Interstate Disputes – Does NCAT Have Jurisdiction?

A recent High Court case, *Burns v Corbett [2018] HCA 15*, has cast doubt on the scope of the jurisdiction of the NSW Civil and Administrative Tribunal ("NCAT") and other tribunals to hear disputes between residents of different states. This is potentially a significant problem for strata schemes, especially those near a state border.

The problem identified in the case is that the Constitution and associated Commonwealth legislation:

- Give the High Court jurisdiction over certain matters, including "all matters ……. between residents of different States".
- Strip state courts and tribunals of State jurisdiction in relation to those matters.
- Allow State courts, but not tribunals, to hear those matters exercising federal jurisdiction, "subject to the limits of their several jurisdictions, whether such limits are as to locality, subject-matter, or otherwise"

This is known as the "diversity jurisdiction". It reflects concerns at the time the constitution was being negotiated about residents of a given state being subject to unfair treatment in court proceedings in another State. The response was to allow State courts to hear these matters, but exercising federal jurisdiction, which effects applicable law and appeal rights.

Neither the Constitution nor the case define terms such as "matters", "between" or "residents", but a string of High Court cases from the 20s and 30s indicate that:

- The High Court and State courts exercising federal jurisdiction can hear disputes between natural persons resident in different States.
- This restriction will have only limited application and State jurisdiction (and hence NCAT jurisdiction) will be available where:
    - One of the parties is a corporation.

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- There are residents of one state on each side of the dispute, e.g. a NSW resident commences proceedings against a NSW resident and Queensland resident.
- The dispute is between a resident of a given State and a resident of a territory or overseas resident, there being only one State involved.
- At the time of filing, the parties reside in the same state, but subsequently one moves to a different state.

Given the likelihood, in a strata context, that one of the parties will be an owners corporation or a strata managing agent, building manager, developer, builder, contractor, insurer or supplier which is a company, these exceptions may well largely destroy the rule. However, it needs to be considered carefully before commencing NCAT proceedings, to minimise the risk of lost cases and adverse costs orders.

We have considerable experience with these issues and can assist you if you are having difficulties in your strata scheme.

Key takeaways

- The High Court case Burns v Corbett has raised questions about NCAT's jurisdiction over interstate disputes.
- State courts can hear disputes between residents of different states under federal jurisdiction.
- Certain exceptions allow NCAT to have jurisdiction in specific circumstances involving corporations.
- Strata schemes near state borders may face significant challenges due to these jurisdictional issues.
- It is crucial to consider these factors before commencing NCAT proceedings to avoid adverse costs.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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