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The issue

The High Court of Australia has recently ruled that the New South Wales Civil and Administrative Tribunal (**NCAT**) does not have the power to resolve a dispute between residents of different States: ([Burns v Corbett; Burns v Gaynor \[2018\] HCA 15](#)).



Consequently, the provisions of NCAT's governing Act, the [Civil and Administrative Tribunal Act 2013](#) (NSW), which purports to allow such a dispute to be heard in NCAT, were rendered invalid.

In Queensland, the High Court's ruling will affect disputes between an investor-owner residing in a different State to the strata scheme, and an owner or occupier of a lot residing in that Queensland scheme. An adjudicator in the Commissioner's Office won't have the ability to deal with such a dispute.

This will have serious repercussions for dispute resolution in the strata industry in Queensland as some interstate disputes about common strata issues will have to be resolved in the courts.

This goes against the object and purpose of Chapter 6 of the [Body Corporate and Community Management Act 1997](#) (Qld) (the **BCCM Act**), which is to establish a cost-effective dispute resolution service accessible to all involved in a strata community within Queensland to resolve a dispute through the Commissioner's Office.

What we are doing

SCA (Qld) sought legal advice on the impact of the decision in Queensland and then led the consultation with many other industry stakeholders.

As a result, SCA (Qld) has now proposed amendments to the BCCM Act to allow the Queensland Civil and Administrative Tribunal to determine strata disputes between residents of different States. This proposed change would result in QCAT having all the powers of an adjudicator and enable consistency (so far as is possible) in the determination of those disputes despite the different forum.

The proposed amendment is supported by [Australian Resident Accommodation Managers Association \(ARAMA\)](#); [Owners Corporation Network \(OCN\)](#); and [Unit Owners Association Queensland \(UOAQ\)](#). The [Commissioner for Body Corporate and Community Management](#) is also aware of SCA's concerns about this matter.

A copy of the proposed amendments may be [found below](#).

SCA (Qld) is confident that the proposed amendment will be incorporated in the current property law review. Queensland's Attorney-General will be attending the upcoming SCA (Qld) conference on the Gold Coast in March 2019 to address the progress of the legislative review program.

Thank you

SCA (Qld) would like to thank Jason Carlson from [Grace Lawyers](#) for helping prepare the submission, the proposed amendments, and this member alert.

Proposed AMENDMENT OF BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997 (Proposed by SCA (Qld))

1. Insertion of new s 229B

After section 229A–
Insert–

(1) This section applies to an interstate dispute.

(2) A party to a dispute mentioned in *subsection (1)* may apply, as provided under the QCAT Act, for an order of QCAT exercising the tribunal's original jurisdiction to resolve the dispute.

(3) In resolving the dispute, the tribunal may exercise all the powers of an adjudicator set out in chapter 6 part 9 of this Act.'

2. Amendment of schedule 6 (Dictionary)

Schedule 6–

Insert–

"interstate dispute" means a dispute between the owner or occupier of a lot included in a community titles scheme, and the owner or occupier of another lot included in the scheme, where those respective owners or occupiers are natural persons and residents of different states or territories of Australia.

3. Amendment of section 229 (Exclusivity of dispute resolution provisions)

After section 229(2)–

Insert–

(2A) The only remedy for an interstate dispute is the resolution of the dispute by–

- a. an order by QCAT exercising the tribunal's original jurisdiction under the QCAT Act; or
- b. an order of the appeal tribunal on appeal from QCAT on a question of law.'



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