



## Disputes where one party is interstate

### Why do these disputes have to be dealt with differently?

In April this year the High Court made a decision in the matter of *Burns v Corbett*<sup>1</sup>. In summary, that case involved a dispute between a person who was resident in one state and others who were residents in other states. The High Court decided that because of certain provisions in the Constitution, only a court of the state which was exercising federal jurisdiction could deal with a dispute of that kind.

In the decision of *Raschke v Firinauskas* (2018/SIR0001676) the President of SACAT made it clear that SACAT the Tribunal could not deal with the an application concerning a tenancy dispute which involved parties who were residents of different states because SACAT is not a court and so is not authorised to make decisions about such disputes.

*Please note that the decision of Raschke v Firinauskas is currently on appeal to the Supreme Court.*

### How will my dispute be dealt with if SACAT cannot deal with it because of this issue?

On 12 July 2018 the *Statutes Amendment (SACAT Federal Diversity Jurisdiction) Act 2018* was assented to. That legislation does the following:-

- Allows SACAT to make an order to transfer an application to the Magistrates Court where the Tribunal considers that it does not have or may not have jurisdiction to determine the application because a party is resident in another state;
- Allows the transfer of the application to occur without the payment of another fee;
- Allows the Magistrates Court to deal with the application in accordance with the same procedures as if SACAT had been dealing with the matter.

### How will this work in practice?

#### Step 1:

Even if an applicant<sup>2</sup> thinks that SACAT is unlikely to have the power to deal with an application because they live interstate, if SACAT would (except for that issue) usually deal with that application, then the application **must** still be made to SACAT.

<sup>1</sup> *Burns Corbett; Burns v Gaynor; Attorney General for NSW v Burns; State of NSW v Burns* (2018) HCA 15

<sup>2</sup> In a tenancy dispute the correct parties are the landlord and tenant even where the landlord has an agent managing the property.

*Note: if an applicant considers that there is no doubt that they live interstate, then the applicant may lodge a statutory declaration which sets out the reasons why with the application (see notes below about relevant factors).*

## **Step 2:**

SACAT will then decide whether or not it can deal with the application. If SACAT determines that it does not have power (or there is some doubt) because a party lives interstate, then SACAT will make an order transferring the application to the Magistrates Court.

*Notes: (1) If an applicant has lodged a statutory declaration about their residency, and if the Tribunal is satisfied that it is appropriate to do so on the basis of that information, the Tribunal may make the referral to the Magistrates Court without conducting a hearing.*

*(2) The applicant will not need to lodge any further documents or pay any further fees for the matter to be transferred to the Magistrates Court.*

## **Step 3:**

Notices of hearing will be sent to parties about the hearing in the Magistrates Court. The Magistrate dealing with the matter will usually conduct the hearing sitting in SACAT's premises at 100 Pirie Street Adelaide. The Magistrate will conduct the hearing in the same general manner as that in which a Tribunal member would have conducted a hearing at SACAT. The form of order will be similar to the forms of order used by SACAT

## **How do I know when this issue arises?**

The question of whether a party is a resident outside the state will be decided on a case by case basis. The following is a list of factors which may be relevant:-

- How long has the person lived interstate?
- Did the person move interstate for work and if so:-
  - When was that?
  - Was that intended to be a long term or short term arrangement?
  - Does the person have an "end date" for the arrangement?
- Does the person intend to return to South Australia in the near future?
- Does the person rent a house interstate or has the landlord bought a house to live in interstate?
- Where is the person's car registered?
- What is the address shown on the driver's licence?
- Is the person on the electoral role interstate?

If an applicant considers that there is some doubt about whether or not they are resident interstate, then the applicant (or their representative) should be prepared to give evidence to the Tribunal about that in a hearing.

## Are there exceptions?

The following are some general guidelines:

1. SACAT can deal with applications in which one party is a corporate entity or an organisation other than an individual person which may operate from another state.
2. SACAT can deal with applications in which one party is resident overseas
3. SACAT can deal with applications in which a landlord is resident in a territory.
4. The relevant time at which the issue of residency is critical is when the dispute arose – and so for example, if the dispute arose before one of the parties moved interstate then it is likely that SACAT can still deal with the dispute.

*Please note that even where the parties agree, SACAT cannot make an order to record that agreement if one of the parties is resident interstate.*

## What happens where an application involving an interstate party has already been made to SACAT or dealt with by SACAT?

- *For an application that has been dealt with in a Tribunal hearing –*
  - and that application has been adjourned –
    - If the matter has not been resolved by an agreed outcome then there may need to be a further hearing at which a determination is made that SACAT is not or may not be able to deal with the dispute and the application is transferred to the Magistrates Court) – the applicant should contact SACAT by email and request another hearing;
    - If the matter has been resolved by an agreed outcome then the applicant may withdraw their application and seek reimbursement of the application fee (but this will only occur if the Tribunal has made a determination that one of the parties is resident interstate).
  - and the application was dismissed –
    - Then the applicant may seek an internal review of that order if the applicant considers that it was not the correct or preferable order; or
    - The applicant may lodge a fresh application with SACAT and have that application transferred to the Magistrates Court.
- *For an application that has not yet been dealt with in a Tribunal hearing –*
  - You should wait to receive the notice of hearing and you should also receive a covering letter which briefly explains the issue and that the Tribunal member will first need to make a determination as to whether or not the dispute can be dealt with in

SACAT because the application suggests that one of the parties may be resident interstate;

- If you are an agent, then you should inform the landlord about the potential issue and seek instructions so that you are able to inform the Tribunal member on the question of residency or you should ask the landlord to make themselves available (by phone) to give evidence to the Tribunal on that issue.

## Who can help?

The following organisations will be able to provide advice to parties in relation to this issue:-

### **Tenancies Advice (Consumer & Business Services): a free service for landlords and tenants**

Ground Floor (Street Level) 91 Grenfell Street Adelaide SA 5000

Contact No: 131 882 (option 3, option 1)

### **Real Estate Institute of South Australia** (provides support to agents)

REI House, 249 Greenhill Road, Dulwich, South Australia 5065.

PO Box 246, Glenside SA 5065

Contact No: (08) 8366 4300, Fax: (08) 8366 4380, Email: [reisa@reisa.com.au](mailto:reisa@reisa.com.au)

### **Legal Services Commission**

Adelaide Office: 59 Gawler Place, Adelaide, SA 5000.

Postal Address :GPO Box 1718,Adelaide SA 5001 DX 104.

Telephone (08) 8111 5555, Fax (08) 8111 5599, Contact No: 1300 366 424

### **Tenants' Information and Advocacy Service** (a service for tenants)

Contact No: 1800 060 462

Tenancy Advisors are also available at SACAT every Monday and Thursday, as well as Friday mornings.

### **Housing Legal Clinic – part of Welfare Rights Centre** (a service for tenants)

Level 5,97 Pirie Street,Adelaide 5000.

Ph: 8223-1338, Fax: 8232-5835, Email: [hlc@wrcsa.org.au](mailto:hlc@wrcsa.org.au)

### **Anglicare** (provides an advocacy service for tenants for conferences)

159 Port Road,Hindmarsh SA 5007

Ph: (08) 8305 9200, Int: +618 8305 9200, Fax (08) 8305 9211, [admin@anglicaresa.com.au](mailto:admin@anglicaresa.com.au)

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