

NCAT - Federal

Diversity Jurisdiction...again

November 30, 2018

RTO 91513

Over the last twelve months there has been many discussions had in our training courses regarding the NSW Civil and Administrative Tribunal (NCAT) decision and the right to take a matter to NCAT should a party to the matter not be an ordinary resident of NSW, also referred to as Federal Diversity Jurisdiction. If you have not attended CPD so far this year, or have not been keeping up with our chronicles, then the previous statement may be causing many questions for you. Either way.....read on.

In February 2017, the Court of Appeal handed down a decision (*Burns v Corbett*; *Gaynor v Burns* [2017] NSWCA 3) that indicated that NCAT may not be able to determine matters between residents of different States. These matters are sometimes said to be within 'federal diversity jurisdiction'.

As was noted in February, the concern with this matter, even though it is not one that has anything to do with property, was that it may affect how property management cases in particular, can be heard within the Tribunal if there is a party to the proceedings that resides interstate.

In 2015, two separate proceedings under the Residential Tenancies Act 2010 (NSW) (the RT Act) were commenced "between residents of different States" in the Civil and Administrative Tribunal of New South Wales. One proceeding involved an application to the Tribunal for an order terminating a residential tenancy agreement under s 87 of the RT Act. The other proceeding involved two applications to the Tribunal for orders for various forms of compensation. After both proceedings were determined by the Tribunal, the unsuccessful party in each proceeding appealed to the Appeal Panel of the Tribunal.

The hearing of both appeals was then stood over pending the decision of the Court of Appeal in *Burns v Corbett* [2017] NSWCA 3. Upon the assumption that the Tribunal was not a "court of a State" within the meaning of s 39(2) of the Judiciary Act 1903 (Cth) and s 77(iii) of the Constitution, the Court held that the Tribunal did not have jurisdiction to determine matters "between residents of different States". The High Court of Australia later affirmed this decision in *Burns v Corbett* [2018] although on different grounds.

After the *Burns* matter was decided at the High Court, the residential tenancy appeals were recommenced in the Supreme Court of Appeal, and the appeals were based on the outcome of the *Burns* case.

The issues of the appeal were:

1. Whether the Court had jurisdiction under s 83(1) of the NCAT Act to determine the appeal;
2. Whether the Tribunal was exercising judicial power in making an order under s 87 of the RT Act terminating a residential tenancy agreement; and
3. Whether the Tribunal is a "court of a State" within the meaning of s 39(2) of the Judiciary Act 1903 (Cth) and s 77(iii) of the Constitution.

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In short, the Supreme Court of Appeal addressed the matters of appeal and eventually found that NCAT did not have the power to make a decision where all parties do not reside within the State, because it is not a Court of a State.

At this point in time, how does this effect the job that you are doing? Exactly as we have discussed in training and within our February Chronicle.

The matter will still be applied for within NCAT, however that application will only support a negotiation/conciliation process. Should the parties not negotiate or settle their matter, the case will not be able to be heard through the Tribunal. The Tribunal member will have to formally dismiss the matter to another court jurisdiction and, depending on the dollar amount of the claim, will be heard in the local court (for claims up to \$100,000) or district court (for claims from \$100,000 through to \$750,000).

Within property management and the services provided to landlords, should an agent be faced with a matter that has federal diversity jurisdiction issues, the property manager will not be the person representing the interests of the landlord. Matters that are taken through the court systems are obviously more costly and time consuming as well as procedurally very different to those matters heard within the tribunal systems, and well outside of the general experiences of property managers.

Remember, if this is an issue for you, seek assistance and advice prior to making your application to NCAT. The best place to obtain this advice is from the legal firm Jemmeson & Fisher, who specialise in all things property.

All of that being said, in an attempt to minimise costs for landlords and tenants, the practical application is that Tribunal Members are attempting to have matters where jurisdiction is an issue, resolved wherever possible, without the need to refer to another court.

‘Til next time,

Wishing you every success in your business ventures,

Rosy

4 HOUR CPD Seminars

THUR 6TH DEC	SYDNEY Commercial & Retail Leasing	FRI 14TH DEC	CASTLE HILL Sales & Prop Mgmt
FRI 7TH DEC	SYDNEY Strata Management	WED 13TH FEB	GOULBURN Stock & Station
THUR 13TH DEC	SYDNEY Real Estate Sales	THUR 14TH FEB	GOSFORD Sales & Prop Mgmt
THUR 13TH DEC	SYDNEY Strata Management	THUR 21ST FEB	PORT MACQUARIE Sales & Prop Mgmt

2 HOUR CPD Seminars (8am - 10am unless otherwise specified). Pre-reading required

Full 12 points!!

TUES 4TH DEC	SYDNEY (5-7PM) Sales & Prop Mgmt	TUES 22ND JAN	CASTLE HILL Sales & Prop Mgmt
WED 5TH DEC	PARRAMATTA Sales & Prop Mgmt	FRI 25TH JAN	SYDNEY Sales & Prop Mgmt
MON 21ST JAN	GOSFORD Sales & Prop Mgmt	FRI 1ST FEB	NEWCASTLE Sales & Prop Mgmt



From the office

It's that time again, and hasn't the last fortnight gone by so quickly? We are fast approaching the end of the year and here at ACOP we have been jammed packed with training seminars and classes so let me take you on a ride of our last fortnight's adventure. Our journey of providing updated knowledge within the industry started inland at Bathurst to travelling far north to the coastline of Newcastle and Gosford making their way back to the Sydney metro area, ending the trip with Castle Hill and Town Hall.

Here at ACOP head office on the other hand, we have been equally as busy running our licensing courses. We kick-started the last (2) two weeks with our Financial Management course along with our Staff Management module. Earlier this week we had a great turn out for our Sales for Real Estate program ending the week off with our full skills course for the Auctioneers Accreditation.

Now as you all know by reading this that ACOP is always full of fun and exciting things and guess what – IT'S OUR BIRTHDAY. Today we are celebrating 15 years of hard work, dedication and success as a training organisation. As a team we would like to thank Rosy and John for all they have done as the College is their brainchild and wouldn't be possible without them and we look forward to many more years together as the ACOP family. We had the pleasure of giving back to our students by running our 15th birthday special discount on all of our enrolments, so if you haven't yet enrolled you have until midnight on 30th November to enrol and claim your gift.

Many of you will know Kristin - she is our Accounts Administrator and we would like to congratulate her as she gets ready for her big wedding day tomorrow. Her ACOP family cannot wait to see her dressed in white as she walk down the aisle to your soon-to-be husband Adam. We wish Kristin endless happiness and love and we look forward to seeing her back in the office after her honeymoon.

Certificate of Registration Courses

Units taken from nationally accredited training qualifications from the CPP07 Property Services Training Package.

MON 10 TH - WED 12 TH DEC	SYDNEY
MON 14 TH - WED 16 TH JAN	SYDNEY
MON 18 TH - WED 20 TH FEB	PORT MACQUARIE
MON 4 TH - WED 6 TH FEB	PARRAMATTA
MON 4 TH - WED 6 TH MAR	CASTLE HILL

Finance & Mortgage Broking Courses

Units taken from nationally accredited training qualifications from the FNS Financial Services Training Package.

MON 10 TH - WED 12 TH DEC	SYDNEY Cert IV in Finance & Mortgage Broking
MON 25 TH - WED 27 TH FEB	
THUR 13 TH - FRI 14 TH DEC	SYDNEY Dip of Finance & Mortgage Broking Management
THUR 28 TH FEB - FRI 1 ST MAR	

Property Licence Courses

Units taken from nationally accredited training qualifications from the CPP07 Property Services Training Package.

TUES 29TH WED 30TH JAN	Financial Management SYDNEY CBD	FRI 25TH JAN	Trust Accounting + Insurance SYDNEY CBD
THUR 31ST JAN FRI 1ST FEB	Staff Management SYDNEY CBD	3RD - 5TH DEC 4TH - 6TH FEB	Trust Accounting SYDNEY CBD
MON 11TH THUR 14TH FEB	Sales for Real Estate SYDNEY CBD	6TH - 7TH DEC 29TH - 30TH JAN	Property Management SYDNEY CBD PORT MACQUARIE
MON 1ST FRI 5TH APR	Stock & Station Agency Practices SYDNEY CBD	THUR 7TH FRI 8TH FEB	Business Broking Agency Practices SYDNEY CBD
MON 21ST THUR 24TH JAN	Strata management Agency Practices SYDNEY CBD		
FRI 15TH FEB	Real Estate Auctioneer Accreditation SYDNEY CBD		

Finish 2018 with Success

With proposed reforms coming for the real estate and property industry, make 2018 the year that you get the qualification and obtain a full property licence.

ACOP provides licensing training programs, and will recognise your prior learning and experience, for the following licence categories:

- **real estate agent's licence**
- **strata manager's licence**
- **business agent's licence**
- **stock and station agent's licence**
- **buyer's agent's licence**
- **on-site residential property manager's licence**

If you are seeking Recognition of Prior Learning (RPL) or Recognition of Current Competence (RCC), talk to us about the types of evidence that you will need to provide to seek these exemptions from training.



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