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# NCAT CLARIFIES THE EXTENT OF ITS JURISDICTION

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## NCAT CLARIFIES THE EXTENT OF ITS JURISDICTION

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### Introduction

In 2018 the High Court concluded that NCAT did not have jurisdiction to resolve disputes between residents of different states. This meant that NCAT could not resolve disputes between strata owners who lived in different states such as NSW and QLD. A recent decision of the Appeal Panel of NCAT clarifies that NCAT can decide a dispute between an owners corporation and a lot owner or occupier who is resident in another state. This is a sensible decision and clarifies uncertainty as to the extent of NCAT's jurisdiction to resolve strata disputes.

### The Case

The case of *The Owners – Strata Plan No.12289 v Donaldson* [2019] NSWCATAP 213 involved a dispute between an owners corporation and a lot owner concerning the installation of a lift on the exterior of a residential apartment building in Manly. In December 2015 the owners of lot 5 in the building obtained approval from the owners corporation to demolish an external staircase at the rear of the building and construct a lift and stairway curling around the lift in place of the staircase. A by-law was made for that purpose. In April 2016 the owners of lot 5 sold the lot to Mr and Mrs Donaldson. Mr Donaldson was wheelchair bound. The Donaldsons desired to install the lift that had been approved by the owners corporation to facilitate access to lot 5 for Mr Donaldson. However the Donaldsons needed to re-design the lift to accommodate Mr Donaldson's needs.

### The Controversy

The Donaldsons demolished the external staircase and began constructing the lift. The owners corporation noticed that the lift that was under construction differed from the lift that it had approved in December 2015. It asked the Donaldsons to stop work on the lift and they did so. The Donaldsons then asked the owners corporation to make a common property rights by-law to permit them to install the re-designed lift. The owners corporation rejected that by-law. The Donaldson's took the owners corporation to NCAT. They sought orders, in effect, to make a by-law to permit them to install the re-designed lift. They were successful.

### Appeal Panel Case

The owners corporation appealed against NCAT's decision to permit the Donaldsons to construct the re-designed lift. In the appeal, the owners corporation argued (for the first time) that NCAT did not have jurisdiction to hear the Donaldson's claim. The owners corporation said that NCAT did not have



that jurisdiction because the Donaldsons resided in Qld. The owners corporation relied on two cases that had been decided in 2018 in which it had been held that NCAT does not have jurisdiction to hear disputes between residents of different states: see *Burns v Corbett* [2018] HCA 15; *Attorney General for NSW v Gatsby* [2018] NSWCA 254. Those cases have been decided in that way because the Commonwealth Constitution does not allow State laws to be made for Tribunals such as NCAT to resolve disputes between residents of different States.

### **Appeal Panel Decision**

The Appeal Panel did not agree with the owners corporation and concluded that NCAT did have jurisdiction to hear the Donaldson's claim. The Appeal Panel held that the 2018 court decisions related to residents who are natural persons only, not to artificial persons or corporations of any kind. The Appeal Panel observed that an owners corporation is a body corporate that is created under the *Strata Schemes Management Act 2015* and not a natural person. For that reason, the 2018 court decisions did not apply to a dispute between an owners corporation and a lot owner who lived outside of NSW. Therefore, the Appeal Panel concluded that NCAT had jurisdiction to hear the Donaldson's claims. Ultimately, the Appeal Panel held that NCAT's decision to make a by-law to permit the Donaldsons to construct the re-designed lift was not erroneous.

### **Conclusion**

The decision in *Donaldson* provides clarity concerning the extent of NCAT's jurisdiction. It is now clear that NCAT has power to resolve a strata dispute between an owners corporation and lot owner or occupier who resides in another state or territory of Australia such as QLD.

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### About JS Mueller & Co Lawyers

JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law and levy collection.

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