LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES

Study of Tenancy Dispute Experience and Preparedness at NCAT

LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES

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We acknowledge the Traditional Custodians of the Country on which we work and live. We acknowledge their history, culture and continuing connection to land, sea, sky and community. We pay our respects to Elders past and present.

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Glossary

Applicant/Respondent
The applicant is the party who lodges an application with NCAT. The respondent is the other party to the matter. Either a tenant or landlord can be the applicant or respondent, depending on the nature of the dispute.

Application
A formal request, complaint, referral or other document lodged with NCAT to start a new process.

Case
For the purposes of this report, a case refers to one or more related applications involving the same parties and tenancy matter. A single case may involve multiple applications or procedural events.

Conciliation
An informal process that gives parties the opportunity to negotiate and resolve their dispute with or without the assistance of a conciliator. If agreement is reached, it may be formalised as a consent order.

Consent Order
An enforceable agreement between the parties that is formalised by the Tribunal.

Contested Hearing
A formal hearing before a Tribunal Member in which both parties present evidence and arguments. Contested hearings typically occur when conciliation has been unsuccessful or not been attempted.

Dismissal/Withdrawal
A dismissal occurs when NCAT closes an application due to non-attendance, jurisdictional issues, or procedural reasons. A withdrawal occurs when the applicant chooses not to proceed with the application.

Listing
A scheduled event at NCAT, such as a conciliation session, hearing, or directions conference. Most applications are listed at least once.

Members
Tribunal Members are the decision makers of NCAT. While not judges, some are former judicial officers; other are appointed for legal or subject-matter expertise.

Order
A decision made by NCAT in response to an application. Orders may be substantive (e.g. termination, compensation) or procedural (e.g. set aside, reinstatement).

Registry
The NCAT office responsible for managing a matter. The registry processes applications, issues notices, and coordinates listings.

Self-represented Party
A person who appears at NCAT without a lawyer or authorised representative. All tenants in this study were self-represented.

Specific Performance Order (SPO)
An order requiring a party—usually a tenant—to comply with a particular condition, such as repaying arrears.

Termination Order
An order that ends a tenancy agreement and sets a date by which possession of the premises must be returned to the landlord.

Warrant for Possession
A legal enforcement mechanism used to give effect to a termination order. If the tenant does not vacate by the specified date, the landlord may apply for a warrant to take possession. This is executed by the NSW Sheriff's Office.

Executive Summary

This report presents findings from the STEP Study—an exploration of how self-represented individuals experience tenancy proceedings at the NSW Civil and Administrative Tribunal (NCAT) . Through a combination of post-hearing surveys and ethnographic observation across four registry locations, the study offers a view of tribunal processes from the perspectives of those who use them.

Key Insights

- **Tribunal users face wide variation in experience.** While many participants found Members to be respectful and believed the process was fair, others encountered barriers—particularly during conciliation and in navigating the physical and procedural environment.
- **Conciliation without oversight can increase risk.** In multiple locations, users were invited to negotiate outcomes without access to a trained facilitator. This was described by one participant as feeling "extremely unsafe," and highlights the need for consistent, structured conciliation support.
- **Tenants' advocates play a crucial role.** Participants who received advocacy described feeling more confident, better informed, and less overwhelmed. Advocates were widely viewed as essential to fairness, especially for those facing experienced landlord agents.
- **Landlords are not a uniform group.** While most landlord parties were professionally represented, a small number of self-represented landlords reported challenges similar to those faced by tenants—particularly when negotiating alone or unfamiliar with NCAT's processes.
- **Power imbalances remain a central concern.** Repeat-player agents, legal language, and inconsistent procedural guidance often left participants—particularly tenants—feeling disempowered, even when they believed the outcome was legally sound.
- **Users value being heard and respected.** Satisfaction with the process was often shaped less by the outcome and more by how clearly decisions were explained, how well-supported users felt, and whether they had the opportunity to tell their story.

Implications

- **Skilled facilitation and accessible advocacy are essential.** Fair and safe conciliation depends on the presence of trained neutral facilitators and the availability of independent support services. These elements should be considered foundational to tribunal design.
- **Procedural clarity matters.** Improved communication, signage, and pre-hearing guidance—both online and onsite—would significantly enhance users' confidence and sense of fairness.
- **Equity must be embedded structurally.** Systemic design changes are needed to ensure that all users, particularly first-time users can engage with NCAT on equal footing, regardless of their role in the matter.

Introduction

Tenancy Disputes in a Changing Rental Landscape

Tenancy disputes at the NSW Civil and Administrative Tribunal (NCAT) sit at the intersection of legal process, personal security, and socio-economic vulnerability. In the current context of a deepening housing and cost of living crisis across New South Wales, the importance of procedural fairness and accessibility in tenancy matters has never been greater. As housing affordability declines and rental stress increases, more people are finding themselves in precarious tenancy arrangements—many for the first time.

These disputes often involve fundamental issues of shelter, safety, and stability. For tenants, facing eviction or hardship can bring significant financial and emotional strain. For landlords, particularly those who are self-represented or navigating the system for the first time, tenancy disputes may also involve considerable stress, uncertainty, and risk.

NCAT's Role in the Tenancy System

NCAT plays a central role in managing tenancy disputes across both the private rental and social housing sectors. In 2024, nearly 40,000 tenancy applications were finalised through its Residential Tenancy and Social Housing lists. While most matters were resolved within NCAT's six-week service benchmark,[1] resolution pathways varied – ranging from administrative closure and consent orders to formal hearings. Landlords initiated the majority of applications, particularly in the social housing sector where agency and organisational policies guide routine tenancy management.

Consent orders were a key resolution mechanism, accounting for around one in four matters. These were especially common in social housing disputes, often used in conjunction with Specific Performance Orders to support tenancy sustainment. At the same time, a high proportion of applications were withdrawn or dismissed, pointing to informal resolution, disengagement, or procedural correction.

NCAT is a vital forum for both parties. It is often the first, and sometimes only, opportunity for tenants and landlords to resolve housing-related disputes in a structured legal setting. For many NCAT users, especially those facing eviction, housing insecurity, or financial hardship, the Tribunal is a pivotal point of intervention with potentially life-altering consequences. The stakes are particularly high for low-income households, people with disabilities, culturally and linguistically diverse renters, and single-parent families – all of whom are overrepresented among those experiencing housing stress.

1 https://ncat.nsw.gov.au/documents/factsheets/ccd_factsheet_decision_timeframes.pdf

NCAT's stated aims include providing a simple, quick, and effective process for resolving disputes and reviewing administrative action.[2] It seeks to resolve matters efficiently while upholding the principles of natural justice and procedural fairness. In the tenancy division, this means balancing legal correctness with accessibility for self-represented parties, many of whom are navigating complex legal issues without support.

The design and delivery of tribunal processes shape how justice is experienced by all users. When participants, whether tenant or landlord, struggle to access information, navigate digital systems, or advocate for themselves, the risk of procedural injustice increases. A user-centred approach to tribunal design is therefore not just administratively efficient but essential to maintaining trust and equity in a strained housing system.

Why This Study Matters

While the administrative data provides valuable insight into application types, timeframes, and outcomes, it cannot fully capture how parties experience the process. While survey responses suggested that most participants felt well prepared for their NCAT appearance, responses to open-ended questions revealed a more complex picture. Participants often described difficulties understanding their rights, navigating procedures, or following through after a decision. Ethnographic observations provided additional context, highlighting moments where confusion or disengagement occurred despite formal procedural compliance. For these tribunal users, resolution is not simply about an outcome but about whether the process felt fair, accessible, and understandable.

As rental pressures increase, the significance of tenancy tribunals in delivering just outcomes has grown. This study focuses on how people experience NCAT in practice, through its digital systems, physical spaces, and conciliation processes. Understanding these experiences can help ensure that NCAT remains not only legally sound but also navigable and equitable for those who rely on it most.

Purpose and Scope

This study explored the lived experiences of tribunal users engaged in tenancy disputes at the NSW Civil and Administrative Tribunal (NCAT). Drawing on qualitative survey responses and ethnographic observations across multiple registry locations, the project examined how applicants and respondents navigated the full trajectory of a tenancy matter—from lodgement through to conciliation, hearing, and outcome. Particular attention was paid to procedural clarity, emotional experience, power dynamics, and the availability of support.

The study focused on self-represented individuals. While participants were asked to identify whether they were an applicant or respondent in the matter, they were not asked to state whether they are a tenant or a landlord. Post-hoc analysis suggests that both tenants and landlords were represented in the study as both applicants and respondents. Given the limitations of this post-hoc inference and the ethical considerations around reporting uncertain data, this report does not disaggregate findings by tenant or landlord status.

2 https://ncat.nsw.gov.au/about-ncat/what-is-ncat.html

Instead, it focuses on how users experienced NCAT processes from the standpoint of their procedural role.

By centring the perspectives of self-represented users, the study aimed to generate insights that can inform practical improvements in fairness, accessibility, and user experience across NCAT's tenancy division.

Methods

This study used a mixed methods approach incorporating participant survey data and ethnographic observation. Tribunal users who had been involved in a tenancy dispute at NCAT were invited to complete a short survey immediately following their hearing. The survey captured basic contextual information (e.g. role in the dispute, language background, representation) and concluded with an open-ended question asking participants to describe their experience in their own words.

In addition to the survey responses, researchers conducted structured observations of tribunal conciliation and hearing processes, focusing on the flow of interactions, communication dynamics, procedural fairness, and visible barriers to participation. These observations were recorded as field notes and analysed thematically alongside participant survey responses.

The combined data provides insights not only into what tribunal users experienced, but how those experiences played out in real time. This design enabled the study to capture both the participants' reflections and the researchers' independent observations of the dispute resolution environment.

Further detail on the study design, recruitment approach, and analysis methods is provided in the Methods appendix at the end of this report.

Study Sample

Participants were recruited from both group listings and contested hearings during five sitting days observed across four NCAT registry locations. The majority of people invited to participate in the survey were from group listings, as these accounted for a greater volume of matters on each sitting day. A total of 53 people were invited to participate in the study, of whom 45 agreed and completed the survey. Eight people declined to participate.

Each participant provided insights in relation to a single tenancy matter listed at the NSW Civil and Administrative Tribunal (NCAT). Of these, 26 participants (58%) were respondents and 19 (42%) were applicants. Only one survey was completed per party per matter; in some cases, both an applicant and a respondent from the same matter took part, but responses were not linked and cannot be analysed as matched pairs.

Participants were not directly asked to identify whether they were tenants or landlords. Post-hoc analysis suggests that most landlord participants were applicants, and that both tenants and landlords appeared on both sides of matters. However, this information could only be inferred in some cases and was not verifiable for all participants. As such, this report does not

attribute findings based on tenant or landlord identity, focusing instead on users' procedural roles and their reported experiences of the tribunal process.

The study was conducted across four NCAT registry locations: Sydney, Newcastle, Liverpool, and Penrith, allowing for a diversity of experiences across metropolitan and regional settings.

Findings

Lodgement and Access

Participants reported a number of technical and structural barriers when accessing NCAT's digital systems and resources during the lodgement process. Several participants described significant frustration with the NCAT portal, particularly when it was unavailable or unreliable at key moments. One participant noted that the portal was down for consecutive days, and when access was restored, it crashed multiple times during attempts to upload documents. Another reported spending more than three hours trying to register and lodge an application, complicated by having signed up with the wrong name. Others reported confusion about file size limits, specifically whether the size restriction applied per document or to the total upload. These issues created additional stress, particularly for users with limited digital skills.

Concerns about accessibility were not limited to system reliability. For some participants, language and cultural differences contributed to difficulty engaging with the tribunal process. One participant, supported by a lay advocate, was an international student and recently arrived migrant who faced significant challenges during the lodgement and preparation stages. The advocate explained that the applicant was unprepared for the level of autonomy required in self-representation ad found the landlord's adversarial conduct distressing. In the applicant's country of origin, such behaviour by a landlord would have been unlawful, and this cultural dissonance added to their confusion and anxiety.

Although NCAT is designed to support self-represented participation, effective engagement still depends on an individual's legal capability, that is, their ability to understand the process assess their rights and options, and advocate for themselves in a high-stakes setting. In this case, the participant struggled not only with legal terminology but also with the expectations placed on them to manage their matter independently.

Although translated information is available on the NCAT website and is presented clearly, the participant and their support person were unaware of it. This suggests a gap not in content but in how people might access that content. This example illustrates how the intersection of limited language proficiency, cultural unfamiliarity, and limited legal support can heighten vulnerability, especially for users from culturally and linguistically diverse backgrounds who are navigating tenancy disputes for the first time.

Participants also highlighted the difficulty of navigating available resources. While the NCAT website hosts a wide array of factsheets, guidance, and FAQs, users described these as hard to find and difficult to relate to their specific situations. This points to a usability gap between the information provided and the actual needs of those trying to access the tribunal's services.

Best-practice guidance on digital government services emphasises that websites should be reliable, easy to navigate, written in plain language, and accessible to all users, including people from culturally and linguistically diverse (CALD) backgrounds.[3] The NCAT website aligns with many of these principles, offering a range of translated resources, clear instructions, and online access points for parties to manage their matters.

Nonetheless, experiences from this study suggest that some users, particularly those with limited digital literacy or legal familiarity, still encounter barriers when engaging with NCAT's systems. Confusion about document upload requirements, lack of awareness of translated materials, and difficulty navigating available resources indicate that further attention to usability and intuitive design may support more equitable access. Ensuring that information is not only available but also findable and understandable for all user groups remains central to effective service delivery in a people-centred justice system.

A small number of participants also raised concerns about the cost of lodging an application. One applicant expressed the view that if they were "in the right," they should not be required to pay the application fee or should at least have the cost shared. This participant highlighted that in addition to paying the lodgement fee, they had invested considerable time in preparing documents and had to take time off work to attend the hearing. These sentiments suggest that the lodgement fee, while modest in absolute terms, can be perceived as unfair by users who already feel burdened by the emotional and financial costs of the process. For users with limited resources or a strong sense of grievance, the upfront cost may be a further barrier to accessing justice.

Pre-Listing Preparation and Use of Support

Closed-response survey questions suggested that participants generally felt well prepared for their NCAT appearance. On a five-point Likert scale where 1 represented "not at all prepared" and 5 represented "extremely prepared," 71% of participants rated themselves as either 4 or 5.

Similarly, 69% of participants (n=31) reported that they had all the necessary paperwork for their case. Five participants indicated they did not have the necessary paperwork, while nine were unsure. Most participants also rated their understanding of the tribunal process highly: 64% selected either 4 or 5 on a five-point scale where 5 represented "fully understood".

Participants were also asked to rate how well they understood the tribunal process and what was expected of them. On a five-point Likert Scale where 1 represented "not at all understood" and 5 represented "fully understood", 64% of participants rated themselves as either 4 or 5.

Just under half of participants (44%, n=20) had accessed some form of legal or other advice or information prior to their hearing. Support-seeking behaviour varied by role. Among applicants, 11 accessed support before lodging their application, four between submission and the hearing, and one on the day. Respondents were less likely to seek early assistance: two did so prior to receiving notification of the case, with eight seeking help between notification and the hearing, and two on the day seeking advice or information.

3 Digital Transformation Agency (DTA) (2023). Digital Service Standard. Australian Government.

Support sources included online resources (n=13), legal assistance lawyers (n=10), private lawyers (n=3), and family or friends (n=3). Despite small numbers in some groups, support was generally rated as helpful: 80% of those who accessed legal assistance lawyers reported the support was helpful, and all those who relied on friends or family rated their support highly.

While these survey findings suggest a generally high level of self-reported preparedness, subsequent insights from open-ended questions and ethnographic observations paint a more complex picture. As discussed below, many participants nevertheless encountered confusion or uncertainty in practice, particularly when navigating unfamiliar processes or settings. Closed-response survey questions are important in identifying patterns in people's perceptions and experiences, but the addition of combining quantitative and qualitative approaches allowed the breadth of users' experiences to be more accurately captured.

Ethnographic observations provided additional insight into how prepared participants appeared in practice. In some locations, tribunal users were observed arriving early, carrying neatly organised documentation, and confidently interacting with front desk staff. In others, confusion was more evident—particularly where signage or procedural guidance was limited. The type of front-of-house support provided appeared to impact how users navigated the waiting area and presentation for their matter. In some locations, sheriff officers greeted users and clarified room numbers and waiting procedures, which helped users orient themselves. In other registries, minimal support was available, and users were observed wandering between rooms unsure of where to go.

In one registry, different Members used different methods to call lists—one stepped out of the room to read names, while another called from inside the hearing room. This led to visible confusion: two respondents entered the wrong hearing room and were then asked by the Member whether they were late or early for the next session. Observers noted that this appeared to distress the parties involved. Other users left the tribunal after conciliation, unaware that they were required to return for consent orders, despite instructions being provided. In one case, a landlord's agent incorrectly told a respondent they were not needed again, even though the member had explicitly stated otherwise.

These observations suggest that even when information is given, nervousness or unfamiliarity may limit comprehension or recall. Different approaches to support and communications by those working in the registry influenced how well-prepared and confident participants appeared in practice, regardless of their self-reported preparation or understanding. for their NCAT appearance.

These findings align with broader research showing that many tribunal users report feeling confident or prepared, even when they may not fully understand the legal or procedural steps involved. This may reflect a subjective sense of readiness that masks important gaps in knowledge or capability. In this study, participants' confidence did not always translate into effective navigation of the process. Ethnographic observations and open-text survey responses revealed that even those who reported feeling prepared sometimes struggled to interpret instructions, missed steps in the process, or became visibly confused in the registry environment.

The fact that many respondents only sought support late in the process, or not at all, raises particular concerns. Respondents often have less time to prepare, as they are reacting to an application rather than initiating it. Delayed access to information or advice may limit their ability to gather evidence, understand their rights, or make informed decisions, placing them at a disadvantage compared to applicants who have had more time and control over how the matter unfolds. This "informational disadvantage" can affect not only users' confidence, but also the fairness and quality of their engagement with the Tribunal. Well-prepared Tribunal users can also contribute to efficiency gains for the Tribunal processes.

Experience of Conciliation

Conciliation is an alternative dispute resolution process where people in dispute talk about their issues in an informal, private meeting with the aim of reaching an agreement. Parties are asked to attempt conciliation before the hearing can take place. NCAT provides Conciliators at major hearing venues to assist parties during their conciliation discussions. Where Conciliators are not available the Tribunal Member will act as both Conciliator and Member with the consent of the parties.

During conciliation, most participants (59%) reported they had no support person with them. Of the 10 participants who did have support during conciliation, tenant advocates were the most common (n = 6), followed by friends or family (n = 4), a general advocate (n = 1), and a disability support worker (n = 1). Some participants reported having more than one type of support person in attendance. Those who had access to advocacy or informal support during conciliation generally described it as beneficial, citing improved confidence, clarity, and emotional support.

Much of the discussion about conciliation in this study reflects the experiences of tenants, particularly those facing power imbalances when negotiating with landlord agents. Observations across registry sites confirmed that landlords were overwhelmingly represented by professional agents—many of whom appeared familiar with NCAT processes and procedures. In contrast, tenants often appeared for themselves and were more likely to express confusion or distress, particularly in the absence of neutral facilitation.

However, there were occasional exceptions. In one case, a self-represented landlord noted they were unable to afford for their agent to attend and felt unprepared to manage the conciliation process alone. This participant expressed disappointment upon learning that the tenant had access to a tenants' advocate, while they had no equivalent form of support. While such scenarios appeared uncommon, they highlight that a small number of landlords may also experience the process as unfamiliar or challenging—particularly when self-represented. These reflections do not diminish the critical role of tenants' advocacy but highlight that NCAT processes, while designed to support self-representation, may at times presume a level of confidence or assertiveness that not all users possess.

PARTICIPANT REFLECTIONS

Ethnographic observation was not possible inside the conciliation room, as these discussions are private and confidential. Accordingly, participants' reflections on their conciliation experiences are based solely on their self-reported accounts. However, safety concerns observed by researchers outside the conciliation room—such as in public waiting areas or during interactions immediately before or after conciliation—are reported separately below.

Some participants described distress and vulnerability during conciliation, particularly when negotiating directly with real estate agents or housing officers. They reported that these professionals, who often represent at the tribunal as part of their day-to-day work, frequently used legalistic language or references to legislation, which left some users feeling overwhelmed and disempowered.

> **Some participants accepted outcomes they believed were unfair because they felt pressured, feared losing their tenancy, or lacked the confidence to continue to a contested hearing. This was especially pronounced when no neutral conciliator was present to support or guide the process.**

Where a conciliator was involved, views varied. Some participants found the conciliator's presence essential to reaching an agreement, describing them as helpful, clarifying, and able to manage dynamics between parties. A smaller number reported negative experiences, including one participant who said the conciliator disrupted the negotiation when they entered the room part-way through. These differences suggest that conciliators' individual skills and approaches have a meaningful impact on how participants experience the process.

In several cases, tenants reported feeling intimidated by landlord agents during conciliation, particularly when those agents dominated discussions or dismissed tenants' concerns. Where conciliators were present, inappropriate behaviour could be managed by separating parties or setting clearer expectations. However, in their absence, some participants described feeling bullied, silenced, uncertain about how to respond, or unable to advocate for themselves effectively.

Participants frequently commented on the lack of clarity about their rights and responsibilities during conciliation, and some appeared unaware that they could reject proposed agreements or seek clarification. A few expressed regret after agreeing to outcomes when they did not fully understand the implications.

OBSERVED SAFETY CONCERNS

The most serious concerns related to safety. On two occasions, sheriffs were required to remove or supervise a party due to escalating behaviour. In one of these cases, a participant explicitly described the process as feeling "extremely unsafe', underscoring the emotional intensity that can accompany tribunal appearances, particularly in high-conflict matters. The presence of sheriffs and other monitoring mechanisms, reflect the Tribunal's commitment to ensuring the safety and security of all participants. These incidents also highlight the importance of early identification of risk and ensuring parties feel both physically and emotionally safe throughout the process.

Ethnographic observations confirmed that there were instances where no trained third-party was present to facilitate or monitor conciliation. In at least one registry, no conciliator was available for the entire day's tenancy list. In others, a single conciliator was required to move between multiple matters simultaneously. This meant that some negotiations occurred without structured oversight, and that the presence of a neutral facilitator could not be consistently relied upon. In these situations, parties, particularly those unfamiliar with tribunal processes, may be more exposed to pressure, confusion, or inappropriate behaviour without any clear avenue for support or intervention.

THE IMPORTANCE OF SKILLED CONCILIATION AND ADVOCACY

While this study did not aim to evaluate conciliation practice directly, the concerns raised suggest the need for systemic attention. Participants' experiences point to the importance of trauma-aware facilitation, clear procedural safeguards, and accessible pathways for seeking clarification or support.

Conciliation is often framed as a lower-conflict alternative to formal hearing—but without skilled, neutral facilitation, it can replicate or even amplify the power imbalances that formal hearings are designed to address. Ensuring that all parties—particularly self-represented and vulnerable tenants—have access to fair, safe, and transparent negotiation processes is critical to the integrity of tenancy dispute resolution.

The presence of tenants' advocates was consistently described as positive and empowering by participants who accessed them. Advocates were seen to level the playing field, provide reassurance, and help tenants understand their rights and options during negotiation. Their involvement not only mitigated the emotional and procedural burden on tenants but also contributed to more informed and confident participation. Expanding access to tenants' advocacy could be a key mechanism for improving users' experiences of the Tribunal and supporting the efficient operations of the Tribunal.

The findings suggest that skilled conciliation and accessible advocacy are not merely helpful additions but play an important role in supporting fair and equitable participation. Ensuring the consistent availability of trained, neutral facilitators and expanding access to independent advocacy could reduce risk, improve confidence in negotiated outcomes, and support fairer, efficient processes overall.

A forthcoming evidence snapshot on conciliation in Australian civil justice contexts further supports these insights.[4]

4 Butler K, Davies K, Kothe E. (2025) Conciliation in Australian Civil Justice: An Evidence Snapshot. Law and Justice Foundation of NSW.

Experience on the Day of the Tribunal

TRIBUNAL DAY LOGISTICS AND DELAYS

Participants' experiences on the day of their hearing varied widely and were influenced by expectations, communication, and procedural clarity. Most participants expressed that they found the Tribunal Member to be fair and respectful. However, the duration of proceedings exceeded most parties' expectations. Many noted they had not anticipated how much of their day would be consumed and were surprised by delays or the need to return for consent orders or a future hearing. These comments came primarily from participants in group listings. Although new group lists commence each hour, researchers noted that conciliation and hearing processes sometimes extended beyond the scheduled hour, with some participants returning to the hearing room during subsequent sessions. Several participants who declined to take part in the study cited the need to rush back to their cars to avoid parking fines or to return to work.

These are qualitative findings and not disaggregated by listing type, but they point to a mismatch between user expectations and how the day unfolded. While some pre-hearing information is provided, it may not always be retained or fully understood, particularly given the volume of information users receive, and the stress often associated with preparing for a Tribunal appearance.

NAVIGATING AN UNFAMILIAR ENVIRONMENT

> **A majority of participants reported that it was their first time at NCAT or in any legal setting, highlighting an unfamiliarity with legal procedures and the tribunal environment.**

This inexperience appeared to contribute to uncertainty during proceedings. Some participants were unclear about when they were allowed to speak, and a few reported that they missed the opportunity altogether. Others described a strong sense of relief when finally given the chance to explain their situation.

Participants who expressed dissatisfaction tended to do so in relation to perceived unfair outcomes. In one case, a couple who had invested significant time preparing for a contested hearing—including reviewing the Residential Tenancies Act and evidentiary rules—found that the hearing did not unfold as expected. They described the process as resembling conciliation more than adjudication and felt that the Member had allowed non-compliant evidence to be introduced by the other party. They felt disempowered and questioned whether their preparation had been worthwhile. In other cases, dissatisfaction stemmed not necessarily from the outcome itself but from a lack of clarity about how or why certain evidence was not accepted. Fuller explanations may have mitigated these concerns. There may also be opportunities to better ensure that Tribunal users are aware of, and engage with, existing online resources about what to expect during a hearing and that they understand their rights to information, such as records of the reasons for decisions after their hearing.

Ethnographic observations confirmed wide variations in Members' communication styles and the clarity with which proceedings were explained. One particularly experienced Member

was noted for being patient and empathetic, carefully explaining decisions and listening respectfully. This approach appeared to foster trust and understanding, particularly among first-time users. In contrast, another Member adopted a more directive style, which appeared to intimidate some participants and left others visibly uncertain. In these cases, participants were less likely to engage confidently or appear to fully grasp the process, potentially contributing to dissatisfaction with the outcome.

The observations and reported experiences of tribunal users highlight the challenging nature of providing efficient and fair processes within an environment that can be uncertain and daunting for users. Thoughtful consideration and communication to users in important, as is a timely process.

GAPS IN COMMUNICATION AND PROCEDURAL UNDERSTANDING

Another point of confusion observed and reported was related to listing expectations. Some participants were surprised to learn that, if no agreement was reached in conciliation, their matter would not be heard that day. While this practice varies based on time and capacity, in at least one registry the Member made it clear that parties would need to return. This was understandably difficult news for participants who were not prepared for that possibility.

These observations and participant reflections suggest that the experience of appearing at NCAT could be significantly improved through clearer upfront guidance, consistent Member communication, and more direct information about scheduling and timeframes. Again, while resources such as online information may be available, these may not necessarily be accessed, or understood by tribunal users. For many users, especially for those attending for the first time, empathy, clear communications, and adequate time can meaningfully shape perceptions of fairness.

Power Dynamics

Participants in this study frequently described a sense of power imbalance in their interactions at NCAT, particularly in disputes involving landlords' agents. Tenants were acutely aware that agents were "repeat players"—individuals with more experience navigating tribunal processes, familiarity with the Residential Tenancies Act, and often informal rapport with tribunal staff. This led some survey participants to express discomfort or suspicion, with a few commenting that the system appeared biased in favour of landlords.

For many tenants, particularly those unrepresented or attending for the first time, this imbalance had tangible emotional and practical consequences. Some described being overwhelmed during negotiations or feeling unable to advocate effectively. The stress of the experience, combined with unfamiliar legal language and adversarial tactics, was reported as a major barrier. One participant described how a landlord's agent repeatedly referred to sections of the Tenancy Act during negotiations, which the participant did not understand, creating a sense of being "overwhelmed with legal mumbo-jumbo".

While most landlords were represented by agents, a small number of self-represented landlords also participated in this study. These individuals, though fewer in number, reported their own challenges navigating the process—particularly when facing experienced tenant advocates or negotiating without support. In one case, a landlord who was unable to afford

representation described feeling unprepared and disadvantaged during the conciliation process. While tenants as a group were more likely to experience structural barriers and disadvantage, these examples suggest that some landlords may also face difficulties engaging confidently in proceedings, particularly when self-represented.

The emotional toll was compounded by practical inequities. While landlords typically sent professional agents, tenants appeared for themselves and were less familiar with tribunal processes.

In addition, tenants frequently had to manage competing responsibilities such as taking time off work, arranging childcare, or attending alone.

One participant attended with a toddler in a pram, while another spoke of having no one to help and feeling completely alone. One person was making calls to real estate agents in the time between conciliation and consent orders, desperately trying to find a new rental property for their family. These examples reflect the broader challenges faced by self-represented tenants in navigating the tribunal process, often without the buffer of professional or informal support.

Participants also described experiences of incivility or intimidation from the other party during conciliation. Where conciliators were present, they could intervene or separate parties when needed. However, in cases where no conciliator was available, some tenants reported feeling bullied or coerced. These experiences raise important questions about whether agents are appropriately equipped—either in training or orientation—to manage negotiation in an equitable and non-coercive manner.

Despite these challenges, some participants highlighted positive experiences. One participant experiencing domestic violence reported that a social housing officer provided empathetic and practical support during proceedings. However, support of this kind is largely dependent on the individual skills of the officer and may not be routinely available. Further, parties experiencing such risks may not disclose their circumstances in the absence of clear pathways to assistance.

Participants consistently described the tribunal process as intimidating—even those who felt well prepared. Feelings of vulnerability were common, especially among those without legal knowledge or experience.

Many participants reported that it felt like no one was there to help them, and that their voices were diminished by an imbalance of experience and power.

Experiences with tenants' advocates, where available, were universally positive. Advocates were described as empowering, supportive, and critical to helping participants understand and assert their rights. Their presence appeared to mitigate many of the challenges described above.

These findings reflect broader research on the impact of power differentials in civil justice processes. The literature shows[5] that self-represented or unrepresented individuals often struggle to assert their rights against more experienced parties. In such settings, confidence, familiarity with procedure, and access to legal language function as forms of institutional power. Without procedural safeguards, power imbalances can lead to outcomes that feel unfair or are, in effect, unjust—even when formal legal standards are followed. Ensuring accessible and balanced processes benefit all parties, including those who may be less familiar with the tribunal environment.

Outcomes and Perceptions of Fairness

Participant feedback on case outcomes was mixed. Some expressed satisfaction, especially where they felt heard and were able to explain their situation. Others reported ambivalence or dissatisfaction, particularly when the process led to an informal agreement rather than a clear adjudication. Several participants expected the tribunal to make a definitive ruling and were surprised when matters resolved through conciliation or compromise.

Some participants indicated that while they understood and accepted the result, they were left unsure whether it was truly fair or merely the result of pressure and exhaustion. In several cases, outcomes were perceived as legally correct but emotionally unsatisfying—particularly for those facing housing insecurity or dealing with a sense of powerlessness.

Observations during hearings and conciliation sessions confirmed the variability in how outcomes were communicated and received. In some cases, Members took considerable time to explain decisions in plain language and acknowledged the effort and stress participants had endured. In others, explanations were brief or unclear, leaving participants with unanswered questions. Some users left immediately after a result was announced, without asking follow-up questions or indicating understanding—suggesting either clarity or resignation.

Visible reactions ranged from relief and gratitude to quiet frustration or disengagement. In a few cases, participants appeared confused about whether their matter had been finalised or what the next steps were.

These findings reflect established research[6] showing that procedural clarity and perceived fairness are just as important to user satisfaction as the substantive outcome itself.

> **Even when the legal result is technically sound, tribunal users may experience the outcome as unfair if they feel silenced, confused, or rushed. The emotional weight of tenancy matters—often involving one's home, family, and financial security—amplifies the need for processes that support understanding and provide closure.**

5 Butler K, Davies K, Kothe E. (2025) Conciliation in Australian Civil Justice: An Evidence Snapshot. Law and Justice Foundation of NSW.
6 Coumarelos, C., Macourt, D., People, J., MacDonald, H., Wei, Z., & Iriana, R. (2012). Legal Australia-Wide Survey: Legal Need in Australia. Law and Justice Foundation of NSW.

Discussion

The findings of this study highlight the complexity of tribunal participation for users navigating tenancy disputes at NCAT. While many participants reported feeling prepared and described Members as fair, the experience was often marked by anxiety, confusion, and a sense of power imbalance. The challenges described—ranging from digital access issues to the emotional weight of conciliation—reflect both structural and procedural dimensions of access to justice.

A recurring theme throughout the study was the gap between formal procedural fairness and how that fairness is experienced by tribunal users. Participants often accepted outcomes despite not fully understanding the process, due in part to stress, legal inexperience, or inconsistent communication. This highlights the importance of not only technical fairness but also perceived fairness—an area strongly influenced by clarity, support, and the conduct of both Members and agents.

Power imbalances were apparent throughout the process. Many tenants faced experienced, repeat-player agents who used legal language and negotiation strategies that left applicants feeling overwhelmed. The lack of neutral oversight in some conciliation settings amplified these pressures. While some conciliators helped restore balance and clarify issues, others were perceived as disengaged or disruptive, and in some cases the absence of a conciliator altogether led to feelings of intimidation or confusion.

Ethnographic observations reinforced these themes. They showed how procedural information, even when conveyed by Members, was not always retained or understood by participants. This was especially true for first-time tribunal users, or where language or cultural differences limited effective engagement. Observers also noted that registry practices and staff interactions varied significantly across sites, affecting user confidence and navigation of the process.

These findings echo broader research on civil justice access, which emphasises that confidence, comprehension, and process legitimacy are key to user satisfaction and procedural justice. When these elements are absent or inconsistent, even legally sound decisions can be experienced as unfair.

The implications of this research point to the need for

- **strengthened procedural safeguards, including clearer communication strategies,**
- **consistent support across registry sites, and**
- **a more structured approach to managing power imbalances—particularly in conciliation.**

This includes ensuring that a trained conciliator is available in all situations where parties are encouraged or required to negotiate outside the hearing room. The presence of a neutral, skilled facilitator helps prevent intimidation and misunderstanding and promotes more constructive negotiation and greater user confidence in the process. Where such facilitators are unavailable, tribunals risk exposing vulnerable parties to coercive or confusing interactions with little oversight. Enhanced training for Members and registry staff in areas such as trauma-informed practice, and greater accessibility to, and promotion of, support services may all contribute to a more equitable and empowering tribunal experience.

In particular, participants' overwhelmingly positive feedback about tenants' advocates underscores the value these independent services provide in tribunal settings. While not part of NCAT and not funded by it, tenancy advocacy services played a vital role in helping participants understand their rights, manage stress, and engage more confidently in the process. Expanding the availability of such support — across jurisdictions and registry locations, and in-person and virtual hearing modes — could significantly improve the experience of vulnerable or unrepresented tenants and better enable fair participation in tenancy dispute resolution..

STEP Methods

Study Aim and design

The Study of Tenancy Dispute Experiences and Preparedness (STEP Study) aimed to explore the lived experience of self-represented parties appearing in tenancy matters at the NSW Civil and Administrative Tribunal (NCAT). The study focused on user perceptions of preparation, process clarity, communication, and emotional experience. It was designed to complement quantitative administrative data by providing in-depth insights into how tribunal processes are encountered by individuals without legal representation.

The study used a mixed-methods design, integrating structured survey data, qualitative interviews, and ethnographic observation to capture both user-reported experience and observed practice.

Methodological approach

QUALITATIVE AND ETHNOGRAPHIC METHODS

- Qualitative research methods are widely used to understand complex social and institutional processes. Unlike quantitative studies, qualitative research does not seek to establish prevalence or generalisability. Instead, it identifies patterns, meanings, and interpretive frameworks within lived experience. In this study, open-ended survey questions and field interviews were analysed thematically to identify recurring issues, tensions, and opportunities for system improvement.

- Ethnographic observation, where researchers systematically record behavioural, environmental, and communication dynamics, was used to contextualise participant accounts. Observations were made in registry foyers, waiting areas, and hearing rooms (where permitted), and included interactions with registry staff, signage and information displays, observed party behaviour, and communication by Tribunal Members and others in public settings. As conciliation sessions are private and confidential, no observations were made within the conciliation room itself. Consequently, participant reflections on conciliation are based solely on their accounts.

- All fieldnotes were recorded contemporaneously and later coded using qualitative data analysis software. The combination of self-report and observational data enhances the validity of findings through triangulation.

SCOPE AND INCLUSION CRITERIA

The study focused on tenancy list matters heard in the Consumer and Commercial Division of NCAT. It included both conciliations and contested hearings. Participants were:

- Self-represented parties (either applicants or respondents)
- Attending in person at one of the selected NCAT locations
- Aged 18 or over
- Available and willing to participate immediately after their hearing

Parties represented by real estate agents, lawyers, or other professionals were excluded. However, self-represented parties who received informal support or advice from others remained eligible.

RECRUITMENT AND CONSENT

Field researchers identified eligible participants by observing hearings and registry processes. Eligible individuals were approached in public waiting areas and invited to participate. The voluntary and confidential nature of the study was explained, and verbal consent was obtained before proceeding. Participation was taken to imply informed consent, consistent with ethics protocol.

All participants received a $20 gift voucher as a token of appreciation. Participation was not linked to any tribunal process or outcome.

DATA COLLECTION AND FIELDWORK

Data were collected across five NCAT tenancy sitting days:

- 10, 11, 13, 17, and 18 March 2025

The selected sites—Sydney, Liverpool, Newcastle, and Penrith—were chosen to reflect diversity in registry size and demographic profile. All participants completed a short, structured survey, and additional open-ended feedback. Researchers administered the survey verbally and recorded the participants' responses on a tablet.

Ethnographic observation occurred concurrently. Researchers recorded fieldnotes during public proceedings and in registry spaces, including interactions, signage, and environmental cues relevant to user experience.

SAMPLE SIZE AND SATURATION

A total of 53 individuals were invited to participate, of whom 45 agreed. Eight declined. While refusals were not systematically recorded, they appeared infrequent. This information has been included retrospectively based on field notes and team reflection and should be interpreted with appropriate caution.

Data collection continued until thematic saturation was reached i.e., the point at which no new themes were emerging from interviews or observations. The final sample size reflects both saturation and the logistical limitations of fieldwork across multiple sites.

ETHICAL REVIEW

The study was reviewed and approved by the Law and Justice Foundation of NSW's internal Human Research Ethics review process. This process is guided by the principles of the National Statement on Ethical Conduct in Human Research and applies equivalent scrutiny to studies involving human participants. All protocols adhered to national ethical standards. Participant anonymity was maintained throughout, and no personal or identifying information was recorded. Researchers wore official identification and were prepared to show documentation confirming NCAT's support for the study if requested. All researchers were appropriately trained in the data collection methods and are skilled, qualified researchers used to working with sensitive data.

DATA ANALYSIS

Quantitative survey data were analysed using descriptive statistics. Open-ended responses and fieldnotes were thematically coded by the lead researcher, with cross checking of coding outputs by multiple team members to ensure consistency and interpretive rigour. Thematic patterns were identified across sites, roles, and stages of the tribunal process. Findings were interpreted in relation to principles of access to justice, user-centred service design, and legal capability.

STEP Participant Survey Results

Who Took Part

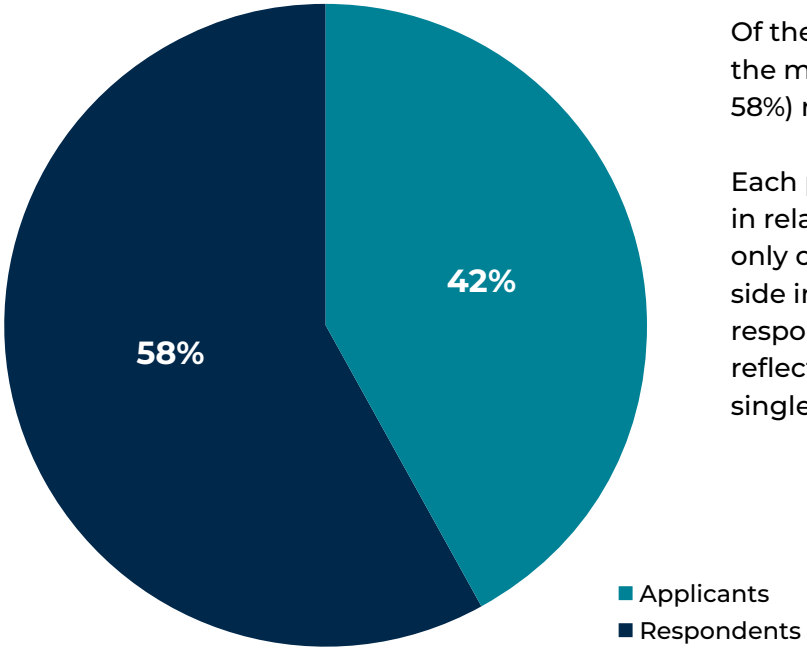
Eligible participants were people who attended NCAT for a tenancy dispute and were representing themselves. Forty-five people responded to our invitation to participate in the STEP Study and completed the survey and interview.

Table 1: Study participants by location (n=45)

NCAT Location	Number of Participants
Sydney	16
Newcastle	11
Liverpool	12
Penrith	6

Q1 What was your role in the tribunal matter?

Figure 1: Applicants vs Respondents



Of the forty-five people who participated, the majority were respondents (n=26, 58%) rather than applicants (n=19, 42%).

Each participant provided responses in relation to a single matter, with only one interview completed for each side in a matter (i.e. applicant and respondent). While some interviews reflect responses from both sides in a single matter, responses are not linked.

Experience of Conciliation

Q2 Did you participate in any conciliation?

The majority of people participated in conciliation on the day of their interview (n=31, 69%).

Q3 Did you reach an agreement?

When people took part in conciliation, consent orders were made as result for the majority of matters (n=21, 68%). Where conciliation took place and an agreement was not reached, matters were resolved by adjournment (n=7), a decision by the Member on the same day (n=2), or dismissal (n=1).

For matters that did not include conciliation, 1 matter was withdrawn, 6 resulted in an adjournment, 3 resulted in decision by the Member, and 4 were dismissed.

Q4 Did you have anyone support you (during conciliation)?

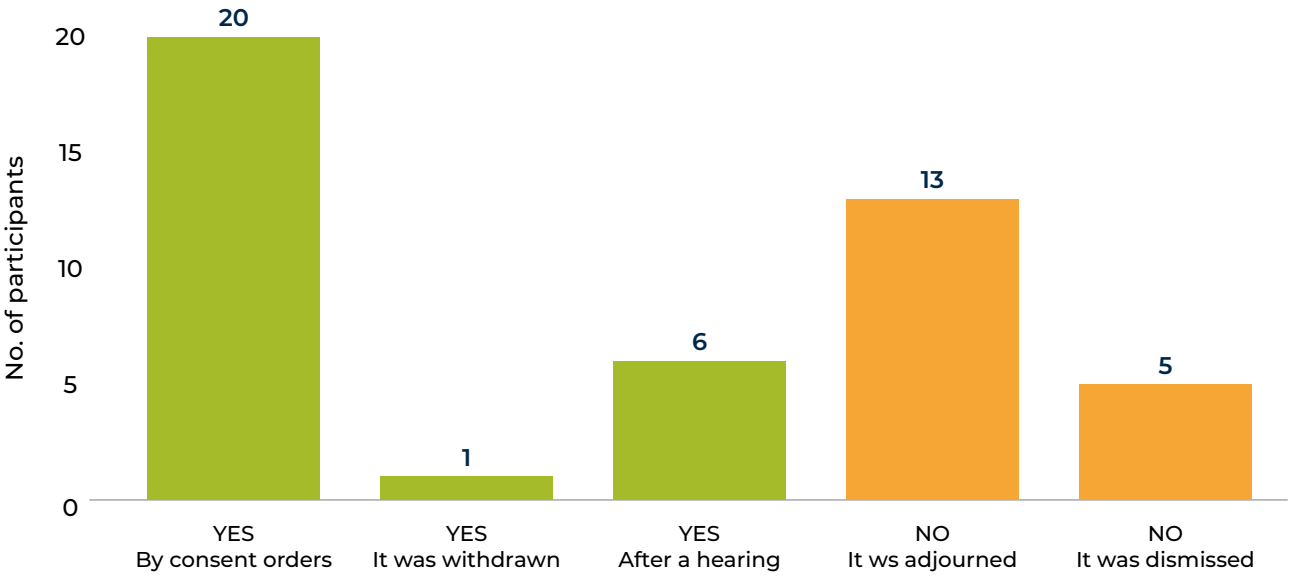
Most people who took part in conciliation outside of the hearing room did not have any support during their conciliation (n=17, 59%). The sources of support for people who did have support during their conciliation (n=10) are described in Table 2.

Table 2: Support during conciliation

Type of support during conciliation	Number of Participants
Family or friend	4
Tenant's advocate	6
Advocate (not otherwise described)	1
Disability support worker	1

Q5 Was your tribunal matter resolved today?

Figure 2: Resolution status of tribunal matters



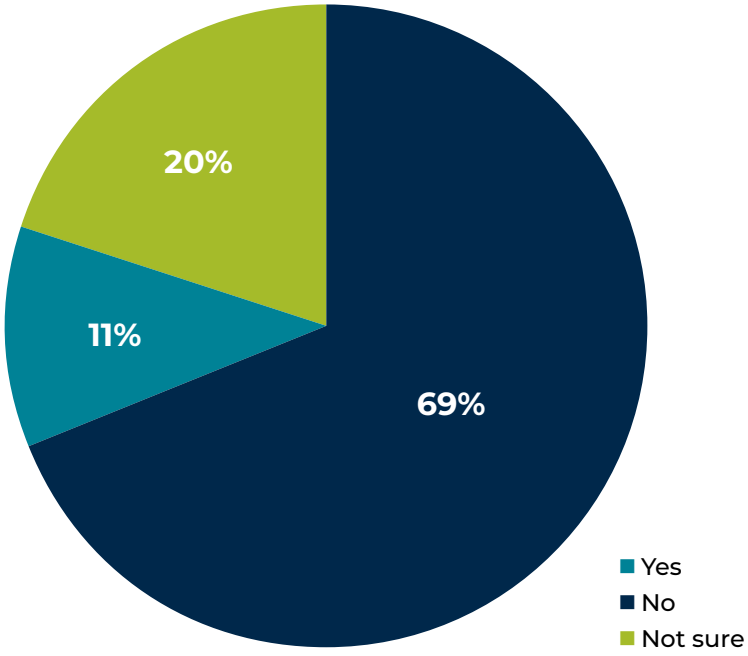
Preparation and Understanding

Q6 How prepared did you feel for your tribunal hearing today?

Most people felt prepared for the tribunal hearing. 71% rated themselves as either 4 or 5 on the rating scale (with 5 being 'extremely prepared').

Q7 Did you have all the necessary documentation for your case?

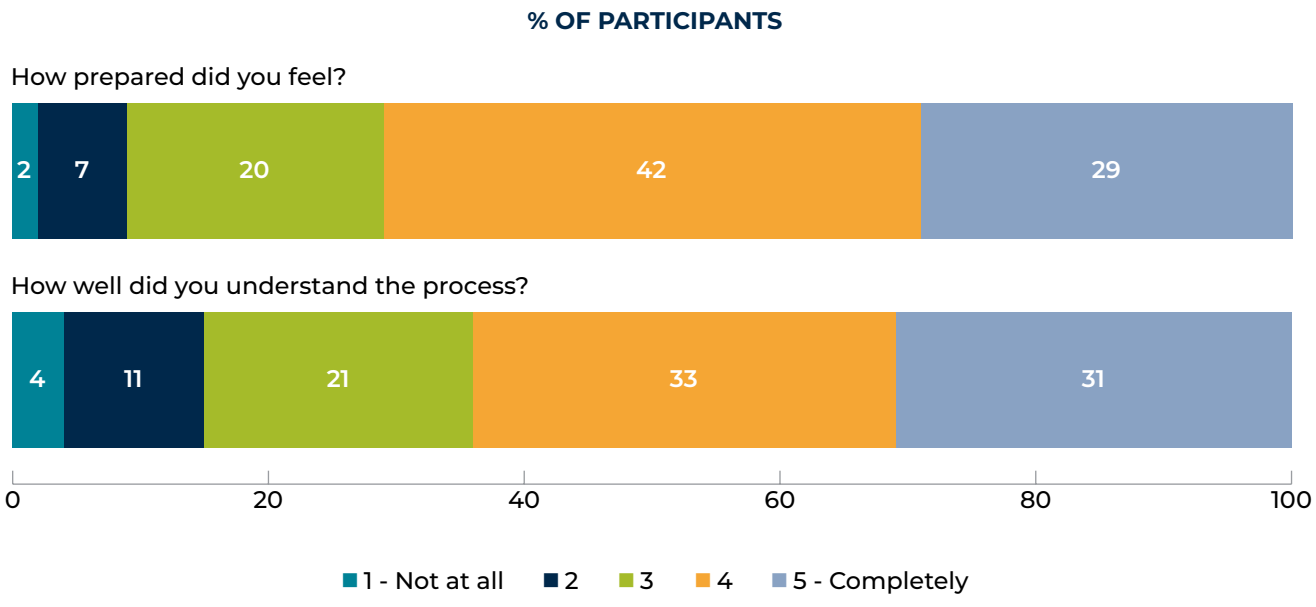
Figure 3: Necessary Documentation



Q8 Did you understand the tribunal process & what was expected of you?

Most people reported feeling that they understood the tribunal process and what was expected of them. 65% rated themselves as either 4 or 5 on the rating scale (with 5 being fully understood).

Figure 4: Participant ratings on preparation and understanding



Support and Advice

Q9 Did you access any legal (or other) advice or information?

Most participants did not access any legal or other advice or information prior to the hearing (n=25, 56%). Where they did this, came from a range of sources.

The potential triggers for accessing support differ depending on whether a person is an applicant or respondent. As such, questions about when people accessed support were phrased differently depending on a person's role in the matter.

Q10 When was the first time you accessed advice or information?

Where applicants accessed legal or other information this was accessed before submitting the application (n=11), between submission and the day of the hearing (n=4), on the day of the hearing (n=1).

Among respondents, two participants had sought formal advice or information prior to receiving the notification of the case. Others sought formal advice or information between receiving notification and the day of the hearing (n=8) and two had received support on the day of the hearing.

Q11 What type of advice or information did you access?

Table 2: Helpfulness of Support and Advice accessed

Support Type	Used by (n)	Rated 4-5 (%)
Online Resources	13	62
Any type of legal advice	13	69
Family or friend	3	100

Q12 How helpful was the information or advice?

Most people rated the information and advice they received as helpful. Table 2 shows the proportion of people who rated each source of support as either a 4 or 5 (with 5 being "extremely helpful"). This only takes into account ratings from people who used that source of support.

STEP Study Questionnaire

Study of Tenancy Dispute Experiences and Preparedness at NCAT

This survey will be conducted using a web-based survey platform (LimeSurvey). All responses are anonymous and confidential. Paper surveys will be available for participants who prefer, or in event of no internet access.

1. What was your role in the tribunal matter? [choose one]

- ☐ Applicant
- ☐ Respondent

2. Did you participate in any conciliation described below? [choose one]

- ☐ No [skip to Q5]
- ☐ Yes, with a conciliator of the Tribunal OUSTIDE the hearing room.
- ☐ Yes, with the presiding Member INSIDE the hearing room.

3. Did you reach an agreement? [choose one]

- ☐ Yes, consent orders were made
- ☐ No

4. Did you have anyone support you? [choose all that apply]

- ☐ No
- ☐ Yes, family or friend
- ☐ Yes, tenant's advocate

5. Was your tribunal matter resolved today?

- ☐ Yes, by consent orders
- ☐ Yes, it was withdrawn
- ☐ Yes, after a hearing where evidence was given, and the Member decided the matter
- ☐ No, it was adjourned
- ☐ It was dismissed by NCAT

6. How prepared did you feel for your tribunal hearing today?

Where 1 is not at all prepared, and 5 is fully prepared.

[Likert scale – 5-point scale]

7. Did you have all the necessary documentation for your case? [choose one]

- ☐ Yes
- ☐ No
- ☐ Not sure

8. Did you understand the Tribunal process and what was expected of you?

Where 1 is "not at all", and 5 is "fully understood"

[Likert scale – 5-point scale]

9. Did you access any legal (or other) advice or information before your hearing? [choose one]

- ☐ Yes
- ☐ No [skip to Q12]

10. When was the first time you accessed advice or information for this case?

- ☐ Before submitting the application / Before receiving notification
- ☐ After submitting the application but before the hearing/ after receiving the notification but before the hearing
- ☐ On the day of the hearing

11. What type of advice or information did you access? [choose all that apply]

- ☐ Online legal resources
- ☐ Advice from a lawyer you paid for
- ☐ Advice from Legal Aid, a community legal centre, or other free legal advice (incl. Tenant's union)
- ☐ Advice from friends or family
- ☐ Other

12. How helpful was the information or advice from [...]?

Where 1 is not helpful at all and 5 is extremely helpful.

[Likert scale – 5-point scale]

13. What do you think could have helped you feel better prepared for your tribunal hearing?

[open text response]

14. Is there anything else you would like to share about your experience?

[open text response]

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