in determining whether to empower a guardian to give consent to a restrictive practice. Comment on this subject is contained in the tribunal's decision *In the Matter of Ben* [2020] ACAT 82.

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 often 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 enduring powers of attorney will become more common because of their increased use in the community, their ease of execution and the growing wealth of many elderly people. Comment on this subject is contained in the tribunal's decision *In the Matter of Clara* [2019] ACAT 46.

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 by responding to submissions that have been put, and by referring to important legal principles relevant to determination of applications.

MENTAL HEALTH

The *Mental Health Act 2015* focuses on treatment, care and support for persons with a 'mental illness' or a 'mental disorder', as defined in the *Mental Health Act 2015*, who lack capacity to make decisions about their treatment, care and support, and who need treatment and do not agree to receive treatment.

Guardians can make decisions about treatment for people who do not have capacity to make their own decisions, but are not refusing treatment. Treatment in this situation occurs outside the provisions of the *Mental Health Act 2015*. On this topic, see generally the tribunal's decisions *In the Matter of Michael* [2020] ACAT 8 and *In the Matter of Charles* [2021] ACAT 17.

The tribunal may make orders requiring a person to attend an appointment to assess their mental health. It can order the involuntary treatment of a person with a mental illness or mental disorder under a psychiatric treatment order, a community care order or a forensic mental health order. Each order is made for a specific period. 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 electroconvulsive 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 and, if so, the tribunal makes recommendations about how the person should be dealt with. 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 also held at the Older Persons Mental Health Unit at Calvary Hospital and at the University of Canberra Hospital. Many hearings are conducted by video-link or by telephone. This has occurred more frequently during the reporting period because of COVID-19 restrictions.

Data regarding mental health hearings is as follows.

Mental health	2016-17	2017-18	2018-19	2019-20	2020-21
Applications for mental health orders	447	437	477	529	551
Psychiatric treatment orders made	637*	607	608	706	752
Community care orders made	10	4	13	4	1
Restriction orders made	9	4	13	6	2
Electroconvulsive orders made	21	29	37	49	40
Conditional release orders made	8	11	20	22	20
Applications dismissed	17	22	17	36	39
Reviews of existing orders where no further order was made	76	70	48	31	50
Applications for extension of emergency detention	380+	448	488	529	582
Emergency detention orders made	384**	454	510	567	582
Forensic referrals	13	21	21	22	46
Applications for ECT	23	25	37	54	40
Own motion reviews of orders	678	530	488	525	607
Requests for revocation	163+	133	145	154	202

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.

The issues that must be considered under the *Mental Health Act* before making a mental health order have increased the amount of detail required in reports from psychiatrists in support of an application for an order and the length of hearings, which normally 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 a written statement that sets 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 remains open to ensure an ongoing record of orders made regarding the person.

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.

MOTOR ACCIDENT INJURIES

In February 2020, the ACAT's jurisdiction expanded to include applications pursuant to the *Motor Accident Injuries Act 2019* (MAI Act). The MAI Act gives jurisdiction to the ACAT to review specified decisions by insurers or to make determinations about injury or death resulting from involvement in a motor vehicle accident. Under the MAI Act, the ACAT is authorised to: review insurers' decisions about eligibility for and payment of treatment and care benefits, quality of life benefits, and income replacement benefits; review an insurer's decision that there has not been a significant occupational impact on an injured person; and make a determination where there is a dispute about future treatment payments. Under the MAI Act, the ACAT has sole jurisdiction to determine the amount of death benefits payable to dependants of a person who dies as a result of a motor vehicle accident.

The MAI Act authorises the ACAT to review specified decisions of the MAI Commissioner in relation to insurers. The ACAT also has a role in discipline matters involving insurers.

Before the MAI Act commenced, work was completed in the ACAT to identify and implement the necessary information technology, procedural changes and processes required for the ACAT to give effect to the new jurisdiction.

During the reporting period there were fewer MAI applications than were anticipated. The lower numbers may be explained by the time it takes to complete the insurer internal review process; a possible lag in time as potential applicants, and insurers, gain awareness and transition from the previous scheme to the MAI Act legislative regime; and, possibly, the impact of the COVID-19 crisis which may have led to a reduction in road travel by many people.

	2020-21	
	Lodgements	Finalisations
Application to review an insurer's decision	15	4
Payment of death benefits	2	1
Total	17	5

An MAI application to review an insurer's decision is listed for an initial directions hearing before a deputy registrar. At that listing the parties provide input as to how the application should progress. Directions are made that for parties to prepare for a hearing, if required. A hearing is conducted by a tribunal member. Where appropriate, a member may decide to determine an application without conducting a hearing. Where this approach is proposed, the parties are given an opportunity to provide their views as to whether a hearing is required.

A death benefits application is generally listed before a Presidential Member at all stages as it progresses through the ACAT.

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 instituted as occupational regulation cases however administrative review processes are applied.

Twenty-three new applications were received, and 10 matters were finalised. The tables below show the number of applications received and completed by category.

Total matters	2016-17	2017-18	2018-19	2019-20	2020-21
Applications lodged	24	24	37	28	23
Applications finalised	32	19	30	40	10

By occupation	2016-17	2017-18	2018-19	2019-20	2020-21
Health practitioners	3	4	8	4	3
Lawyers	6	5	7	5	13
Liquor licensees	1	0	1	0	0
Security guards	0	1	1	2	0
Construction occupations	5	0	4	6	1
Long Service Leave Authority	0	4	5	4	0
Working with vulnerable people	2	7	2	4	3
Agents	-	-	7	3	1
Miscellaneous	7	3	2	0	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. All three of the new applications relating to health practitioners were brought under the *Health Practitioner Regulation National Law* seeking reviews of decisions in relation to registration of a psychologist, a dentist and a medical practitioner.

The ACAT aims to have all applications completed in less than 12 months. There is some variation in the time taken to finalise an occupational regulation application. Some applications require several interlocutory hearings and final hearings of several days,⁷ while other applications are completed within a shorter timeframe and with only one day of hearing. Matters finalised during the reporting period took, on average, approximately 247 days from commencement to conclusion, with an average of at least three tribunal events.⁸

⁷ 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.

⁸ A tribunal event is an attendance by the parties upon the tribunal such as a directions, final or interlocutory hearing, mediation, return of subpoena, etc. Each day of final hearing is counted as a separate event.

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 ACAT considers 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 ACAT 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 ACAT to elaborate on the joint submission or provide further information relevant to the exercise of the ACAT's discretion, before final orders are made.

Of the nine matters referred to mediation in the reporting period, all (100%) proceeded to hearing. Three matters underwent a preliminary conference and of these, all proceeded to hearing.⁹

The number of active applications in this work area increased at the end of the reporting period from five to 19. This is attributable to an increase in complexity of applications currently before the tribunal, and some delayed preparation of applications for hearing during the COVID-19 crisis. A decision was reserved on the four related matters older than 12 months.

Age of pending applications for occupational regulation as at 30 June 2021

Age of files	0–3 months	3–6 months	6–9 months	9–12 months	12 months+	Total
2020–21						
No of files	6	4	2	3	4	19
% of files	31.58%	21.05%	10.53%	15.79%	21.05%	100%
2019–20						
No of files	2	2	0	0	1	5
% of files	40.0%	40.0%	0.0%	0.0%	20.0%	100%

⁹ For an explanation of the parameters applied for ADR reporting see *Efficiency* earlier in this Review.

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 determines rental bond disputes referred from the Office of Rental Bonds.

The number of new applications under the *Residential Tenancies Act 1997* (including rental bond referrals) remained steady from the previous reporting period. The number of endorsement applications received during the reporting period remained consistent.

Residential tenancies	2016-17	2017-18	2018-19	2019-20	2020-21
Applications lodged	1,093	1,068	730	936	961
Applications finalised	1,108	1,039	1,767	824	956
Endorsement applications	381	335	246	332	321
Endorsement applications completed	401	302	271	215	421

In 2020-21, there was an increase in applications from the ACT Commissioner for Social Housing compared with the number in 2019-20, particularly in applications for access to inspect a property. During this reporting period new application types were added in response to amendments to the *Residential Tenancies Act 1997* related to co-tenancies and occupancy agreements. A referral pathway to the ACAT has also been provided from the Human Rights Commission for occupancy disputes.

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

Type of application	2016-17	2017-18	2018-19	2019-20	2020-21
By lessor for access to inspect	246	192	82	77	145
By lessor for compensation	49	33	35	35	11
By lessor for refusal of animal on premises	-	-	-	7	0
By lessor for rental arrears	72	46	49	42	63
By lessor for rental increase	2	0	0	0	3
By grantor for compensation*	-	-	-	-	1
By grantor - for occupancy fee or other fee arrears*	-	-	-	-	1
By grantor - occupancy termination and vacant possession order*	-	-	-	-	4
By tenant for animal on premises				2	8
By tenant for compensation	53	59	42	38	50
By tenant for other modification	-	-	-	2	3

Type of application	2016-17	2017-18	2018-19	2019-20	2020-21
By tenant for rent refund	2	4	4	2	1
By tenant for review of rental increase	4	9	6	6	6
By tenant for rent reduction	15	0	1	1	3
By tenant terminate tenancy	0	0	3	1	1
By occupant – occupancy termination order*	-	-	-	-	2
Reinstate – wrongful eviction	1	2	2	0	0
Co-tenancy dispute – bond*	-	-	-	-	1
Co-tenancy dispute – other*	-	-	-	-	3
Rental bond dispute	348	379	266	430	357
Terminate tenancy Family Violence Order or Personal Protection Order	-	10	4	6	11
Termination and possession	272	291	184	217	220
Other	29	43	52	70	67
Total	1,093	1,068	730	936	961

Note: * New application type in 2020-21

The tribunal issued 48 warrants for eviction during the reporting period, compared with 40 warrants issued in 2019-20.

Matters under the *Residential Tenancies Act 1997* follow two different pathways to resolution. Urgent applications, such as applications for access or for termination and possession, are listed for initial hearing within two weeks of lodgement. Non-urgent applications, such as rental bond referrals, are listed for a one-hour preliminary conference within two to four weeks after lodgement. If a matter is not resolved at preliminary conference, it will be listed for a hearing on another day and directions are made for filing of evidence.

During 2020-21 a series of Residential Tenancies (COVID-19 Emergency Response) Declarations remained in place limiting evictions and rental arrears proceedings in the context of COVID-19. There was also a delay in listing some non-urgent matters for preliminary conference. This led to a delay in finalising matters during the reporting period, and a reduction in applications for termination and possession compared with historic averages. In the reporting period, the average number of days between the opening of a residential tenancies file and the closing of that file was 70 days, which is a slight increase from 2019-20.

Average days to finalisation	2018-19*	2019-20	2020-21
Residential tenancies	54	58	70

* Data for period prior to 2018-19 is not available.

During 2020, the ACAT accrued a backlog of undetermined endorsement applications as a result of staffing constraints arising from COVID-19. This backlog was cleared by March 2021 by utilising a larger number of members to decide applications. The opportunity was taken at that time to clarify and streamline registry processes. Under the streamlined processes the tribunal considers applications for endorsement in chambers within two weeks of being lodged. Applications may then be listed for further consideration in chambers after provision of information by the parties, or at a short hearing.

During the reporting period, the average age of an application for endorsement at the time of finalisation was 190 days, reflecting the processing of the backlog of endorsement applications.

Average days to finalisation	2018-19*	2019-20	2020-21
Residential endorsements	51	142	190

* Data for period prior to 2018-19 is not available.

The outreach project for public housing tenancy matters with Canberra Community Law (CCL), continued on Thursdays throughout the period, with the tribunal facilitating community and public housing tenants contacting CCL by telephone for advice, duty lawyer services and ongoing representation in termination and possession matters.

During the reporting period, the need for a second hearing list for termination and possession matters was identified. This was due to the longer time taken in hearing matters by telephone, when compared with face-to-face hearings conducted before COVID-19. Anecdotally matters take more time to hear by telephone because of greater time taken by the member getting each party on the conference call, and greater tenant participation in the hearings. In 2021-22, a second hearing list will be conducted on Wednesdays for private tenancy matters. The Tribunal has engaged with Legal Aid ACT who will trial the provision of a duty lawyer service for those tenants with matters in that list who are not eligible for assistance from CCL.

UTILITIES – ENERGY AND WATER

The ACAT:

- has jurisdiction under the *Utilities Act 2000* (ACT) to determine applications for hardship assistance for residential energy and water customers who cannot afford to pay their bills and are facing disconnection or restriction of supply (hardship applications);
- performs the role of jurisdictional energy ombudsman for the ACT pursuant to the *National Energy Retail Regulations* (complaint applications);
- has jurisdiction under the *Utilities Act 2000* (ACT) to investigate and determine complaints made by customers and consumers against energy and water utilities licenced in the ACT;
- has jurisdiction under Electricity Feed-in Codes made under the *Electricity Feed-in (Renewable Energy Premium) Act 2008* (ACT) to investigate and determine complaints about the feed-in-tariff (complaint applications); and
- has jurisdiction under the *Privacy Act 1988* (Cth) to investigate and determine complaints against energy utilities in respect of credit default listings made by those utilities.

Energy and water hardship applications

Households whose electricity, gas, or water is under threat of disconnection, and who have not been able to come to a satisfactory arrangement with the utility company's hardship program, are eligible for ACAT Energy and Water hardship assistance. On receipt of a hardship application, an initial hearing is held in which tribunal members consider the financial circumstances, social circumstances, utility usage and other relevant needs of the applicant. Orders are generally made requiring regular payments of amounts sufficient to meet ongoing usage costs (averaged over the year) with a modest additional contribution to reduce any existing debt. In particular situations of hardship, orders may be made for payments that do not cover the cost of current usage, in which case the tribunal may discharge the difference so the debt does not increase further. Hardship applications are case-managed for as long as the applicant remains under threat of disconnection. 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 refer cases to a senior or presiding member for further hearing, for revocation orders, or for orders discharging an amount of debt.

New applications

In the reporting period, the trend of decreasing numbers of new hardship applications continued. This was due to responses to the COVID-19 crisis and the Statements of Expectations issued to utility companies by the Australian Energy Regulator (AER). The Statements directed utilities to cease disconnections of customers in specified circumstances, except where the customer failed to engage in any way with the utility. It is expected that application numbers and debt levels will increase in 2021-22 as the latest Statement of Expectations lapsed on 30 June 2021. Many new applications involve complex domestic and social circumstances, and high levels of debt and energy needs that exceed the client's capacity to pay. These clients 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 another member or registry staff member. After the initial home visit, reviews are usually conducted by telephone. No home visits were conducted during the reporting period.

Review of orders

In 2020-21, 5,367 orders were reviewed by staff and 561 orders were listed for a review hearing before members. In line with the ACAT's response to COVID-19 restrictions, hearings continued to be conducted by telephone throughout the reporting period but two-member hearings were reinstated. This was welcomed by members as it creates further opportunities for engagement with a client and more transparency and accountability in terms of decision-making. Increased and more intensive case-management by a deputy registrar and staff helped to reduce the need for a review hearing before a member.

Discharge of debt

The ACAT in its Energy and Water jurisdiction has the power to discharge residential customer debts in cases of substantial hardship. Decisions to discharge take into account the hardship circumstances and the client's capacity to pay. Discharges are rarely for the full amount of debt and take the form of under-consumption discharges (mentioned above), co-waivers of debt with retailers for clients who have escaped family violence and in other circumstances, incentive discharges where a client has been regularly meeting (or exceeding) the tribunal's directions, and discharges in recognition of specific hardships being experienced. In 2020–21, a total of \$641,931 (covering 1,930 utility customer accounts) was discharged; \$55,821 of this was for COVID-19 related hardship. It is anticipated that COVID-19 related debt discharges will continue in 2021–22.

Hardship applications	2016–17	2017–18	2018–19	2019–20	2020–21
Applications lodged	546	758	836	602	292
Reconnection orders	78	98	150	73	3
Initial hearings	375	673	625	463	192
Discharge orders	890	788	904	1,781	1,930
Home visits	0	6	3	6	0
Staff reviews	4,328	4,587	5,830	5,983	5,367
Review hearings	739	1,065	1,107	806	561
Applications finalised	686	710	656	689	567

Farewell

ACAT Energy and Water (ACAT-EW) members acknowledge that within days of the end of the 2020–21 reporting period Jo-Anne Tulk retired. Jo was the Manager/Deputy Registrar of the energy and water jurisdiction in all its iterations – the Energy and Water Consumer Council, the Essential Services Review Committee, and finally its amalgamation into the ACAT in 2009. We thank Jo for the decades she has committed to this area of work. She supported many clients over the years and provided support and back-up to all the members. We wish her the best in her retirement.

Energy and water complaint applications

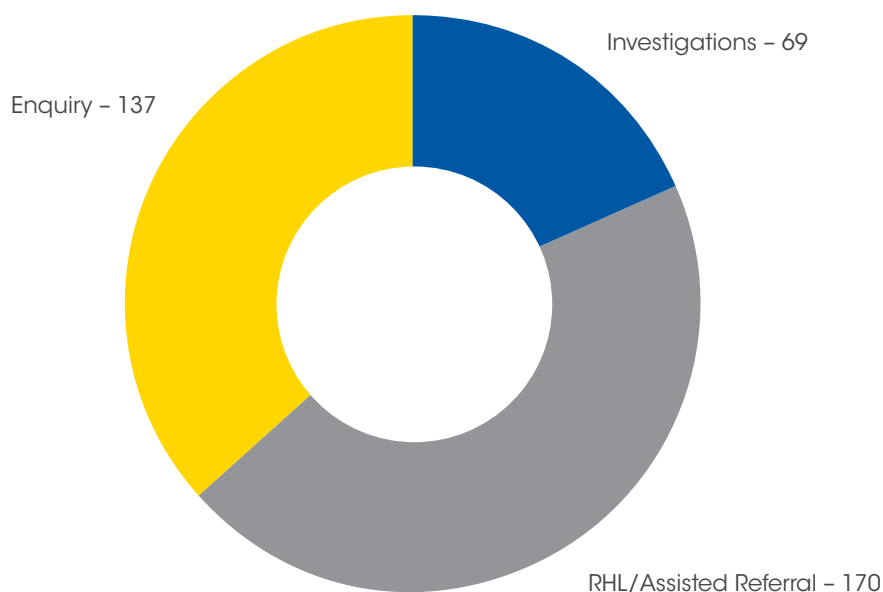
The ACAT-EW is the jurisdictional energy ombudsman for the ACT pursuant to the National Energy Retail Regulations under the National Energy Retail Law, and is responsible under the *Utilities Act 2000* (ACT) for considering and resolving water and sewerage complaints against Icon Water. The ACAT-EW also has the role of considering and resolving complaints against energy retailers in respect of credit default listings which do not comply with the Credit Reporting Code made under the *Privacy Act 1988* (Cth). These varied forms of complaint are dealt with in a single complaints process.

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

- Enquiry – referring the customer back to the utility;
- Referral to Higher Level (RHL) – referring the complaint to a higher level within the utility and requesting it contact the customer directly to resolve the problem;
- 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 if the ACAT-EW considers that the matter does not require further investigation, the customer is provided the option of proceeding through the formal processes of the tribunal, being a conference, a directions hearing or a formal hearing by a tribunal member.

In 2020–21, the ACAT-EW received 376 new enquiries and complaints: see Table 1.

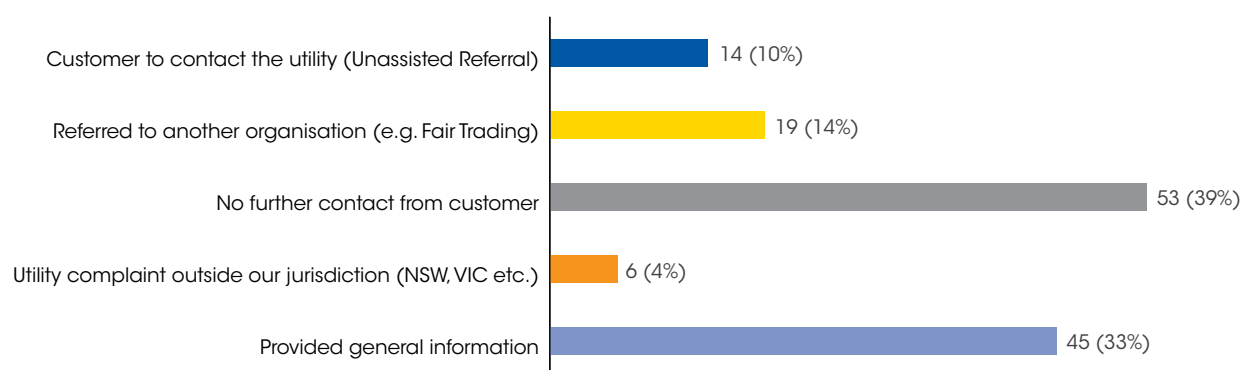
Table 1: How complaints were handled



New enquiries

In 2020–21, the ACAT-EW recorded 137 enquiries, compared with 150 enquiries in 2019–20. 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 the ACAT-EW. Contacts may be made by customers requiring general information, advice regarding utilities, or details on how to submit a complaint directly with the utility. Also included are contacts where the ACAT-EW directs customers back to the utility because they have not attempted to resolve the complaint with their utility in the first instance. Complaints which do not fall under the ACAT-EW's jurisdiction are also recorded in this area for statistical purposes.

Table 2: How enquiries were dealt with

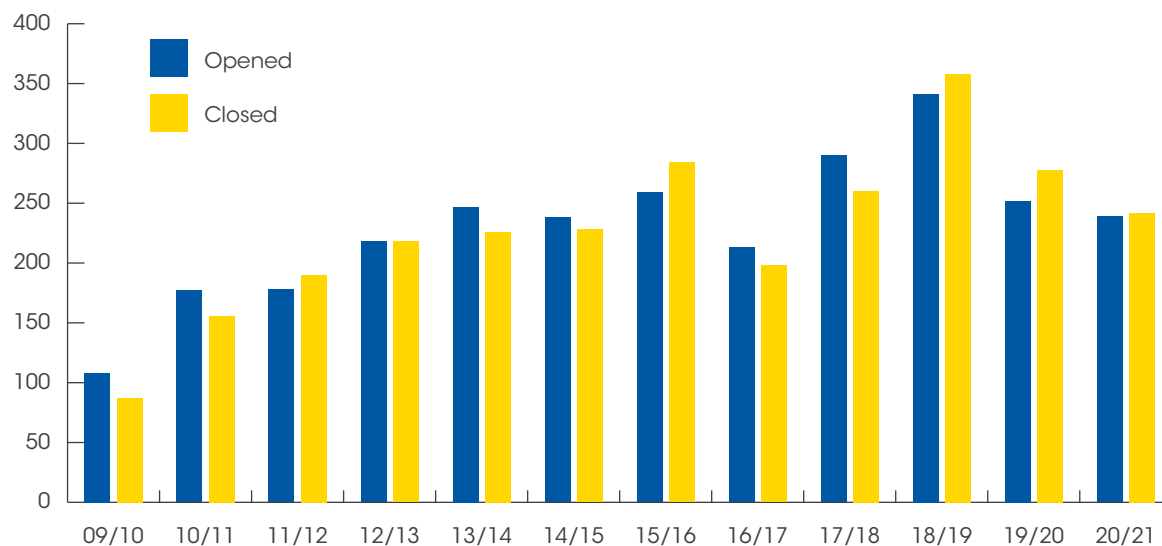


New complaints

In 2020–21, the ACAT-EW received 239 new complaints, a slight decrease from 2019–20 when 252 new complaints were recorded. The decrease in new complaint numbers in 2020–21, at least in part, was related to the Statements of Expectations by the AER which required that debt collection and disconnections cease during the COVID-19 crisis, and to customers being distracted by the pressures of that crisis. Of the 239 new complaints in 2020–21, 170 complaints were referred to the utility through the RHL process and 69 complaints were classified as an investigation. The 69 complaints investigated included unsuccessful RHLs where the customer decided to continue with their complaint.

Table 3 records the total number of complaints (RHLs and investigations) opened and closed each year since the ACAT-EW commenced operation in 2009.

Table 3: Complaints (RHLs and investigations) opened and closed each year



	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21
Opened	108	177	178	218	247	238	259	213	290	341	252	239
Closed	87	156	190	218	226	228	284	198	260	358	278	242

Utility complaint performance

The Statements of Expectations issued by the AER, which commenced in March 2020 and ended in June 2021, may also have affected complaint levels generally.

In 2020–21, ActewAGL Retail remained the utility for which the ACAT-EW received the most complaint applications. That reflects ActewAGL Retail's higher market share in the ACT. However, between 2018–19 and 2020–21 new complaints about ActewAGL Retail decreased by 50%. That decrease might reflect changes to their internal handling of complaints as well as their decreasing market share as other energy retailers increase their presence in the ACT.

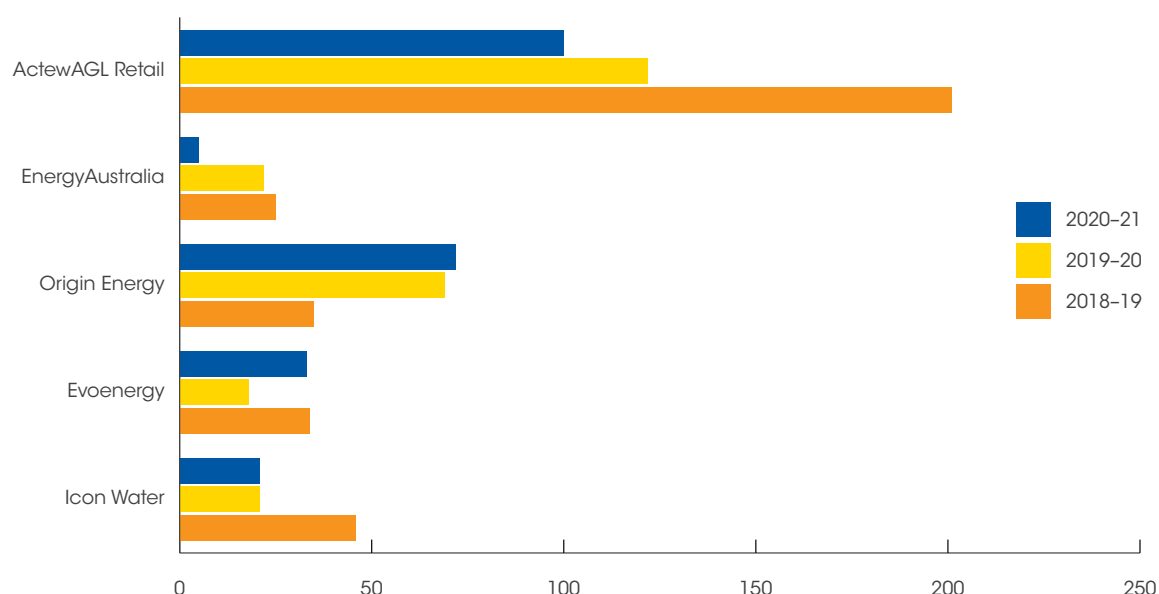
Complaints about EnergyAustralia decreased significantly in percentage terms in 2020–21 compared with those recorded in previous years. The actual number of EnergyAustralia complaints continues to be small, reflecting their relatively low retail market share in the ACT.

Origin Energy recorded a slight increase in complaints since the previous reporting period. However, since 2018 their complaints have increased almost 100%. This increase was from a relatively low starting base and probably reflects Origin's increasing retail energy market share in the ACT.

Evoenergy is the sole energy distributor in the ACT. Complaints about Evoenergy increased back to levels similar to 2018–19 but continued to be comparatively low overall, considering Evoenergy's central role in the energy market in the ACT.

Complaints about Icon Water, the sole water and sewerage utility in the ACT, remained steady after a 54% decrease in 2019–20.

Table 4: New complaints by utility



	Icon Water	Evoenergy	Origin Energy	EnergyAustralia	ActewAGL Retail
2020-21	21	33	72	5	100
2019-20	21	18	69	22	122
2018-19	46	34	35	25	201

Note: Complaints about other utilities are not included in Table 4.

RHLs and investigations by utility

A breakdown of RHLs and investigations opened in 2020-21 for each utility is provided below:

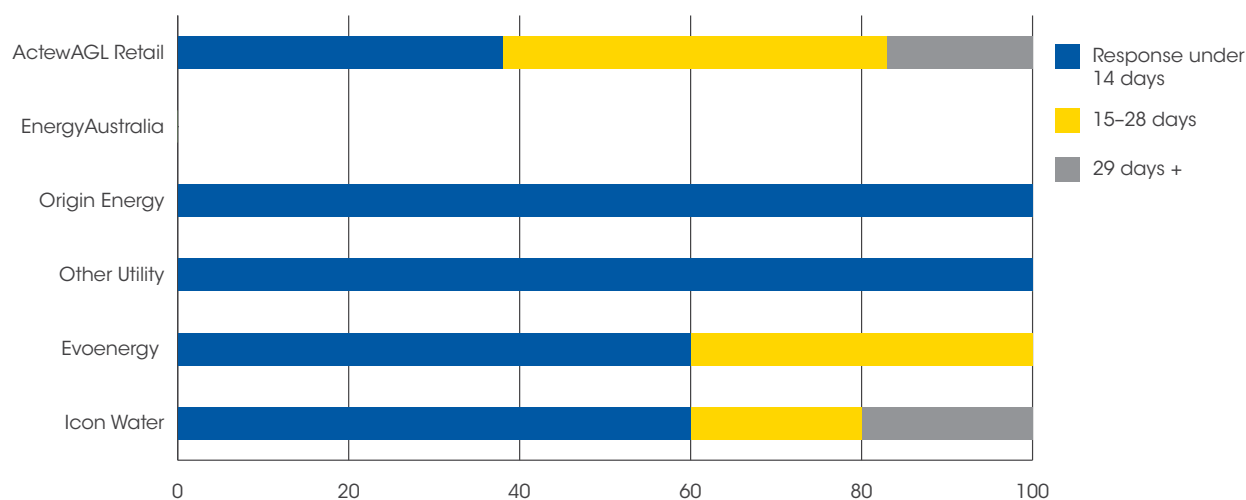
	ActewAGL Retail	Origin Energy	Energy Australia	Icon Water	Evoenergy	Other utility	Total
RHLs	61	64	5	12	23	5	170
Investigations	39	8	0	9	10	3	69
TOTAL	100	72	5	21	33	8	239

These figures show that, despite receiving the highest number of RHLs, Origin Energy had a significantly lower number of cases which proceeded to an investigation. Origin Energy has an increasing market share in the ACT, which has led to an increased number of complaints about that utility. However, it appears that Origin Energy often makes commercial decisions to resolve customer complaints quickly, and this may have driven down the number of investigations referred to that utility. The AER's Statements of Expectations during COVID-19 may also have had an impact on complaint resolution processes.

Timeliness of utility responses

The ACAT-EW has an expectation that utilities will provide a substantive response within 10 business days to a complaint which has been referred to them for investigation. Table 5 records the performance of each utility against this performance standard.

Table 5: Utility response times for investigations



	Icon Water	Evoenergy	Other Utility	Origin Energy	Energy Australia	ActewAGL Retail
Response under 14 days	60%	60%	100%	100%	0%	38%
15-28 days	20%	40%	0%	0%	0%	45%
29 days +	20%	0%	0%	0%	0%	17%

Note: There were no Energy Australia investigations during 2020-21. Responses are measured in 14 day intervals rather than 10 business days.

Origin Energy and Icon Water improved the timeliness of their responses to ACAT-EW between 2019-20 and 2020-21. However, ACAT-EW is concerned that the compliance of ActewAGL Retail with the performance standard dropped from 51% in 2019-20 to 38% in 2020-21.

Complaint categories

The ACAT-EW records complaints in nine general categories which are based on categories commonly used by energy and water ombudsman schemes in Australia. Each of these categories includes a range of related issues, for example "credit" includes debt collection, disconnection for debt, actions of debt collectors, and credit default listings.

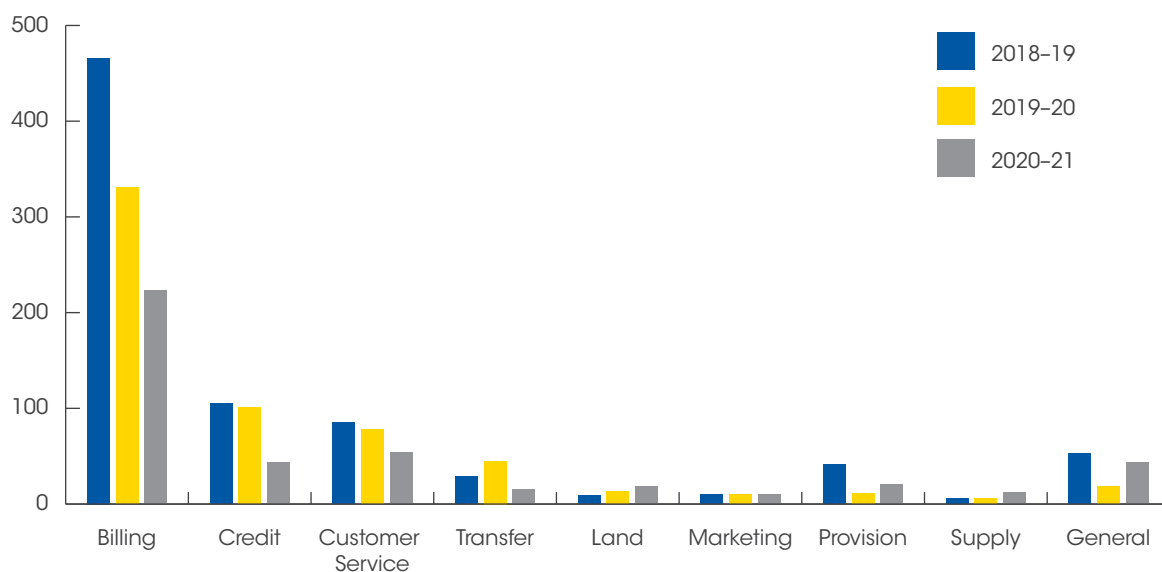
The three main categories of complaints which the ACAT receives are billing, credit and customer service.

As in previous years, the ACAT-EW received more billing complaints in 2020-21 than any other complaint category. Complaints regarding credit and customer service remained high but continued to trend downwards. The ACAT-EW expects that credit issues may decrease slightly in 2021-22 due to changes implemented in response to COVID-19. Note that the credit category does not include hardship complaint applications under the ACAT-EW's hardship assistance program; these are separately reported in this Annual Review.

Land complaints have increased but remain at a relatively low level, reflecting a generally good performance by the utilities in this sometimes complex area of dispute.

Table 6 records complaints by category, over a three year period, and includes enquiries, RHLs and investigations.

Table 6: Complaints by categories

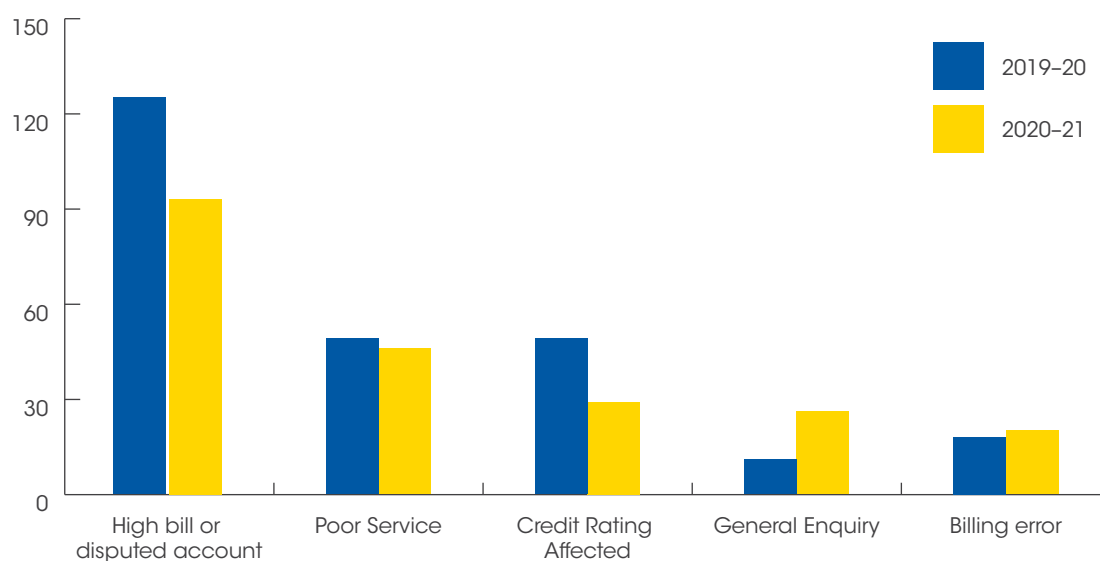


	Billing	Credit	Customer Service	Transfer	Land	Marketing	Provision	Supply	General
2018-19	466	105	85	29	9	10	41	6	53
2019-20	331	101	78	45	13	10	11	6	18
2020-21	223	43	54	15	18	10	20	12	43

Table 7 records the issues most complained about in 2020-21 and compares them with the previous reporting period. In total, 438 issues were recorded for all matters including enquiries, RHLs and investigations. Consistent with previous years, high bill or disputed account was the most recorded issue, representing 21% of the total. However, there was a 26% decrease in this complaint issue in 2020-21, possibly due to the AER's Statements of Expectations during COVID-19 which required utility retailers to actively engage with consumers facing financial difficulty.

Complaints regarding poor service have remained steady while other complaint issues have decreased, resulting in an increase in that issue in proportion to complaints as a whole.

Table 7: Type of issue most complained about



	High bill or disputed account	Poor service	Credit rating affected	General enquiry	Billing error
2019-20	125	49	49	11	18
2020-21	93	46	29	26	20

Table 8 is a detailed breakdown of complaint categories and issues, by utility. This Table records issues in relation to the total number of complaints, including enquiries, RHLs and investigations.

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

	Electricity					Gas					Water	Utility	
	AclerwAGL	Evo Energy	EnergyAustralia	Origin	Other Utility	AclerwAGL	Evo Energy	EnergyAustralia	Origin	Other Utility	ICON	Not licensed	
Billing													
High bill or disputed account	27		2	17	2	19		0	9	0	17	0	93
Tariff (time of use, prices)	7		0	10	0	0		0	2	0	0	0	19
Solar Credits	6		0	3	3							0	12
Billing error	4		0	8	1	2		0	5	0	0	0	20
Delayed bill or bill not received	0		0	1	1	2		0	1	0	0	0	5
Direct Debit/Even Pay	1		0	1	0	0		0	0	0	0	0	2
Fees and charges	1		0	1	2	1		0	0	0	1	0	6
Estimated account, meter not read	3		0	6	0	3		0	6	0	1	0	19
Backbilling	3		0	5	1	4		0	0	0	2	0	15
Delay in issuing refund or refund not received	0		0	1	0	0		0	1	0	0	0	2
Meter accuracy or fault	4		0	0	0	0		0	0	0	0	0	4
Debt transferred from another account	0		0	3	0	0		0	0	0	0	0	3
Common hot water system issue						5		0	6	0		0	11
Dear Customer	0		0	0	0	1		0	1	0	0	0	2
Concessions	0		1	0	1	0		0	0	0	0	0	20
Other	4		0	0	0	2		0	0	1	1	0	8
Category Total	60	0	3	56	11	39	0	0	31	1	22	0	223
Credit											Total Billing %		50.74%
Facing disconnection due to non-payment	0		0	0	0	0		0	0	0	0	0	19
Disconnected/Restricted due to non-payment	0		0	0	0	1		0	0	0	0	0	1
Contacted by debt collectors	4		0	2	0	2		0	4	0	0	0	12
Credit rating affected	22		0	1	0	6		0	0	0	0	0	29
Payment difficulties	1		0	0	0	0		0	0	0	0	0	1
Arrears requiring ACAT protection (hardship)	0		0	0	0	0		0	0	0	0	0	0
Arrears requiring payment plan	0		0	0	0	0		0	0	0	0	0	0
Category Total	27	0	0	3	0	9	0	0	4	0	0	0	43
Customer service											Total Credit %		13.05%
Poor service	12	3	0	13	5	3	1	0	8	0	1	0	46
Failed to respond	1	1	0	0	1	0	0	0	1	0	0	0	4
Incorrect advice or information provided	0	0	1	2	0	0	0	0	0	0	0	0	3
Privacy concern or breach	1	0	0	0	0	0	0	0	0	0	0	0	1
Category Total	14	4	1	15	6	3	1	0	9	0	1	0	54

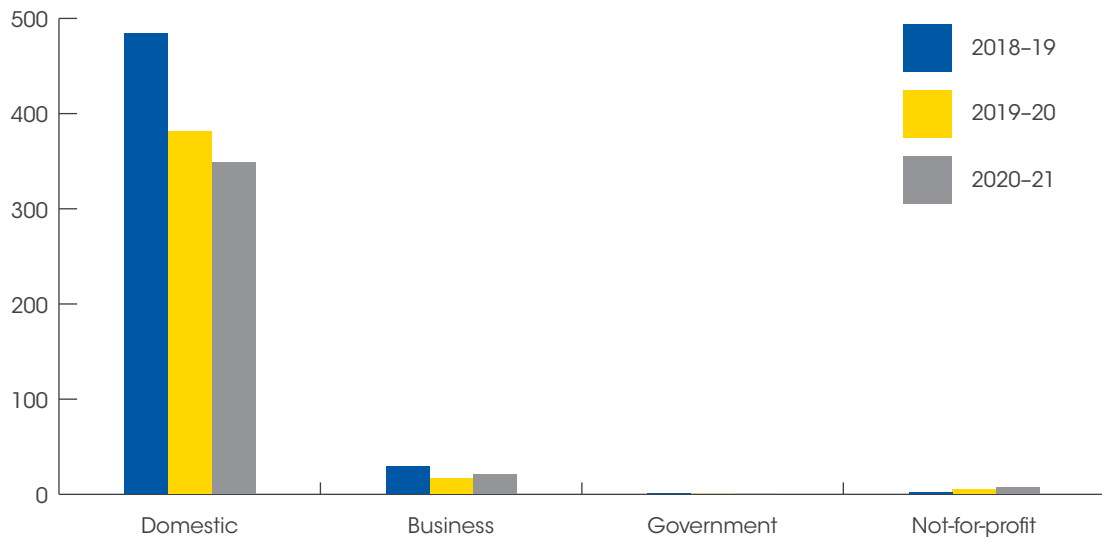
	Electricity					Gas					Water	Utility	Total
	ActewAGL	Evo Energy	EnergyAustralia	Origin	Other Utility	ActewAGL	Evo Energy	EnergyAustralia	Origin	Other Utility	ICON	Not licensed	
Transfer											Total Cust Service %		11.37%
Contract (eg variation, fees)	0	0	0	1	1	0	0	0	0	0		0	2
Transferred without consent	0	0	0	0	0	0	0	0	0	0		0	0
Site ownership issues	0	0	0	0	0	0	0	0	0	0		0	0
Transferred in error	0	0	0	0	0	0	0	0	0	0		0	0
Cooling cancellation not-actioned	0	0	0	0	0	0	0	0	0	0		0	0
Delay in issuing bill after transfer	0	0	0	0	0	0	0	0	0	0		0	0
Billing problems on transfer	0	0	0	1	0	0	0	0	0	0		0	1
Request for new account/transfer rejected	0	0	0	0	0	0	0	0	0	0		0	0
Other	5	0	0	3	0	2	0	0	2	0		0	12
Category Total	5	0	0	5	1	2	0	0	2	0	0	0	15
Land											Total Transfer %		3.16%
Easement (access, other)		2					0				0	0	2
Vegetation management		4					0				0	0	4
Network assets (health & safety, maintenance, placement)		5					2				1	0	8
Other (general, property damage/restoration)		1					0				3	0	4
Category Total	0	12	0	0	0	0	2	0	0	0	4	0	18
Marketing											Total Marketing %		3.79%
Information	1	0	0	1	0	0	0	0	0	0	0	0	2
Misleading	0	0	0	0	0	0	0	0	0	0	0	0	0
Non account holder	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	1	3	0	0	0	2	0	0	2	0	0	0	8
Pressure sales	0	0	0	0	0	0	0	0	0	0	0	0	0
Category Total	2	3	0	1	0	2	0	0	2	0	0	0	10
Provision											Total Land %		2.11%
Common hot water system							6						6
Disconnection/restriction (error, meter access, safety/defect)		0					0				0		0
Existing connection (de-energisation, energisation/connection, interference, meter removal, repair, safety, supply upgrade, other)		6					2				2		10
Solar – network connection issues		0					0						0
New connection (capital contribution, delay, information, other)		3					0				0		3
Restriction (error, meter access, safety/defect)		0					0				1		1
Category Total	0	9	0	0	0	0	8	0	0	0	3	0	20

	Electricity					Gas					Water	Utility	Total
	AclwAGL	Evo Energy	EnergyAustralia	Origin	Other Utility	AclwAGL	Evo Energy	EnergyAustralia	Origin	Other Utility	ICON	Not licensed	
Supply	Total Provision %												4.21%
Off supply-planned (damage/loss, duration, frequency, health & safety, inconvenience, information/notice, other)		3				0					0		3
Off supply-unplanned (damage/loss, delivery delay, duration, frequency, health & safety, inconvenience, information/notice, loadshed)		4				0					0		4
Quality (colour, health/safety, pressure, taste/odour, other)		0				0					0		0
Sewer/stormwater overflow/blockage											1		1
Variation (damage/loss, frequency, health & safety, inconvenience, information)		3				0					1		4
Category Total	0	10	0	0	0	0	0	0	0	0	2	0	12
General Enquiry	Total Supply %												2.53%
Energy/water	0	5	0	1	0	3	1	0	0	0	0	16	26
Non energy/water	0	0	0	3	0	0	0	0	0	0	0	14	17
Category Total	0	5	0	4	0	3	1	0	0	0	0	30	43
Total General %											9.05%		
Retailer Total	108	43	4	84	18	58	12	0	48	1	32	30	438

Complaint clients

Tables 9, 10 and 11 give a profile of the ACAT-EW complaint client base: client type; gender; and location. These Tables record the client profile of the total number of complainants, including enquiries, RHLs and investigations.

Table 9: Types of clients



	Domestic	Business	Government	Not-for-profit
2018-19	484	29	1	2
2019-20	381	16	0	5
2020-21	348	21	0	7

Table 10: Gender of clients

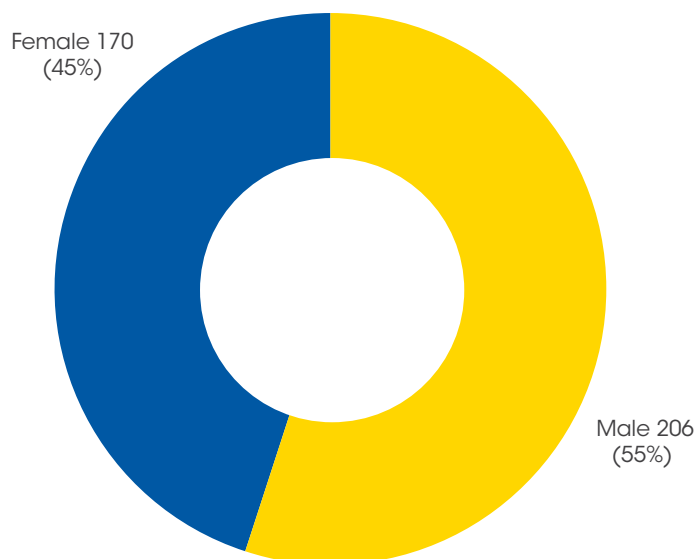
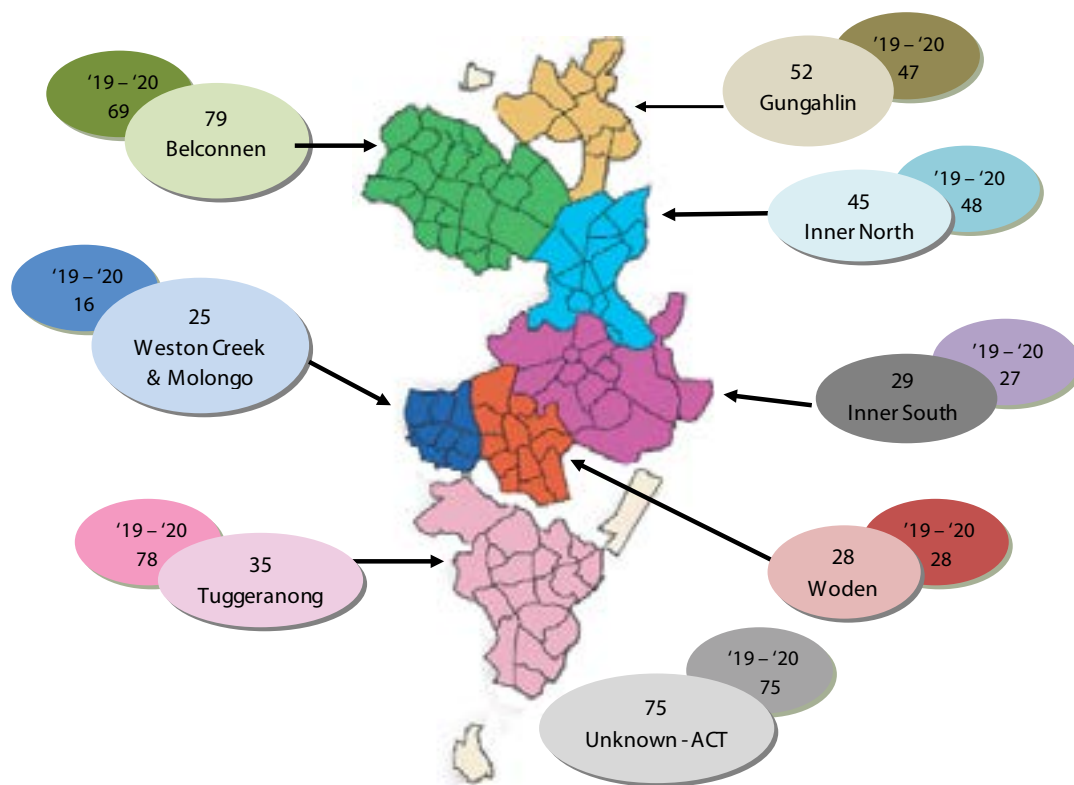


Table 11: Location of clients in the ACT



Note: Unknown - 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 being from the ACT are excluded.

Complaint outcomes

In 2020–21, 242 complaint applications (RHLs and investigations) were closed. Of them, 176 complaints were closed after being referred to the utility by an RHL. There was a higher number of closures than opened due to RHLs opened in the previous year being closed in 2020–21.

RHLs represented the majority of complaint closures, however this figure does not necessarily indicate the number of referrals that were successfully resolved. A customer may be dissatisfied with the response of the utility to an RHL, but decide not to proceed to investigation.

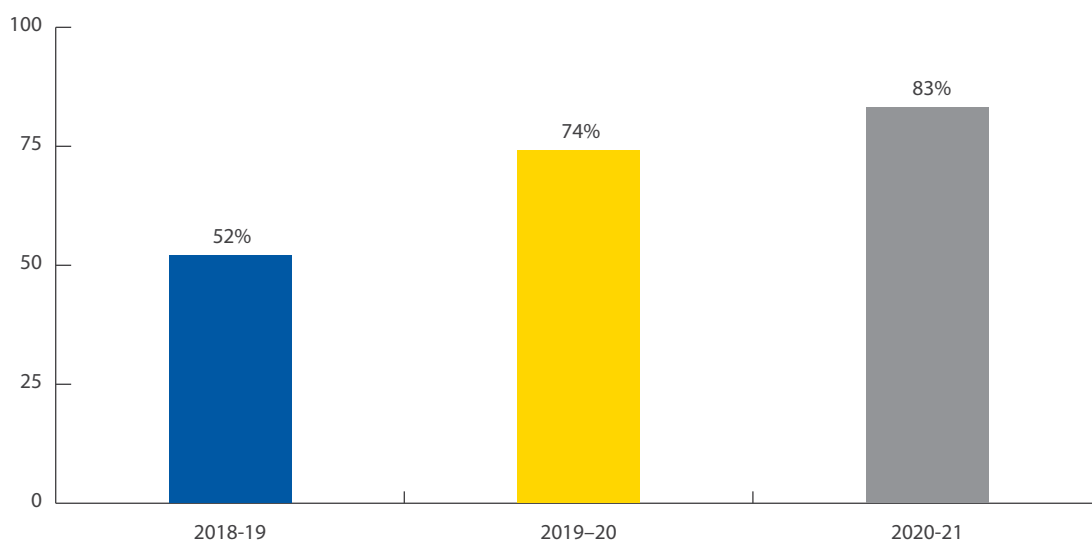
Outcome of RHLs

The ACAT-EW initially refers the majority of complaints to utilities as RHLs to ensure that the utility has a reasonable opportunity to resolve their customer's concerns, with minimal external involvement. The ACAT-EW 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.

In 2020–21, of the 176 complaint applications referred to a higher level within the utility, 83% were closed at this stage without the need for further ACAT-EW Complaints investigation. In 2019–20, the comparable proportion was 74%.

Table 12 provides data on the outcome of RHLs, showing a progressive increase between 2018–19 and 2020–21 in the number and the proportion of complaints closed as a result of an RHL.

Table 12: Complaints successfully resolved following an RHL to utility



	2018–2019	2019–2020	2020–2021
TOTAL: Closed on referral to RHL	222	167	176
Not resolved following RHL and opened as an investigation	106	44	30
Complaint resolved following RHL stage	116	123	146

Outcome of investigations and hearings

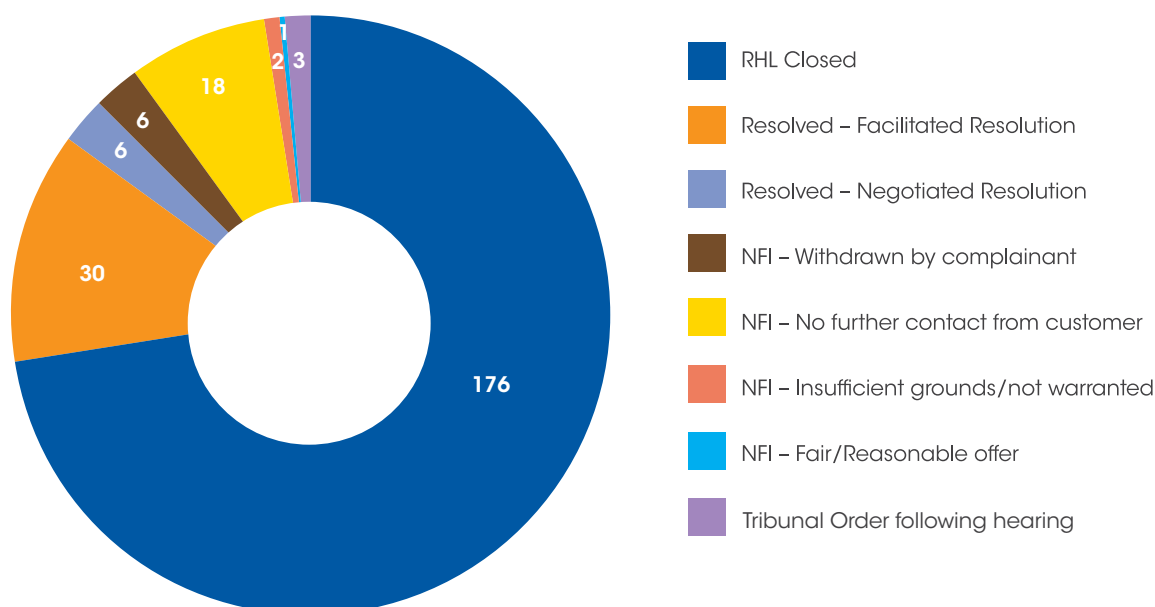
During 2020–21, 66 (27%) complaints were closed following an investigation or a hearing. Matters which proceed to formal tribunal processes are counted both as an investigation and as a formal tribunal process.

The breakdown of investigation and hearings outcomes are:

- 36 (55%) complaints were closed through the ACAT-EW facilitating a resolution between the parties or by the ACAT-EW actively negotiating a resolution.
- 24 (36%) complaints were closed due to clients abandoning or withdrawing their application.
- 2 (3%) complaints were closed due to the ACAT-EW reviewing the complaint and advising that the complainant had no grounds, and the customer did not proceed further in the process.
- 1 (1.5%) complaint was closed when the ACAT-EW formed the opinion that the utility's offer was fair and reasonable, and the customer did not proceed further in the process.
- 3 (4.5%) complaints were closed after the ACAT-EW convened a conference or hearing, resulting in orders binding on the parties.

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

Table 13: Outcome of total complaints (excluding formal tribunal processes)



Reported systemic issues

Section 174 of the *Utilities Act 2000 (ACT)* requires the ACAT to report energy and water issues of a systemic nature to the Minister (the Attorney-General) and to the Independent Competition and Regulatory Commission (ICRC). In 2020–21, the ACAT did not report any systemic issues under section 174.

Other issues and concerns

Credit default listings

The ACAT-EW closed 28 complaints regarding utility-applied credit default listings during 2020–21. A default remains on a consumer's credit file for five years from the date it was listed as a default and can have a negative impact on their ability to obtain credit for such things as a home loan or a mobile phone plan. Due to the potentially adverse financial outcomes for customers arising from default listings, care should be taken by utilities to ensure they have been applied correctly.

Table 14 provides data on the number of closed complaints in 2020–21 which involved a credit default listing issue and on the reasons those default listings were removed by the two energy retailers involved.

Table 14: Outcome of credit default listing complaints

	ActewAGL Retail	Origin Energy	Total
TOTAL: Defaults challenged by customers	25	3	28
Defaults removed for goodwill	1	0	1
Defaults removed for compliance concerns	10	3	13
Total defaults removed	11	3	14
Percentage of defaults removed	44%	100%	50%

In 2020–21 there was an appeal in relation to the tribunal’s decision on a credit default listing in *Eighani v Icon Retail Investments Limited and AGL ACT Retail Investments Pty Ltd Trading as ActewAGL Retail* (Energy and Water) [2020] ACAT 39. The appeal decision is expected to be handed down in the next reporting period.

The ACAT-EW will focus on monitoring the continuing issues with credit default listing during 2021–22 and will work with the Office of Australian Information Commissioner where appropriate. In 2020–21, the ACAT-EW also discussed debt collection practices with the Australian Competition and Consumer Commission.

Estimates

As 51% of ACAT-EW complaints concern billing issues, the ACAT-EW looks for any systemic issues that may be present in this category in order to reduce the overall complaint load.

In a recent matter a customer had a meter removed and was charged estimated readings for over four years on the removed meter. This complaint raised a number of potential systemic issues, including why the central meter database had not been kept up to date and why estimated reads were allowed to continue for more than 12 months. In response, ActewAGL Retail advised the ACAT-EW that they will develop a report which will bring to their attention customers who have bills based on estimated reads for 12 months or more. The ACAT-EW looks forward to the utility’s progress in this matter.

Exempt sellers and embedded networks

In 2020–21 the ACAT-EW received complaints from consumers living in caravan parks where it appeared that the regulatory regime for exempt selling of electricity had not been complied with. Due to this, consumers were accruing large debts and/or not getting concessions on their utilities to which they were entitled.

Issues involving exempt sellers and embedded networks are becoming more common in other jurisdictions and are likely to increase in the ACT with new building developments and increasing public awareness of the regulatory requirements.

The ACAT has made a submission to the Australian Energy Regulator in relation to proposed amendments to the exempt selling and exempt networks regulatory regime.

Other activities

Working with other Energy and Water Ombudsman schemes

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

In the reporting period the President attended the quarterly ANZEWO meetings in July and November 2020 and in February and May 2021.

Reports, submissions and information

During 2020–21, the ACAT-EW:

- provided the Australian Energy Market Operator (AEMO) with:
 - » data and case studies for the review of metering and roll-out of smart meters
 - » provided submissions and attended consultations with the Australian Competition and Consumer Commission (ACCC) regarding:
 - the Debt Collection Industry Engagement & Compliance Campaign
 - reauthorisation of the Clean Energy Council.
- made submissions to the AER in relation to:
 - » Retail Exempt Selling guideline review
 - » Networks Exemption guideline review
 - » Retailer Authorisation Application by Telstra Energy (Retail) Pty Ltd
 - » Retailer Authorisation Application by EA Connect Pty Ltd
 - » Exempt Retailer Authorisation Application by Tindo Energy Pty Ltd
 - » the proposed AER 2021–26 Gas Access Arrangements.
- provided information to the AER in relation to Data on the impact of the AER's response to COVID-19.
- made submissions to the Independent Competition and Regulatory Commission (ICRC) in relation to:
 - » the ACT Retail Electricity Transparency and Comparability Code
 - » the Review of Retail Electricity Form of Price Control.

Participation with industry and community

During 2020–21, the ACAT-EW:

- provided quarterly reports and statistics to ANZEWO
- participated in monthly stakeholder web conference meetings convened by ActewAGL Retail for discussion of hardship issues arising from COVID-19
- provided (via the ACAT Website) a Welcome Pack for utilities entering the ACT energy market
- commenced receiving complaints via an online form.

