

6 June 2018

SACAT decision relating to tenancies matters involving parties who are residents in different states

On 5 June 2018, the Tribunal determined, in a case called *Raschke v Firinauskas*, that the Tribunal is not entitled to decide a case under the Residential Tenancies Act between a landlord who was resident in Victoria and tenants who are resident in South Australia.

In the decision, the Tribunal determined that it lacked the jurisdiction to hear and decide the case because the Tribunal is not a court and is not authorised to make decisions involving cases between residents of different states. This follows a decision of the High Court in *Burns v Corbett* which decided that the NSW equivalent of SACAT (NCAT) could not decide an anti-discrimination case between parties who are residents in different states. The High Court considered that the Commonwealth Constitution only permits particular types of courts to decide such cases. Decisions of the High Court are binding on all courts and tribunals in Australia.

Raschke v Firinauskas involved an application for vacant possession by the landlord, but the principles in the decision apply to other types of tenancies cases. The effect of the decision is that the Tribunal cannot decide any disputes between landlords and tenants under that Act where one party is an interstate resident. This includes cases that are decided by conciliation or where the parties achieve an agreed outcome and seek to have that written in a Tribunal order.

It does not set out whether the Tribunal can hear other sorts of applications and disputes between residents of different states under different laws. For example, it has not been shown that guardianship and administration cases, or reviews of decisions by Government agencies, are affected.

The question of whether the landlord or the tenant (usually the landlord) is a resident of another state may not be straightforward. Usually some degree of permanency will be required to be shown before a person can be shown to be a resident of a different state. If the Tribunal considers that a dispute may involve residents of different states it will tell the parties before the hearing so that they are ready to address this at a preliminary hearing. The Tribunal will endeavour to do that quickly for parties.

If the Tribunal is not entitled to hear a case, the parties must find a different way to resolve their dispute. They may be able to reach a settlement and SACAT's website provides some guidance on that. They may be able to use the courts to seek a determination about their rights.

SACAT understands that the Government is actively considering ways it can assist parties who find themselves unable to have SACAT hear their matter. Until a longer-term solution is identified, the

Tribunal may refund application fees where it appears that one of the parties may be an interstate resident and the Tribunal conducts a preliminary hearing and determines that it cannot hear the matter.

It may be that the Government or one of the parties appeals the decision in *Raschke v Firinauskas* in which case a court will decide whether the Tribunal's decision is correct or not.

Current cases that are part-way through being decided may be affected. If a matter has been adjourned pending the outcome of the decision in *Raschke v Firinauskas* and the parties have been unable to resolve that dispute without the Tribunal, then the applicant should request another hearing so that:

1. The application can be dismissed which may be necessary for it to be determined elsewhere; and
2. The application fee can be refunded.

In summary:

- Until established otherwise, only tenancies matters are affected
- Only matters involving a party who is an interstate resident are affected
- The Tribunal can decide whether a person is a resident of another state
- The Tribunal does not have the power to make orders in relation to affected cases
- SACAT understands that the Government is working on a solution to ensure that parties in affected cases can resolve their disputes in a way that is similar to the way that was, until this decision, occurring.



Justice Judy Hughes
President
South Australian Civil and Administrative Tribunal