
2014/15
ANNUAL REVIEW

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About us

About this Review

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.

The 2014–15 annual review is the first independently published annual report on the activities of the ACAT. Previous ACAT annual reports have formed an annexure to Justice and Community Safety Directorate Annual Reports.

Reports on performance, financial management and strategic indicators for the 2014–15 financial year are set out at Output 3.1 in the annual report of the Directorate for 2014–15. This annual review 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 sixth 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. The ACAT is supported by a registry of 26 staff, employed by the ACT Government under the Justice and Community Safety Directorate.

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.

Members

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 61 sessional non-presidential members. The acting presidential member is also a sessional member. The names of members are set out below.

A recruitment process for sessional members was undertaken during the period. Most of the current appointments for these members expired on either 1 February or 1 April 2015. As a result, a number of new members were appointed, some current members were re-appointed and other current members decided not to seek re-appointment.

The General President is the head of jurisdiction. She 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 Commissions Act 1994*.

Remuneration is determined by the ACT Remuneration Tribunal. The relevant determinations for the review period are numbers 4 of 2013, 15 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. About 30 sessional members are regularly involved in tribunal work. The core group includes lawyers, psychiatrists, mediators, people with expertise in planning and related matters and a number of people who sit on hearings as members of the community. Community members are used in mental health, guardianship, utilities and occupational discipline matters. Part-time members provide an invaluable service to the ACT community.

During the period Senior Member Patricia (Trish) McDonald passed away suddenly. Trish contributed much to the work of the tribunal and its predecessor bodies in the energy and water hardship area. She is sorely missed.

Retiring members included Phillip Thompson, Margot Hodge, Don McMichael, Margaret Gath and Maurice Sexton, Brian Loftus and Brian Hatch who all gave distinguished service to the ACT through their work with this and earlier tribunals. Their work is valued and the presidential members and staff of the tribunal acknowledge them and all other outgoing and continuing members.

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 24/07/2016

Non-Presidential Members

Mary-Therese DANIEL	Full time member	Appointed 01/04/2012 to 01/01/2016
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Senior Members

ANFORTH Allan	LENNARD Jann
BIGINELL Nigel	LOFTUS Brian (to 1 February 2015)
BOYLE Alysoun	LOVELL Denis (from 2 February 2015)
BRENNAN Mary (from 2 February 2015)	LUNNEY Graeme
BRODRICK Frank (from 2 February 2015)	MATHESON Marie (from 2 February 2015)
CHENOWETH Christopher	MCDONALD Patricia (deceased October 2014)
CORBY Wilhelmena Elizabeth	MCMICHAEL Donald (to 1 February 2015)
CREYKE Robin (from 2 February 2015)	MEAGHER Bryan (from 2 February 2015)
DAVEY Adrian George	OWEN Cathy
DONOHUE Harriet Louise	ORR Robert (from 2 February 2015)
DREW Leslie	PEGRUM Roger
FERGUSON Elspeth (from 2 February 2015)	QUAID Jack (from 2 February 2015)
FOLEY Anthony James	SINCLAIR Michael (from 2 February 2015)
HATCH Brian (to 1 February 2015)	SUTHERLAND Peter
HERRICK Stephen	TRICKETT Graeme

Ordinary Members

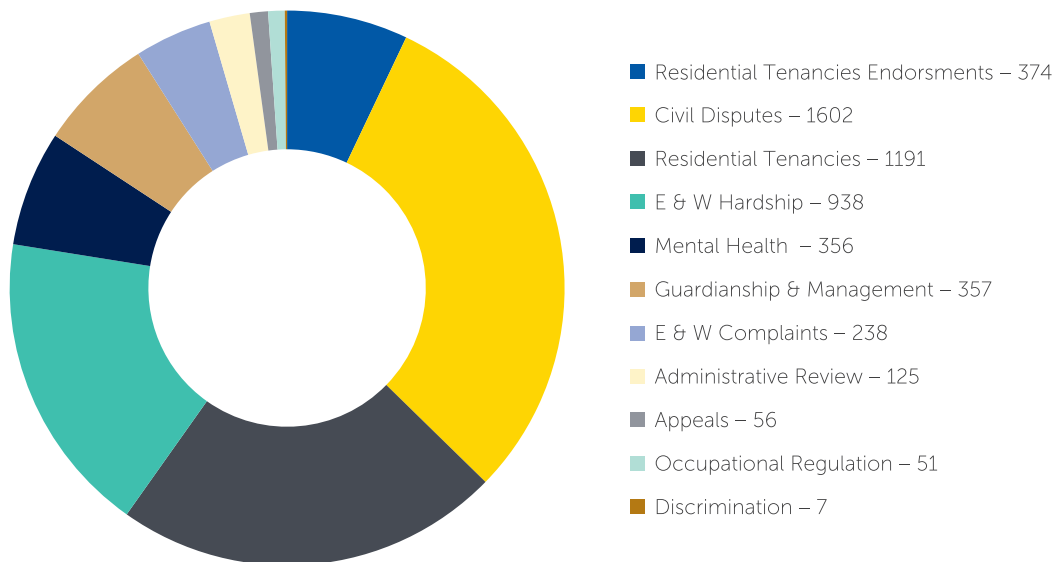
BEACROFT Laura	MORRIS Athol (from 2 February 2015)
BELLANTONIO Nino (to 1 February 2015)	MORRIS Peter (to 1 February 2015)
BURDACK Leonie	NEWMARCH Eileen
BYRNE Donald	NOAKES Anthony
CONWAY Peter	O'KEEFE Elissa
DAVIES Robyn	PEARCY William
DELAHUNT Anne-Marie (from 2 February 2015)	PROCTER Ann (to 1 February 2015)
DONOVAN John (to 1 February 2015)	PROCTOR Margaret (to 1 February 2015)
FAUNCE Thomas	SEXTON Maurice (to 1 February 20 15)
GATH Margaret (to 1 February 2015)	SINGER Andrew
GREAGG Jane	SOO Tuck Meng
GREALISH Laurie (to 1 February 2015)	STEEPER Elizabeth
HAMILTON Janelle	SYKES Ian
HARBISON Scott (to 1 February 2015)	TAYLOR Jan (to 1 February 2015)
HARDMAN David	THOMPSON Phillip (to 1 February 2015)
HIRD Harold	TOWNSEND Catherine (to 1 February 2015)
HODGE Margo (to 1 February 2015)	VAN ARKEL Abraham (to 1 February 2015)
KENNEDY Rosemary	VASSAROTTI Rebecca (from 2 February 2015)
KLEMPFNER George	WALKER Tom
KRUEGER Joanne	WALLACE Liisa (to 1 February 2015)
LITTLE Rod (1 April 2015)	WATCH Ross (to 1 February 2015)
LONG Francis	WEBER Linda
LUCAS Dianne	WEDGWOOD Robert
MACDONALD Anne (to 1 February 2015)	WESTAWAY Joan (to 1 February 2015)
MAYES Leasa (from 2 February 2015)	WILLIAMS Athol
MCINTOSH Angus (to 1 February 2015)	WILLIAMS Leanne
MIDDLEMISS Tom (to 1 February 2015)	WRIGHT Graham
MITCHELL Imogen	

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

New Applications received by Subject Matter 2014–15



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, discrimination and occupational regulation applications decreased, with residential tenancy dispute and administrative review applications increasing slightly. There was a decrease in the number of new applications made under the *Utilities Act 2000* and a continued increase in applications relating to guardianship and management of property. Because utilities, guardianship and mental health files remain open for lengthy periods with regular "own motion" reviews, the number of cases finalised compared to those lodged expressed as a percentage, reduced. The number of mediations, conferences and substantive hearings increased during the period. The clearance rate remains high.

	2010–11	2011–12	2012–13	2013–14	2014–15
Cases lodged*	4725	5759	5824	5730	5535
Cases finalised*	6457	6103	6122	4905	4627
Cases pending#	816	1068	1167	1021	1025
Cases pending > 12 months#	40	32	48	10	28
Clearance rate#	122%	110%	107 %	102 %	100%
Reviews held^	2721	2336	2487	2246	2509

Notes:

* includes applications for endorsement 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, discrimination, administrative and occupational regulatory work areas are resolved using alternative dispute resolution events such as mediation or conferencing and, only 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.

Resolution Events – All Work Areas	2010–11	2011–12	2012–13	2013–14	2014–15
Mediation/Preliminary Conferences	1063	1273	1322	1257	1294
Interim Hearings	528	565	333	176	130
Motions Hearings	288	309	224	289	296
Substantive Hearings (includes resumed hearing days)	6691	6224	6522	5616	6428

In keeping with the tribunal's objects, mediation and conferencing is used at the early stages of many applications to support parties to resolve their disputes before a hearing. Even in those matters that are not resolved, the methods serve a useful purpose by allowing parties to narrow the issues in question and to better understand each other's perspective.

Some internal changes were made to the way in which tribunal conferencing work is undertaken during the period, with part-time members undertaking this role. Members are able to undertake assessments at conference and to immediately list matters for hearing at short notice with a view to achieving quick resolution for parties where appropriate.

During the period, a review was carried out into the use of alternative dispute resolution within the tribunal and the ACT Magistrates Court. The recommendations of this review are under consideration by presidential members.

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, 56 applications for appeal were lodged with the tribunal and 58 applications were finalised. Three 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. Two referrals were made in the period under review.

Internal Appeals	2010–11	2011–12	2012–13	2013–14	2014–15
Applications lodged	43	52	55	55	56
Applications Finalised	37	60	59	46	58

Type of Appeals	2010–11	2011–12	2012–13	2013–14	2014–15
Civil Disputes	18	11	17	12	11
Residential Tenancies	9	22	18	23	19
Occupational Regulation	8	5	5	2	3
Administrative Review	5	5	8	9	11
Discrimination	1	2	4	3	5
Mental Health	1	1	1	3	1
Guardianship	1	4	0	1	2
Energy and Water	0	2	2	2	1
Extension of Time					3

Applications were lodged with the Supreme Court for leave to appeal from seven decisions of the appeal tribunal. Appeals were upheld in two matters, three are still to be determined, and two were rejected on procedural grounds.

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 usually listed within 4 to 6 weeks of an unsuccessful conference.

Civil Dispute Applications	2010–11	2011–12	2012–13	2013–14	2014–15
Civil Applications Lodged*	1826	2231	1963	1835	1537
Common Boundaries Applications Lodged	32	27	26	32	12
Unit Titles Applications Lodged	27	48	30	27	52
Retirement Villages	0	0	0	3	1
Applications finalised	2396	2482	2177	2072	1547

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

The number of new applications in this work area decreased with each month's filings being less than those for the corresponding month in the previous year. There is no obvious explanation for the decrease. The average number of days lapsed between the opening of a file and the closing of the file remained stable. Measures such as 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 are employed to contribute to this result.

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 application was filed in the period.

The *Unit Titles (Management) Act 2011* empowers the tribunal to hear a range of applications about unit titles holdings. There were 52 applications in the period, an increase from the previous financial year. Unit title and retirement village disputes are often complex and can include many parties with competing interests. Directions hearings are held in the first instance so that a member can identify the issues in dispute, 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 slightly increased from the previous year. Applications for endorsement decreased from the previous period. The average number of days lapsed between the opening of a residential tenancies file and the closing of that file remained stable.

Residential Tenancies	2010–11	2011–12	2012–13	2013–14	2014–15
Applications Lodged*	1052	1266	1247	1150	1191
Applications Finalised	1112	1269	1367	1132	1152
Endorsement applications	395	392	615	441	374
Endorsement applications completed	376	372	610	379	429

* Includes matters referred by the Office of Rental Bonds

The outreach project for public housing tenancy matters with the Canberra Community Law (CCL, formerly Welfare Rights and Legal Centre) and CARE Inc Financial Counselling Services (CARE) continued throughout the period, with the tribunal providing office space one day a week for these organisations to offer services to clients attending the tribunal for termination possession matters. CCL 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. 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 May 2015, the ACAT held a Residential Tenancy Stakeholders seminar and forum, which was attended by approximately 36 users of the ACAT. The seminar provided information about tribunal procedures and recent decisions. 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”.

Administrative Review	2010–11	2011–12	2012–13	2013–14	2014–15
Applications Lodged	144	134	103	99	125
Applications Finalised	134	100	126	111	132

Decision Type	2010–11	2011–12	2012–13	2013–14	2014–15
Cases subject to 120 day limit					
Planning & Development	58	34	25	7	19
Heritage	1	1	5	2	2
Tree Protection	2	2	2	6	2
Other Cases					
Building & Construction	6	13	14	6	7
Revenue	50	57	29	29	62
Licences & Permits	9	9	2	4	2
Dangerous Dog Licence	2	2	3	3	4
Freedom of Information	7	5	4	7	6
Housing Allocation/Rental Rebate	2	6	2	7	15
Miscellaneous	7	5	17	28	6

Applications concerning the same, or a substantially similar, decision may be heard together. The 125 new applications lodged in the year under review related to 104 matters.

Sixty-one mediations were listed with thirty-three matters being resolved at or after the mediation and before hearing.

Age of pending applications for administrative review as at 30 June 2015

Age of files	0–3 months	3–6 months	6–9 months	9–12 months	12 months+
No of files	23	10	7	0	5
% of files	51%	23%	15%	0%	11%

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 an 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.

- **KIRO SUKLOSKI & LENA SUKLOSKA v ACTPLA & MEMBERS EQUITY BANK – AT14/02** – time extended by 41 days. The matter was filed on 30 January 2014 and progressed to an Interlocutory hearing without delay and was heard on 21 February 2014. The matter was set down for hearing on 21 and 22 May 2014. At the first directions hearing the parties requested the hearing date be vacated. On 26 May 2014, the tribunal ordered that the parties file and serve submissions regarding the discretion of the tribunal under s22P of the ACAT Act to extend the time for which this matter must be decided. The parties were involved in discussions to ultimately resolve the matter outside of the tribunal process. Three further directions hearings were held after which the parties filed a notice of discontinuance and the matter was dismissed on 10 July 2014.
- **NORTH CANBERRA COMMUNITY COUNCIL v ACTPLA & CANBERRA DISTRICT RUGBY LEAGUE FOOTBALL CLUB – AT13/69** – time extended by 221 days. Initially, the respondent challenged the standing of the applicant to bring the application for review. The challenge progressed to an interlocutory hearing, which was set down for 27 November 2013, to allow sufficient time for the parties to file written submissions, and replies to those submissions, before the hearing. The tribunal reserved its decision following the interlocutory hearing on 27 November 2013, to allow the applicant and the respondent to make additional submissions to the tribunal arising from the evidence given at the hearing. The tribunal delivered its decision on 10 January 2014, dismissing the respondent's challenge to the applicant's standing and setting the matter down for directions on 22 January. A timetable for dealing with the substantive application for review was set on 22 January 2014. The matter proceeded without delay to a two-day hearing on 22 and 23 April 2014. The tribunal reserved its decision at the close of the hearing on 23 April and delivered its decision on 29 July 2014. The decision was a substantial decision, which deals in detail with six distinct lines of argument raised by the parties and the six separate criteria relevant to the making of the tribunal's decision under section 120 of the *Planning and Development Act 2007*. The decision also contains a detailed discussion of the history of concessional leases in the Australian Capital Territory.
- **PAUL GERONDAL AND MONICA GERONDAL v ACTPLA – AT14/10** – time extended by 70 days. At the initial directions hearing held in this matter on 23 January 2014, the hearing was set down for 3 days (from 5 to 7 May). On 24 March 2014, the applicants filed an Application for Interim or Other Orders, seeking an order to the effect that the matter raises a question of law that should be referred to the Supreme Court. The Application for Interim Orders was heard on 8 April 2014 and the Application for Interim Orders was dismissed at the close of the hearing. The matter subsequently proceeded to hearing on the timetable originally set for the matter. At the close of the hearing, the applicants were granted additional time to provide copies of medical reports in support of their submissions. The tribunal's decision was delivered on 1 August 2014. It was a long decision (over 70 pages), that required the tribunal to consider the possible continuing effect of orders made in relation to the subject property by the former ACT Administrative Appeals Tribunal in 2003 and 2004, and the interaction of the now-repealed *Land (Planning and Environment) Act 1991* with the *Planning and Development Act 2007*.

- **KEVIN LONERGAN AND ANNETTE LONERGAN v ACTPLA & PAUL & VICKY PAPAS – AT14/27** – time extended by 92 days. The matter was filed with the tribunal on 13 May 2014. The matter was heard on 5 June 2014 at an initiating directions hearing with directions to list for hearing on 27, 28 and 29 August 2014. The matter then progressed to mediation without delay and was heard on 25 June 2014. The parties consented at mediation and then at further mediation on 2 July 2014 the party joined withdrew their consent and the parties requested to have all submissions and hearing dates vacated. The matter was relisted for directions hearing on 24 September 2014, the matter was heard and adjourned for directions hearing on 3 December 2014. The matter was heard and adjourned for further directions hearing on 12 December 2014, which was vacated upon the parties submitting a section 55 consent decision on 11 December 2014.
- **FRANK MAATOUK v CONSERVATOR OF FLORA AND FAUNA – AT14/86** – time extended by 11 days. The application was filed on 26 September 2014 and at the initial directions hearing held in this matter on 22 October 2014, the applicant was asked to provide facts and contentions and the matter was set down for a further directions hearing after the filing of those documents on 14 November 2014 where mediation was listed for 8 December 2014 and a hearing was set down for 1 day on 23 January 2015. At the mediation there was no resolution however parties kept talking without the matter being settled. The matter proceeded to hearing on 23 January 2015, with the presiding member reserving his decision and this was delivered on 3 February 2015.
- **A. T. ADAMS CONSULTING PTY LTD v ACTPLA AT14/103** – time extended by 52 days. An initial directions hearing was held on 19 December 2014 where the applicant was asked to provide facts and contentions before the mediation. Consent orders were proposed however an application for interim or other orders was submitted. The matter was set down for a further directions hearing and the matter listed for a 2 day hearing on 17 and 18 March 2015. The hearing was vacated and set down for a further directions hearing where it was anticipated that consent orders would be filed by 2 April 2015. The parties sought an extension for the period of deciding the application on the basis that the extension was in the interest of justice because:
 - The parties had reached an agreement in relation to the application;
 - The act requires certain procedural steps to be taken before any agreement can be reduced to an application for consent orders, including public notification of the Amended Development Application for a period of 15 working days pursuant to section 157 of the Act and section 28(b)(ii) of the *Planning and Development Regulation 2008*; and
 - The procedural steps cannot be completed within 120 day period provided for in section 22 of the ACAT Act.

The matter was finalised when consent orders pursuant to s55 of the ACAT Act were filed by the parties.

DEAKIN RESIDENTS ASSOCIATION v ACTPLA & TURCO & ASSOCIATES PTY LTD AT14/106 – time extended by 57 days. The application for review was filed on 3 December 2014. The timeframe for the matter was delayed by the holiday period, with the first directions hearing occurring on 7 January 2015. Mediation followed within 2 weeks, being 23 January 2015 at which time there was no resolution by the parties. A timetable for the parties to file submissions, facts and contentions and witness statements was agreed. The applicant saw the development application as being of precedent value and wished to fully explore the possibilities of amendment of the development proposal in mediation, which ran over two days. Due to the time required for participation in the mediation and for the parties (including one joined party) to prepare and present their cases the matter was listed for a two day hearing, on 26 and 27 March 2015 allowing only 4 business days for the decision to be handed down within time. In the event, that time frame for the members of the tribunal proved unrealistic given the number of complex issues raised in the proceeding (including a third amendment of the development proposal) which required consideration. One of the Members involved was also overseas for part of the period of the writing of the decision.

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. Forty-one new applications were received. The tables below show the number of applications received and completed by category. 'Working with vulnerable people' was a new occupation category added to the tribunal's jurisdiction in 2014–15.

Health Practitioners	2010–11	2011–12	2012–13	2013–14	2014–15
Applications Lodged	4	3	5	11	12
Applications Finalised	2	4	5	3	13

Lawyers	2010–11	2011–12	2012–13	2013–14	2014–15
Applications Lodged	11	9	13	10	6
Applications Finalised	15	10	12	10	7

Liquor Licensees	2010–11	2011–12	2012–13	2013–14	2014–15
Applications Lodged	9	5	5	1	2
Applications Finalised	9	5	5	1	2

Security Guards	2010–11	2011–12	2012–13	2013–14	2014–15
Applications Lodged	2	7	7	6	4
Applications Finalised	2	4	9	4	4

Construction Occupations	2010–11	2011–12	2012–13	2013–14	2014–15
Applications Lodged	4	7	7	9	7
Applications Finalised	4	7	5	5	10

Long Service Leave Authority	2010–11	2011–12	2012–13	2013–14	2014–15
Applications Lodged	7	0	8	16	2
Applications Finalised	7	0	8	5	11

Miscellaneous	2010–11	2011–12	2012–13	2013–14	2014–15
Applications Lodged	2	12	2	5	5
Applications Finalised	2	11	4	5	3

Working with Vulnerable People	2010–11	2011–12	2012–13	2013–14	2014–15
Applications Lodged	–	–	–	–	3
Applications Finalised	–	–	–	–	2

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 12 new applications relating to health practitioners, 9 related to medical practitioners, one to a psychologist, one to a nurse/midwife and one application related to a pharmacist. The categories of notification are as follows:

Category of notification of ACAT Occupational Regulation matters relating to Health Practitioners	Number
Behaviour	1
Boundary violation	3
Clinical care	2
Pharmacy/medication	6
Total number of matters	12

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.

Discrimination	2010–11	2011–12	2012–13	2013–14	2014–15
Complaints Referred	30	19	17	12	7
Complaints Finalised	17	30	14	20	11

The seven new complaints involved seven complainants. The primary ground of complaint for two complainants was unlawful discrimination on the ground of race; three were concerned primarily with disability discrimination, one with age discrimination in provision of goods/services and one with discrimination on the grounds of association with a person with a disability/employment/access.

Of the 11 matters finalised this year, seven matters were discontinued, three were dismissed after the hearing of applications brought under section 32 of the ACAT Act and one matter was dismissed after the tribunal decided it did not have jurisdiction.

Age of pending files for discrimination matters as at 30 June 2015

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

One complaint was more than 12 months old at the end of the year. The matter had many complex issues and submissions were required to be filed into the substantive issues and penalty.

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.

Mental Health	2010–11	2011–12	2012–13	2013–14	2014–15
Applications for Mental Health Orders	343	305	358	325	346
Applications for Extension of Emergency Detention	274	225	267	299	262
Forensic Referrals	29	52	65	43	22
Applications for ECT	20	16	14	10	10
Own Motion Reviews of Orders	822	786	848	877	851
Requests for Revocation	121	151	109	80	156

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

Guardianship & Management of Property Orders	2010–11	2011–12	2012–13	2013–14	2014–15
Applications Lodged	292	265	299	320	357
Own Motion Reviews of Orders	366	428	460	504	556
Emergency Appointments	42	52	24	20	18

The number of new applications continues to increase as inevitably do the number of own motion reviews, as new orders exceed the number of revocations and deaths.

Applications for emergency appointments, made without holding a hearing, decrease as use is made of legislation to allow the appointment of health attorneys for urgent medical decisions and the tribunal opts to list other applications for hearing quickly. 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 category 'Acquired Brain Injury' includes people who have experienced stroke and accidents. The data indicates as follows:

Conditions affecting subject people	2011–12	2012–13	2013–14	2014–15
Dementia	35%	38%	32%	34%
Mental Illness	32%	32%	29%	28%
Intellectual Disability	20%	22%	25%	19%
Acquired Brain Injury	13%	8%	14%	19%

ACAT acknowledges the considerable assistance it receives from staff of the Public Advocate of the ACT and of the Public Trustee for 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.

In May 2015, the tribunal hosted a Guardianship and Management of Property Roundtable. Attendees included representatives from Legal Aid ACT, the Public Advocate's Office, policy staff of the Justice and Community Safety Directorate, ACT Health, Disability ACT, the legal profession, the aged care sector and consumers. The roundtable provided information about the work of the tribunal and discussed proposed future changes to legislation and process.

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). The Tribunal performs the role of Energy Ombudsman for the ACT and works in conjunction with the Australian Energy Regulator in this area.

Energy and Water Hardship Applications

On receipt of 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

In 2014–15 the number of new application was down slightly as Retail in-house hardship programs improve. However, the tribunal has noted that new applications are more complex and often require greater long-term case management.

Home Visits

A home visit is offered to clients who have mobility issues – physical, psychological or age related. Typically, a Senior or Presiding Member undertakes these visits accompanied by a registry staff member. After the initial home visit, reviews are often conducted by telephone. During 2014–15, 5 home visits were conducted.

Review of Orders

In 2014–15, 6840 orders were reviewed by staff and 1102 orders were listed for a review hearing before members. Staff prepared 1088 debt discharge orders and 818 revocation orders for consideration by a Presidential, Senior or Presiding Member. An additional 32 debt discharge orders and 200 revocation orders were made by a Senior or Presiding Member at hearing.

Hardship Applications	2010–11	2011–12	2012–13	2013–14	2014–15
Applications Lodged	685	874	847	1116	938
Reconnection Orders	101	179	56	114	122
Initial Hearings	770	988	915	1233	754
Discharge Orders	1035	920	1042	1029	1120
Home Visits	44	49	14	2	5
Staff Reviews	7313	5656	5261	5907	6840
Review Hearings	1533	1122	1179	865	1102
Applications Finalised	1078	990	848	886	1018

Energy and Water Complaint Applications

There was a slight decrease in complaint applications from 247 in 2013–14 to 238 in 2014–15.

Table 1: Total complaints open & closed

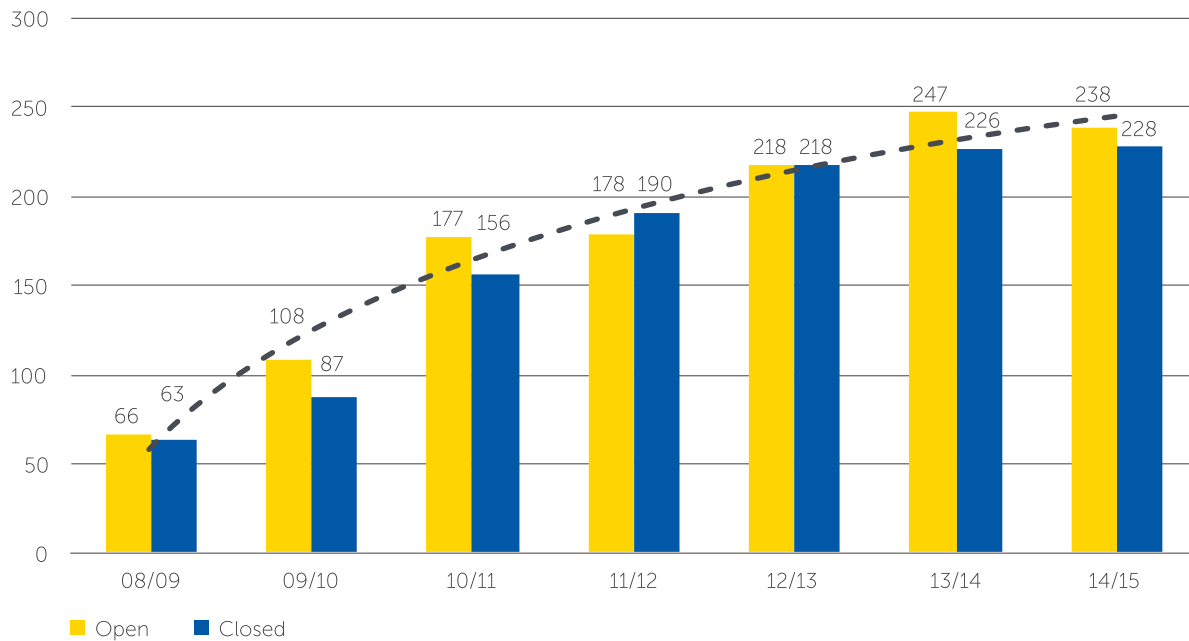
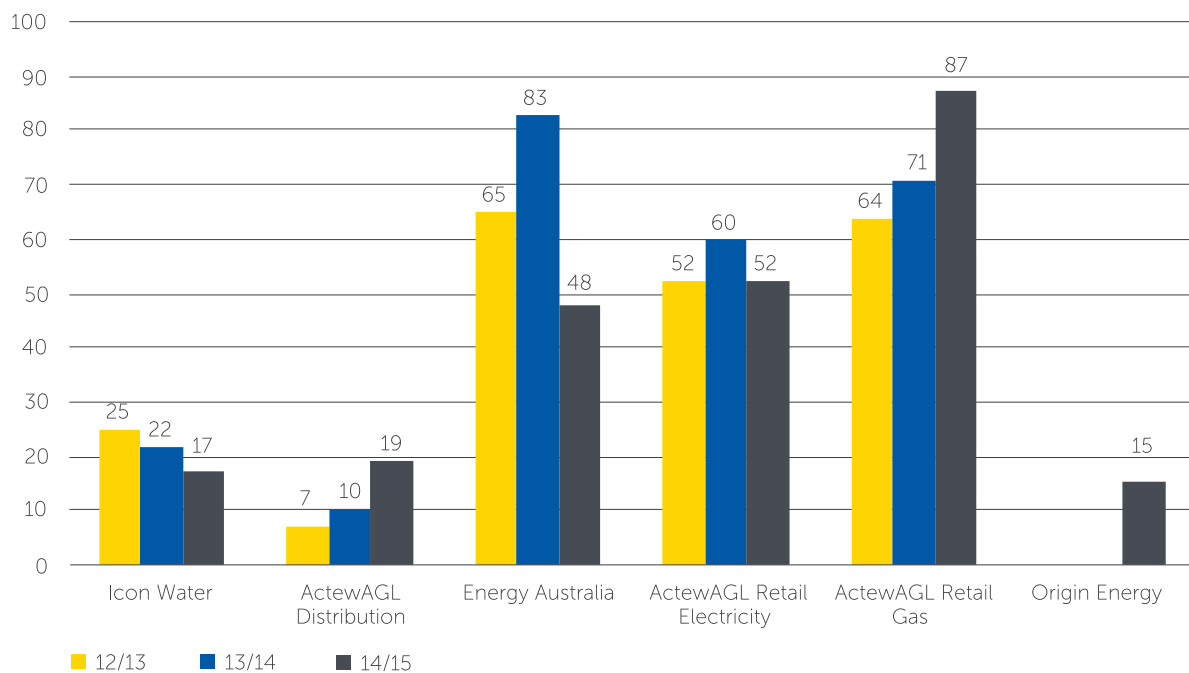


Table 2: Complaints by Utility



* No complaints were received regarding Ausgrid (Energy Australia NSW)

** ActewAGL Retail Electricity & ActewAGL Retail Gas are treated separately as complaints are handled by different areas. Electricity Complaints are handled by ActewAGL in Canberra, whilst Gas complaints are handled by AGL in Melbourne)

*** Icon Water was formally called Actew Water

**** Origin Energy commenced marketing to ACT customers in 2014–15

Table 3: What issues categories customers complained about (%)

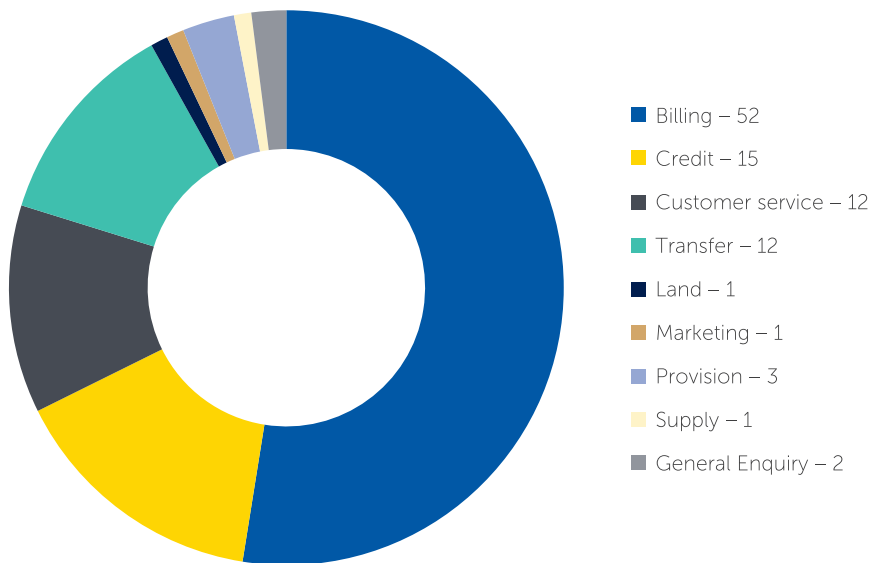


Table 4: The type of issues most complained about (no. of issues raised)

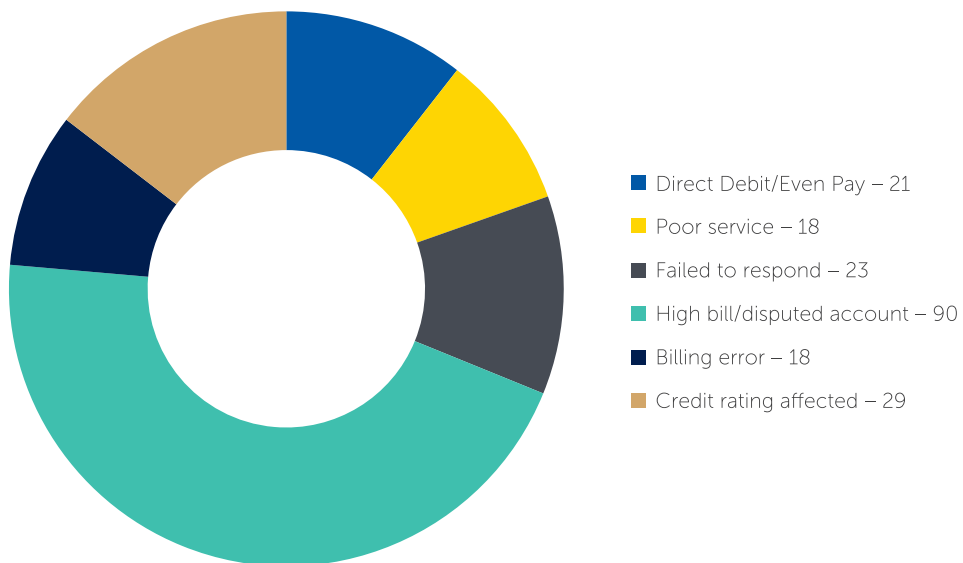


Table 5: Types of Complaint received

Billing	52%
High bill or disputed account	91
Tariff (time of use, prices)	6
Feed In Tarriff (ACT Government)	1
Retail Solar Credits	6
Billing error	18
Delayed bill or bill not received	14
Direct Debit/Even Pay	21
Fees and charges	7
Estimated account, meter not read	10
Backbilling	6
Delay in issuing refund or refund not received	10
Meter accuracy or fault	12
Debt transferred from another account	4
Common hot water system issue	2
Concessions	1
Credit	15%
Facing disconnection due to non-payment	5
Disconnected/Restricted due to non-payment	3
Contacted by debt collectors	9
Credit rating affected	29
Payment difficulties / Payment Plans	15
Customer service	12%
Poor service	18
Failed to respond	23
Incorrect advice or information provided	8
Privacy concern or breach	1
Transfer	12%
Contract (eg variation, fees)	2
Transferred without consent	7
Site ownership issues	17
Transferred in error	0
Cooling cancellation not-actioned	0
Delay in issuing bill after transfer	8
Billing problems on transfer	6
Request for new account/transfer rejected	8

Table 5 continued

Land	1%
easement (access, other)	2
vegetation management	0
network assets (health & safety, maintenance, placement)	0
other (general, property damage/restoration)	4
Marketing	1%
information (door-to-door, other sales channels, phone)	0
misleading (door-to-door, other sales channels, phone)	3
non account holder (door-to-door, other sales channels, phone)	1
other (door-to-door, other sales channels, phone)	1
pressure sales (door-to-door, other sales channels, phone)	0
Provision	3%
disconnection/restriction (error, meter access, safety/defect)	2
existing connection (de-energisation, energisation/connection, interference, meter removal, repair, safety, supply upgrade, other)	5
solar - network connection issues	2
new connection (capital contribution, delay, information, other)	3
restriction (error, meter access, safety/defect)	1
Supply	1%
off supply–planned (damage/loss, duration, frequency, health & safety, inconvenience, information/notice, other)	0
off supply–unplanned (damage/loss, delivery delay, duration, frequency, health & safety, inconvenience, information/notice, loadshed)	0
quality (colour, health/safety, pressure, taste/odour, other)	2
sewer/stormwater overflow/blockage	1
variation (damage/loss, frequency, health & safety, inconvenience, information)	1
General Enquiry	2%
energy/water	7
Total Issues	402

* Excludes applications lodged directly with the ACAT energy & water hardship program

** Due to rounding, the total percentage may not equal 100

*** Complaint issues include enquiries

**** There may be more than one issue raised each complaint

***** The ACAT changed complaint issues at the beginning of 2014–15 financial year to better reflect partner agencies interstate

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.

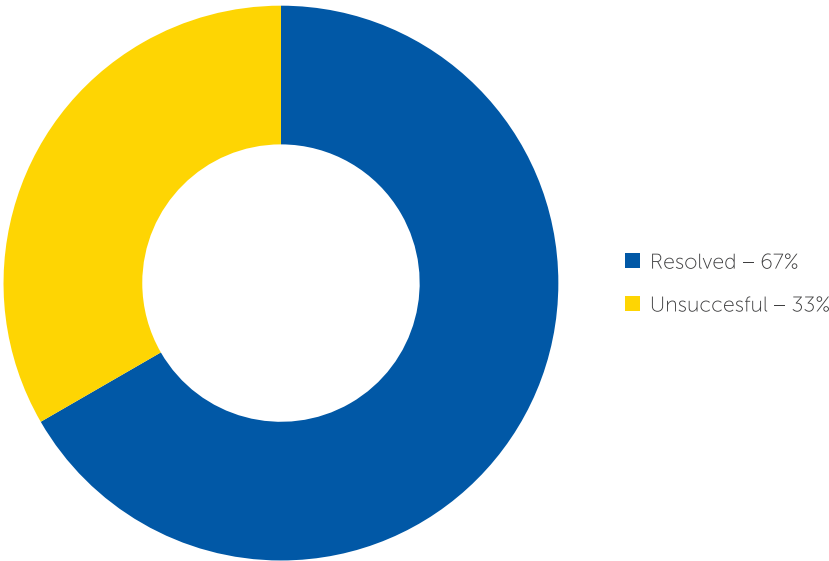
This can include:

- referring the customer back to the utility (Unassisted Referral/Enquiry);
- 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 8 complaints to a conference or a hearing. Of the 238 complaints closed during the year, only 4% required resolution through a formal tribunal mechanism.

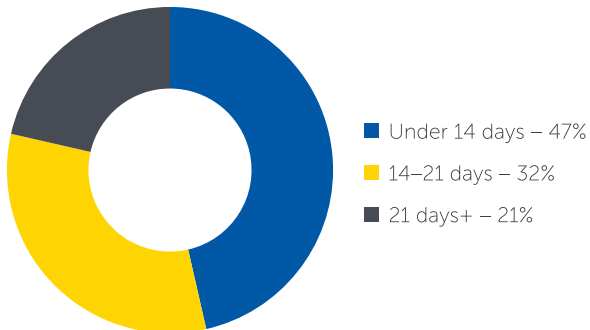
The RHL process was expanded this year to include Icon Water. The RHL process continues to have a high success rate, which enables the tribunal to focus attention on more complex complaints.

Table 6: Outcome of Complaints handled via RHL (%)

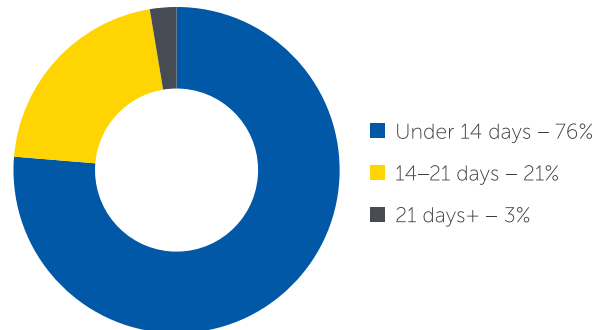


Tables 7–12: Utility Response Times

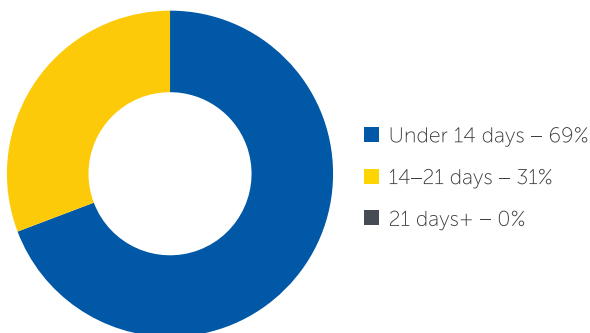
EnergyAustralia



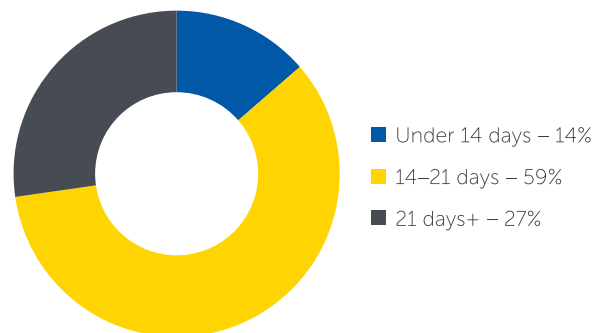
ActewAGL Gas



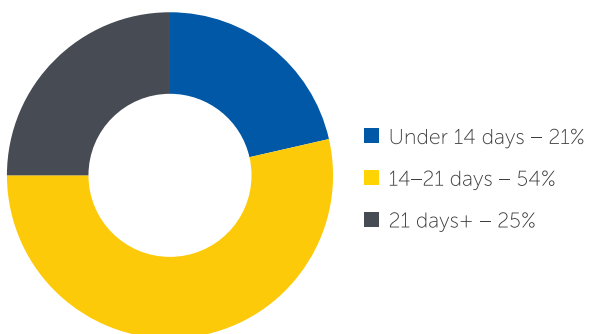
ActewAGL Distribution



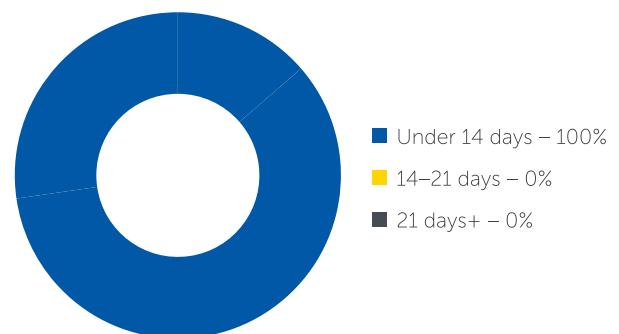
ICON Water



ActewAGL Electricity



Origin Energy



An effective and prompt initial response by the utility is imperative to achieve an early resolution of a complaint investigation. 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 closed complaint investigations by respective utilities.

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).

No systemic issues were reported during the 2014 –2015 financial year.

Reports, Submissions & Information

During the financial year, the tribunal:

- provided feedback to the Australian Energy Regulator (AER) regarding ACT electricity network pricing;
- attended discussions hosted by the Privacy Commissioner regarding changes to Consumer Credit Reporting;
- provided data to Australian Energy Market Commission;
- provided information to the ICRC regarding utility compliance on a yearly basis;
- provided disconnection data to the AER.

Working with other Ombudsman schemes

The tribunal is a member of the Australian & New Zealand Energy & Water Ombudsman Network (ANZEWON), represented by the ACAT General President. ANZEWON membership allows 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.

During the financial year, ANZEWON held a common processes workshop aimed at improving and streamlining resolution processes amongst the various ombudsman schemes. Two ACAT staff members attended.

The ACAT received a visit from the new NSW Energy & Water Ombudsman (EWON), Janine Young in May 2015.

The ACAT would like to acknowledge the ongoing support provided by EWON and EWOV to the numerous information requests from the ACAT.

Participation with Industry & Community

- Continued regular meetings with ActewAGL Retail (Electricity)
- Provided a presentation to Icon Water complaints team in May 2015
- Continued to regularly liaise with the ICRC
- Discussed the renewal of the Australian Energy Regulator – ACAT Memorandum of Understanding (MOU) and agreed to discuss issues relevant to the ACT energy sector during quarterly meetings
- Participated in the development of the ActewAGL five year gas network plan

Further Information

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, guardianship and management of property 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, the Australian and New Zealand Energy and Water Ombudsman Network 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.

Throughout the year, the General President attended a number of meetings of the Australia and New Zealand Energy and Waters Ombudsman's Network. The ACAT Legal Registrar and Professor Spender participated in the National Tribunals Alternative Dispute Resolution Network. 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 the Australian National University and Canberra University 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.

A survey of tribunal users was undertaken during September 2014. The survey was open for a 4 week period and 53 responses were received. A number of the issues raised by users are under consideration.

Other Achievements

A CBR Free Public Wi-Fi hotspot was made available to tribunal users in ACAT hearing rooms and waiting area during the period, under the ACT Government's Digital Canberra program. There has been a strong take-up of the service since its introduction in April 2015.

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 anticipated that the new system will be in operation in the second half of 2015. As part of this project, tribunal application forms are being revised to make them easier to use.

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. Thank you also to our registry staff who demonstrate a high level of commitment to the work of the tribunal – their efforts do not go unnoticed. I acknowledge their continued hard work, patience and good humour.

Linda Crebbin

General President

December 2015

