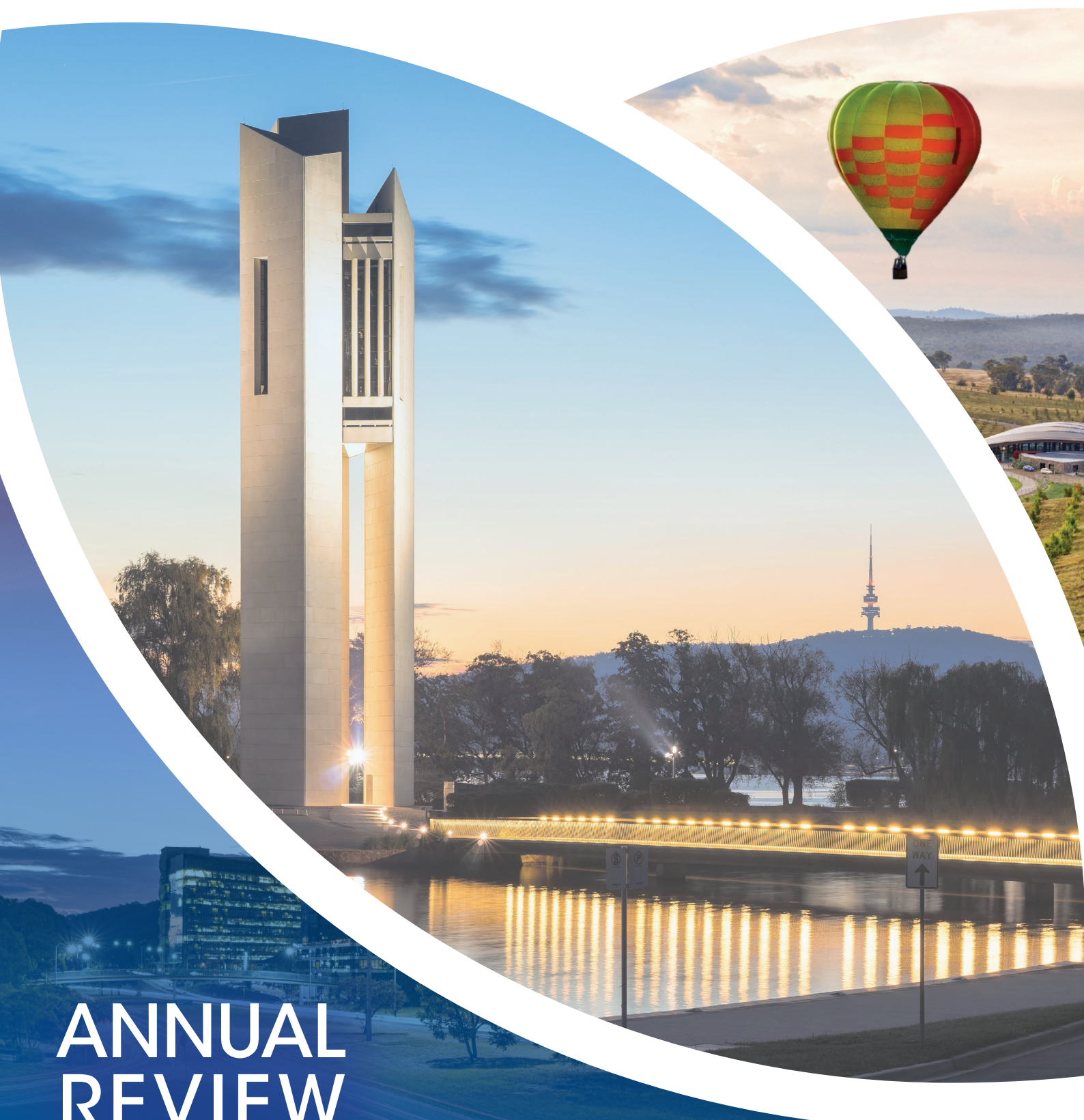




AUSTRALIAN CAPITAL TERRITORY
CIVIL & ADMINISTRATIVE TRIBUNAL



ANNUAL
REVIEW
2021-22

Contents

About us.....	4
Independence.....	6
Tribunal leadership and effective management.....	10
Fair treatment.....	12
Accessibility	13
Professionalism and integrity	17
Accountability.....	20
Efficiency.....	22
Client needs and satisfaction	24
In prospect and acknowledgements.....	25
Statistics and performance information	26
Year at a glance.....	26
Overall workload and outcomes.....	27
Appeals.....	28
Administrative review	29
Change of identity details.....	33
Civil, retirement villages and unit titles disputes.....	34
Discrimination	38
Guardianship and management of property.....	40
Mental health.....	43
Motor accident injuries.....	45
Occupational and professional regulation	47
Residential tenancies disputes.....	49
Utilities – energy and water.....	51



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.

Throughout the reporting period, the ACAT was located on Level 4, 1 Moore Street, Canberra City. In August 2022, the ACAT relocated to Allara House, 15 Constitution Avenue, 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 from residential premises. Regardless of the subject matter, each case is important to the participants and some are important 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
- change of registered identity details of young people
- the discipline and regulation 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.

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 62 members of the ACAT. They are supported by a registry of 37 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 thirteenth 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 2021–22. This Annual Review provides more detailed information about the tribunal's case workload and outcomes in the 2021–22 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

Presidential members are appointed by the Executive and non-presidential members are appointed by the Attorney-General. Transparency of the appointment process and independence of members is facilitated by a clear statutory framework in the ACAT Act.

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 2021–22, Graeme Neate AM continued in his full-time appointment as ACAT President. Presidential Members Geoffrey McCarthy, Mary-Therese Daniel and Heidi Robinson, and Senior Members Kristy Katavic and Michael Orlov continued in their full-time appointments.

In addition, the tribunal had 56 sessional non-presidential members at the beginning of the reporting period. At the end of the reporting period there were 55 sessional non-presidential members. The names of all members in 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:

- Determination 9 of 2020, effective from 1 November 2020
- Determination 8 of 2021, effective from 1 November 2021

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. As required by section 51 of the ACAT Act, 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 35 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 2021–22 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
MCCARTHY , Geoffrey	Presidential Member	1 January 2016 to 31 December 2022
ROBINSON , Heidi	Presidential Member	6 May 2021 to 5 May 2028
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
KYPRIANOU , Thena	Presidential Member (Acting)	23 July 2021 to 22 July 2028

Non-Presidential Members

KATAVIC , Kristy	Senior Member (Full-time)	1 February 2020 to 31 January 2025
ORLOV , Michael	Senior Member (Full-time)	6 June 2021 to 5 June 2026

Sessional Senior Members

ANFORTH Allan AM

BAILEY Robyn

BEACROFT Laura

BIGINELL Nigel

BOYLE Alysoun

BRENNAN Mary

BYRNE Donald

CORBY Wilhelmena

CREYKE Robin AO

DAVEY Adrian

DAVIES Robyn (from 1 December 2021)

DONOHUE Louise SC

FERGUSON Elspeth

FOLEY Anthony James

HERRICK Stephen

HYMAN Mark

KERSLAKE David

KYPRIANOU Thena

LANCKEN Stephen

LENNARD Jann

LOVELL Denis

LUBBE Katherine

LUNNEY Graeme SC

MATHESON Marie

MEAGHER Bryan SC

MULLIGAN Dominic

NORRIE Peter

ORR Robert

PEGNUM Roger

SINCLAIR Michael

SPENDER Peta

SUTHERLAND Peter

TRICKETT Graeme

TURNER Graeme

WAGSTAFF Bruce

WARWICK Theresa

WILLIAMS Leanne

Sessional Ordinary Members

BENNETT Elizabeth

DAVIES Robyn (to 30 November 2021)

DELAHUNT Anne-Marie

GREAGG Jane (to 29 June 2022)

HATAMI Parastou

HAWKINS Walter

KELLER Sheridan

LUCAS Dianne AM

MAYES Leasa

MCGLYNN Lisa

MORRIS Athol

NEWMARCH Eileen

PEARCY William

SELBY Hugh

STEEPER Elizabeth

TRICKETT Elizabeth

WEDGWOOD Robert

WILLIAMS Athol

WILSON Mirjana

WRIGHT Graham

Resignation of member

One longstanding sessional member resigned during the period covered by this report. Ordinary Member Jane Greagg, a member of the ACAT since 2009, was involved in guardianship, mental health, energy and water matters, and civil and residential tenancy disputes. She resigned in June 2022. We acknowledge the valuable contributions that Jane Greagg made to the work of the ACAT and wish her 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 2021–22 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 2021–22 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 2021–22 were to:

- implement a competency framework for members and identify member training needs to provide a framework for regular performance review and feedback on performance
- adapt procedures and ICT processes to facilitate ongoing legislative amendments
- conduct a client satisfaction survey and use the results to enhance client service delivery
- 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 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. Hearings proceed in a relatively informal and non-adversarial manner.

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, developed by the ACAT President, that focusses on ensuring fair treatment for self-represented litigants.

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 2021–22, five new videos were produced and published on the ACAT website. They provide information to tribunal users on particular aspects of the tribunal's work. This brings the total number of videos to 14. The new videos are:

- *How to ask ACAT for a subpoena*
- *Change of identity details for young people*
- *Coming to ACAT for people who might need a guardian or manager*
- *How to apply for a guardianship or management order*
- *What to do before a hearing*

During 2021–22, two videos, *Conferences at ACAT* and *Hearings at ACAT*, were translated into 20 languages. The videos can be found on the [ACAT website](#).

In preparation for the ACAT's relocation to Allara House, website content was designed to facilitate remote attendance for tribunal matters heard at Allara House. The 'ACAT's Remote Attendance Webpage' was created and tested during the reporting period to enable users to participate in particular matters via modern and accessible means.

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. In the reporting period, the website was substantially reviewed and updated in relation to:

- guardianship and management of property cases
- endorsements

In May 2022, the ACAT released our first Easy English Guide. It is for people who may need a guardian or manager appointed. The Easy English Guide has information about making decisions, what a guardian or manager is, what a guardian or manager does, how the ACAT decides if someone needs a guardian or manager, who can be a guardian or manager, what kinds of decisions a guardian or manager might make, how long someone will need a guardian or manager, and how to get help to attend the ACAT and take part in a hearing.

Practice notes

In 2022, the tribunal released three new practice notes to ensure information regarding tribunal processes is consistent and fair to all tribunal users.

- Practice note 1 of 2022 – Communicating with the Tribunal
- Practice note 2 of 2022 – How can I take part in tribunal proceedings – in person or remotely?
- Practice note 3 of 2022 – Applications made by a utility

They can be found on the [ACAT website](#).

Online forms

During 2021–22, online forms were introduced to assist ACAT users with the lodgement of documents. The online forms collect the same required information as the hard copy forms but enable faster and efficient accessibility to users. The online forms can be found on the [ACAT website](#). The new forms include:

- Notice of discontinuance
- Application for interim or other orders
- Application to change registered identity details

New or amended ACAT forms

During 2021–22, the following forms were introduced or amended to accommodate new processes, legislative amendments or to streamline the form:

- *Application – Unit Titles (Management) Act 2011*
- *Application – Unit Titles Act 2001*
- *Application – Retirement Villages Act*
- *Fence dispute application*
- *Civil dispute application*
- *Response – civil dispute*
- *Third party notice – civil dispute*
- *Response to third party notice – civil dispute*
- *Application for default judgment – civil dispute*
- *Application for order to be joined as a party*
- *Request to take part in person or remotely*
- *Questionnaire – Review of Appointment*
- *Subpoena*
- *Application for endorsement*

ACAT accommodation

Extensive work continued during the reporting period to fit out a new premises for the ACAT at Allara House, 15 Constitution Avenue, Canberra City. During the reporting period, 15 tribunal rooms were completed with progressive new technology, primarily audio-visual facilities. Public entrances and waiting areas were designed with display boards and signage to assist in navigating around the building. Staff and tribunal members were provided with onsite training regarding the facilities. They revised processes and procedures to ensure a seamless transition to the new premises for all tribunal users. We expect 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 August 2021, in response to the COVID-19 lockdown in the ACT, 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.

As COVID-19 restrictions eased over the reporting period, 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. During 2022-23 the tribunal will continue to adapt and review its processes with reference to the tribunal's new accommodation and facilities.

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 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, 39 matters were referred by the ACAT under this program. The matters involved administrative review, discrimination, mental health, guardianship, change of identity details, civil claims, residential tenancies disputes and appeals. Warm referrals were made to ACT Legal Aid, Canberra Community Law, Youth Law ACT and the Animal Defenders Office.

Duty lawyer services

The tribunal engages with duty lawyer services on a regular basis to assist tribunal clients with their proceedings. Legal Aid ACT provides support for mental health, guardianship and residential tenancies matters. Canberra Community Law also provides services within the residential tenancies jurisdiction. Throughout the 2022–23 reporting period, the tribunal will engage more broadly with members of the ACT Legal Assistance Forum to provide expanded duty lawyer and legal assistance services in our new premises.

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](#).

The ACAT website can also be translated into 132 languages by using the 'select language' function located at the top of each page.

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' appointment

ACAT members are appointed by the Executive or the Attorney-General under the ACAT Act after an open merit-based recruitment process. They are selected on the basis of their skills and abilities against criteria such as knowledge and technical skills relevant to the jurisdiction and procedures of ACAT, communication skills, experience in relation to decision-making and dispute resolution, professionalism and integrity.

Members' allocation

The President allocates members to deal with applications considering the nature, importance and complexity of the matter, as well as any legislative requirements for the type of matter to be heard. Members are allocated to hear and decide a particular application with regard to their qualifications, expertise, experience and availability.

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 2021–22, some ACAT members participated in the following conferences as attendees or speakers:

- COAT NSW Webinar Conference, November 2021
- COAT National Conference, June 2022

ACAT Member competency framework

The ACAT Member competency framework was implemented throughout the reporting period. The framework was developed to guide and assess member performance, identify areas for development and guide professional development for members. The framework was developed using COAT guidelines, examples from other Australian tribunals and direct input from ACAT members.

Staff professional development

In July 2021, all ACAT staff participated in training regarding gender diversity and inclusion, in preparation for the tribunal's new change of registered identity details jurisdiction.

In October 2021, key ACAT staff and members participated in training around young people and decision making. The training was targeted to registry staff and members who would actively be involved in the tribunal's new change of registered identity details jurisdiction and was conducted as a round table workshop.

Also in October 2021, all staff participated in the 'Recharge your batteries – managing energy and motivation' training session. This was provided to all staff to explore their own resilience and understand their own working behaviour in the context of a busy work environment operating throughout the COVID-19 pandemic.

In May 2022, ACAT staff participated in Vicarious Trauma training tailored to their role within the tribunal. All staff were offered training in identifying vicarious trauma and understanding the importance of taking responsibility for supporting their wellbeing and seeking support when needed. Managers and team leaders engaged in further training focussed on assisting their teams by exploring mitigating factors and supporting staff experiencing vicarious trauma.

Training was provided to staff internally, including in relation to strategic cross-development of all work sections and in regard 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, the ACAT members' portal was launched. The portal brings together bench materials, training materials, guidelines, policies and other resources into an intranet site accessible by both full-time and sessional members. The portal is a dynamic and practical tool designed to support members in their daily work.

Material interests

As required by section 51 of the ACAT Act, 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.

Participation in national work

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

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 2021–22.

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 of the Russell Fox Library. Presidential Member Daniel mentors young lawyers through the Women In Law Association of the Australian National University. The ACAT Registrar or a Deputy Legal Registrar attends the monthly meetings of the ACT Law Society's Civil Litigation Committee meeting.

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 may be received by 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 2021–22, one complaint was referred to the President by the Attorney-General under the Protocol.

During 2021–22, 30 complaints were received about ACAT services or members. That number 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 2021–22, 114 written decisions were published (including on the ACAT website) and 33 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. One intern attended the ACAT during 2021–22. This is a reduction in numbers from earlier years and is a result of COVID-19 restrictions limiting the number of interns allowed on site.

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:

- *Births Deaths and Marriages Registration Act 1997*
- *Carer's Recognition Act 2021*
- *Discrimination Act 1991*
- *Domestic Animals Act 2000*
- *Fair Trading (Australian Consumer Law) Act 1992*
- *Fair Trading and Other Justice Legislation Amendment Act 2022*
- *Gaming Machine Act 2004*
- *Government Procurement Act 2001*
- *Guardianship and Management of Property Act 1992*
- *Human Rights Commission Act 2005*
- *Planning and Development Act 1997*
- *Public Health Act 1997*
- *Radiation Protection Act 2006*
- *Residential Tenancies Act 1997*
- *Statue Law Amendment Act 2022*
- *Urban Forest Act 2022*

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 objects of the ACAT Act, 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. Twelve members and four staff remained accredited during the reporting period. 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 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 might be formally resolved on the day of a mediation or conference, or it might 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 might 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 before 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 draft report was prepared following a project to examine dispute resolution at the ACAT, including current ADR processes, alternative ADR processes and issues around Online Dispute Resolution (ODR) at the ACAT. The draft report will be developed further during 2022–23.

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 Information and Communications Technology (ICT) systems

During the reporting period, the ACAT provided a business case to receive funding for a new ICT system. A project was undertaken during the 2020–21 reporting period to investigate the replacement of the Lotus Notes database system currently used by the energy and water hardship and complaints teams which led to the proposed business case. ACAT received the required funding, and it is anticipated the design work for the new system will be progressed during the 2022–23 reporting period.

ACAT jurisdictional changes

Legislative changes implemented during 2021–22 increased and changed the ACAT's jurisdiction.

New reviewable decisions were created under a range of legislation and new functions were given to ACAT under amendments to the *Births Deaths and Marriages Registration Act 1997*, which commenced in August 2021. The amended Act sets up a mechanism for children under 16 to apply to the ACAT for leave to apply to the 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.

There were legislative amendments to existing jurisdictions, including to the:

- *Guardianship and Management of Property Act 1992* which gave the ACAT the power to order compensation if guardians or managers do not comply with the Act.
- *Fair Trading (Australian Consumer Law) Act 1992* which gave power to The Commissioner for Fair Trading to conciliate consumer complaints. These conciliations may be brought to the ACAT for orders to give effect to the agreement.
- *Residential Tenancies Act 1998*, including in relation to education provider occupancy agreements.

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 usually 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 2021–22 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 2022–23.

Feedback on ACAT performance

Tribunal user feedback is sought and received on a range of activities. During 2021–22, the tribunal released a survey in relation to client satisfaction. Results from this survey will continue to be assessed and integrated into the 2022–23 reporting period.

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 acknowledgements

Looking ahead

ACAT priorities for 2022–23 include:

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.

Client service: Incorporate and implement feedback from the 2021–22 client satisfaction survey. Work regarding being adaptive and responsive to client service will be ongoing.

ACAT accommodation: Transition to Allara House in Canberra City and ensure the facilities will meet current and future business needs.

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.

In the past year there were additional challenges as a consequence of restrictions in relation to COVID-19. We continue to draw on those experiences to refine our practices to best suit future circumstances and to use the enhanced facilities of our new accommodation at Allara House.

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.

Graeme Neate AM

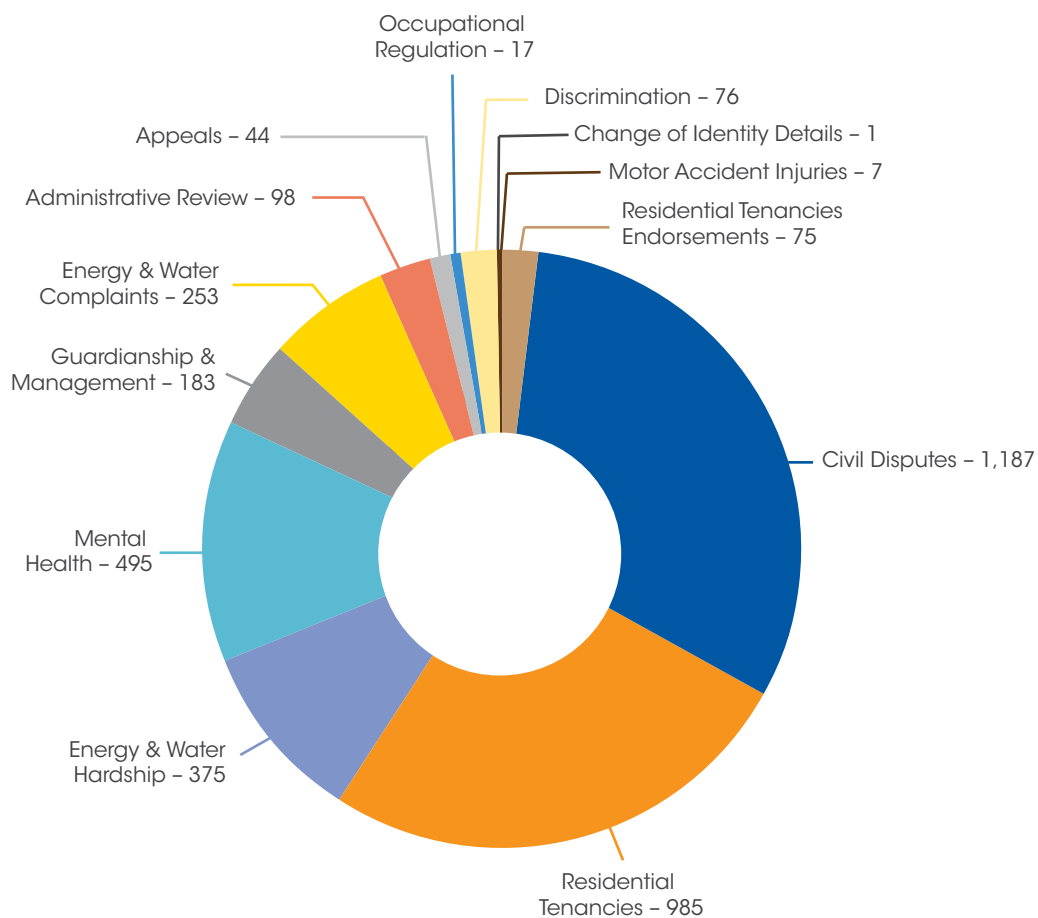
President

November 2022

Statistics and performance information

Year at a glance

Chart 1: New applications received by subject matter for 2021-22



Overall workload and outcomes

The numbers of new applications varied across different parts of the tribunal's work during the reporting period. By comparison with 2020-21, the number of civil dispute, mental health and residential tenancy endorsement applications decreased, but there were increases across energy and water hardship and complaints, guardianship and residential tenancies applications.

The total number of applications decreased by 340 (8%) and the number of files finalised decreased by 578 (14%). Pending matters decreased during the reporting period by 189 matters in accordance with the reduced overall matter numbers. At 30 June 2022, the total number of pending matters aged greater than 12 months was 57, which is 1.50% of total lodgements.

Table 1: Statistics overview

	2017-18	2018-19	2019-20	2020-21	2021-22
Applications lodged*	5,051	4,764	4,683	4,136	3,796
Files finalised*	4,133	4,037	3,777	4,038	3,460
Applications pending#	1,178	1,025	1,310	955	766
Pending > 12 months*	96	31	38	56	57
Clearance rate#	94%	104%	91%	111%	106%
Reviews held^	2,090	1,909	1,801	1,706	1,909

Notes: * includes applications for endorsement of inconsistent terms; # does not include mental health, guardianship and utilities files; ^ reviews held on tribunal's own initiative in mental health, guardianship and utilities cases

The table below compares the number of tribunal resolution events for each of the past five years.

Table 2: Resolution events – all work areas

Resolution Events – All Work Areas	2017-18	2018-19	2019-20	2020-21	2021-22
Mediation/preliminary conferences	1,102	1,142	1,273	1,243	1,167
Interim hearings	199	211	193	230	190
Motions hearings	145	140	110	470	207
Substantive hearings (includes resumed hearings)	7,037*	6,495	6,138	6,357	6,466

Notes: * does not include in-chambers orders.

Appeals

For most types of cases, a party to an original application may 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, 44 applications for appeal were lodged with the tribunal and 54 applications were finalised.

Table 3: Total number of internal appeal applications

Internal Appeals	2017-18	2018-19	2019-20	2020-21	2021-22
Applications lodged	47	50	44	61	44
Applications finalised	57	41	49	43	54

Table 4: Types of internal appeal applications

Type of Appeal	2017-18	2018-19	2019-20	2020-21	2021-22
Civil disputes	13	24	17	20	17
Residential tenancies	23	14	15	19	16
Unit titles	2	3	1	5	2
Occupational regulation	0	1	4	3	2
Administrative review	6	3	1	5	4
Discrimination	0	3	1	6	1
Mental health	1	1	3	0	0
Guardianship	2	1	2	1	1
Energy and water	0	0	0	2	1
Motor accident injuries*	-	-	0	0	0
Extension of time	4	4	7	1	8

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

* The motor accident injuries jurisdiction commenced with the tribunal in February 2020. For this reason, no data is required for years 2017-18 and 2018-19.

The tribunal may refer questions of law and original applications or appeals to the Supreme Court. One application for referral of a question of law to the Supreme Court was received under section 84 of the ACAT Act. The question of law has been referred to the Supreme Court.

Two applications for appeal from an ACAT decision were lodged with the Supreme Court and four applications were received for removal of a matter to the Supreme Court under section 83 of the ACAT Act. The two appeals to the Supreme Court that were completed in the reporting period were dismissed. Of the four applications for removal to the Supreme Court that were completed in the reporting period, two were dismissed, one was removed, and one has not been determined.

Administrative review

The ACAT reviews a diverse range of administrative decisions made by ACT 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 2021-22.

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.

Table 5: Total number of administrative review applications

Administrative Review	2017-18	2018-19	2019-20	2020-21	2021-22
Applications lodged	103	107	108	107	98
Applications finalised	88	106	112	112	92

Table 6: Types of administrative review applications

Decision Type	2017-18	2018-19	2019-20	2020-21	2021-22
Cases subject to 120-day limit					
Planning and development	30	28	37	31	34
Heritage	0	1	0	0	0
Tree protection	4	2	4	3	11
Other Cases					
Building and construction	2	4	3	7	7
Revenue ¹	28	39	21	19	11
Licences and permits	19	12	11	11	13
Dog matters	10	12	27	24	9
Freedom of Information	3	1	0	0	0
Public housing allocation/rental rebate	2	1	0	2	0
Victims of crime	-	2	0	2	3
Miscellaneous	5	1	4	8	10

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 98 new applications lodged related to 96 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 40 matters referred to mediation in the reporting period, 9 (22.5%) were resolved at ADR, 9 (22.5%) were resolved after ADR, 16 (40%) proceeded to hearing and 6 (15%) are yet to be determined. Fifteen matters underwent a preliminary conference, with three settling at the conference, five settling prior to hearing and the remaining seven proceeding to hearing.

The ACAT aims to have all applications completed in less than 12 months. On average, matters finalised during the reporting period were completed in 99 days from being commenced and involved five tribunal events.¹

There were 32 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.

At the end of the reporting period, five pending matters were older than 12 months. Of those, two were awaiting ACT Supreme Court decisions and one was awaiting jurisdictional confirmation. The remaining two matters being heard together were awaiting submissions from the parties.

Table 7: Age of pending applications for administrative review as at 30 June 2022

Age of files	0-3 months	3-6 months	6-9 months	9-12 months	12 months+	Total
2021-22						
No of files	17	4	2	4	5	32
% of files	53.12%	12.5%	6.25%	12.5%	15.63%	100%
2020-21						
No of files	17	6	6	0	1	30
% of files	56.67%	20.00%	20.00%	0.00%	3.33%	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.

¹ 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.

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:

Grafton v Conservator of Flora and Fauna

AT 64/2021 – time extended by 31 days. The application was filed in late July 2021. At the first directions hearing on 16 August 2021, directions for filing documents were made and the mediation date was set. The mediation proceeded on 25 August 2021 and the parties were unable to settle the matter. The matter was listed for a hearing on 14 October 2021 which was one day in duration. The Tribunal reserved its decision on the day of hearing. The Tribunal's decision was handed down on 17 December 2021.

Liangis Investments Pty Limited v ACT Planning and Land Authority

AT 96/2021 – time extended by two days. The application was filed in early October 2021. At the first directions hearing on 8 November 2021, directions for filing documents were made and the mediation date was set. The mediation proceeded on 22 November 2021 and the parties were unable to settle the matter. The matter was listed for a hearing on 29 March 2022 which was to be six days in duration. Prior to the hearing the parties applied for multiple variations of the timetable. On 10 February 2022 the parties filed consent orders and the matter was finalised in chambers on 11 February 2022.

Ng Woden Pty Ltd v Commissioner for ACT Revenue

AT 88/2021 – time extended by 48 days. The application was filed in mid-September 2021. At the first directions hearing on 18 October 2021 the matter was set down for a mediation on 4 November 2021. Prior to the mediation, the Tribunal received a request to vacate the mediation and relist the matter for another directions hearing. The request was granted, however prior to the relisted directions hearing, the Tribunal received a request to adjourn the directions hearing to a later date. The directions hearing proceeded on 29 November 2021 and the matter was set down for another mediation. The mediation proceeded on 17 December 2021 and the parties reached an agreement and indicated that the matter should be resolved by the end of January 2022. On 9 February 2022, the Tribunal wrote to the parties in relation to the settlement of the matter. The Tribunal was asked to grant more time to finalise the matter. The matter was listed for a directions hearing on 28 February 2022. The directions hearing was adjourned to 7 March 2022 noting that the parties anticipated filing consent orders prior to 7 March 2022. A consent agreement was filed on 28 February 2022. The consent orders were made in chambers on 1 March 2022.

Le v Conservator of Flora and Fauna

AT 69/2021 – time extended by 92 days. The application was filed in early August 2021. At the first directions hearing on 30 August 2021 the matter was set down for mediation on 6 October 2021. The parties were unable to settle the matter at mediation. The matter was listed for a directions hearing on 8 October 2021 and the matter was set down for hearing for one day in duration on 24 November 2021. The Tribunal reserved its decision on the day of hearing. The Tribunal's decision was handed down on 3 March 2022.

Carmody and Suburban Land Agency v ACT Planning and Land Authority

AT 106/2021 – time extended by four days. The application was filed in late November 2021. At the first directions hearing on 17 December 2021 the matter was set down for a preliminary conference. The parties were unable to settle the matter. The matter was listed for an adjourned preliminary conference to be followed by a directions hearing on 31 January 2022. The matter was then listed for a further directions hearing on 14 February 2022. The parties sought an extension of time to file the preliminary issues. The preliminary issues may be referred to the Supreme Court. Accordingly, the matter was adjourned for two weeks to 28 February 2022 to allow the application to be made. The parties sought an adjournment to 8 March 2022. The parties sought a further adjournment to 22 March 2022. The matter proceeded on 22 March 2022 and the Tribunal finalised the matter with consent orders.

Herron v Conservator of Flora and Fauna

AT 92/2021 – time extended by 64 days. The application was filed in late September 2021. At the first directions hearing on 25 October 2021, directions for filing documents were made and the mediation date was set. The mediation proceeded on 2 November 2021 and the parties were unable to settle the matter. The matter was listed for a hearing on 16 December 2021 which was one day in duration. The Tribunal reserved its decision on the day of hearing. The Tribunal's decision was handed down on 30 March 2022.

O'Shea, Lockey and Dimov v ACT Planning and Land Authority

AT 67/2021 – time extended by 153 days. The application was filed in early August 2021. At the first directions hearing on 13 September 2021 the matter was set down for a mediation to be followed by a directions hearing. The parties sought an adjournment, however the matter proceeded for mediation on 8 October 2021 and was listed for a further mediation on 19 November 2021. The matter did not settle and was adjourned for a further mediation on 7 December 2021. On 7 December 2021 the matter was listed for a directions hearing on 7 February 2022. The directions hearing proceeded and a timetable was set. The parties proceeded to file interim applications and subpoenas in relation to the matter. The matter proceeded to hearing on 2 May 2022 and was originally listed for three days, however the matter was only one day in duration. The matter was finalised with consent orders on 2 May 2022.

Hipkins, Ring, D&H Developments v ACT Planning and Land Authority

AT 97/2021 – time extended by 100 days. The application was filed in mid-October 2021. At the first directions hearing on 15 November 2021 the matter was set down for a mediation to be followed by a further directions hearing. The mediation proceeded on 25 November 2021 and the parties were unable to settle the matter. The matter then proceeded to the further directions hearing on 26 November 2021 and directions for filing of documents were set. The matter proceeded to hearing on 3 February 2022 and was one day in duration. The hearing was adjourned to 21 February 2022. The adjourned hearing proceeded on that date and the Tribunal reserved its decision. The Tribunal's decision was handed down on 20 May 2022.

Change of identity details

On 20 August 2021, amendments to the *Births, Deaths and Marriages Act 2021* came into operation, creating an accessible procedure for young people who are transgender, intersex or gender diverse to change their birth registration details and birth certificates to better reflect their gender identities.

Under the Act, a young person who does not have the agreement of their parents may seek leave from the tribunal to apply to the Registrar-General for a change in identity particulars. A young person between the ages of 12 to 15 years old may apply to the ACAT for leave without the support of their parents and a young person under 12 with the support of at least one parent. In considering whether to grant leave, the tribunal will consider the young person's understanding of the meaning of the change and why the change would better reflect their gender identity. The tribunal may also make orders about who is told about the application.

The tribunal developed a tailored process to ensure that it would be as accessible as possible to young people wishing to seek leave under these provisions. The young person and any support person attend an initial directions hearing, where the tribunal's role is explained by the members who will hear the matter. The young person then attends a final hearing, with a lawyer or support person if they wish. The Public Advocate of the ACT may also attend.

Tribunal members and registry staff who anticipated being involved in these matters participated in training about the needs of young people, particularly those who are transgender, intersex or gender diverse.

The tribunal received one application in the reporting period.

Table 8: Total number of change of identity detail applications

	2021-22	
	Lodgements	Finalisations
Application to change registered identity details	1	0
Total	1	0

Civil, retirement villages and unit titles disputes

Civil dispute applications, and applications about retirement villages and unit titles are case-managed in the civil team. In the reporting period there was a reduction in the number of civil dispute applications lodged (down 12%), and an increase in the number of unit titles applications lodged (up 15%) when compared with the previous year. There was one retirement village application lodged in the reporting period.

Table 9: Total number of civil, retirement villages and unit titles applications

	2017-18	2018-19	2019-20	2020-21	2021-22
Civil applications lodged	1,716	1,767	1,625	1,281	1,132
Unit titles applications lodged	33	32	40	47	54
Retirement villages applications lodged	4	0	4	1	1
Applications finalised	1,649	1,805	1,542	1,600	1,216

Civil disputes

The ACAT decides applications relating to civil disputes for amounts up to \$25,000. Parties can consent to the tribunal dealing with applications for amounts greater than \$25,000.

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

Table 10: Types of civil dispute applications

Type of application*	2017-18	2018-19	2019-20	2020-21	2021-22
Australian consumer law	14	20	37	58	55
Common boundaries	29	24	24	25	28
Contract	74	81	74	79	81
Damages	204	193	230	251	217
Debt	1,316	1,283	1,183	780	662
Debt declaration	6	1	8	5	12
Goods	74	66	48	56	55
Nuisance	12	17	13	18	16
Trespass	3	4	3	3	4
Other	13	4	5	6	2
Total	1,745	1,693	1,625	1,281	1,132

* The kinds of civil disputes that may be brought in the ACAT are specified in section 16 of the ACAT Act.

The reduction of civil dispute applications lodged during the reporting period compared to the previous year is due primarily to a continued reduction in the number of debt applications lodged.

The distribution of amounts sought in civil dispute applications in 2021–22 remained broadly similar to the previous year, but with a noted reduction in small value claims:

Table 11: Number of applications per claim amount

Amount of claim	2017–18	2018–19	2019–20	2020–21	2021–22
\$3,000 and under	759	787	714	584	435
\$3,001 to \$15,000	820	766	767	577	562
\$15,001 and over	166	140	144	120	135
Total	1,745	1,693	1,625	1,281	1,132

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 20% of overall civil dispute applications.

Table 12: Number of applications for increased jurisdiction

Amount of claim	2017–18	2018–19	2019–20	2020–21	2021–22
\$10,001 and over	316	279	283	222	231
Total	1,745	1,693	1,625	1,281	1,132

Civil dispute applications follow different pathways depending upon the nature of the matter and the amount of the claim.

For unopposed matters (that is, 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 the year under review, 327 responses contesting liability were lodged, 50 of which included a counter-claim. In all applications where a response is lodged, ADR is considered as the first approach. ADR in this jurisdiction most commonly involves a conference and immediate determination (CID), or a one-hour preliminary conference, or a half day conference and evaluation. The type of ADR is tailored to the amount in dispute or the type of dispute.

When a matter is listed for 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. Applications suitable for CID include:

- straightforward matters under \$3,000 in value (i.e. with no counter claim, or legal or factual complexities)
- straightforward common boundaries applications (i.e. no associated nuisance claim or legal or factual complexities)

A matter listed for preliminary conference will generally receive a one-hour preliminary conference and, if the matter is not resolved, directions are made preparing the application for a hearing to be conducted on another day. Applications suitable for one-hour conference include:

- applications between \$3,000 and \$15,000 in value
- complex common boundaries disputes
- complex claims under \$3,000 in value

Contested matters over \$15,000 in value, and matters over \$10,000 with particular complexity or sensitivities, are listed for a half day conference and evaluation. If the matter is not resolved, directions are made preparing the application for a hearing to be conducted on another day.

Of the contested civil applications referred to ADR, a significant number are resolved at ADR or between ADR and the final hearing. Of the 43 CID conferences held during the reporting period, only eight matters (19%) proceeded to hearing. In the reporting period, 275 preliminary conferences were conducted, 65 matters were adjourned for further preliminary conference, and 29 conference and evaluations were conducted. Four matters were referred to mediation. There were 143 final hearings, with an additional 20 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. Hearings are usually listed about eight weeks after ADR.

In 2020–21, matters took longer to finalise due to the deferred processing of non-urgent applications during the COVID-19 crisis. In 2021–22, the average number of days for finalisation reduced significantly to an improvement on pre-COVID-19 timeframes. This is in part due to earlier identification of complex matters requiring proactive case management, and more confident utilisation of technology by parties and the ACAT to conduct ADR and hearings in a timely manner.

Table 13: Average days to finalisation for civil dispute matters

Average days to finalisation	2018–19*	2019–20	2020–21	2021–22
Civil disputes	156	162	197	143

* Data for the period 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 54 applications in the reporting period, an increase of around 15% on the previous reporting period.

Unit titles applications have more than doubled in number from 25 in 2016–17 to 54 in the 2021–22 year. 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 clarify the issues in dispute, identify any additional parties that need to be joined to the proceeding, and determine the best procedure for dealing with the particular case.

A matter involving complex procedural steps and notification of additional parties may require several directions hearings. Wherever appropriate, applications are referred to ADR at an early stage. Some applications lend themselves to early mediation, or a half day preliminary conference, while others would not benefit from ADR because the parties seek determination of a legal issue. Applications in the latter category may require interim determinations or quick final hearings.

There were 77 directions hearings, six hearings of applications for interim or other orders, six mentions and 21 final hearings (with two additional adjourned days of hearing) conducted during the reporting period. Two mediations were held, three half-day conference and evaluations, three preliminary conferences and three adjourned preliminary conferences.

In 2021–22, the average number of days before an application was finalised was 101 days, a significant decrease from 146 days in 2020–21.

Table 14: Average days to finalisation for unit titles matters

Average days to finalisation	2018–19*	2019–20	2020–21	2021–22
Unit titles	152	89	146	101

* Data for the period 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 was held in the period, followed by the matter being discontinued and dismissed.

In 2021–22, the average number of days before an application was finalised was 17 days, a decrease from 66 days in 2020–21. This variability is to be expected due to the small number of matters.

Table 15: Average days to finalisation for retirement village matters

Average days to finalisation	2018–19*	2019–20	2020–21	2021–22
Retirement villages	259	12	66	17

* Data for the period 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). Forty new referrals were received in the reporting period, and 42 matters were finalised.

The ACAT also receives a copy of conciliation agreements reached at the HRC. In the reporting period the tribunal received 36 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 one application for orders was received.

Amendments to the *Human Rights Commission Act 2005* allow for the HRC to initiate discrimination complaints with the tribunal, however no application was received during the reporting period.

Table 16: Discrimination overview

Discrimination	2017-18	2018-19	2019-20	2020-21	2021-22
Complaints referred	17	24	36	39	40
Complaints finalised	9	24	28	43	42
HRC-initiated matter	-	-	-	1	0
Conciliation agreements registered	32	32	33	32	36
Application for orders in relation to conciliation agreement*	-	-	1	1	1

* This data was collected from 2019-20 onwards.

The 40 referred complaints involved 37 complainants. The primary grounds of complaint for referred complaints and conciliation agreements were as follows:

Table 17: Grounds for complaint

Primary ground of complaint 2021-22 discrimination matters	Complaints	Conciliation agreements	HRC referrals (s. 53)	Total
Age	0	2		2
Disability	19	17		36
Race	9	3		12
Religion or political conviction	2	2		4
Profession or trade organisation	1	1		2
Pregnancy	1	1		2
Vilification	2	0		2
Victimisation	1	2		3
Sex	3	4		7
Sexuality	0	1		1
Spent conviction	1	0		1
Status as a parent or carer	0	2		2

Primary ground of complaint 2021-22 discrimination matters	Complaints	Conciliation agreements	HRC referrals (s. 53)	Total
Subjection to domestic or family violence	0	0		0
Other	1	1		2
Total	40	36	0	76

The 40 referred complaints continue 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 relative to other areas of the tribunal's work.

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 three to four tribunal events per matter, with the average hearing being two days.²

Discrimination is a technical area of law and 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, with time for the other parties to prepare their response in between. That process allows adequate time for the other party to respond to the case but it does take more time to finalise a matter.

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. It is possible 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. 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 14 matters referred to mediation in the reporting period, four (29%) were resolved at ADR, six (43%) were resolved after ADR, 1 (7%) proceeded to hearing and three (21%) are yet to be determined. Five other matters underwent a preliminary conference, with none settling at ADR, one (20%) settling after ADR, two (40%) proceeding to hearing and two (40%) yet to be determined.

² 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 aims to resolve all discrimination complaints and applications for orders relating to conciliation agreements within 12 months of receipt by the ACAT. 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, ill 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.

Table 18: Age of pending files for discrimination matters as at 30 June 2022

Number of complaints	0–3 months	3–6 months	6–9 months	9–12 months	12 months+	Total
2021–22	4	3	1	5	6	19
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 ACAT 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.

Guardianship is a protective jurisdiction with a strong inquisitorial process. The tribunal requests 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. The attendance of the subject person greatly improves the value and effectiveness of the hearing.

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. Some 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.

Guardianship hearings were held at the Canberra, Calvary and University of Canberra Hospitals in 2021–22. During that period, 45 hearings were held at the Canberra Hospital and 22 were held at the University of Canberra Hospital, with 78% of proposed protected persons attending their hearings. At Calvary Hospital 13 hearings were held with all the proposed protected persons attending their hearings.

For hospital hearings, the period between lodgement of a completed application and hearing was approximately 12.9 days for the Canberra Hospital and University of Canberra Hospital, and 6.3 days for Calvary Hospital. The relatively short periods often enabled earlier discharge of the subject person. This benefited 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 reporting period, the tribunal also held hearings at several aged care accommodation facilities and private hospitals, again to enable participation of the subject person.

For COVID-19 reasons, most hearings during the reporting period needed to be held by conference telephone. 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 potentially alleviates this disadvantage.

The role of the ACAT 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 ACAT's 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 the person's 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 ACAT reviews the appointments of managers who do not comply with their obligation to lodge annual accounts. Ongoing non-compliance can sometimes lead to the revocation of a manager's appointment.

Table 19: Overview of guardianship matters

Guardianship and management of property orders	2017-18	2018-19	2019-20	2020-21	2021-22
Applications lodged	190	191	151	159	184
Own motion reviews of orders	495	404	470	538	473
Emergency appointments	16	6	14	4	1

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.

Table 20: Conditions affecting subject people

Conditions affecting subject people	2017-18	2018-19	2019-20	2020-21	2021-22
Dementia	37%	49%	54%	58%	59%
Mental illness	21%	14%	19%	15%	15%
Intellectual disability	26%	24%	11%	21%	18%
Acquired brain injury	17%	13%	16%	6%	8%

When deciding whether to appoint a guardian and/or manager and, if so, the powers that should be given to the guardian and/or manager, the ACAT 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 ACAT 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 under the *Aged Care Act 1997* (Cth). Whilst Commonwealth legislation regulates the provider 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 decisions *In the Matter of Ben* [2020] ACAT 82, *In the Matter of Evelyn* [2021] ACAT 126 and *Re Frieda* [2022] ACAT 27.

The ACAT 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 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 that Act, who lack capacity to make decisions about their treatment, care and support, and who need treatment and do not agree to receive treatment. On questions about whether a person is not agreeing to receive treatment and about whether treatment can be provided other than under a mental health order, see generally the tribunal's decision *In the Matter of Adam* [2020] ACAT 91.

The ACAT can order the involuntary treatment of a person with a mental illness under a psychiatric treatment order or a forensic psychiatric treatment order. It can order the involuntary treatment of a person with a mental disorder under a community care order or a forensic community care health order.

Each order is made for a specified period. Unless revoked beforehand, each order is reviewed on the tribunal's own initiative before it expires. On review, a further order can be made if the criteria for doing so continue to be met.

The ACAT may make an order requiring a person to attend an appointment to assess their mental health. On questions about whether an assessment order can be made, see the tribunal's decision *In the Matter of Indira* [2022] ACAT 8.

The ACAT may also make an order authorising the administration of electroconvulsive therapy. It may make an order extending the period of a person's emergency detention from three days to up to 14 days.

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.

In addition, the ACAT 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, make recommendations about how the person should be dealt with.

The tribunal may make a mental health order or a forensic mental health order, if the criteria for doing so are met, where charges are dismissed against a person but a court orders the person to submit to the jurisdiction of the tribunal for the purpose of making such an order.

Where a court has found a person not guilty because of mental impairment, the tribunal must review the person's detention and can order the release of the person on such conditions that it considers appropriate.

Procedures under the *Mental Health Act* set tight time frames that govern the ACAT's workflow. To enable the participation of persons who are inpatients, the tribunal sits at The Canberra Hospital each Monday afternoon and Thursday morning to hear applications for mental health orders. It sits at the tribunal's premises each Monday morning and Thursday afternoon to hear applications for mental health orders that involve people living in the community. Hearings are also held for patients 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 occurred more frequently during the reporting period because of COVID-19 restrictions.

Data regarding mental health hearings is as follows:

Table 21: Overview of mental health matters

Mental health	2017-18	2018-19	2019-20	2020-21	2021-22
Applications for mental health orders	437	477	529	551	496
Psychiatric treatment orders made	607*	608	706	752	794
Community care orders made	4	13	4	1	2
Restriction orders made	4	13	6	2	6
Electroconvulsive therapy (ECT) orders made	29	37	49	40	50
Conditional release orders made	11	20	22	20	14
Applications dismissed	22	17	36	39	54
Reviews of existing orders where no further order was made	70	48	31	50	46
Applications for extension of emergency detention	448+	488	529	582	552
Emergency detention orders made	454**	510	567	582	562
Forensic referrals	21	21	22	46	44
Applications for ECT	25	37	54	40	50
Own motion reviews of orders	530	488	525	607	647
Requests for revocation	133+	145	154	202	196

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. This data includes both psychiatric treatment orders and forensic psychiatric treatment orders.

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

The ACAT's files in its mental health jurisdiction relate to the subject person rather than to a discrete application or a review of an order. The file remains open to ensure an ongoing record of orders made regarding the person.

The ACAT'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. 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

Since the commencement of the *Motor Accident Injuries Act 2019* (MAI Act) in February 2020, the ACAT has jurisdiction to review specified decisions by insurers or to make determinations about injury or death resulting from involvement in a motor vehicle accident in the ACT. In response to applications 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.

During this reporting period, the ACAT has had the opportunity to utilise, review and assess the processes implemented in preparation for the commencement of this new jurisdiction. Notwithstanding the small volume of applications to date, the processes and procedures have worked well in facilitating the progress of applications to the tribunal.

As in the 2020–21 reporting period, in this reporting period there were fewer MAI applications than were anticipated. Whilst the industry and the Motor Accident Commission may be better placed to explain the fewer than expected number of applications to the ACAT, one explanation might be that the scheme, including the internal review mechanism, is operating in a way that meets the ACT Government's policy objectives. According to a media release dated 22 October 2021, issued by Hon Chris Steel to mark the first year and a half of the scheme's operation, more than 95 percent of lodged applications are being accepted by MAI insurers. The Minister suggested that the figure "shows these providers are doing the right thing and providing support when it's needed."

Based on the information available to the ACAT, it is unclear how many, and why, people whose claims are not accepted by insurers decide not to commence proceedings in the ACAT.

One explanation for the low number of applications to the ACAT might be that the number of accidents and injuries has dropped in recent years. It is possible that the ongoing impact of COVID-19 has had the effect of reducing the frequency and extent of road use by people and consequently the number of accidents and injuries. If the number of motor accidents and resulting injuries has not decreased, the fewer number of applications may be a result of unrepresented applicants' reluctance to engage in the external review process. Most of the applicants in the reporting period were legally represented. In those cases where the ACAT found in favour of the applicant, it awarded costs. Those costs were the maximum sum permitted by the legislation. The ACAT is unable to assess the extent to which, if at all, the cap on the amount for costs that the ACAT can order and which lawyers can charge for their services under the MAI Act, affects the number of matters in which lawyers are willing to provide representation and hence the number of applications to the ACAT for external review.

The MAI Commission, under the MAI Act, has the function of collecting, evaluating, disseminating, and reporting on information about the scheme. It might be that an explanation for the lower than anticipated numbers of applications to the ACAT will become evident from information gathered and analysed by the MAI Commission.

Table 22: Total number of motor accident injuries applications

	2020-21		2021-22	
	Lodgements	Finalisations	Lodgements	Finalisations
Application to review an insurer's decision	15	4	7	14
Payment of death benefits	2	1	0	1
Total	17	5	7	15

An application to the ACAT under the MAI Act for external review of an insurer's reviewable decision is limited to a question of fact or law and, unless otherwise ordered, the ACAT must only consider the information that was available to the decision-maker when the decision was made. Wherever possible and appropriate, in order to streamline the ACAT's response to an MAI application and to simplify the process for the parties, matters are dealt with in chambers and decisions are made based on documents lodged by the parties and without conducting a hearing. However, before this approach is adopted, parties are always consulted and given an opportunity to provide their views as to whether they prefer to participate in a hearing.

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

In the reporting period the tribunal published its written reasons for decision in most matters that have progressed to the point of final orders. In doing so the presiding members have addressed the substantive issues and have sought to provide guidance on the correct interpretation of the MAI Act and Guidelines. These written decisions may assist insurers and applicants in assessing MAI Act claims. They may also provide useful guidance to insurers in the approach that needs to be taken when making decisions. Decision of note include:

- *Williams v AAI Limited ACN 005 297 807 Trading As GIO (Motor Accident Injuries)* [2021] ACAT 100
- *Fakhouri v Insurance Australia Limited ACN 000 016 722 Trading As NRMA Insurance (Motor Accident Injuries)* [2021] ACAT 119
- *Wood v AAI Limited ACN 005 297 807 Trading As GIO (Motor Accident Injuries)* [2022] ACAT 7
- *Neish v Insurance Australia Limited ACN 000 016 722 Trading As NRMA Insurance (Motor Accident Injuries)* [2022] ACAT 24

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.

Seventeen new applications were received, and 20 matters were finalised. The tables below show the number of applications received and completed by category.

Table 23: Total number of occupational and professional regulation applications

Total matters	2017-18	2018-19	2019-20	2020-21	2021-22
Applications lodged	24	37	28	23	17
Applications finalised	19	30	40	10	20

Table 24: Types of occupational and professional regulation applications

By occupation	2017-18	2018-19	2019-20	2020-21	2021-22
Health practitioners	4	8	4	3	5
Lawyers	5	7	5	13	4
Liquor licensees	0	1	0	0	1
Security guards	1	1	2	0	1
Construction occupations	0	4	6	1	0
Long Service Leave Authority	4	5	4	0	0
Working with vulnerable people	7	2	4	3	3
Agents	-	7	3	1	1
Miscellaneous	3	2	0	2	2

All five of the new applications relating to health practitioners were brought under the *Health Practitioner Regulation National Law* seeking reviews of decisions in relation to the registration of a psychologist, a medical practitioner and three nurses.

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,³ 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 288 days from commencement to conclusion, with an average of at least four tribunal events.⁴

³ 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.

⁴ 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 five matters referred to mediation in the reporting period, one (20%) settled at mediation and the remaining four (80%) proceeded to hearing. Four matters underwent a preliminary conference in the reporting period, one (25%) settled at the conference, two (50%) settled after the conference and one (25%) proceeded to hearing.

The number of active applications in this work area decreased at the end of the reporting period from 19 to 15. A decision was reserved on two of the matters older than 12 months, with the remaining two matters being heard together and awaiting ACT Supreme Court proceedings.

Table 25: Age of pending applications for occupational regulation as at 30 June 2022

Age of files	0–3 months	3–6 months	6–9 months	9–12 months	12 months+	Total
2021–22						
No of files	5	1	4	1	4	15
% of files	33.34%	6.67%	26.66%	6.67%	26.66%	100%
2020–21						
No of files	6	4	2	3	4	19
% of files	31.58%	21.05%	10.53%	15.79%	21.05%	100%

Residential tenancies disputes

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

Table 26: Total number of residential tenancies applications

Residential tenancies	2017-18	2018-19	2019-20	2020-21	2021-22
Applications lodged	1,068	730	936	961	985
Applications finalised	1,039	1,767	824	956	1,058
Endorsement applications	335	246	332	321	75
Endorsement applications completed	302	271	215	421	109

The reduction in applications for endorsement of inconsistent terms may be due to the publication of ACAT decisions during the reporting period which clarified when endorsement of an additional term is required, and the circumstances in which the ACAT will exercise its discretion not to grant the application.

The types of residential tenancies dispute applications received, as identified at the lodgement of the application, are listed in Table 27.

Table 27: Types of residential tenancies applications

Type of application	2017-18	2018-19	2019-20	2020-21	2021-22
By lessor for access to inspect	192	82	77	145	100
By lessor for compensation	33	35	35	11	9
By lessor for refusal of animal on premises	-	-	7	0	15
By lessor for rental arrears	46	49	42	63	52
By lessor for rental increase	0	0	0	3	10
By grantor for compensation*	-	-	-	1	0
By grantor – for occupancy fee or other fee arrears*	-	-	-	1	1
By grantor – for occupancy termination and vacant possession order*	-	-	-	4	5
By tenant for animal on premises			2	8	1
By tenant for compensation	59	42	38	50	43
By tenant for other modification	-	-	2	3	1
By tenant for rent refund	4	4	2	1	1
By tenant for review of rental increase	9	6	6	6	5

Type of application	2017-18	2018-19	2019-20	2020-21	2021-22
By tenant for rent reduction	0	1	1	3	2
By tenant terminate tenancy	0	3	1	1	0
By occupant – occupancy termination order*	-	-	-	2	6
Reinstate – wrongful eviction	2	2	0	0	0
Co-tenancy dispute – bond*	-	-	-	1	6
Co-tenancy dispute – other*	-	-	-	3	14
Rental bond dispute	379	266	430	357	378
Terminate tenancy Family Violence Order or Personal Protection Order	10	4	6	11	4
Termination and possession	291	184	217	220	241
Other	43	52	70	67	91
Total	1,068	730	936	961	985

Note: * New application type in 2020-21

In 2020-21, there was an increase in applications for access to inspect a property, as COVID-19 restrictions on property inspections eased. The number of applications for access orders is now returning to the previous average.

The ACAT Registrar issued 42 warrants for eviction during the reporting period, compared with 48 warrants issued in 2020-21.

Tenancy and occupancy disputes 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 2021-22, a series of Residential Tenancies (COVID-19 Emergency Response) Declarations was gradually lifted. This is reflected in a noticeable reduction in the average number of days between the lodgement and finalisation of an occupancy or tenancy dispute, which now approaches the historic average of around 8 weeks.

Table 28: Average days to finalisation for residential tenancies matters

Average days to finalisation	2018-19*	2019-20	2020-21	2021-22
Residential tenancies	54	58	70	62

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

For speed and efficiency, applications for endorsement of inconsistent terms follow a streamlined process. Endorsement applications are considered by a member 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 for a short hearing.

During the reporting period, the average age of an application for endorsement at the time of finalisation was 133 days, an improvement on timeframes during COVID-19 but still significantly longer than the pre-COVID-19 average. This longer timeframe is in part due to a large number of applications for private tenancies involving the same proposed term, which underwent a timetable of preparation for a joint hearing, the applications were ultimately withdrawn prior to the hearing taking place. The longer average timeframe is also due to the finalisation during the reporting period of a number of social housing endorsement applications lodged in early 2021, which were heard jointly with the written decision delivered on 6 October 2021: *Commissioner for Social Housing v Social Housing Tenants* [2021] ACAT 95.

Table 29: Average days to finalisation for residential endorsement matters

Average days to finalisation	2018–19*	2019–20	2020–21	2021–22
Residential endorsements	51	142	190	133

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

During the reporting period, Canberra Community Law (CCL) continued to provide a duty lawyer service for tenants of public and social housing facing eviction. The tribunal facilitated community and public housing tenants contacting CCL in person at the ACAT or by telephone for advice, duty lawyer services and ongoing representation. During the reporting period, Legal Aid ACT commenced providing a duty lawyer service for tenants facing eviction from private housing. The ACAT is grateful for the legal assistance provided to tenants in these matters.

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* to investigate and determine complaints made by consumers against energy and water utilities licensed 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
- is an External Dispute Resolution scheme under the provisions of the *Privacy Act 1988* (Cth)
- has jurisdiction 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, who have not been able to come to a satisfactory arrangement with the utility company's hardship program, and where the withdrawal of the utility service causes, or would cause, substantial hardship, are eligible for ACAT Energy and Water (ACAT EW) 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 situations of extreme 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.

Orders are reviewed by registry team members at three or six-month intervals according to the client's circumstances, payment record and any other case-management directives issued by the tribunal member. ACAT EW registry team members refer cases to a senior or presiding member for further hearing, revocation orders, or for orders discharging an amount of debt. Hardship applications are case managed for as long as the applicant remains under threat of disconnection or restriction of supply.

Due to the ACAT'S response to restrictions imposed in relation to COVID-19, hardship application hearings were conducted by telephone for the 2020–21 reporting period. This process continued into the 2021–22 reporting period and has become the standard business process. Exceptions are made for initial applications, or where, due to special circumstances, the tribunal directs that an in-person hearing is necessary.

New applications

During 2021–22, hardship applications started trending upwards from the previous reporting period. This was due to the Statements of Expectations, issued to utility companies by the Australian Energy Regulator (AER), coming to an end on 30 June 2021. Although there was a significant increase in hardship applications for the 2021–22 reporting period compared to the previous reporting period, the total number of applications was still below the amount received in 2018–19 and 2019–20.

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. As the majority of the tribunal hearings are held by phone, only two home visits were conducted during the reporting period.

Review of orders

In 2021–22, 5,364 orders were reviewed by staff and 789 orders were listed for a review hearing before members. The primary means of engagement with Energy and Water clients continued to be through multi-member hearings. A review of business flow processes identified opportunities for an increase in individual case-management by the ACAT EW registry team, resulting in a reduction in the need for a review hearing before a member and a subsequent increase in the number of orders being made.

Table 30: Overview of energy and water hardship matters

Hardship applications	2017–18	2018–19	2019–20	2020–21	2021–22
Applications lodged	758	836	602	292	523
Reconnection orders	98	150	73	3	87
Initial hearings	673	625	463	192	353
Discharge orders	788	904	1,781	1,930	1,079
Home visits	6	3	6	0	2
Staff reviews	4,587	5,830	5,983	5,367	5,364
Review hearings	1,065	1,107	806	561	789
Applications finalised	710	656	689	567	557

Discharge of debt

The ACAT in its Energy and Water jurisdiction has the power to discharge residential customer debts in cases of substantial hardship. In deciding whether to discharge debt the ACAT will consider both the hardship circumstances of the client and their capacity to pay. Discharges are rarely for the full amount of debt and take various forms, including under-consumption discharges, co-waivers of debt with retailers for clients who have escaped family violence or similar 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 2021–22, a total of \$664,201 (covering 1,079 utility customer accounts) was discharged.

Table 31: Discharge of debt

Type	2019–20	2020–21	2021–22
COVID-19	\$16,100	\$48,965	\$90,300
COVID-19 Under Consumption	\$820	\$6,856	\$0
Debt Horizon	\$389,859	\$377,178	\$220,771
Co-Waiver	\$10,722	\$1,500	\$10,700
Hardship, One-Off, Single	\$102,251	\$124,515	\$158,697
Incentive	\$16,016	\$22,574	\$109,008
Interest	\$9,807	\$0	\$111
Less than Usage – Under Consumption	\$107,107	\$60,343	\$74,614
Total Discharge	\$652,682	\$641,931	\$664,201

Farewell

The ACAT makes special acknowledgement of Lynn Lovelock, who retired within the 2021–22 reporting period. Lynn was a respected and long-term member of the energy and water jurisdiction in all its iterations – the Essential Services Review Committee, the Energy and Water Consumer Council, and finally its amalgamation into the ACAT in 2009. Through her wealth of knowledge, Lynn was instrumental in the great work the Energy and Water team performed in her years at the ACAT. Lynn supported many clients and provided support and back-up to all the members. Her understanding of business processes will be missed, and we wish her all the best in her retirement.

Energy and water complaint applications

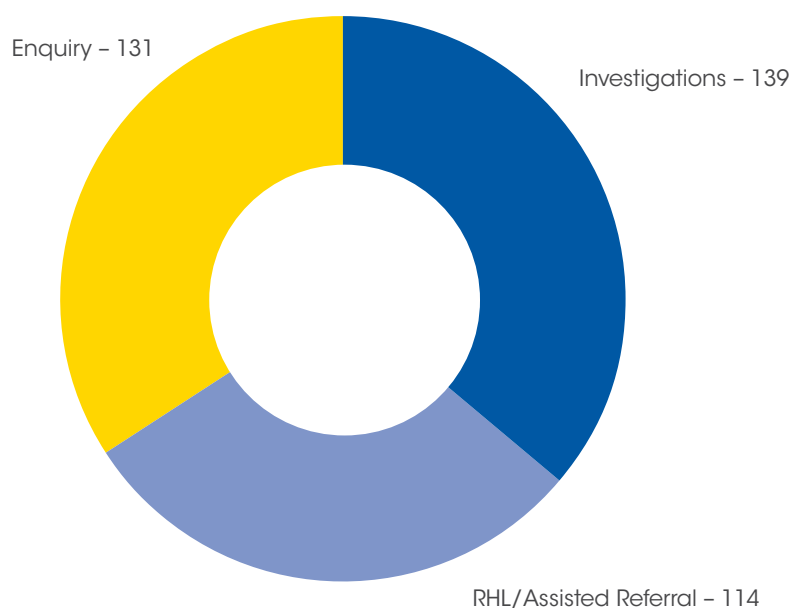
The ACAT in its Energy and Water jurisdiction is the energy ombudsman for the ACT pursuant to the National Energy Retail Regulations under the National Energy Retail Law. The ACAT has responsibilities under the *Utilities Act 2000* for considering and resolving complaints against energy retailers and distributors in the ACT, including complaints concerning solar Feed in Tariffs and water and sewerage complaints against Icon Water. The ACAT 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 complaint process has an emphasis on informal resolution. The process is similar to energy and water ombudsman schemes in other jurisdictions, where most complaint applications are finalised through early resolution processes. When a complaint is received, the ACAT EW registry team assesses the complaint and determine the appropriate resolution pathway. This 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.
- No further investigation (NFI) – this may occur where, after a complaint has been lodged, the complaint is withdrawn by the customer, there has been no further contact from the customer, the customer has been provided with a fair and reasonable offer, or after investigation there are insufficient ground to continue the complaint.
- Conference and Hearing – if the parties cannot agree on a resolution, or if the registry team considers that the matter does not require further investigation, the customer is provided the option of proceeding through the formal tribunal processes overseen by a tribunal member.

In 2021–22, 384 new enquiries and complaints were received: see Chart 2.

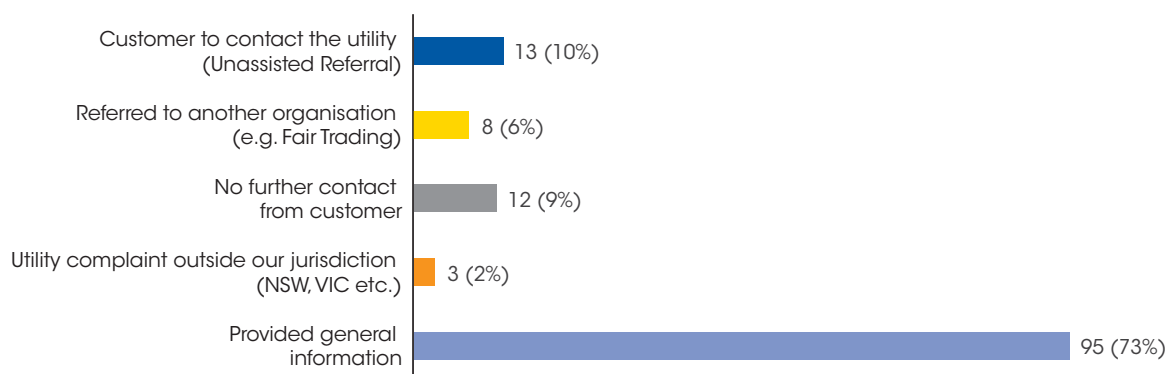
Chart 2: How energy and water complaints were handled



New enquiries

In 2021–22, 131 enquiries were recorded, compared with 137 enquiries in 2020–21. 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. Contact 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 instances of the customer being directed back to the utility as no attempt to resolve the complaint through utility business processes has been attempted. Complaints which do not fall within jurisdiction are also recorded in this area for statistical purposes.

Chart 3: How enquiries were dealt with

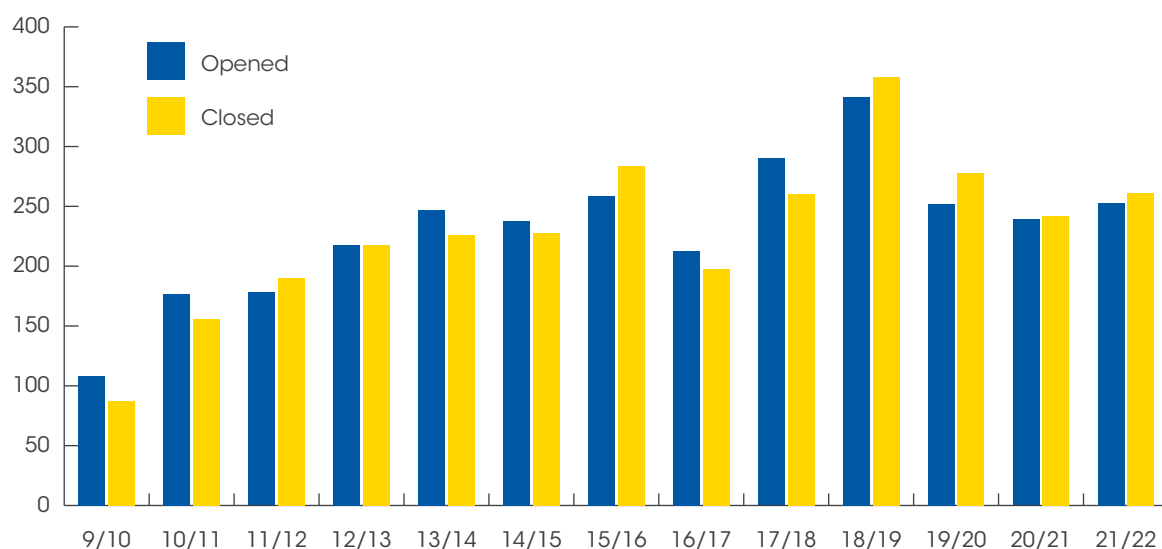


New complaints

In 2021–22, 253 new complaints were received, an increase from 2020–21 when 239 new complaints were recorded. The small increase in new complaint numbers in 2021–22 could be attributed to the ending, on 30 June 2021, of the Statements of Expectations by the AER which required that debt collection and disconnections cease during the COVID-19 crisis. Of the 253 new complaints in 2021–22, 114 complaints were referred to the utility through the RHL process and 139 complaints were classified as an investigation. The 139 complaints investigated included instances where the customer decided to continue with their complaint after an initial RHL referral.

Chart 4 records the total number of complaints (RHLs and investigations) opened and closed each year since the ACAT took on Energy and Water jurisdictional responsibility in 2009.

Chart 4: Complaints (RHLs and investigations) opened and closed each year



	9/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22
Opened	108	177	178	218	247	238	259	213	290	341	252	239	253
Closed	87	156	190	218	226	228	284	198	260	358	278	242	261

Utility complaint performance

In 2021–22, ActewAGL Retail remained the utility for which the most complaint applications were received, which reflects the utility's higher market share in the ACT. New complaints about ActewAGL Retail were similar in number to those recorded in 2020–21 and were 25% down on the numbers recorded in 2019–20. This may reflect a decreasing market share as other energy retailers increase their presence in the ACT.

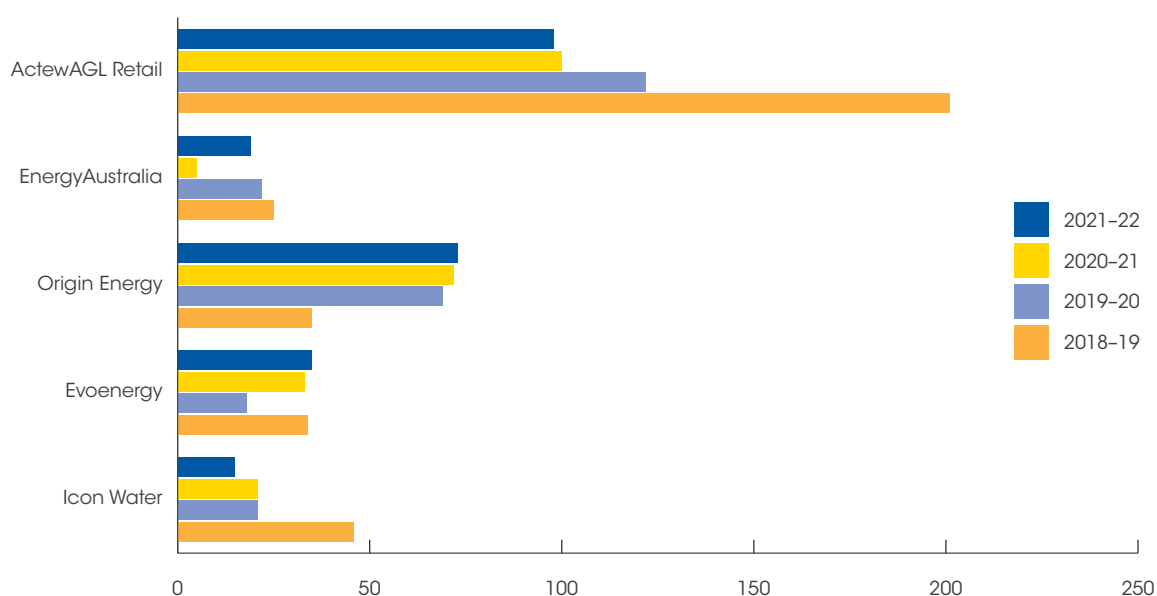
Complaints about EnergyAustralia increased significantly in percentage terms in 2021–22 compared with those recorded in 2020–21. The number of EnergyAustralia complaints, while small, is of concern considering its relatively low retail market share in the ACT.

Origin Energy complaints remained steady in comparison to the previous reporting period. However, the number of complaints received is of concern, considering its retail market share in the ACT is approximately 15–20%.

Evoenergy is the sole energy distributor in the ACT. Complaints about Evoenergy remained steady in 2021–22 compared to 2020–21, but continued to be comparatively low overall, considering its central role in the energy market in the ACT.

Complaints about Icon Water, the sole water and sewerage utility in the ACT, reduced by 30% in 2021–22, which suggests improved complaint handling processes by the utility.

Chart 5: New complaints by utility



	Icon Water	Evoenergy	Origin Energy	EnergyAustralia	ActewAGL Retail
2021-22	15	35	73	19	98
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 Chart 5.

RHLs and investigations by utility

A breakdown of RHLs and investigations opened in 2021–22 for each utility is provided below:

Table 32: RHLs and investigation breakdown

	ActewAGL Retail	Origin Energy	Energy Australia	Icon Water	Evoenergy	Other Utility	Total
RHLs	39	49	11	4	7	4	114
Investigations	59	24	8	11	28	9	139
Total	98	73	19	15	35	13	253

Most complaints that come to the tribunal with respect to ActewAGL Retail are commenced as an investigation. This is due to the good customer responses and contact to initial complaints that it provides.

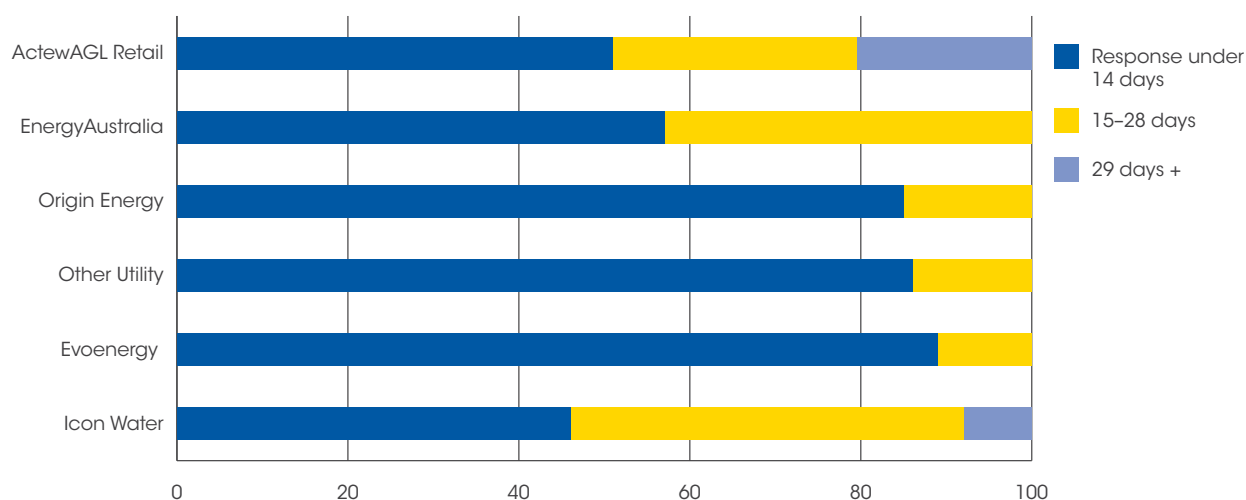
The high number of RHLs for Origin Energy may be due to the lack of a dedicated complaints team, and customers receiving unsatisfactory responses from customer service operators. The lower number of investigations may be explained by Origin Energy offering complainants significant goodwill payments at the RHL stage, resulting in early complaint resolution.

As the distributor, Evoenergy is often joined in a complaint that may have originally commenced through a retailer. This accounts for the relatively high number of investigations lodged in 2021–22.

Timeliness of utility responses

There is an expectation that utilities will provide a substantive response within two weeks, to a complaint which has been referred to them for investigation. Chart 6 records the performance of each utility against this performance standard.

Chart 6: Utility response times for investigations



	Icon Water	Evoenergy	Other Utility	Origin Energy	Energy Australia	ActewAGL Retail
Response under 14 days	46%	89%	86%	85%	57%	51%
15–28 days	46%	11%	14%	15%	43%	29%
29 days +	8%	0%	0%	0%	0%	21%

The ACAT is pleased with the response times of both Origin Energy and Evoenergy, with over 85% of matters being responded to within 14 days. In comparison, while the performance standard of ActewAGL Retail has increased to 51% in 2021–22 from 38% in 2020–21, there is concern at the length of time ActewAGL Retail have taken to respond to complaints generally.

Complaint categories

Complaints are recorded in nine general categories which are based on those categories commonly used by other energy and water ombudsman schemes in Australia. Each category includes a range of related issues. For example, 'credit' includes debt collection, disconnection for debt, actions of debt collectors, and credit default listings.

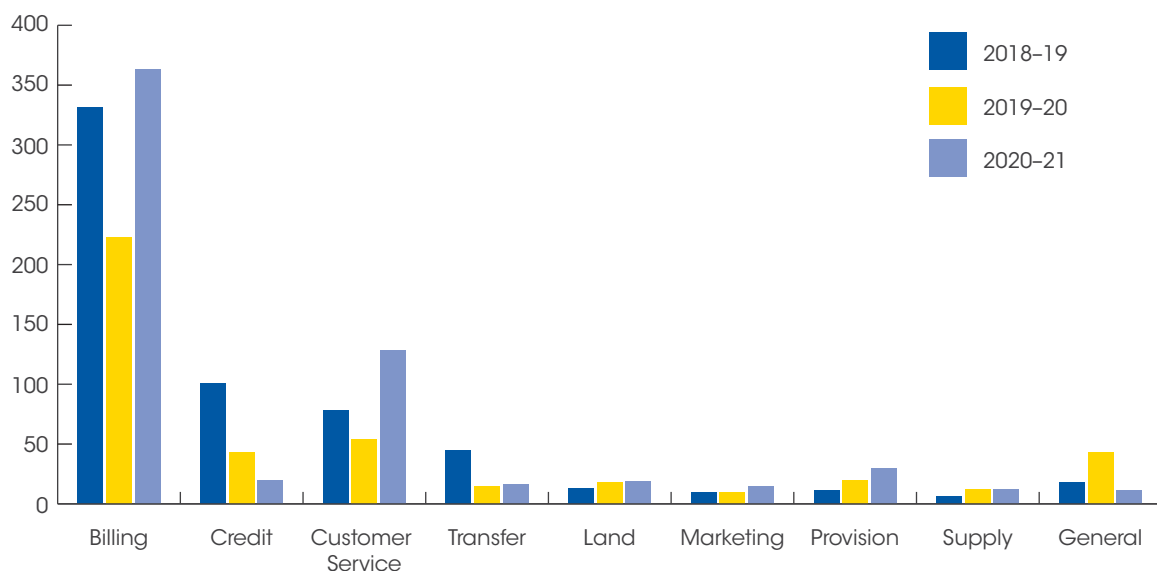
The three main categories of complaints which are received relate to billing, credit and customer service.

As in previous years, more billing complaints were received in 2021-22 than any other complaint category. Complaints regarding credit reduced by 50% from the previous year; this was in line with expectations due to changes implemented in response to COVID-19. Note that the credit category does not include hardship complaint applications under the hardship assistance program, which are reported separately in this Annual Review.

Land complaints held steady from the 2020-21 reporting period, but remain at a relatively low level overall, reflecting a generally good performance by the utilities in what can be a complex area of dispute.

Chart 7 records complaints by category, over a three-year period, and includes enquiries, RHLs and investigations.

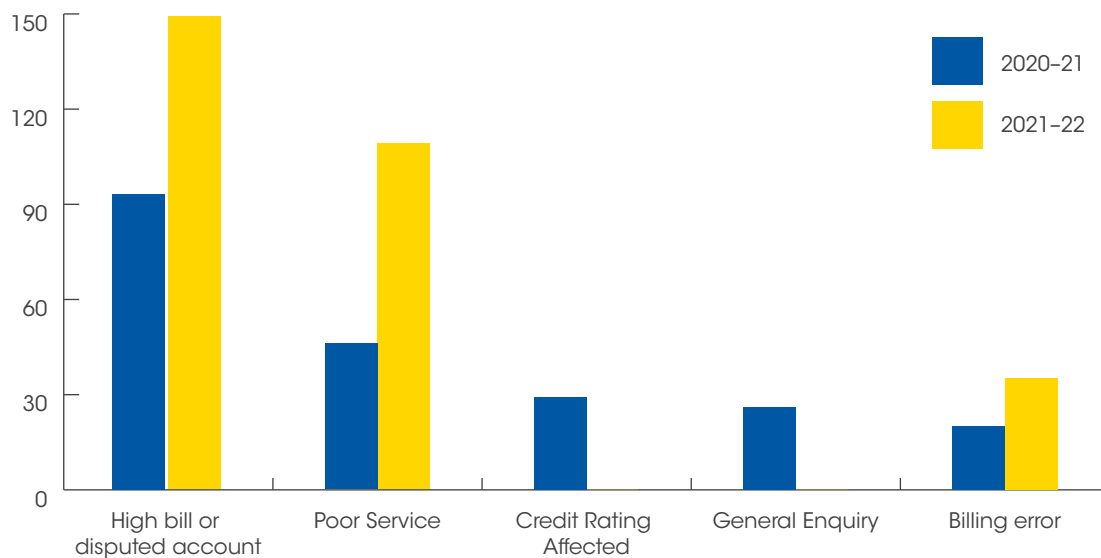
Chart 7: Complaints by categories



	Billing	Credit	Customer Service	Transfer	Land	Marketing	Provision	Supply	General
2019-20	331	101	78	45	13	10	11	6	18
2020-21	223	43	54	15	18	10	20	12	43
2021-22	363	20	128	16	19	15	30	12	11

Chart 8 records the issues most complained about in 2021–22 and compares them with the 2020–21 reporting period. The issue categories may change, as trends emerge. In total, 614 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 27% of the total of the top five issues. There was a 60% increase in this complaint issue in 2021–22, possibly due to the AER's Statements of Expectations during COVID-19 ceasing in June 2021. Poor Service complaints accounted for only 13% of the total of the top issues, but saw a 137% increase from the previous year, most likely because of increased client engagement with a utility after the AER Statements of Expectations ending. While other complaint issues have generally decreased, there has been a 750% increase in complaints regarding Meter Accuracy or Fault from 4 in 2020–21 to 34 in 2021–22.

Chart 8: Type of issue most complained about



	High bill or disputed account	Poor service	Credit rating affected	General enquiry	Billing error
2020-21	93	46	29	26	20
2021-22	149	109	0	0	35

Table 33 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 33: All issues raised in energy and water complaints (including enquiries)

	Electricity					Gas					Water	Utility	
	ActewAGL	Evoenergy	EnergyAustralia	Origin	Other Utility	ActewAGL	Evoenergy	EnergyAustralia	Origin	Other Utility	ICON Water	Not licensed	
Billing													
High bill or disputed account	50		14	21	15	21		0	12	0	16	0	149
Tariff (time of use, prices)	8		0	5	0	2		0	3	0	0	0	18
Solar Credits	2		0	3	0							0	5
Billing error	10		0	7	4	5		0	6	2	1	0	35
Delayed bill or bill not received	4		0	3	2	0		0	0	0	0	0	9
Direct Debit/Even Pay	3		0	3	0	2		0	5	0	0	0	13
Fees and charges	0		0	1	1	5		2	0	0	0	0	9
Estimated account, meter not read	3		4	2	0	3		0	8	0	3	0	23
Backbilling	2		1	1	1	3		0	1	0	0	0	9
Delay in issuing refund or refund not received	0		1	5	1	0		1	1	0	1	0	10
Meter accuracy or fault	19		1	0	0	5		0	8	0	1	0	34
Debt transferred from another account	0		0	10	2	0		0	0	0	0	0	12
Common hot water system issue						8		2	2	0	0	0	12
Dear Customer	0		0	0	0	0		0	1	0	0	0	1
Concessions	2		0	0	0	1		0	1	0	0	0	4
Other	3		1	5	3	4		0	0	0	4	0	20
Category Total	106	0	22	66	29	59	0	5	48	2	26	0	363
Credit											Total Billing %		59.12%
Facing disconnection due to non-payment	1		0	0	0	0		0	0	0	0	0	1
Disconnected/Restricted due to non-payment	0		0	0	0	0		0	0	0	0	0	0
Contacted by debt collectors	1		1	0	0	0		1	1	0	0	0	4
Credit rating affected	10		0	0	1	3		0	0	0	0	0	14
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	13	0	1	0	1	3	0	1	1	0	0	0	20
Customer service											Total Credit %		3.26%
Poor service	27	7	2	30	7	12	0	4	14	0	6	0	109
Failed to respond	3	1	1	0	1	2	0	0	2	0	0	0	10
Incorrect advice or information provided	2	0	0	1	0	2	0	0	1	2	0	0	8
Privacy concern or breach	1	0	0	0	0	0	0	0	0	0	0	0	1
Category Total	33	8	3	31	8	16	0	4	17	2	6	0	128

	Electricity					Gas					Water	Utility	Total
	ActewAGL	Evoenergy	EnergyAustralia	Origin	Other Utility	ActewAGL	Evoenergy	EnergyAustralia	Origin	Other Utility	ICON Water	Not licensed	
Transfer	Total Customer Service %										20.85%		
Contract (eg. variation, fees)	1	0	0	2	0	1	0	0	1	0		0	5
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	1	0	0	0	0	0	0		0	1
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	0	0	0	0	0	0	0		0	0
Request for new account/transfer rejected	0	0	0	1	0	0	0	1	1	0		0	3
Other	1	0	0	3	2	0	0	0	1	0		0	7
Category Total	2	0	0	7	2	1	0	1	3	0		0	16
Land	Total Transfer %										2.61%		
Easement (access, other)		0					0				0		0
Vegetation management		5					0				0		5
Network assets (health & safety, maintenance, placement)		6					4				1		11
Other (general, property damage/restoration)		2					0				1		3
Category Total		13					4				2		19
Marketing	Total Marketing %										3.09%		
Information	0	0	0	0	0	0	0	0	0	0	0	0	0
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	2	5	1	1	2	2	0	0	2	0	0	0	15
Pressure sales	0	0	0	0	0	0	0	0	0	0	0	0	0
Category Total	2	5	1	1	2	2	0	0	2	0	0	0	15
Provision	Total Land %										2.44%		
Common hot water system							3						3
Disconnection/restriction (error, meter access, safety/defect)		0					1				0		1
Existing connection (de-energisation, energisation/ connection, interference, meter removal, repair, safety, supply upgrade, other)		10					8				1		19
Solar – network connection issues		4					0				0		4
New connection (capital contribution, delay, information, other)		0					0				0		0
Restriction (error, meter access, safety/defect)		2					0				1		3
Category Total		16					12				2		30

	Electricity					Gas					Water	Utility	Total
	ActewAGL	Evoenergy	EnergyAustralia	Origin	Other Utility	ActewAGL	Evoenergy	EnergyAustralia	Origin	Other Utility	ICON Water	Not licensed	
Supply											Total Provision %		4.89%
Off supply-planned (damage/loss, duration, frequency, health & safety, inconvenience, information/notice, other)		4					0				0		4
Off supply-unplanned (damage/loss, delivery delay, duration, frequency, health & safety, inconvenience, information/notice, loadshed)		2					0				0		2
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)		5					0				1		5
Category Total	0	11	0	0	0	0	0	0	0	0	1	0	12
General Enquiry											Total Supply %		1.95%
Energy/water	0	0	0	0	0	1	0	0	0	1	0	2	4
Non energy/water	1	0	0	0	0	0	0	0	0	0	1	5	7
Category Total	1	0	0	0	0	1	0	0	0	1	1	7	11
										Total General Enquiry %			1.79%
Retailer Total	157	53	27	105	42	82	16	11	71	5	38	7	614

Complaint clients

Charts 9, 10 and 11 give a profile of the 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.

Chart 9: Types of clients

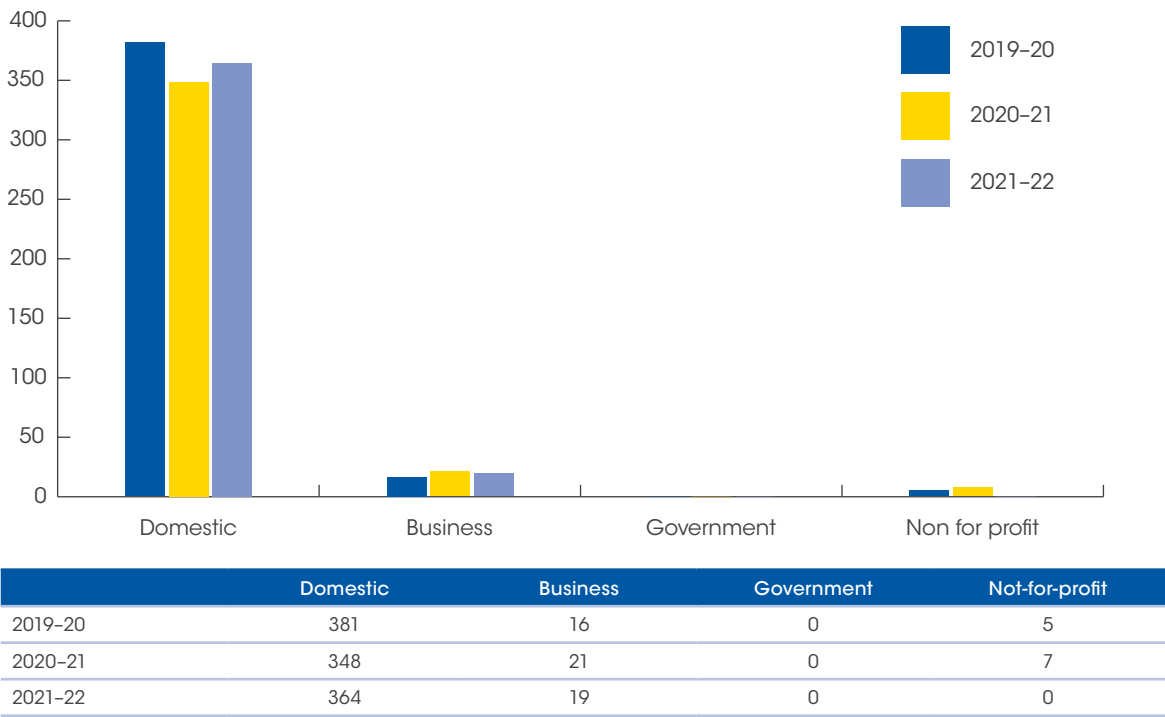


Chart 10: Gender of clients

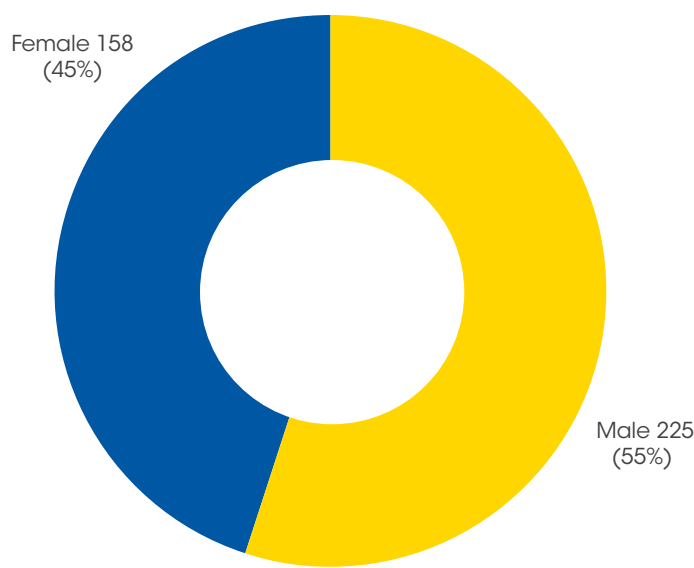
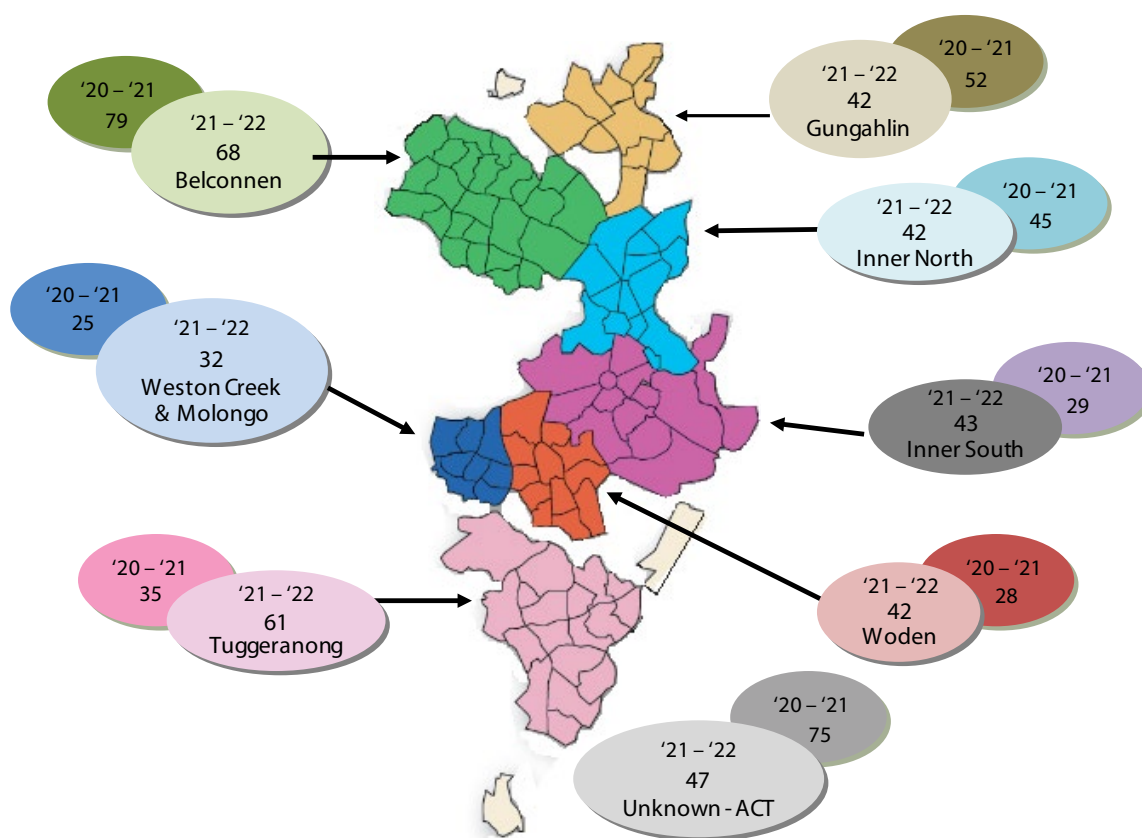


Chart 11: Location of clients in the ACT



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 2021–22, 261 complaint applications (RHLs and investigations) were closed (Chart 13). Of them, 120 complaints were closed after being referred to the utility by an RHL. More complaints were closed than opened due to RHLs that had been opened in the previous year being closed in 2021–22.

RHLs represent most of the 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 have decided not to proceed with an investigation by the ACAT.

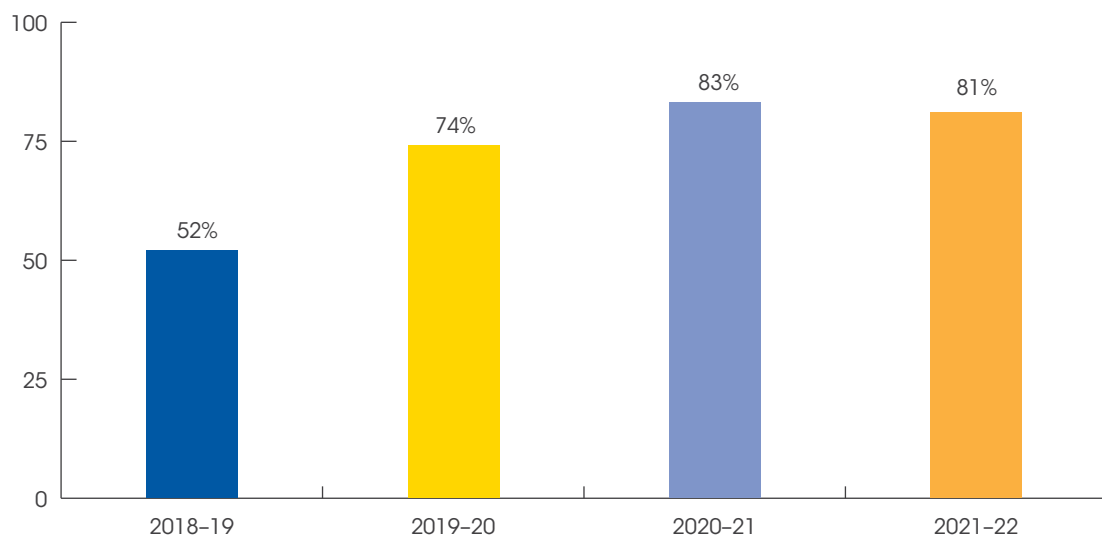
Outcome of RHLs

Most complaints are referred to utilities as RHLs. This ensures that the utility has a reasonable opportunity to resolve their customer's concerns, with minimal external involvement. The ACAT encourages utilities to use this process to re-connect with their customer, resolve concerns and restore the relationship, which is generally beneficial to all parties.

In 2021–22, of the 120 complaint applications referred to a higher level within the utility, 81% were closed at this stage without the need for further ACAT EW Complaints investigation. In 2020–21, the comparable proportion was 83%.

Chart 12 shows the trend of complaints closed because of an RHL since 2018–19. It is noted that there has been a noticeable improvement over the past four years. This may be due to an increase in competition in the ACT, with utility providers improving internal complaint processes to mitigate churn.

Chart 12: Complaints successfully resolved following an RHL to utility



	2018–2019	2019–2020	2020–21	2021–22
Closed on referral to RHL	222	167	176	120
Not resolved following RHL and opened as an investigation	106	44	30	23
Complaint resolved following RHL stage	116	123	146	97

Outcome of investigations and hearings

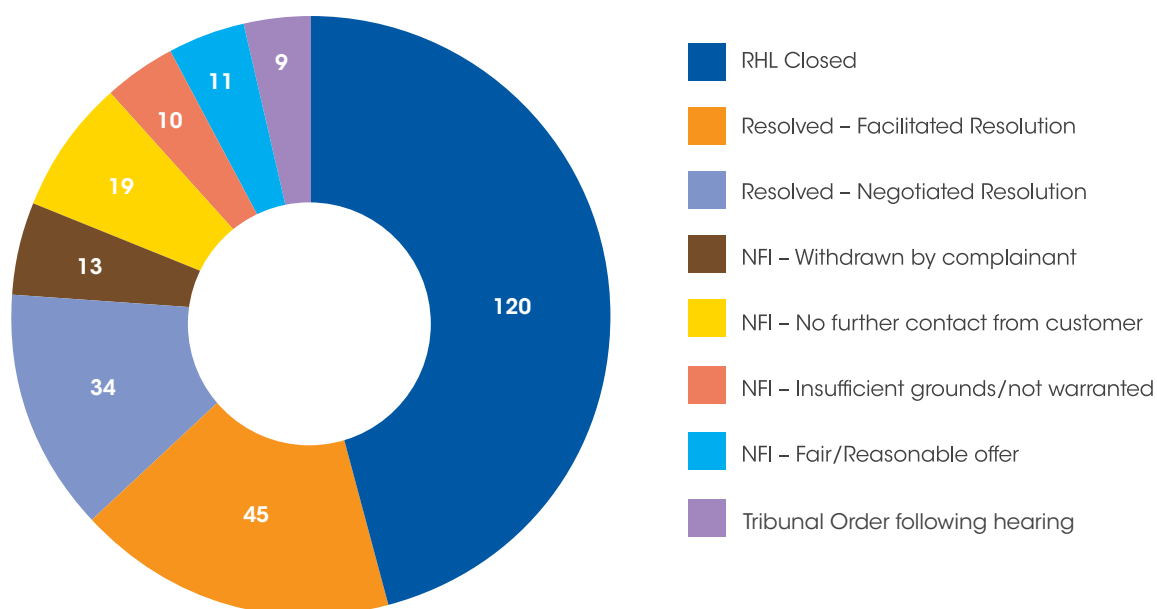
During 2021–22, 141 (53%) complaints were closed following an investigation or a hearing. Matters which proceed to formal tribunal processes are counted both as an investigation and as a formal tribunal process.

The breakdown of investigation and hearings outcomes are:

- 79 (30%) complaints were closed through the ACAT EW facilitating a resolution between the parties or by the ACAT EW actively negotiating a resolution.
- 32 (12%) complaints were closed due to clients abandoning or withdrawing their application.
- 10 (4%) complaints were closed after a review of the complaint and provision of advice to the complainant that they had no grounds, and the complainant did not proceed further in the process.
- 11 (4%) complaints were 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.
- 9 (3%) complaints were closed after a conference or hearing, resulting in orders binding on the parties.

If a view is formed 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.

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



Formal hearings

Five complaints were resolved by formal hearings in the reporting year:

- *Icon Retail Investments Limited (ABN 23 074 371 207) and AGL ACT Retail Investments Pty Ltd (ABN 53 093 631 586) v Eighani (Appeal)* [2021] ACAT 118: Credit; Default listing.
- *Mohamed v ActewAGL & Anor (Energy and Water)* [2022] ACAT 13: Feed-In-Tariff; Transfer of FiT to new property.
- *Bennett & Waterford v Icon Water Limited ACN 069 891 960 (Energy and Water)* [2022] ACAT 38: Water billing; High bill.
- *Ogilvie v Evoenergy (Energy and Water)* [2022] ACAT 45: Land; Network operations.
- *Beall v EnergyAustralia Pty Ltd (Energy and Water)* [2022] ACAT 2022/0041: Electricity billing; Sale of utility debt to collection agent.

Reported systemic issues

Section 174 of the *Utilities Act 2000* 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 2021–22, the ACAT did not report any systemic issues under section 174.

Other issues and concerns

Credit default listings

There were 11 closed complaints regarding utility-applied credit default listings during 2021–22. 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 34 provides data on the number of closed complaints in 2021–22 which involved a credit default listing issue and on the reasons those default listings were removed by the energy retailer involved.

Table 34: Outcome of credit default listing complaints

	ActewAGL Retail	Energy Australia	Origin Energy	Total
Defaults challenged by customers	12	0	0	12
Defaults removed for goodwill	0	0	0	0
Defaults removed for compliance concerns	11	0	0	11
Total defaults removed	11	0	0	11
Percentage of defaults removed	92%	N/A	N/A	92%

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 was dismissed by an Appeal Tribunal in *Icon Retail Investments Limited (ABN 23 074 371 207) and AGL ACT Retail Investments Pty Ltd (ABN 53 093 631 586) v Eighani* (Appeal) [2021] ACAT 118. It is worth noting that of the 12 defaults challenged by customers, 50% were lodged in previous years and were closed only after this appeal had been dismissed.

During 2021–22, the ACAT EW was approved by the Australian Information Commissioner as an External Dispute Resolution (EDR) scheme for the purposes of the *Privacy Act 1988* (Cth). By virtue of the ACAT being an EDR, utility retailers in the ACT can continue sending credit default listings to credit reporting agencies.

Estimates

59% of complaints in 2021–22 concerned billing issues, with estimated reads becoming a trending issue.

Under section 20(2) of the National Energy Retail Rules, the retailer must use its best endeavours to ensure that actual readings of the meter are carried out as frequently as is required to prepare its bills consistently with the metering rules, and in any event at least once every 12 months. During the COVID-19 pandemic there was a reasonable expectation that bills would be estimated, due to periods of lockdown as well as staffing issues for meter reading companies.

Unfortunately, as the ACT has transitioned out of COVID-19 lockdown, there did not appear to be a reduction in the instances of estimated reads. It seems that utility retailers in the ACT are depending on a narrow interpretation of section 20(2) to issue bills based on estimated reads, specifically the part that states ‘in any event at least once every 12 months’, without giving due consideration to the whole rule.

The ACAT has asked retailers in the ACT to provide details on how they are using ‘best endeavours’ to ensure actual readings are carried out before the preparation of a bill.

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 (ANZEWON) and is represented by the ACAT President. ANZEWON membership allows the ACAT to expand its expertise in the energy and water jurisdiction and, where possible, provide a service which is consistent with other energy ombudsman schemes.

In the reporting period the President attended the quarterly ANZEWON meetings on 7 July 2021, 23 November 2021 and 29 March 2022.

Reports, submissions and information

In the reporting period, ACAT EW made submissions to the AER in relation to:

- Accelerated smart meter rollout
- Draft Better Resets Handbook
- Compliance and Enforcement Activities.

In the reporting period, ACAT EW made submissions to the ICRC in relation to:

- Disclosure Guidelines Determinations.

In the reporting period, ACAT EW made submissions to the Australian Energy Market Commission (AEMC) in relation to:

- protecting customers affected by family violence.

Participation with industry and community

In the reporting period, ACAT EW:

- provided quarterly reports and statistics to ANZECON and the AER
- participated in monthly stakeholder web conference meetings convened by ActewAGL Retail for discussion of hardship and other issues arising as the community transitions from COVID-19 pandemic measures.

During 2021–22, we commenced participation in appropriate community outreach programs, where energy matters might be discussed including:

- Bring your bills – Facilitated by Communities@Work (31 March 2022)
- Midweek Matters (Saving Money this Winter) – Facilitated by Council of the Ageing (COTA) (11 May 2022).

During 2021–22, we joined the Society of Consumer Affairs Professionals (SOCAP) as a member. SOCAP membership allows the ACAT EW team to undertake complaints training courses. Specific training in this area provides the team with the knowledge and tools to deal with complaints in the most effective manner.

