

**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**ACT** : STRATA TITLES ACT 1985 (WA)

**CITATION** : CARTNER and CRAIG [2020] WASAT 101

**MEMBER** : MR D AITKEN, SENIOR MEMBER

**HEARD** : DETERMINED ON THE DOCUMENTS

**DELIVERED** : 26 AUGUST 2020

**FILE NO/S** : CC 508 of 2020

**BETWEEN** : STEVEN CARTNER  
Applicant

AND

PAUL CRAIG  
Respondent

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*Catchwords:*

Proceeding under s 83(1) of the *Strata Titles Act 1985* (WA) as it was prior to 1 May 2020 - Respondent resident of New South Wales - Jurisdiction - Whether there is a matter between residents of different States for the purposes of s 75(iv) of the *Australian Constitution*

*Legislation:*

*Anti-Discrimination Act 1977* (NSW)

*Civil and Administrative Tribunal Act 2013* (NSW)

*Commonwealth of Australia Constitution Act 1990* (Cth), s 75, s 75(iv), s 77(iii), Ch III

*Interpretation Act 1987* (NSW), s 31

*Interpretation Act 1984* (WA), s 7

*Judiciary Act 1903* (Cth), s 39(2)

*State Administrative Tribunal Act 2004* (WA), s 16(1), s 60(2)

*Strata Titles Act 1985* (WA), (prior to 1 May 2020), s 32(1), s 42(2), s 83(1), Sch 1, Sch 2

*Strata Titles Act 1985* (WA), (since 1 May 2020), s 197, Sch 5 cl 4(2), cl 30

*Strata Titles Amendment Act 2018* (WA), s 82(b)

*Result:*

Preliminary issue determined

Tribunal does not have jurisdiction to deal with the matter

Application dismissed

*Category:* B

**Representation:**

*Counsel:*

Applicant : In Person

Respondent : In Person

*Solicitors:*

Applicant : N/A

Respondent : N/A

**Case(s) referred to in decision(s):**

*Australasian Temperance & General Mutual Life Assurance Society v Howe*  
(1922) 31 CLR 290

*Burns v Corbett* [2018] HCA 15; (2018) 92 ALJR 423

*CGU Insurance Ltd v Blakeley* (2016) 259 CLR 339

*Cox v Journeaux* (1934) 52 CLR 282

*Crouch v Commissioner for Railways (Qld)* (1985) 159 CLR 22

*Fencott v Muller* (1983) 152 CLR 570

*GS v MS* [2019] WASC 255

*Momcilovic v The Queen* [2011] HCA 34

*Palmer v Ayres* (2017) 259 CLR 478

*R v Langdon; Ex Parte Langdon* (1953) 88 CLR 158

R v Macdonald; Ex parte Macdonald (1953) 88 CLR 197

R v Oregan; Ex parte Oregan (1957) 97 CLR 323

Re Judiciary and Navigation Acts (1921) 29 CLR 257

Re McBain; Ex parte Australian Catholic Bishops Conference  
(2002) 209 CLR 372

Rizeq v Western Australia (2017) 91 ALJR 707

Rochford v Dayes (1989) 84 ALR 405

Watson & Godfrey v Cameron (1928) 40 CLR 446

Watson v Marshall & Cade (1971) 124 CLR 621

## REASONS FOR DECISION OF THE TRIBUNAL:

### *Introduction*

1 This proceeding was commenced prior to 1 May 2020, when major amendments to the *Strata Titles Act 1985* (WA) (**ST Act**) commenced operation. Pursuant to cl 30 of Sch 5 of the ST Act the proceeding is to be dealt with as if those amendments have not been enacted. In other words, the proceeding is to be determined in accordance with the provisions of the ST Act as it was prior to 1 May 2020. Therefore, all references to provisions in the ST Act in these reasons for decision are references to the provisions of the ST Act as it was prior to 1 May 2020, unless stated otherwise.

2 The proceeding is an application dated 27 April 2020 (**Application**) by Mr Steven Cartner (**Mr Cartner**) as applicant against Mr Paul Craig (**Mr Craig**) as respondent under s 83(1) of the ST Act, which was lodged with the Tribunal on 28 April 2020.

3 Mr Cartner and Mr Craig each own a lot in the four lot strata scheme named '6 Dee Road Applecross' (**Strata Scheme**), which was created by the registration of Strata Plan 15826 (**Strata Plan**) on 16 February 1988.

4 Each of the lots has one unit entitlement in respect of the Strata Scheme, which means that the owners of the four lots each have equal voting rights, equal ownership of the common property and equal liability for contribution to the levies for the Strata Scheme.

5 Pursuant to s 32(1) of the ST Act, a strata company named 'The Owners of 6 Dee Road Applecross Strata Plan 15826' (**Strata Company**) was created by the registration of the Strata Plan. In the application Mr Cartner refers to the 'Strata Group', which the Tribunal regards as being a reference to the Strata Company.

6 Pursuant to s 42(2) of the ST Act, prior to 1 May 2020 the by-laws of the Strata Company (**by-laws**) were the by-laws set out in Sch 1 and Sch 2 of the ST Act, because there are no changes to those by-laws registered on the Strata Plan. However, pursuant to cl 4(2) of Sch 5 of the ST Act (as it has been since 1 May 2020), Sch 1 by-laws 11 to 15 and Sch 2 by-law 5 are taken to have been repealed from the by-laws on 1 May 2020.



7 Mr Cartner has owned lot 2 in the Strata Scheme since June 2001 and Mr Craig has owned lot 4 in the Strata Scheme since January 2020. Mr Craig's wife, Ms Andrea Craig, has owned lot 1 in the Strata Scheme since January 2019 (apparently, as the trustee of a family trust, of which Mr Craig is a beneficiary).

8 Mr Cartner says that 'specific issues' have resulted from Mr Craig's actions and attitudes since January 2019.

9 Mr Cartner says in the Application that his 'complaint' against Mr Craig falls under three categories:

- 1) Breaches of the ST Act and the by-laws by Mr Craig.
- 2) 'Disruptive attitude' by Mr Craig towards the Strata Scheme management.
- 3) 'Insulting attitude' by Mr Craig towards Mr Cartner.

10 Mr Cartner is seeking orders which would:

- 1) exclude a particular strata management company from providing any services to the Strata Scheme;
- 2) require Mr Craig to 'accept and observe' the ST Act, the by-laws and resolutions of the Strata Company;
- 3) accept Mr Cartner's 'process' for the appointment of a strata manager;
- 4) bar Mr Craig from holding any Strata Company 'appointment';
- 5) require Mr Craig to 'not be disruptive and argumentative' at meetings of the Strata Company;
- 6) appoint an 'independent chairman' to conduct the next Strata Company meeting; and
- 7) require Mr Craig to pay Mr Cartner's costs in making the Application.

11 At the first directions hearing in the proceeding the Tribunal noted that Mr Craig's address is stated in the Application as an address in New South Wales, whilst Mr Cartner's address is in Western Australia.

Mr Craig stated that he resides in New South Wales and Mr Cartner does not dispute that.

12 This raises the question of whether or not the Tribunal has jurisdiction to deal with the application in light of the decision of the High Court of Australia (**High Court**) in *Burns v Corbett* [2018] HCA 15; (2018) 92 ALJR 423 (*Burns v Corbett*). That decision has potential ramifications regarding the jurisdiction of the Tribunal where the parties to a proceeding are residents of different States.

13 At the directions hearing, the Tribunal informed Mr Cartner that if he wished to proceed against the Strata Company as a respondent then the jurisdictional issue under *Burns v Corbett* would not arise (for the reason set out in [42] below). However, Mr Cartner said that his focus is on Mr Craig, not the Strata Company and he did not want to join the Strata Company as a party to the proceeding.

#### ***Preliminary issue to be determined***

14 The Tribunal, therefore, decided to determine, entirely on the documents pursuant to s 60(2) of the *State Administrative Tribunal Act 2004* (WA), the following preliminary issue:

Does the Tribunal have jurisdiction to deal with this matter, considering that the respondent [Mr Craig] is a resident of the State of New South Wales and the decision of the High Court in *Burns v Corbett*?

15 The Tribunal asked Mr Cartner and Mr Craig if they wanted to file submissions regarding the preliminary issue, but each of them said that they did not want to do so.

#### **The decision in *Burns v Corbett***

16 Section 75(iv) of the *Commonwealth of Australia Constitution Act 1900* (Cth) (**Constitution**) provides that the High Court shall have original jurisdiction (**federal jurisdiction**), relevantly, in 'all matters ... between residents of different States'.

17 Section 77(iii) of the Constitution empowers the Commonwealth Parliament to make laws investing any 'court of a State' with federal jurisdiction and s 39(2) of the *Judiciary Act 1903* (Cth) does that, subject to various the limitations.

18        ***Burns v Corbett*** concerned an appeal to the High Court from the decision of the Court of Appeal of the Supreme Court of New South Wales that the Civil and Administrative Tribunal of New South Wales (NCAT) did not have jurisdiction to hear and determine a dispute arising under the *Anti-Discrimination Act 1977* (NSW) (**AD Act**) between a resident of New South Wales and a resident of another State; see ***Burns v Corbett*** at [14].

19        At all material times, the complainant, Mr Burns was a resident of New South Wales, the respondent to one of his complaints, Ms Corbett, was a resident of Victoria and the respondent to his other complaint, Mr Gaynor, was a resident of Queensland; see ***Burns v Corbett*** at [7].

20        A majority of the High Court (Kiefel CJ, Bell, Keane and Gageler JJ) dismissed the appeal on the basis that:

- The adjudicative authority in respect of the matters set out in s 75(iv) of the Constitution cannot be conferred on an organ of government, federal or State, other than a court referred to in Ch III of the Constitution; see ***Burns v Corbett*** at [45], [46], [64], [65], [69] and [121]. (Note: the courts referred to in Ch III of the Constitution are the High Court, federal courts and courts of a State, which are therefore the only courts on which federal jurisdiction can be conferred)
- It was accepted by all parties that NCAT was not a court of a State; see ***Burns v Corbett*** at [27].
- The provisions of the *Civil and Administrative Tribunal Act 2013* (NSW) (**NCAT Act**) which confer jurisdiction on NCAT are invalid to the extent that they purport to confer jurisdiction on NCAT in relation to the matters between Mr Burns, and Ms Corbett and Mr Gaynor. And, pursuant to s 31 of the *Interpretation Act 1987* (NSW), those provisions are to be read down so that they do not confer jurisdiction on NCAT to determine a complaint under the AD Act where the complainant and Mr Craig to the complaint are 'residents of different States' within the meaning of s 75(iv) of the Constitution; see ***Burns v Corbett*** at [64], [119] and [120].

21        In summary, the decision in ***Burns v Corbett***, was that:

- The complaints by Mr Burns against Ms Corbett and Mr Gaynor were each a 'matter between residents of different States' for the purposes of s 75(iv) of the Constitution;
- Those complaints were, therefore, within federal jurisdiction and could not be dealt with by NCAT, since it is not a 'court of a State' and, therefore, cannot exercise federal jurisdiction; and
- The provisions of the NCAT Act which purport to confer jurisdiction on NCAT to deal with those complaints are to be read down so that they do not confer such jurisdiction.

22 The questions which arise from *Burns v Corbett* which are relevant to the determination of the preliminary issue in this proceeding are:

- 1) Is the dispute/complaint which is the subject of this proceeding a 'matter' for the purposes of s 75(iv) of the Constitution?
- 2) Are Mr Cartner and Mr Craig 'residents of different States' for the purposes of s 75(iv) of the Constitution?
- 3) Is the Tribunal a court of a State for the purposes of s 75(iv) of the Constitution?

***Is the dispute/complaint which is the subject of this proceeding a 'matter' for the purposes of s 75(iv) of the Constitution?***

23 The High Court has considered the question of what a 'matter' is for the purposes of s 75(iv) of the Constitution in a number of cases.

24 In *Re Judiciary and Navigation Acts* (1921) 29 CLR 257 at 265, the High Court stated that a 'matter' is not a legal proceeding; it is the subject matter in a legal proceeding in which there is some immediate right, duty or liability to be established by the determination of the Court.

25 In *Fencott v Muller* (1983) 152 CLR 570 (*Fencott v Muller*), at 603, the High Court stated that a 'matter' is a justiciable controversy, identifiable independently of the proceedings which are brought for its



determination and encompassing all claims made within the scope of the controversy.

26 In *CGU Insurance Ltd v Blakeley* (2016) 259 CLR 339 at 351 the High Court stated that 'matter' has two elements. Firstly, the subject matter itself and secondly, the concrete or adversarial nature of the dispute sufficient to give rise to a justiciable controversy.

27 In *Burns v Corbett* at [70], Gageler J referred to the above three cases and stated, succinctly, that a 'matter' encompasses a concrete controversy about legal rights existing independently of the forum in which that controversy might come to be adjudicated.

28 In *Re McBain; Ex parte Australian Catholic Bishops Conference* (2002) 209 CLR 372 (*Re McBain*), at 405 the High Court stated that the task of identification of the 'matter' is to be approached as a tripartite inquiry: first, the identification of the subject matter for determination in the proceeding; secondly, the identification of the right, duty or liability to be established in the proceeding; thirdly, the identification of the controversy between the parties to the proceeding for the quelling of which judicial power is invoked.

29 In *Rizeq v Western Australia* (2017) 91 ALJR 707 (*Rizeq*), at 719, the majority of the High Court, citing *Fencott v Muller*, at 608 stated that the essential character of judicial power stems from the unique and essential function that judicial power performs by quelling controversies about legal rights and legal obligations through ascertainment of facts, application of law and exercise, where appropriate, of judicial discretion.

30 In *Palmer v Ayres* (2017) 259 CLR 478, at 491, the High Court stated that the controversy that the Court is being asked to determine must be genuine, and not an advisory opinion divorced from a controversy, and only a claim is necessary; a 'matter' can exist even though a right, duty or liability has not been, and may never be, established.

31 In *GS v MS* [2019] WASC 255 (*GS v MS*), with reference to *Re McBain*, *Fencott v Muller* and *Rizeq*, at [34], [35], [60] and [61], Quinlan CJ stated:

34. ... A 'matter' within the meaning of s 75 and s 76 of the *Constitution* involves, amongst other things, the existence of a controversy for the quelling of which judicial power is invoked.

35 Put another way, a useful description (albeit not an exhaustive definition) of a 'matter' is 'a justiciable controversy, identifiable independently of the proceedings which are brought for its determination and encompassing all claims made within the scope of that controversy'. The 'matter' (the controversy) is, accordingly the res (or thing) in relation to which, because the controversy is 'justiciable', judicial power is exercised.

...

60. The unique and essential function of judicial power is the quelling of controversies about legal rights and legal obligations through ascertainment of the facts, the application of the law and the exercise, where appropriate, of judicial discretion.

61. A useful, albeit not exhaustive, statement of the nature of judicial power was provided by Kitto J in *R v Trade Practices Tribunal; Ex parte Tasmanian Breweries Pty Ltd*, in the following terms:

... a judicial power involves, as a general rule, a decision settling for the future, as between defined persons or classes of persons, a question as to the existence of a right or obligation, so that an exercise of the power creates a new charter by reference to which that question is in future to be decided as between those persons or classes of persons. In other words, the process to be followed must generally be an inquiry concerning the law as it is and the facts as they are, followed by an application of the law as determined to the facts as determined; and the end to be reached must be an act which, so long as it stands, entitles and obliges the persons between whom it intervenes, to observance of the rights and obligations that the application of law to facts has shown to exist.

32

Section 83(1) of the ST Act provides:

The State Administrative Tribunal may, pursuant to an application of a strata company, an administrator, a proprietor, a person having an estate or interest in a lot or an occupier or other resident of a lot, in respect of a scheme, make an order for the settlement of a dispute, or the rectification of a complaint, with respect to the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed by this Act or the by-laws in connection with that scheme on any person entitled to make an application under this subsection or on the council or the chairman, secretary or treasurer of the strata company.

33 Applying the principles from the above cases, the Tribunal has decided that a dispute/complaint which falls within s 83(1) of the ST Act is a 'matter' for the purposes of s 75(iv) of the Constitution for the following reasons.

34 Section 83(1) of the ST Act enables any of the persons referred to in that sub-section to apply to the Tribunal for an order to be made 'for settlement of a dispute or the rectification of a complaint with respect to the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed by [the ST Act] or the by-laws in connection with [a strata scheme]'.

35 An application properly made under s 83(1) of the ST Act will therefore be a proceeding for the determination of a controversy about legal rights and legal obligations under the ST Act and/or the by-laws of a strata scheme, which is identifiable independently of the proceeding.

36 In dealing with an application under s 83(1) of the ST Act the Tribunal must quell the controversy between the parties to the proceeding about legal rights and legal obligations under the ST Act and/or the by-laws of a strata scheme through ascertainment of the facts, the application of the law and the exercise, where appropriate, of judicial discretion.

37 Under s 83(1) of the ST Act the Tribunal exercises judicial power to determine (or quell) the controversy which is before it by taking evidence, making findings on material questions of fact, applying the law to those facts and exercising the discretion given to it under s 83(1) the ST Act to make an order to settle the dispute or rectify the complaint, which may be an order against the respondent/s to the proceeding or an order dismissing the application.

38 It seems that part of the complaint detailed by Mr Cartner in the Application (being the alleged 'disruptive attitude' and alleged 'insulting attitude' of Mr Craig) does not fall within the purview of s 83(1) of the ST Act, because it is not in respect of the exercise or performance of a power, authority, duty or function conferred or imposed by the ST Act or the by-laws. However, the other part of the complaint (being the alleged breaches of the ST Act and the by-laws) falls within that purview (albeit that the orders sought are in very general terms and need to be amended to be more specific). Therefore, the Tribunal



considers that at least part of the Application falls within and could be dealt with by the Tribunal under s 83(1) of the ST Act.

39 Therefore, the Tribunal has decided that this proceeding is in respect of a 'matter' for the purposes of s 75(iv) of the Constitution.

***Are Mr Cartner and Mr Craig 'residents of different States' for the purposes of s 75(iv) of the Constitution?***

40 The Tribunal accepts Mr Craig's statement that he resides in New South Wales, which is not disputed by Mr Cartner, and the Tribunal finds that Mr Cartner resides in New South Wales. The Tribunal also finds that Mr Cartner resides in Western Australia, which is not disputed by Mr Craig.

41 However, for the sake of completeness, the Tribunal will now consider the meaning of the words 'residents of different States' for the purposes of s 75(iv) of the Constitution.

42 The High Court has considered the meaning of the words 'residents of different States' in s 75(iv) of the Constitution in a number of cases, from which the Tribunal draws the following principles:

- 1) Only a natural person can be a resident; see ***Australasian Temperance & General Mutual Life Assurance Society v Howe*** (1922) 31 CLR 290 (***Howe's case***) in which the High Court (Knox CJ, Gavan Duffy and Higgins JJ) held that the word 'residents' in s 75(iv) of the Constitution refers to natural persons only and not to artificial persons or corporations. The High Court refused to reopen that decision in ***Cox v Journeaux*** (1934) 52 CLR 282 (***Cox***) and again in ***Crouch v Commissioner for Railways (Qld)*** (1985) 159 CLR 22, in which the Court applied it.
- 2) A natural person can only be a resident of one State at any time; see ***Howe's case*** at 296, where it was stated by Knox CJ and Gavin Duffy J that s 75(iv) of the Constitution seems to assume that a resident of one State cannot at the same time be a resident of another State.



- 3) A resident is a natural person who resides permanently in a place, which is his or her home; see *Howe's case* where it was stated, by Knox CJ and Gavin Duffy J at 295 and by Higgins J at 327, that a resident is a natural person who resides permanently in a place. Also, in *Howe's case* it was stated by Isaacs J at 324, that a natural person is a resident of the State where, in fact, the nature of his residence shows it is his real home. And also, in *Howe's case* it was stated by Starke J at 327, that a resident is a natural person who lives, dwells and has his home in some place.
- 4) A natural person can be a resident of a State after residing there for only a brief period of time; see *R v Macdonald; Ex parte Macdonald* (1953) 88 CLR 197 (a month), *R v Langdon; Ex Parte Langdon* (1953) 88 CLR 158 (five months) and *R v Oregan; Ex parte Oregan* (1957) 97 CLR 323 (two and a half months).
- 5) There must not be residents of the same State 'on both sides of the record'; see *Watson & Godfrey v Cameron* (1928) 40 CLR 446 Mr Watson, who was a resident of Victoria, and Mr Godfrey, who was a resident of New South Wales, instituted an action in the High Court against Mr Cameron, who was a resident of New South Wales. The High Court (Knox CJ, Isaacs, Higgins, Gavan Duffy, Powers and Starke JJ) held that it did not have jurisdiction under s 75 of the Constitution to deal with the matter because it was not an action between residents of different States. Knox CJ stated, at 448, that where there is a resident of New South Wales on each side of the record, then it is impossible to say that the controversy is between residents of different States. Higgins J stated, at 449, that in his opinion, the plaintiff or plaintiffs must be resident in one State and the defendant or defendants must be resident in another State for the action to be 'between' residents of different States.
- 6) If a corporation is a party in a proceeding it is precluded from being a matter 'between residents of different States'. In *Cox* an action was brought in the

High Court by a natural person resident of Queensland against a number of natural persons, who were residents of Victoria and two companies which had been incorporated in Victoria. Dixon J ordered that the action was to be dismissed unless the plaintiff elected to proceed only against the defendants who were natural persons, applying the decision in *Howe's case*. The plaintiff appealed the decision of Dixon J to the Full Court (constituted by Gavan Duffy CJ, Starke, Evatt and McTiernan JJ), which dismissed the appeal. In *Rochford v Dayes* (1989) 84 ALR 405 (*Rochford*), in a proceeding in the High Court, the plaintiff and the first and second defendants were natural persons and residents respectively of New South Wales, Queensland and Western Australia and the third defendant was a corporation. In *Rochford*, at 406, Gaudron J noted that in *Cox* Dixon J, at first instance, held that the presence of a corporation on the record had the effect of denying to a proceeding otherwise between residents of different States the character of a matter 'between residents of different States' as those words are used in s 75(iv) of the Constitution and followed that decision, making an order that the action be dismissed unless the plaintiff elected to proceed only against the first and second respondents.

- 7) The relevant date of a natural person's residence is the date the proceeding is commenced as opposed to the date of the conduct in question in the matter; see *Watson v Marshall & Cade* (1971) 124 CLR 621 at 623 and *Momcilovic v The Queen* [2011] HCA 34 at [134].
- 8) A proceeding may become a 'matter between residents of different States' after it has commenced and before it is determined. If that happens the matter will then fall within federal jurisdiction under s 75(iv) of the Constitution. 'Jurisdiction' is the authority to adjudicate or determine a matter, which is to be distinguished from the law that is applied in the exercise of that jurisdiction; see *Rizeq* at [8], [9], [49], [50], [51], [52], [127] and [128]. Therefore, although a proceeding, when it is commenced in a court or the

Tribunal, may be within State jurisdiction, the authority to adjudicate under State jurisdiction will cease if the matter subsequently falls within federal jurisdiction.

43 Applying the above principles, the Tribunal finds that Mr Craig is a resident of New South Wales and Mr Cartner is a resident of Western Australia and that they are 'residents of different States' for the purposes of s 75(iv) of the Constitution.

***Is the Tribunal a court of a State for the purposes of s 75(iv) of the Constitution?***

44 The Tribunal is not a court and therefore is not 'court of a State' for the purposes of s 75(iv) of the Constitution: ***GS and MS*** at [23]

***Conclusion regarding the preliminary issue***

45 This proceeding is a matter between residents of different States for the purposes of s 75(iv) of the Constitution.

46 The Tribunal therefore concludes that the proceeding is within federal jurisdiction and cannot be dealt with by the Tribunal since the Tribunal is not a court of a State and cannot exercise federal jurisdiction.

47 The fact that the Strata Scheme is situated in Western Australia and that Mr Cartner is a resident of Western Australia does not affect this conclusion.

48 This conclusion has consequences for the provisions of the SAT Act and the ST Act which purport to confer jurisdiction on the Tribunal to deal with this proceeding. Those provisions are invalid to the extent that they purport to confer jurisdiction on the Tribunal to determine a matter which falls within s 75(iv) of the Constitution.

49 Section 7 of the *Interpretation Act 1984* (WA) provides as follows:

Every written law shall be construed subject to the limits of the legislative power of the State and so as not to exceed that power to the intent that where any enactment thereof, but for this section, would be construed as being in excess of that power, it shall nevertheless be valid to the extent to which it is not in excess of that power.



50 Following the reasoning in *Burns v Corbett* at [64] and [119], the provisions of s 16(1) of the SAT Act and s 83(1) of the ST Act which confer jurisdiction on the Tribunal to make an order for the settlement of a dispute or the rectification of a complaint which falls within the purview of s 83(1) of the ST Act are invalid to the extent that they purport to confer jurisdiction on the Tribunal to deal with this proceeding. However, to avoid that conclusion, those provisions can and should be read down, pursuant to s 7 of the *Interpretation Act 1984* (WA), so that they do not confer jurisdiction on the Tribunal to determine this proceeding.

51 The preliminary issue is determined in the negative. The Tribunal does not have jurisdiction to deal with this matter.

52 The Tribunal will, therefore, make the orders set out below.

***The preclusion of the conferral of jurisdiction on the Tribunal in a 'matter between residents of different States' can only be addressed by the Parliament of Western Australia***

53 It is unfortunate for Mr Craig (and other persons caught in a similar situation) that, due to the provisions of s 75 of the Constitution and the decision in *Burns v Corbett*, the Tribunal may not have jurisdiction to deal with particular 'matters' under the ST Act where the parties to a proceeding are 'residents of different States'.

54 The preclusion of the conferral of jurisdiction on the Tribunal, as a result of the decision in *Burns v Corbett*, to deal with an application under the ST Act when a matter falls within federal jurisdiction under s 75(iv) of the Constitution, because the parties are 'residents of different States', is an issue which can only be addressed by the Parliament of Western Australia.

55 However, it should be noted that, taking into account the principles outlined in [42] above, the situations in which this will occur are likely to be rare, particularly considering that in many situations a strata company will be a party to the proceeding.

56 It must also be noted that s 83(1) of the ST Act was removed from the ST Act pursuant to s 82(b) of the *Strata Titles Amendment Act 2018* (WA), with effect from 1 May 2020. However, s 197 of the ST Act, as it has been since 1 May 2020, provides for an application to be made to the Tribunal for the resolution of a 'scheme dispute', as defined in that section, in respect of which the provisions of s 75 of the



Constitution may operate to preclude the conferral of jurisdiction on the Tribunal.

**Orders**

1. The Tribunal has determined, as a preliminary issue, that it does not have jurisdiction to deal with this matter by reason of s 75(iv) of the *Commonwealth of Australia Constitution Act 1900* (Cth).
2. The proceeding is dismissed pursuant to s 47(2) of the *State Administrative Tribunal Act 2004* (WA) as misconceived.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

MR D AITKEN, SENIOR MEMBER

26 AUGUST 2020