



ACAT

AUSTRALIAN CAPITAL TERRITORY
CIVIL & ADMINISTRATIVE TRIBUNAL

Annual Report

2013–2014

ACAT

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An electronic version of this 2013–14 Annual Report can also be found on the ACAT website.

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ACT CIVIL AND ADMINISTRATIVE TRIBUNAL 2013-14 ANNUAL REPORT

ABOUT THIS REPORT

The ACT Civil and Administrative Tribunal (ACAT or the tribunal) is administered by the ACT Law Courts and Tribunal Administration within the Justice and Community Safety Directorate. Reports on performance, financial management and strategic indicators are set out at Output 3.1 in the annual report of the Directorate for 2013-14.

This report provides more detailed information about the tribunal's case workload and outcomes.

ABOUT THE TRIBUNAL

ACAT is established under the *ACT Civil and Administrative Tribunal Act 2008* (the ACAT Act). It commenced operation in February 2009. ACAT is located on Level 4, 1 Moore Street, Canberra City. Contact details are provided on the tribunal's website at www.acat.act.gov.au. This report relates to the tribunal's fifth full year of operation.

ACAT considers and resolves applications lodged by individuals, businesses, government agencies and occupational regulatory authorities about many different things. The subject matter of applications extends from the review of multi-million dollar planning and taxation decisions to the disconnection of essential services. Regardless of the subject matter, each case is of fundamental importance to the participants and often, to sectors within the ACT community. Applications can be made about:

- the review of a large number of administrative decisions
- discrimination complaints
- guardianship, financial management and enduring powers of attorney
- mental health treatment and care
- residential tenancies disputes
- energy and water hardship and complaints
- civil disputes valued at under \$10,000
- unit titles disputes
- liquor licensing

- compliance with some long service leave obligations
- the discipline and regulation of various occupations including construction occupations, surveyors, architects, security agents, real estate agents, teachers and the health and legal professions.

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

PRINCIPLES AND OBJECTS

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

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

- provide for a wide range of matters 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 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, and
- identify and bring to the Attorney General's attention systemic problems in relation to the operation of authorising laws.

TRIBUNAL MEMBERS

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

The tribunal has two full-time presidential members, two part-time presidential members, an acting presidential member, a full time non-presidential member and 71 sessional non-presidential members. The acting presidential member is also a sessional member. The names of members are set out below.

The General President is responsible for ensuring the orderly and prompt discharge of tribunal business and ensuring that tribunal decisions are made according to law. She allocates members to tribunals to deal with applications and has a number of other statutory functions relating to the operation of the tribunal. The Appeal President is responsible for the orderly and prompt discharge of tribunal business relating to appeals and referrals to the Supreme Court. He allocates members to tribunals to deal with appeal applications.

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, 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 is determined by the ACT Remuneration Tribunal. The current determinations are numbers 4 of 2013, 5 of 2013 and 4 of 2014.

Presidential members cannot engage in remunerative employment or accept an appointment to another statutory position without the Attorney General's written consent. Professor Spender has written consent to engage in employment with the Australian National University.

Members are required by section 51 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 General President can direct a member not to deal with an application, even where the parties give consent. The General President provides the Attorney-General with a written report about each disclosure after the end of each financial year.

Presidential members are appointed for a minimum term of seven years. The terms of the current presidential members are shown below. The appointments of current non-presidential members expire on either 1 February or 1 April 2015.

Many sessional members have specialised knowledge or experience about the areas in which the tribunal works. Thirty 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 used in mental health, guardianship, utilities and occupational discipline matters. Part-time members provide an invaluable service to the ACT community. The presidential members and staff of the tribunal acknowledge and thank them for their work.

ACAT Members during the period under review were:

PRESIDENTIAL MEMBERS

Linda CREBBIN	General President	Appointed 17/11/2008 to 01/01/2016
Bill STEFANIAK, RFD AM	Appeal President	Appointed 17/11/2008 to 01/01/2016

Peta SPENDER	Part-Time President	Appointed 02/02/2009 to 02/02/2016
Elizabeth SYMONS	Part-Time President	Appointed 01/04/2012 to 01/01/2019
Christopher CHENOWETH, OAM	A/g President	Appointed 23/07/2009 to 23/07/2016

NON-PRESIDENTIAL MEMBERS

Mary-Therese DANIEL	Full time member	Appointed 01/04/2012 to 01/04/2015
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SENIOR MEMBERS:

ANFORTH Allan	FOLEY Anthony James	O'NEIL Allan (resigned with effect from 21 October 2013)
BIGINELL Nigel	HATCH Brian	OWEN Cathy
BOYLE Alysoun	HERRICK Stephen	PEGRUM Roger (appointed 23 October 2013)
CHENOWETH Christopher	LENNARD Jann	SUTHERLAND Peter
CORBY Wilhelmena Elizabeth	LOFTUS Brian	TRICKETT Graeme
DAVEY Adrian George	LUNNEY Graeme	
DONOHUE Harriet Louise	MCDONALD Patricia	
DREW Leslie	MCMICHAEL Donald	

ORDINARY MEMBERS:

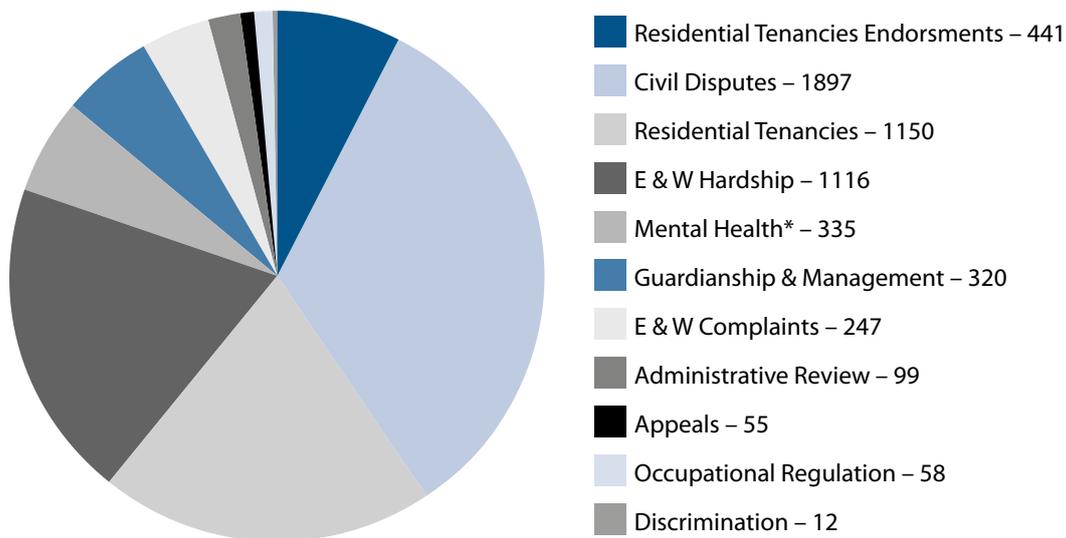
BEACROFT Laura	LUCAS Dianne	WALKER Greg (deceased Oct 2013)
BELLANTONIO Nino	MACDONALD Anne	WALKER Tom
BURDACK Leonie	MCINTOSH Angus	WALLACE Liisa
BYRNE Donald	MIDDLEMISS Tom	WATCH Ross
CONWAY Peter	MITCHELL Imogen	WEBER Linda
DAVIES Robyn	MORRIS Peter	WEDGWOOD Robert
DONOVAN John	NEWMARCH Eileen	WESTAWAY Joan
FAUNCE Thomas	NOAKES Anthony	WILLIAMS Athol
GATH Margaret	O'KEEFE Elissa	WILLIAMS Leanne
GREAGG Jane	PEARCY William	WRIGHT Graham
GREALISH Laurie	PROCTER Ann	
HAMILTON Janelle	PROCTOR Margaret	
HARBISON Scott	SEXTON Maurice	
HARDMAN David	SINGER Andrew	
HIRD Harold	SOO Tuck Meng	
HODGE Margo	STEEPER Elizabeth	
KENNEDY Rosemary	SYKES Ian	
KLEMPFNER George	TAYLOR Jan	
KRUEGER Joanne	THOMPSON Phillip	
LITTLE Rod	TOWNSEND Catherine	
LONG Francis	VAN ARKEL Abraham	

MEMBER TRAINING

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

YEAR AT A GLANCE

Graph 1 – New Applications received by Subject Matter 2013-2014



OVERALL WORKLOAD AND OUTCOMES

The profile of new applications and of resolution events changed during the year under review. The number of new civil dispute, residential tenancy dispute, discrimination and administrative review applications decreased. There was a significant increase in the number of new applications made under the *Utilities Act 2000* and a more modest, but nevertheless meaningful, increase in applications relating to guardianship and management of property and occupational regulation. Because utilities, guardianship and mental health files remain open for lengthy periods with regular “own motion” reviews, and rarely use mediation or preliminary conference techniques, the percentage of cases finalised compared to those lodged reduced, as did the number of mediations, conferences and substantive hearings. Nevertheless, the clearance rate remains high and the number of cases open for more than 12 months in the civil and administrative work areas decreased significantly.

Table 1 – Overall Workload and Outcomes

	2009-10	2010-11	2011-12	2012-13	2013-14
Cases lodged*	5789	4725	5759	5824	5730
Cases finalised*	5927	6457	6103	6122	4905
Cases pending#	1024	816	1068	1167	1021
Cases pending > 12 months#	117	40	32	48	10
Clearance rate#	113%	122%	110%	107 %	102 %
Reviews held^	2871	2721	2336	2487	2246

Notes:

* includes applicatons for endorsment of inconsistent terms;

does not include mental health, guardianship and utilities cases;

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

RESOLVING CASES

Applications in the tribunal's civil, residential tenancy, administrative and occupational regulatory work areas are resolved using alternative dispute resolution events such as mediation or conferencing and, where necessary, hearings. In some matters parties reach agreement before or during a substantive hearing and finalise the application by either withdrawing it or asking the tribunal to make orders in accordance with the agreement reached. The table below compares the number of tribunal resolution events for each year since commencement.

Table 2 – Resolution Events – All Work Areas

	2009-10	2010-11	2011-12	2012-13	2013-14
Mediation/Preliminary Conferences	887	1063	1273	1322	1257
Interim Hearings	336	528	565	333	176
Motions Hearings	226	288	309	224	289
Substantive Hearings (includes resumed hearing days)	6763	6691	6224	6522	5616

APPEALS AND REFERRALS

The Appeal President is responsible for the discharge of tribunal business relating to referrals and appeals, including the allocation of members to appeal hearings.

A party to an original application, may, for most cases, lodge an application for appeal within the tribunal on a question of fact or of law, once the tribunal has decided the original application.

In the reporting period, 55 applications for appeal were lodged with the tribunal and 46 applications were finalised. Four applications for appeal were removed to the Supreme Court on either the joint application of the parties or by the Appeal President when the parties could not agree where it should be heard.

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.

The tribunal may refer questions of law and original applications or appeals to the Supreme Court. One referral was made in the period under review.

Table 3 – Internal Appeals

	2009-10	2010-11	2011-12	2012-13	2013-14
Applications lodged	39	43	52	55	55
Applications Finalised	28	37	60	59	46

Table 4 – Type of Appeals

	2009-10	2010-11	2011-12	2012-13	2013-14
Civil Disputes	9	18	11	17	12
Residential Tenancies	14	9	22	18	23
Occupational Discipline	6	8	5	5	2
Administrative Review	7	5	5	8	9
Discrimination	2	1	2	4	3

	2009-10	2010-11	2011-12	2012-13	2013-14
Mental Health	0	1	1	1	3
Guardianship	1	1	4	0	1
Energy and Water	0	0	2	2	2

Applications were lodged with the Supreme Court for leave to appeal from three decisions of the appeal tribunal. The appeals were unsuccessful in two matters, one is still to be determined.

The modest number of appeals each year indicates a general satisfaction with the outcome of the thousands of matters the ACAT handles. Credit should be given to the tribunal members and staff for this.

CIVIL, RETIREMENT VILLAGES AND UNIT TITLES DISPUTES

ACAT decides applications relating to civil disputes about contracts, damages, debt, goods, nuisance, trespass, debt declarations, common boundaries (fences) and other matters that are stated to be civil dispute applications in an authorising law. The tribunal may determine disputes for amounts of \$10 000 or less. Parties can consent to the tribunal dealing with an application for a sum greater than \$10 000.

Most civil applications are resolved at alternative dispute resolution conferences before hearing. There is a focus on ensuring that conferences and hearings are listed with minimal delay. Preliminary conferences are usually held within 3 - 4 weeks of receipt of a response document. Hearings are listed within 4 to 6 weeks of an unsuccessful conference.

Table 5 – Civil Dispute Applications

	2009-10	2010-11	2011-12	2012-13	2013-14
Civil Applications Lodged*	1756	1826	2231	1963	1835
Common Boundaries Applications Lodged	9	32	27	26	32
Unit Titles Applications Lodged	5	27	48	30	27
Retirement Villages	0	0	0	0	3
Applications finalised	2173	2396	2482	2177	2072

*Applications to re-list matters or to set aside default judgements are not recorded as new applications.

The average number of days lapsed between the opening of a file and the closing of that file in this work area reduced by 30 days. Several measures contributed to this improvement including restricting adjournments of conferences, increasing focus on ensuring parties are prepared for hearings to further reduce the frequency of adjournments, regularly reviewing files that have been open for more than 6 months and using members to conduct preliminary conferences.

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. Three applications have been filed to date, and two of those have been resolved before a substantive hearing. Directions hearings are held for these applications so that a member can identify the issues in dispute and determine the procedure that best suits the needs of the particular case.

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

RESIDENTIAL TENANCIES DISPUTES

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

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

The number of new applications about disputes decreased compared to the two previous years. The decrease in applications for endorsement of terms reflects an inflated number of applications in the previous year which related to a major project undertaken by the Commissioner for Social Housing. The average number of days lapsed between the opening of a residential tenancies file and the closing of that file reduced by 18 days. Continued refinement of procedures and documentation has contributed to this result.

Table 6 – Residential Tenancies

	2009-10	2010-11	2011-12	2012-13	2013-14
Applications Lodged *	1222	1052	1266	1247	1150
Applications Finalised	1245	1112	1269	1367	1132
Endorsement applications	540	395	392	615	441
Endorsement applications completed	518	376	372	610	379

* Includes matters referred by the Office of Rental Bonds

The procedure for listing applications for termination and possession orders was changed to allow these matters to be heard on the same day each week. This reconfiguration allowed an outreach project for public housing tenancy matters with the Welfare Rights and Legal Centre (WRLC) and CARE Inc Financial Counselling Services (CARE), to commence on 31 October 2013. WRLC runs the Street Law project, aimed at assisting people who are homeless or who are at risk of becoming homeless by providing a free legal service and by connecting clients with other services. CARE provides parties with access to free financial counselling, assists in drawing up budgets to submit in the legal proceedings, and provides ongoing support to clients after proceedings are finalised. Research indicates that person's experience of the legal process and satisfaction with outcomes is enhanced where parties are able to obtain early legal advice and assistance relevant to their matter. As a consequence of the outreach project, more tenants facing eviction are represented, and those who are not represented are more likely to be equipped with legal advice and better able to represent themselves in the proceedings.

The tribunal is pleased to support these programs which enhance access to justice and lead to better outcomes for all parties.

In February 2014, the ACAT held a Residential Tenancy Stakeholders seminar and forum, which was attended by approximately 50 users of the ACAT. The seminar provided information about tribunal procedures and recent decisions. The forum included a report about the tribunal's work in this area for the last financial year and in the first six months of the current financial year. Attendees asked questions, provided comments and made suggestions in relation to the practices and procedures of the tribunal.

ADMINISTRATIVE REVIEW

The tribunal reviews a wide range of decisions made by government entities. A number of new "reviewable decisions" were added to the tribunal's jurisdiction during the year.

The tables that follow show the number of applications made and finalised over five years and the type of decisions for which review has been sought. Decisions with similar subject matter have been grouped together. For example, applications for review of decisions about change of use charges, motor vehicle duty, payroll tax, rates, land tax, stamp duty and first home owners' grants have been grouped together under the classification "Revenue".

Table 7 – Administrative Review

	2009-10	2010-11	2011-12	2012-13	2013-14
Applications Lodged	83	144	134	103	99
Applications Finalised	114	134	100	126	111

Table 8 – Decision Type

	2009-10	2010-11	2011-12	2012-13	2013-14
Cases subject to 120 day limit					
Planning & Development	26	58	34	25	7
Heritage	5	1	1	5	2
Tree Protection	4	2	2	2	6
Other Cases					
Building & Construction	4	6	13	14	6
Revenue	24	50	57	29	29
Licences & Permits	12	9	9	2	4
Dangerous Dog Licence	0	2	2	3	3
Freedom of Information	1	7	5	4	7
Housing Allocation	5	2	6	2	7
Miscellaneous	2	7	5	17	28

Applications concerning the same, or a substantially similar, decision may be heard together. The 99 new applications lodged in the year under review related to 86 matters. There was a significant decrease in applications relating to planning and development decisions.

In keeping with the tribunal's objects, mediation is used at an early stage for many applications. Orders requiring parties to attend mediation are made at the same time as orders that set timetables for filing documents and hearing dates in the event that the mediation is not successful. This means that hearing preparation can commence immediately if necessary. Outcomes of mediations are kept under review. Thirty-five mediations were listed with ten matters being resolved at or after the mediation and before hearing. Even in those matters that are not resolved as a result of mediation, mediation serves a useful purpose by allowing parties an opportunity to gain a better understanding of each other's case in a confidential setting.

Table 9 – Age of pending applications for administrative review as at 30 June 2014

Age of files	0-3 months	3-6 months	6-9 months	9-12 months	12 months+
No of files	24	7	10	7	0
% of files	50%	14.5%	21%	14.5%	0

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 General President if she is satisfied that the extension is in the interests of justice. The time limit is difficult to meet in matters in which there are a number of parties, or when parties ask for additional time for mediation or when a collateral or interlocutory issue interrupts the tight hearing preparation schedule.

Time was extended for several applications. 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.

- **Land Development Agency v ACT Heritage Council – AT13/17** – time extended by 69 days. Following mediation, the parties asked for time to pursue a number of actions that could lead to the resolution of their dispute other than by a contested hearing. The tribunal agreed to extend time as requested. The application was resolved and terms of agreement approved pursuant to section 55 of *ACT Civil and Administrative Tribunal ACT 2008*.
- **Cteck Hop Pty Ltd v ACTPLA & Hunt – AT13/25** - time extended by 40 days. A person closely involved with the application became seriously ill shortly after it was filed. The first directions hearing was delayed for several weeks so that the person could participate. That delayed the subsequent progress of the proceedings.
- **Gutta v ACTPLA – AT13/33** – time extended by 18 days. The matter progressed to hearing without delay and was heard on 13 and 14 August 2013. The tribunal’s decision was reserved on 14 August 2013 and handed down on 23 September 2013. The complexity and number of issues considered for the decision necessitated a longer period for the preparation of the written decision than was originally anticipated.
- **Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn v ACT Heritage Council & ORS – AT12/59** – time extended by 282 days. This matter involved a complex interlocutory issue relating to the standing of several people who wished to be joined to the proceedings. The resolution of the issue delayed the substantive hearing. Additional days then had to be scheduled for the substantive hearing, leading to further delay.
- **Gardner & Watson v ACT Heritage Council & Ors - AT13/64 and 65** – time extended by 47 days. The matter progressed to hearing without delay and was heard over 4 consecutive days, commencing on 25 November 2013. The tribunal’s decision was reserved on 28 November 2013 and handed down on 29 January 2014. The complexity and number of issues considered necessitated a longer period for the preparation of the written decision than was originally anticipated would be required.
- **ACT Rural Landholders Association Inc & Ors v ACTPLA AT13/42, 43 and 44** – time extended by 193 days. A preliminary challenge by the respondent to the standing of the applicants and an individual seeking to be joined as a party delayed preparation for the substantive hearing. The hearing took place over 4 days in November 2013. At the close of the hearing, the tribunal agreed to allow the respondent to file a further witness statement and for all parties to make further written submissions. The final written submission was received on 13 January 2014. The tribunal’s detailed decision was delivered approximately 3 months later.
- **Donohoe v ACTPLA AT11/65** - time extended by 950 days. A question of law was referred to the ACT Supreme Court in this matter in January 2012. The question was determined and referred back on 22 November 2013. The application was re-listed and directions made for the filing of documents necessary for the final hearing. The tribunal’s decision was reserved at the end of a 3 day hearing on 2 May 2014 and was delivered on 30 June 2014.

OCCUPATIONAL AND PROFESSIONAL REGULATION

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 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 decisions that affect their licence or registration. The latter applications are dealt with as occupational regulation cases rather than administrative review matters.

Mediation or confidential conferences are used in many matters to enable the parties to fully explore the issues in dispute in a confidential setting. If the parties agree on an appropriate disciplinary outcome, a joint submission is made to the tribunal so that it may consider all relevant factors before making orders in the terms

of the agreement reached. The parties may be required to explain the joint submission and provide further information relevant to the exercise of the tribunal's discretion.

Some applications require several interlocutory events and hearings of several days while others are completed with a brief hearing. Fifty-eight new applications were received, with a third of those being lodged in June 2014. The tables below show the number of applications received and completed by category.

Table 10 – Number of applications received and completed by category

	2009-10	2010-11	2011-12	2012-13	2013-14
Health Practitioners					
Applications Lodged	6	4	3	5	11
Applications Finalised	6	2	4	5	3
Lawyers					
Applications Lodged	11	11	9	13	10
Applications Finalised	7	15	10	12	10
Liquor Licensees					
Applications Lodged	3	9	5	5	1
Applications Finalised	7	9	5	5	1
Security Guards					
Applications Lodged	6	2	7	7	6
Applications Finalised	12	2	4	9	4
Construction Occupations					
Applications Lodged	n/a	4	7	7	9
Applications Finalised	n/a	4	7	5	5
Long Service Leave Authority					
Applications Lodged	n/a	7	0	8	16
Applications Finalised	n/a	7	0	8	5
Miscellaneous					
Applications Lodged	n/a	2	12	2	5
Applications Finalised	n/a	2	11	4	5

The Australian Health Practitioner Regulation Agency has asked tribunals to provide more detailed information in annual reports about applications relating to health practitioners. Some applications are filed by Boards seeking disciplinary orders while others are filed by practitioners who appeal decisions made by Boards about them. Of the 11 new applications relating to health practitioners, seven related to medical practitioners, two to psychologists, one to a dentist and one to a midwife. The categories of notification are as follows:

Table 11 – Category of notification of ACAT Occupational Regulation matters relating to Health Practitioners

	Number
Behaviour	2
Boundary violation	2
Clinical care	2
Health impairment	2
Pharmacy/medication	3
Total number of matters	11

DISCRIMINATION

The tribunal hears complaints under the *Discrimination Act 1991* referred to it by the Human Rights and Discrimination Commissioner and registers agreements reached during conciliations conducted by the Commissioner.

Table 12 – Discrimination

	2009-10	2010-11	2011-12	2012-13	2013-14
Complaints Referred	9	30	19	17	12
Complaints Finalised	10	17	30	14	20

The twelve new complaints involved eleven complainants. The primary ground of complaint for four complainants was unlawful discrimination on the ground of race; three were concerned primarily with disability discrimination, two with sex/sexual harassment, two with age discrimination in employment and one with discrimination on the grounds of status as a parent or carer, in employment.

Of the twenty matters finalised this year, ten matters were discontinued, seven matters were dismissed after proceeding to hearing (several of these matters were connected), two were dismissed after the hearing of applications brought under section 32 of the ACAT Act and one matter was dismissed after the tribunal dealt with the application on the papers pursuant to section 54 of the *ACT Civil and Administrative Tribunal Act 2008*.

Table 13 – Age of pending files for discrimination matters as at 30 June 2014

Age of files	0-3 months	3-6 months	6-9 months	9-12 months	12 months+
Number of complaints	4	1	1	0	1

One complaint was more than 12 months old at the end of the year. The applicant in that matter sought several extensions of time for filing documents and adjournments of hearings.

Most applicants do not have legal representation. While the tribunal's processes allow parties to represent themselves, the law relating to discrimination is complex and technical and all parties would benefit from assistance with the preparation of their cases.

MENTAL HEALTH

The *Mental Health (Treatment and Care) Act 1994* gives ACAT power to determine applications for orders relating to the treatment and care of people who suffer from a mental illness or mental dysfunction. The tribunal may make psychiatric treatment and community care orders, restriction orders and orders for assessment. The tribunal also considers applications for the release of people involuntarily detained, for the extension of emergency detention, and for orders authorising the administration of electro-convulsive therapy. Most orders are reviewed on the tribunal's own initiative before expiry.

In addition, ACAT considers matters referred by courts. The tribunal may determine whether a person charged with a criminal offence has a mental impairment, make a mental health order or review whether an offender with a mental impairment should be detained or released with or without conditions.

Procedures in this area are largely determined by the authorising law which sets tight time frames and statutory obligations that govern workflow. The tribunal sits at The Canberra Hospital on Monday afternoon and Thursday morning and at the tribunal's own premises each Thursday afternoon. Hearings are also held at the Older Persons Mental Health Unit at Calvary Hospital. Some referrals relating to offenders were dealt with at the Magistrates Court because the tribunal does not have an on-site custodial facility. It hasn't been possible to discern any longitudinal trends in this work area, although overall, the volume of work, particularly in relation to reviews of orders, has increased since the tribunal commenced.

Table 14 – Mental Health

	2009-10	2010-11	2011-12	2012-13	2013-14
Applications for Mental Health Orders	302	343	305	358	325
Applications for Extension of Emergency Detention	203	274	225	267	299
Forensic Referrals	66	29	52	65	43
Applications for ECT	25	20	16	14	10
Own Motion Reviews of Orders	760	822	786	848	877
Requests for Revocation	21	121	151	109	80

Files in this jurisdiction remain open unless the person who is the subject of the application dies. It is difficult to obtain a report on the number of matters that are finalised as distinct from reports on the number of orders made. The statutory time frames however, ensure that all applications are considered and determined quickly.

The tribunal's ability to meet its statutory obligations is greatly assisted by the work of ACT Health's Tribunal Liaison Officer, 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. ACAT acknowledges their important contribution and their on-going commitment to this work.

GUARDIANSHIP AND MANAGEMENT OF PROPERTY

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

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

This is a protective jurisdiction with a strong inquisitorial process. Tribunal staff request reports from health professionals, care providers, the Public Advocate and the Public Trustee to provide information for hearings.

Applications are processed and listed for hearing within 3 to 6 weeks of receipt. Most matters are finalised on the first listing date. A small number of matters are adjourned to allow further information to be obtained. Hearings may be held at shorter notice and may take place at a hospital or where the protected person lives.

The role of the tribunal continues after orders are made. Each order must be reviewed on the tribunal's own initiative at least once in each three year period. Reviews are scheduled for any time from 3 months to three years after an order is made depending on the nature of the condition that leads to the impairment of decision-making and the life circumstances of the protected person.

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

Because of the on-going requirement to review orders, files remain open until the person the subject of the application dies or orders are revoked on review. It is not possible to obtain a report that shows the number of finalised applications. The nature of the cases however is that applications are determined in short time frames.

The tribunal writes to financial managers each year to remind them of their statutory obligation to submit accounts to the Public Trustee for the ACT for examination. The Public Trustee in turn reports to the tribunal about the outcome of examinations and about any failure to submit reports. The tribunal reviews the appointment of managers who do not comply with the obligation.

Table 15 – Guardianship & Management of Property Orders

	2009-10	2010-11	2011-12	2012-13	2013-14
Applications Lodged	276	292	265	299	320
Own Motion Reviews of Orders	329	366	428	460	504
Emergency Appointments	42	42	52	24	20

The number of own motion reviews continue to increase as new orders exceed the number of revocations and deaths.

Applications for emergency appointments continue to decrease as use is made of legislation to allow the appointment of health attorneys for urgent medical decisions. The figures shown above relate to initial applications for emergency appointment only. It is common for the tribunal to receive applications for further appointments for each matter.

The tribunal collects data about the conditions affecting people who are the subject of applications for new orders using internationally agreed categories. The data indicates as follows:

Table 16 – Conditions affecting subject people

	2011-12	2012-13	2013-14
Dementia	35%	38%	32%
Mental Illness	32%	32%	29%
Intellectual Disability	20%	22%	25%
Acquired Brain Injury	13%	8%	14%

ACAT acknowledges the considerable assistance it receives from staff of the Public Advocate of the ACT and of the Public Trustee of the ACT in this area. The reports provided to the tribunal are invaluable. The quality of participation in hearings is of the highest standard. Both statutory offices contribute constructively to this area of work and the tribunal is grateful for their assistance and patience.

UTILITIES - ENERGY AND WATER

ACAT has jurisdiction under the *Utilities Act 2000* to determine applications for hardship assistance for energy and water customers who cannot afford to pay their bills and are facing disconnection or restriction of supply (hardship applications). ACAT also investigates and determines complaints made by customers and consumers against energy and water utilities licensed in the ACT, including complaints about the Feed-in Tariff (complaint applications).

HARDSHIP APPLICATIONS

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

NEW APPLICATIONS

New applications increased by over thirty percent. The tribunal noted a number of new applications from people with very high debt; where there had been little active collection activity by the utility for some time before disconnection, an often unrealistic payment arrangement and no referral to in-house hardship programs. These applications mainly involve ActewAGL Retail electricity customers. The tribunal has expressed concern about these matters formally with ActewAGL Retail and informally with the Australian Energy Regulator. The tribunal will continue to monitor the issue.

HOME VISITS

A home visit is offered to clients who have mobility issues – physical, psychological or age related. Typically, a Senior Member undertakes these visits accompanied by a registry staff member. After the initial home visit, reviews are often conducted by telephone. During 2013-14, the tribunal started conducting initial hearings by telephone when possible with just two home visits needed.

REVIEW OF ORDERS

In 2013-14, 5907 orders were reviewed by staff and 865 orders were listed for a review hearing before members. Staff prepared 995 debt discharge orders and 775 revocation orders for consideration by a Senior or Presiding Member. An additional 34 debt discharge orders and 148 revocation orders were made by a Senior or Presiding Member at hearing.

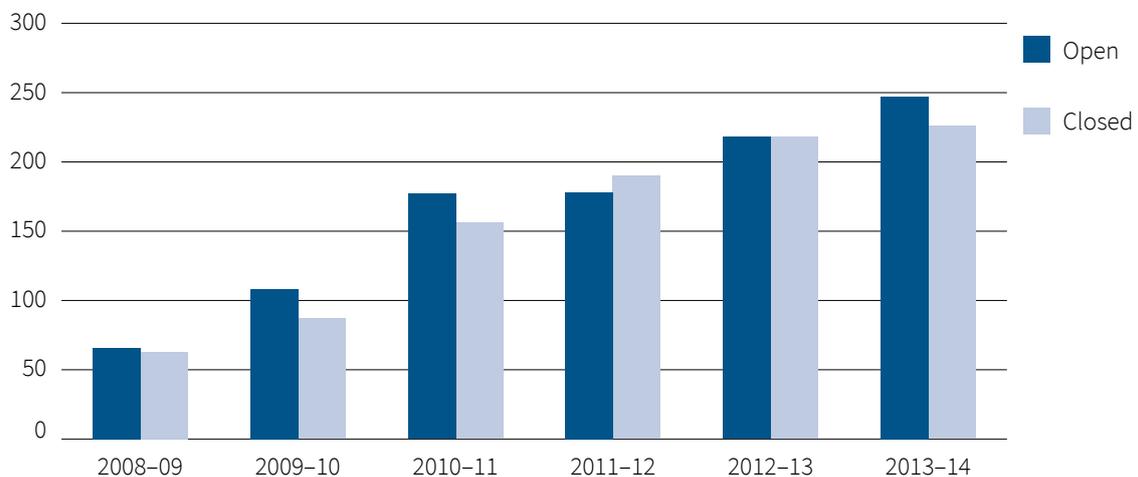
Table 17 – Hardship Applications

	2009-10	2010-11	2011-12	2012-13	2013-14
Applications Lodged	1389	685	874	847	1116
Reconnection Orders	286	101	179	56	114
Initial Hearings	1614	770	988	915	1233
Discharge Orders	915	1035	920	1042	1029
Home Visits	27	44	49	14	2
Staff Reviews	7088	7313	5656	5261	5907
Review Hearings	1791	1533	1122	1179	865
Applications Finalised	1117	1078	990	848	886

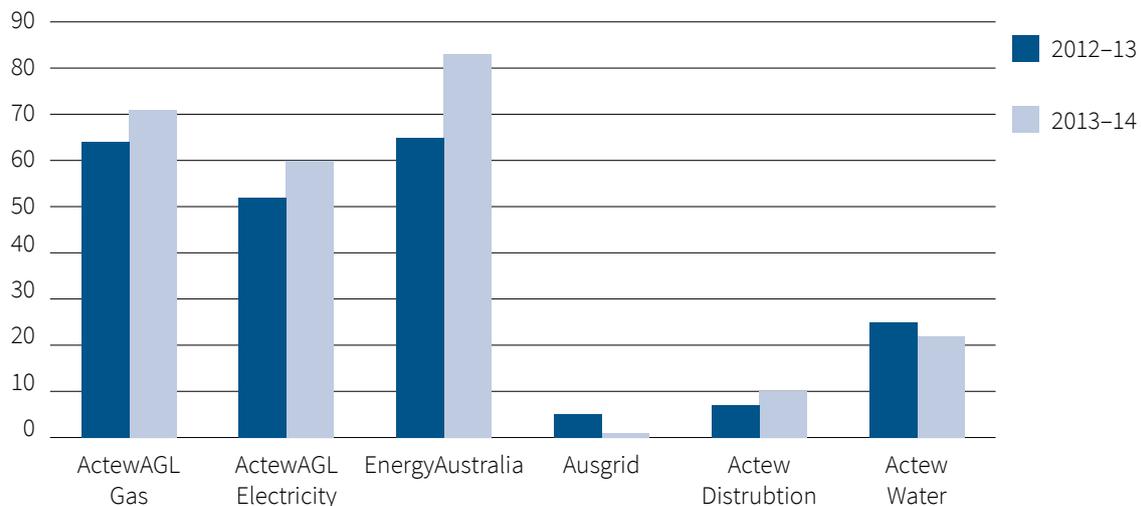
COMPLAINT APPLICATIONS

Complaint applications increased by 13% from 218 in 2012–13 to 247 in 2013-14. This continues the upwards trend of complaint applications over recent years.

Graph 2 – Total complaints received



Graph 3 – Complaints by Utility



*EnergyAustralia refers to the former TRUenergy (known as EnergyAustralia Victoria)

**Ausgrid trades as EnergyAustralia (known as Energy Australia NSW)

***ActewAGL Electricity & ActewAGL Gas refers to the retailers and are treated separately as complaints are handled by different areas. Electricity Complaints are handled in Canberra, whilst Gas complaints are handled by AGL in Melbourne)

ISSUES RAISED

Billing is the most common complaint issue, with 42% of applications including an issue related to billing. The next most common complaints relate to credit and customer service. One in ten complaints now raise issues relating to debt collection which is a reflection on the increased number of complaints received from customers contacted by external debt collectors or who are default listed. The tribunal notes that an increasing number of complaints are lodged by 'Credit Repair' agencies of behalf of customers.

Graph 4 – Billing Issues Breakdown

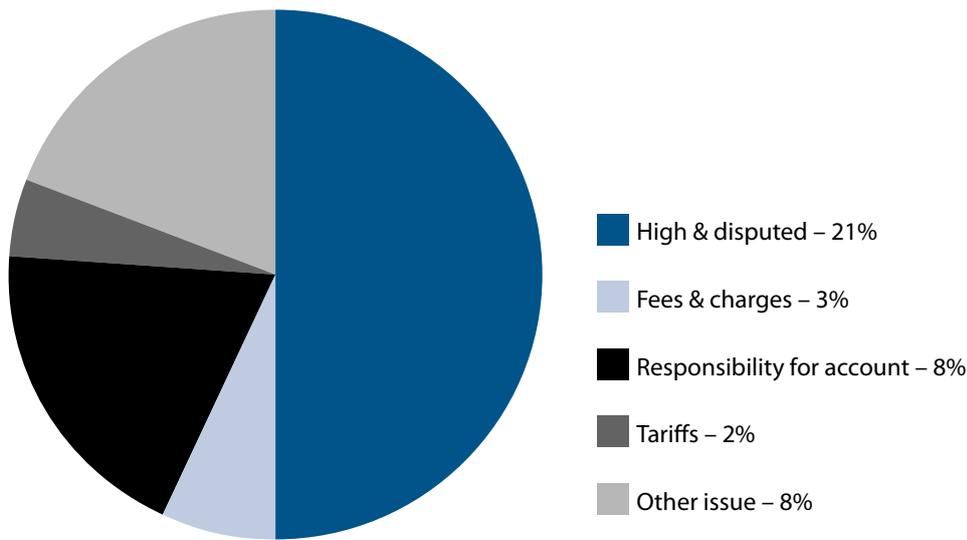


Table 18 – Complaint Issues Raised

	2010-2011		2011-2012		2012-2013		2013-2014	
	Number	%	Number	%	Number	%	Number	%
BILLING	119[^]	40	149	44	166	45	154	42
high & disputed	65	22	81	24	93	25	76	21
fees & charges	8	3	11	3	11	3	11	3
responsibility for account	29	10	36	11	34	9	29	8
tariffs	4	1	2	1	4	1	7	2
other issue	13	4	19	6	24	7	31	8
CREDIT	61[^]	21	80	24	52	14	62	17
disconnection & restriction	14	5	15	4	5	1	4	1
disputed arrears	4	1	7	2	2	1	0	0
debt collection	19	6	12	4	27	7	39	11
payment difficulties **	8	3	12	4	4	1	3	1
payment issues	15	5	32	9	11	3	13	4
other issue	1	0	2	1	3	1	3	1
CUSTOMER SERVICE	73	24	25	7	47	13	40	11
poor attitude/service	34	11	7	2	16	4	18	5
failure to inform/respond	18	6	16	5	24	7	18	5
incorrect advice	18	6	0	0	5	1	2	1
privacy breach	2	1	0	0	0	0	2	1
other issue	1	0	2	1	2	1	0	0
MARKETING	9	3	6	2	22	6	25	7
marketers conduct	0	0	1	0	4	1	4	1

	2010-2011		2011-2012		2012-2013		2013-2014	
	Number	%	Number	%	Number	%	Number	%
incorrect/misleading information	0	0	0	0	1	0	1	0
contracts & cooling off periods	2	1	3	1	16	4	18	5
bundling	7	2	1	0	0	0	1	0
other issue	0	0	1	0	1	0	1	0
PROVISION	13	4	15	4	20	5	10	3
new or existing connection	3	1	5	1	6	2	3	1
capital contribution	1	0	1	0	1	0	0	0
meters	9	3	9	3	11	3	3	1
other issue	0	0	0	0	2	1	4	1
SUPPLY	5	2	5	1	12	3	6	2
quality of supply	0	0	0	0	0	0	0	0
damage/loss	2	1	1	0	4	1	1	0
outages	1	0	3	1	2	1	2	1
other issue	2	1	1	0	6	2	3	1
LAND	5	2	17	5	5	1	7	2
impact of network assets	0	0	7	2	0	0	2	1
maintenance/property damage	3	1	7	2	3	1	4	1
environment/trees	1	0	1	0	1	0	1	0
other issue	1	0	2	1	1	0	0	0
TRANSFER	5	2	9	3	22	6	34	9
account errors	0	0	0	0	3	1	4	1
delay in transfer	1	0	2	1	6	2	8	2
site ownership	2	1	6	2	8	2	22	6
other issues	2	1	1	0	5	1	0	0
GENERAL	8	3	31	9	23	6	31	8
not energy & water	0	0	16	5	6	2	3	1
feed-in-tariff / solar credits	8	3	13	4	14	4	26	7
other	0	0	2	1	3	1	2	1
TOTAL #	298[^]	100	337	101	369	100	369	103

**excludes hardship applications lodged with ACAT

[^] the data published in previous reports for these figures were incorrect

due to rounding, the total percentage may not equal 100

COMPLAINTS PROCESS

The majority of complaint applications are finalised by early resolution processes. When a complaint is received, the tribunal assesses the complaint and determines the appropriate course of action. This can include:

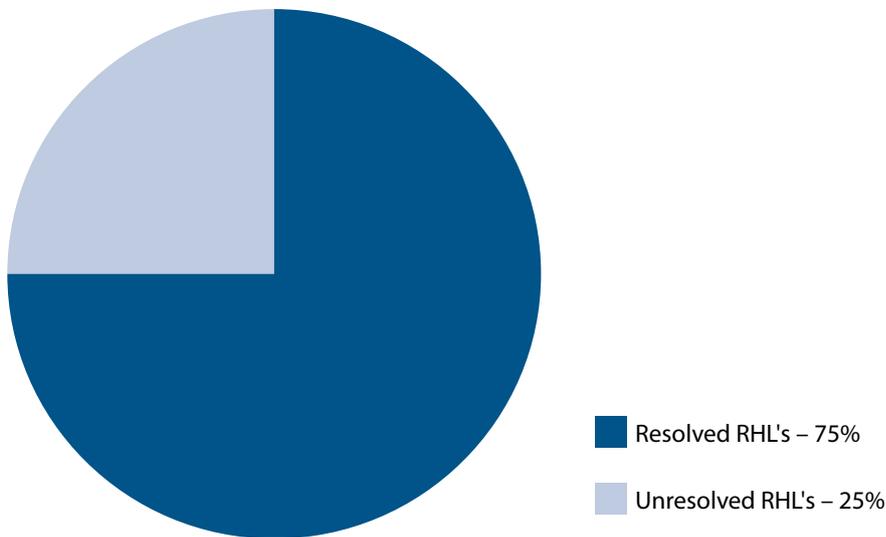
- referring the customer back to the utility (Unassisted Referral);

- referring the complaint to a higher level (RHL/Assisted Referral) within the utility and requesting it contact the customer;
- notifying the utility of the complaint and commencing an investigation. This includes requesting a written response and information from the utility. Once the response is received, a process of conciliation occurs which includes the Applicant having an opportunity to provide a response and further information;
- referring the complaint to the tribunal’s hearing processes for conference, directions or hearing by a tribunal member.

The tribunal referred 7% (16 complaints) of complaint applications to the hearing process. This is slightly less than last year’s referral of 11% of complaints.

The successful RHL process was expanded to include the electricity section of ActewAGL Retail. The RHL process continues to have a high success rate, which enables the tribunal to focus attention on more complex complaints.

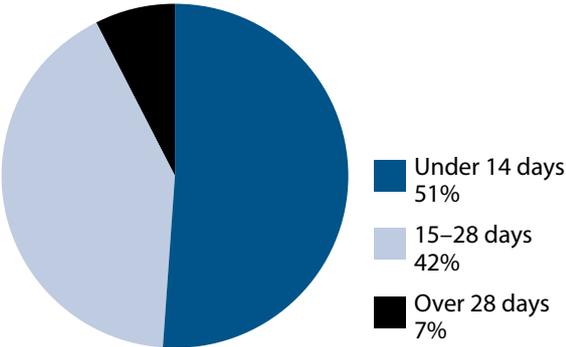
Graph 5 – Successful Resolution of RHL’s (Assisted Referrals) %



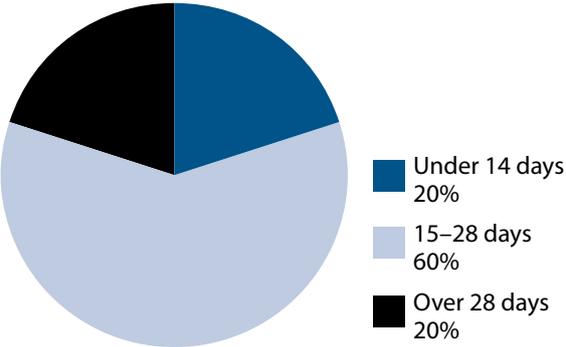
UTILITY RESPONSE TIMES

An effective and prompt initial response by the utility is imperative to achieve an early resolution of a complaint. A delayed response may further impair the customer’s opinion of the utility and hinder the tribunal’s ability to resolve a complaint without holding a hearing. The tribunal closely monitors the time taken by utilities to respond to complaint applications. When notifying utilities of complaints, the ACAT always requests a response within 10 business days. The charts that follow outline the percentage of initial responses to complaint investigations by respective utilities within 14 days (10 business days), 15-28 days and over 28 days.

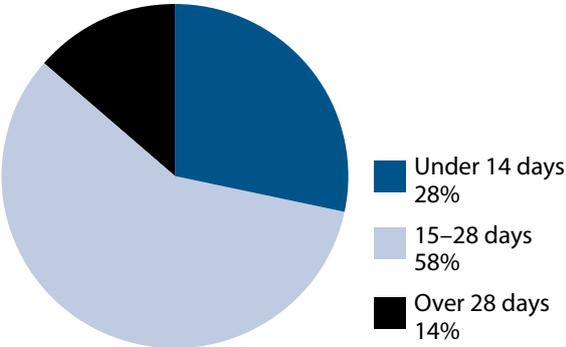
Graph 6 – ActewAGL Retail Gas



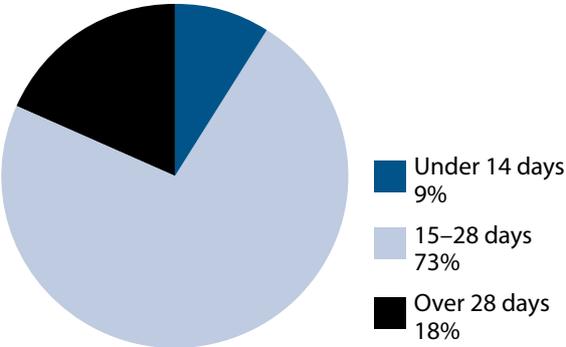
Graph 9 – ActewAGL Distribution



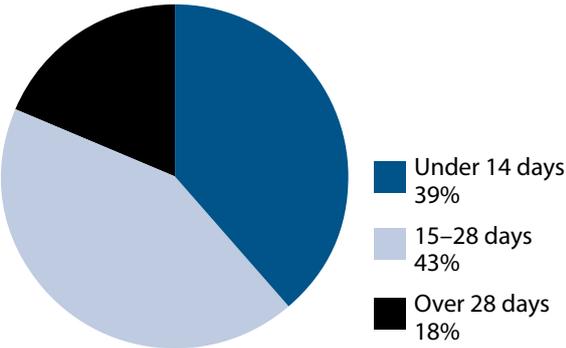
Graph 7 – ActewAGL Retail Electricity



Graph 10 – Actew Water



Graph 8 – EnergyAustralia



SYSTEMIC ISSUES

Section 174 of the Utilities Act requires the tribunal to report issues of a systemic nature to the relevant Minister and to the Independent Competition & Regulatory Commission (ICRC). Additionally, matters relevant to energy were discussed with the Australian Energy Regulator. During year, the tribunal reported the following issues:

Jurisdictional Monetary limit

The tribunal raised concerns about the monetary limit imposed in relation to non-hardship complaints. There have been a number of applications in which the complainant's purported loss is greater than the current \$10,000 limit. We anticipate more such applications as energy costs rise. The tribunal is concerned that the jurisdictional limit inhibits ACT customers' ability to make a complaint to the ACAT as the ACT energy ombudsman. This is inconsistent with the situation in other jurisdictions.

Unclaimed Monies

The tribunal advised of concerns relating to credits in accounts of deceased customers who had not made a will. The Tribunal wrote to the utility regarding the importance of complying with the *Unclaimed Monies Act* and suggested law reform that assist easier resolutions.

Solar Customers

Since the closure of the ACT Government Feed-in-tariff scheme, it is up to each retailer to determine how much it will pay for electricity generated by customers and exported to the network. EnergyAustralia has chosen not to make payments to its customers.

The tribunal received numerous complaints from EnergyAustralia customers who had solar panels installed in order to receive credits for exported electricity. Complainants say that they were not aware that the offer was available to ActewAGL Retail customers only. Each complaint is unique, but where there appears to be no contravention by the utility, the tribunal refers complainants to the Office of Regulatory Services to assist with liaison with the solar installation company.

Water and Sewerage Services Contracts

The 2013/14 Actew Water, *Water and Sewerage Services Connection and Supply Standard Customer Contract*, appeared to provide for owners of rental properties to have tenants establish water accounts. The tribunal expressed concern about this provision and potential conflict with the *Residential Tenancies Act 1997*. The tribunal understands that the standard contract has been changed.

Other issues

In addition to meeting its obligations under Section 174 of the Utilities Act, the tribunal wrote to utilities about the following:

- Energy Australia (Victoria) was asked to provide information about and rectify 'unauthorised transfers' undertaken for residents of a complex in Lyneham. Energy Australia rectified the issue swiftly;
- ActewAGL Retail customers apparently being allowed to accrue large arrears without being referred to the utility hardship program. The utility provided a response and the tribunal will monitor this issue into the future.

REPORTS, SUBMISSIONS & INFORMATION

The tribunal provided information to the ICRC regarding utility compliance. Additionally, submissions were made to the ICRC regarding retail electricity pricing and water pricing.

The tribunal also:

- provided feedback to the ACT Environment & Sustainable Development Directorate regarding the possible introduction of a 'no fault scheme' for distributor damage;
- provided information to the Productivity Commission's 'Access to Justice' review;
- attended discussions regarding the Australian Energy Regulators (AER) 'Retailer of Last Resort' provisions;
- provided feedback to the AER regarding ACT electricity network pricing;
- attended discussions hosted by the Privacy Commissioner regarding changes to Consumer Credit Reporting;
- attended the energy poverty forum in Sydney;
- provided data to Australian Energy Market Commission.

WORKING WITH OTHER OMBUDSMAN SCHEMES

During the year the tribunal joined the Australian & New Zealand Energy & Water Ombudsman Network (ANZEWON). ANZEWON membership will allow the tribunal to expand its expertise in the energy and water jurisdiction and where possible, provide a service which is consistent with other ombudsman schemes.

ACAT staff and members visited the Energy & Water Ombudsman of New South Wales (EWON) and Victoria (EWOV).

PARTICIPATION WITH INDUSTRY & COMMUNITY

- Commenced regular meetings with ActewAGL Retail (Electricity & Water).
- Visited EnergyAustralia (Victoria).
- Continues to regularly liaise with the ICRC and the Australian Energy Regulator.
- Held its annual energy & water stakeholders meeting.

MATERIAL INTERESTS

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

SYSTEMIC ISSUES

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

ENGAGEMENT

Stakeholder meetings were held with people interested in the work undertaken by the tribunal in relation to residential tenancies and energy and water.

The General President serves on the executive committees of the Council of Australasian Tribunals and the Australian Institute of Administrative Law and participates in annual meetings of the Australian Guardianship and Administration Council and of heads of tribunals relating to health practitioners, mental health matters and guardianship matters. She continued to work closely with the advisory committee considering the review of ACT mental health legislation.

The Appeal President participated in a meeting of heads of planning tribunals on behalf of the General President. Professor Spender participates in monthly meetings of the ACT Joint Rules Advisory Committee as the tribunal's nominee.

The tribunal continued its engagement with law students at both universities by offering observation opportunities, internships of between 10 and 20 days duration and identifying research projects. There is almost always a student on-site. Their presence encourages a culture of learning within the tribunal and expands the knowledge base of young lawyers about the work of the tribunal. Their contribution is gratefully acknowledged.

IN PROSPECT

The tribunal is preparing for the implementation of a new case management database. This is a significant project that requires all procedures, processes and forms to be reviewed, and revised where necessary. All existing data is to be checked to remove anomalies before data archiving and migration. Tribunal staff and members are working closely with the Law Courts and Tribunal ICMS Project Team. It is now anticipated that the new system will be in operation in the second half of 2015. Tribunal application forms are being revised to make them easier to use. Work has also commenced on the revision of the tribunal's website. Considerable work will be required.

THANKS

Finally, the presidential members and Ms Daniel acknowledge the ongoing support of our colleagues in the ACT Courts, the continued support of other directorate staff and the assistance and support of the various organisations which are involved with the daily work of the Tribunal. Thanks also to our registry staff for their commitment to the work of the tribunal, their hard work, good humour and patience.

Linda Crebbin
General President
August 2014

