QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*AB v CD* [2020] QCAT 295
PARTIES:	**AB** (applicant) **v** **CD** (respondent)
APPLICATION NO/S:	51553/19
MATTER TYPE:	Other minor civil dispute matters
DELIVERED ON:	14 July 2020
HEARING DATE:	15 April 2020
HEARD AT:	Southport
DECISION OF:	Adjudicator Alan Walsh
ORDERS:	**1. Collection & Recovery Options Pty Ltd has leave retrospectively to represent the Applicant.** **2. A non-publication order is made with respect to the identity and street address of the Applicant and Respondent which shall not be published except to the parties and Collection & Recovery Options Pty Ltd.** **3. Nothing in Order 2 prevents the publication and reporting of this decision.** **4. The Request for a Default Decision is refused.** **5. The Application for minor civil dispute – Minor Debt filed at Southport on 14 November 2019 is dismissed for lack of jurisdiction.**
CATCHWORDS:	ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – minor civil dispute – where collection agent for applicant filed application for minor debt at Southport Registry of Tribunal - where collection agent not a party to the proceeding – where collection agent did not apply for leave to represent applicant – whether leave should be granted ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – minor debt claim – where applicant claimed child support payment pursuant to federal legislation – where child support amount

deemed owing – where neither applicant nor respondent resident in Queensland – where respondent did not file a Response – whether applicant entitled to a default decision

ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – minor debt claim – jurisdiction – where no part of applicant's cause of action arose within Queensland – where collection agent's address the only connection with Queensland – whether the Queensland Civil and Administrative Tribunal a court or court of summary jurisdiction for purposes of federal legislation providing for collection and recovery of child support money owing – whether the Tribunal has jurisdiction

ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – minor debt claim – exercise of jurisdiction – whether the Tribunal ought to exercise jurisdiction

Australian Constitution, Chapter III, s 109
Acts Interpretation Act 1901 (Cth), s 2B, s 15AB, s 15C
Acts Interpretation Act 1954 (Qld), Schedule 1
Child Support (Registration and Collection) Act 1988 (Cth), s 3, s 4, s 104, s 113, s 113A, s 116
Human Rights Act 2019 (Qld), s 25
Judiciary Act 1903 (Cth), s 32, s 39
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 6, s 7, s 8, s 9, s 10, s 15, s 16, s 32, s 43, s 164
Service and Execution of Process Act 1992 (Cth), s 3, s 47, s 51
Service and Execution of Process Regulations 2018 (Cth), s 6

Attorney General for New South Wales v Gatsby [2018] NSWCA 254
Attorney General (SA) v Raschke (2019) 133 SASR 215
Austin v Commonwealth of Australia (2003) 215 CLR 185
Brayalei Pty Ltd v ABC Scaffolds Pty Ltd [2018] QCAT 299
Burns v Corbett [2018] HCA 15
Clark v Commissioner of Taxation [2008] FCAFC 51
Johnson v Dibbin; Gatsby v Gatsby [2018] NSWCATAP 45
Fisher v Wenzel & Anor [2016] QCAT 456
K-Generation Pty Ltd v Liquor Licensing Court (2009) 237 CLR 501
Li v Medical Board of Australia (No 1) [2013] QCAT 595
Meringnage v Interstate Enterprises Pty Ltd & Ors

	[2020] VSCA 30 *Owen v Menzies* [2013] 2 Qd R 327 *Parcelvalue SA by its Australian Agent, Australian Commerce Systems Pty Ltd v Ozepost Pty Ltd* [2015] QCAT 463 *Pelechowski v The Registrar, Court of Appeal* (1999) 198 CLR 435 *Raschke v Firinauskas* [2018] SACAT 19 *United Telecasters Sydney Ltd v Hardy* (1991) 23 NSWLR 323
REPRESENTATION:	
Applicant:	Collection & Recovery Options Pty Ltd
Respondent:	Unrepresented
APPEARANCES:	This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld)

REASONS FOR DECISION

Application for Minor Debt – Child Support

[1] This matter concerns an Application for a Minor Debt (the Application) for the collection and recovery of an assessed child support over-payment by one parent to another. Neither live in the State of Queensland. The Applicant's agent, Collection & Recovery Options Pty Ltd (CAROP), has its place of business at Southport on the Gold Coast of Queensland.

Privacy

[2] Section 3(2) of the *Child Support (Registration and Collection Act)* 1988 (Cth) (CSRACA) provides that it is the intention of the Parliament that the Act shall be construed and administered, to the greatest extent consistent with the attainment of its objects,[1] to limit interference with the privacy of persons.

[3] Section 25 (Privacy and reputation) of the *Human Rights Act* 2019 (Qld) (HRA) confers the qualified statutory right of a person not to have their privacy unlawfully or arbitrarily interfered with. This legislation does not have extra-territorial effect beyond the State of Queensland whereas CSRACA applies nationwide.

[4] What might constitute interference for the purposes of the legislation is unspecified but would include anything that might reveal the identity and details of a person protected by a privacy provision to the public. I will therefore anonymise the parties in these reasons for decision, referring to the Applicant as AB and the Respondent as CD in the heading, and make a non-publication order with respect to their identities and addresses.

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1 *Child Support (Registration and Collection Act)* 1988 (Cth), s 3(1).

Child Support Letter

[5] The child support claimed is referred to in an unsigned letter dated 14 June 2019 from the General Manager, Child Support Smart Centres to the Applicant who, it appears from the address of the letter, resides (and at the time resided) in Western Australia (the CSA letter).

[6] A similar letter with due alteration of detail will have issued to the Respondent but the proceedings are not defended so it has not been disclosed in this proceeding. The Applicant will not have received a copy of it for privacy reasons.

[7] In content, the CSA letter does not expressly certify anything. Whether or not it is a certificate in substance for CSRACA purposes need not however be decided because other considerations will determine the outcome of the Application.

[8] Historically, as is evident from the CSA letter, the Applicant paid child support to the Respondent. The letter explained that a change to the child support balance after adjustment resulted in the Respondent owing him $4,760.51.

Notification

[9] On 1 November 2019, CAROP sent a copy of the CSA letter dated 14 June 2019 together with a letter from it to the General Manager of the Child Support Agency in Melbourne notifying the Agency pursuant to section 113A(1)(a) of the *Child Support (Registration and Collection Act)* 1988 (Cth) that the Applicant intended at the expiration of 14 days to institute a proceeding to recover the debt.

The Claim

[10] The Applicant wants a decision in his favour for $4,760.51 plus interest together with filing and other outlays, in total $5,058.35 all up and, through his private collection agent, comes to the Tribunal for that purpose.

Jurisdiction – The Issues

[11] The Queensland Civil and Administrative Tribunal (QCAT) is a creature of Queensland statute and of limited jurisdiction. It is not a Court of inherent or general jurisdiction. As I said in *Fisher v Wenzel & Anor* [2016] QCAT 456 at [41] on High Court authority,[2] a Tribunal order made beyond jurisdiction is a complete nullity and binds no-one.[3]

[12] Demarcation of the Tribunal's jurisdictional boundaries is sometimes difficult to discern.

[13] Two questions of jurisdiction arise:

(a) Does this Tribunal have jurisdiction to hear and decide the dispute referred to in the Application?

(b) If so, consistently with its statutory object to deal with the matters in a way that is accessible, fair, just, economical, informal and quick,[4] should the

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2 *Pelechowski v The Registrar, Court of Appeal* (1999) 198 CLR 435 at [28]. See *United Telecasters Sydney Ltd v Hardy* (1991) 23 NSWLR 323 at 325.

3 See *United Telecasters Sydney Ltd v Hardy* (supra) applied in *Pelechowski*.

4 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 3(a).

Tribunal (constituted by me in this case) exercise jurisdiction and hear and determine the dispute?

The Agent

[14] CAROP filed the Application in the Applicant's name on 14 November 2019, giving its office at Southport as the address for service of documents on the Applicant in Queensland, but did not seek leave to represent the Applicant.

Leave

[15] Section 43(1) of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) (QCAT Act) requires that parties represent themselves unless the interests of justice require otherwise, so leave is necessary where an agent files a minor debt claim on behalf of a principal, as in this case.

[16] It should not be assumed that leave will invariably be granted in circumstances such as the present but I will grant such leave pursuant to section 43(2)(b)(iv) and (3) of the QCAT Act, retrospectively and of my own motion, because the Applicant does not reside in Queensland.

Service

[17] The Application when filed by CAROP referred to an address for service on the Respondent in Queensland.

[18] However, less than three weeks later, service of it and a Form 1 SEPA Notice[5] was effected by a licensed process server by ordinary mail posted in an envelope addressed to the Respondent at an address in Victoria on 2 December 2019.[6]

Default Decision Request

[19] CAROP requested a default decision on behalf of the Applicant on or about 6 February 2020 but QCAT Registry referred the request for a default decision to me on a question of jurisdiction.

[20] A default decision entered without jurisdiction is, for the reasons I have referred to earlier, a nullity. The Tribunal must avoid making decisions which are a nullity.

Show Cause Orders

Orders dated 21 February 2020

[21] Of my own motion, I made interim orders in the nature of directions on 21 February 2020. They required that, by 4 pm on 16 March 2020, the Applicant file written submissions showing cause why the Application should not be dismissed for lack of jurisdiction.[7]

[22] I ordered that the matters to be addressed in submission include:[8]

(a) Whether and what legislation as enabling legislation confers jurisdiction on the Tribunal to hear and decide income support assessment claims;

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5 Issued pursuant to the *Service and Execution of Process Act* 1992 (Cth).
6 Affidavit of service sworn by Lennard William Goldsworthy on 3 December 2019.
7 Order 2.
8 Order 3.

(b) Whether essentially the Applicant is asking the Tribunal to enforce a Child Support Assessment against the Respondent;

(c) Whether the Tribunal has jurisdiction to enforce a Child Support Assessment; and

(d) Any case precedent in support of the Applicant with respect to the matters referred to in sub-paragraphs (a) to (c).

[23] I also ordered that the question of jurisdiction and the application for a default decision be decided on the papers by me after 23 March 2020.[9]

Dismissal Order – 26 March 2020

[24] On 26 March 2020, I dismissed the Application because neither the Applicant nor the agent had complied with orders 2 and 3 of the orders dated 21 February and (for) lack of jurisdiction.

Review Order – 2 April 2020

[25] CORAP applied to set aside those orders, saying that it did not receive the interim orders dated 21 February 2020 at its address.

[26] That was likely the case because QCAT Registry at that time had entered the address of the Applicant in the QCAT database as a post box in Southport rather than c/o Collection & Recovery Options Pty Ltd at that address. The envelope containing documents mailed to CORAP was therefore probably not delivered.

[27] Upon the miscellaneous application by CORAP to set aside the dismissal order because the previous orders had not been received, on 2 April 2020 I therefore ordered that:

(a) The QCAT database be corrected as to address for service on the Applicant;

(b) By 4 pm on 9 April 2020, the Applicant inform Registry by email as to which is the correct address for service of the Respondent, that is the address in the Application or the address stated in the affidavit of service sworn on 3 December 2019;

(c) The miscellaneous application be further considered by me after 9 April 2020 on the papers; and

(d) QCAT Registry email the orders to CORAP.

[28] CAROP, by its Group Compliance Manager, Mr Bax, emailed the Tribunal Registry on 8 April 2020 stating that:

(a) the Respondent's address for service was her place of residence at an address in Queensland referred to in the Minor Debt Claim at the time of filing;

(b) before service could be effected, the process server advised that she had moved to Victoria, to which address the Application was then mailed.

[29] There is no actual evidence to support the assertion that the Respondent resided at the address in Queensland when the Application was filed on 14 November 2019.

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[9] Order 5.

Rescission Order – 15 April 2020

[30] On 15 April 2020, I set aside the earlier dismissal order in the circumstances and reserved my decision on the question of whether the Tribunal has jurisdiction and whether it should exercise it in that event.

Jurisdiction – Submissions

[31] CAROP, in an email to Registry on 27 March 2020 concerning jurisdiction, made submissions (which I accept where stated below) that:

(a) The child support debt is a registered maintenance liability, deemed outstanding and collectable by the Applicant. (That appears to be the case).

(b) In terms of section 113 of the *Child Support (Registration and Collection Act)* 1988 (Cth) (the CSRACA), a debt due to the Commonwealth in relation to a registered maintenance liability or carer liability is payable to the Registrar in the manner and at the place prescribed.[10] (That is so).

(c) Such a debt may be sued for and recovered by the payee of the liability suing in accordance with section 113A[11] in a court having jurisdiction for recovery of debts up to the amount of the debt.[12] (That is so).

(d) In *Owen v Menzies* [2013] 2 Qd R 327 (*Owen)* the Queensland Court of Appeal held that the Queensland Civil and Administrative Tribunal is a 'court' for the purposes of Chapter III of the *Australian Constitution*. (That is so).

(e) QCAT therefore has jurisdiction to determine this matter as the Applicant has complied with section 113A(1) of the CSRACA. (That is the issue).

(f) In terms of section 113A(1) of the CSRACA, a payee of a registered maintenance liability or carer liability may sue for recovery of the debt if the payee notifies the Registrar in writing of the intention to do so at least 14 days beforehand[13] or in exceptional circumstances within such shorter period as the court allows.[14] (That is so).

(g) In terms of section 116(1) of the CSRACA, the mere production of a document signed by the Registrar purporting to be a copy of the entry in the Child Support Register in relation to a registrable maintenance liability is prima facie evidence that:

(i) the liability is a registrable maintenance liability;[15] and

(ii) the liability is duly registered under this Act;[16] and

(iii) the particulars of the entry in the Child Support Register in relation to the liability are those set out in the document;[17] and

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10 *Child Support (Registration and Collection Act)* 1988 (Cth), s 113(1)(a).
11 Ibid, s 113(1)(b)(ii).
12 Ibid, s 113(1)(c)(i).
13 Ibid, s 113A(1)(a).
14 Ibid, s 113A(1)(b).
15 Ibid, s 116(1)(a).
16 Ibid, s 116(1)(b).
17 Ibid, s 116(1)(c).

(iv) all of those particulars are correct.[18]

(That is so).

(h) In terms of section 116(2) of the CSRACA, the mere production of a certificate in writing signed by the Registrar, certifying that an amount specified in the certificate was, on the date of the certificate, due and payable by a specified person to the Commonwealth in relation to a specified registrable maintenance liability or registered carer liability or under a specified provision of Part IV, is prima facie evidence of the matters stated in the certificate. (That is so).

(i) The sum sued for is a debt or liquidated demand which QCAT may hear in its minor civil dispute jurisdiction. (That does not necessarily follow).

[32] CAROP's submissions do not cover the entire field of legislation and case law to which regard needs be had in this case.

Jurisdiction – Findings and Reasons

CSRACA is not enabling legislation

[33] CSRACA is not an enabling Act for the purposes of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) (the QCAT Act). None of its provisions purport to enable the Tribunal to hear and decide matters the subject of that Act. Unsurprisingly, the features of an enabling Act referred to in sections 6, 10, 15 and 16 of the QCAT Act are absent.

[34] I am supported in that conclusion by the definitions in section 4 of CSRACA that:

(a) "*court having jurisdiction under this Act* does not include a court that has jurisdiction under this Act only (sic) in relation to the recovery of amounts of child support;" and

(b) "*court exercising jurisdiction under this Act* does not include a court exercising jurisdiction in a proceeding under subparagraph 113(c)(i)."

QCAT is not vested with CSRACA jurisdiction

[35] Section 15C (jurisdiction of courts) of the *Acts Interpretation Act* 1901 (Cth) provides that, where a provision of an Act expressly or by implication authorises a civil or criminal proceeding to be instituted in a particular court in relation to a matter:

(a) that provision shall be deemed to vest that court with jurisdiction in that matter;

(b) the jurisdiction so vested is not limited by any limits to which any other jurisdiction of the court may be subject; and

(c) in the case of a court of a Territory, that provision shall be construed as providing that the jurisdiction is vested so far only as the *Constitution* permits.

[36] Section 15C is not invoked in the present case in my opinion because QCAT is not a court having jurisdiction or a court exercising jurisdiction and because, in providing that a child support debt may be recovered in a court having jurisdiction for recovery

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[18] Ibid, s 116(1)(d).

of debts up to the amount of the debt, section 113(1)(c)(i) CSRACA does no more than permit a payee to commence private proceedings on the statutory cause of action in a court with existing debt recovery jurisdiction as an alternative to waiting for collection by the Child Support Agency.

[37] The question then is whether this Tribunal is a court as defined, or referred to, in relevant federal legislation engaged on the facts in this case. State Magistrates Courts and the Federal Circuit Court of Australia are clearly Courts in which a payee owed child support might elect to sue privately, relying on section 113(1)(c)(i). See the definitions in section 2B of the *Acts Interpretation Act* 1901 (Cth) to which I will return shortly.

QCAT is not a court within the meaning of s 113(1)(c)(i) CSRACA

[38] This Tribunal is not, in my respectful opinion, a "court" as defined or referred to in the *Judiciary Act* 1903 (Cth), the *Child Support (Registration and Collection) Act* 1988 (Cth), the *Acts Interpretation Act* 1901 (Cth), the *Service and Execution of Process Act* 1992 (Cth) and the *Service and Execution of Process Regulations* 2018 (Cth).

[39] The point was not raised in submissions[19] to the Queensland Court of Appeal in *Owen v Menzies* because it was there primarily concerned with the interpretation of the QCAT Act and the *Anti-Discrimination Act* 1991 (Qld), not with CSRACA.

[40] It is necessary in the present matter to ascertain the intention of the federal legislature in providing that a child support debt may be recovered by a payee in a court having jurisdiction for recovery of debts up to the amount claimed.

[41] There is nothing in the explanatory memoranda to CSRACA and amending legislation in original Bill form or in the provisions of CSRACA itself, for example section 104(2) investing State courts of summary jurisdiction with federal jurisdiction, to suggest or permit the interpretation that "a court" for the purposes of CSRACA means or includes a State Tribunal held by a State Court to be a court for the purposes of Chapter III of the *Australian Constitution*.

[42] There is nothing in section 39(2) of the *Judiciary Act* 1903 (Cth) or any of its other provisions that would permit the interpretation that "courts of states" invested with federal jurisdiction within the limits of their several jurisdictions includes, and must be taken to mean and include, State Tribunals held by State Courts to be courts with diversity jurisdiction for purposes of Chapter III of the *Australian Constitution*.

[43] Section 2B (Definitions) of the *Acts Interpretation Act* 1901 (Cth), to which I referred earlier, relevantly provides that a "court exercising federal jurisdiction" means any court when exercising federal jurisdiction and includes a federal court, and that "court of summary jurisdiction" means any justice of the peace, or magistrate of a State or Territory, sitting as a court of summary jurisdiction. I will return to this issue later.

[44] Other definitions in section 2B of that Act include "federal court", "judge", "justice of the peace", "magistrate" and "Stipendiary Magistrate." Significantly, nowhere in section 2B or anywhere else is there any reference to, or definition of, a "State

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[19] Summarised by the Chief Justice (as he then was) in *Owen v Menzies* [2013] 2 Qd R 327, at paragraphs [8] to [16] of his reasons.

Tribunal" or a "Judicial Member" or a "Member" or (where the office exists) an "Adjudicator" of a State Tribunal.

[45] In passing, I note that a magistrate of the Magistrates Court of South Australia has been held by the Federal Court of Australia to be a judge of a court of a State within the meaning of section 7 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act* 1997 (Cth). See *Clark v Commissioner of Taxation* [2008] FCAFC 51 (3 April 2008).

[46] In *Austin v Commonwealth of Australia* (2003) 215 CLR 185, the High Court unanimously concluded that a Master of the Supreme Court of Victoria was a "judge of a court of a State" within the meaning of section 7 of the same Assessment Act.

[47] I know of no case law in Australia that would support the conclusion that Members (other than Judicial Members) and Adjudicator/s of State Tribunals such as the Queensland Civil and Administrative Tribunal are, by their office, judges of courts of States.

[48] The provisions of the *Service and Execution of Process Act* 1992 (Cth) expressly distinguish the status of Tribunals from Courts.

[49] In 1991, the *Service and Execution of Process Act* 1901 (Cth) was amended to bring proceedings before Tribunals within the Act's power. It was subsequently repealed on 10 April 1993 when the *Service and Execution of Process Act* 1992 (Cth) (SEPA) commenced. It replaced the various State systems with a single national system covering all interstate service rules.

[50] Unless a contrary intention appears, section 3 of SEPA provides that:

(a) "adjudicative function" in relation to a tribunal, means the function of determining the rights or liabilities of a person in a proceeding in which there are 2 or more parties, including the function of making a determination.

(b) "authority" means a judge, magistrate, coroner or officer of a court appointed or holding office under a law of a State.

(c) "court" except in Part 7, means a court of a State and includes an authority exercising the powers of such a court.

(d) "court of issue" in relation to a process, means the court by which the process was issued.

(e) "judgement" means:

(i) a judgment, decree or order given, entered or made by a court in a civil proceeding under which a sum of money is payable; or a person is required to do or not to do an act or thing (other than the payment of money); not being an order made under proceeds of crime legislation (other than a pecuniary penalty order); or

(ii) an order that is made by a tribunal in connection with the performance of an adjudicative function and is enforceable without an order of a court (whether or not the order made by the tribunal must be registered or filed in a court in order to be enforceable); …

[51] Also, by section 3, "tribunal" means:

> (a) a person appointed by the Governor of a State, or by or under a law of a State; or
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> (b) a body established by or under a law of a State;
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> and authorised by or under a law of the State to take evidence on oath or affirmation, but does not include:[20]
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> (c) a court; or
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> (d) a person exercising a power conferred on the person as a judge, magistrate, coroner or officer of a court.

[52] By section 47, "tribunal of issue" in relation to a process means the tribunal by which the process was issued, and, by section 51 insofar as concerns information to be provided, service is effective only if copies of such notices as are prescribed are attached to the process, or the copy of the process, served.

[53] Deputy President Horneman-Wren SC DCJ (as he then was) in *Li v Medical Board of Australia (No 1)* [2013] QCAT 595 said at [12] that in his view the Tribunal is a court for SEPA purposes but he went on to say at [14] that if he were wrong in that conclusion then it would be a tribunal as defined in that Act.

[54] QCAT is however, first and foremost, a Tribunal. It is not, in my respectful opinion, a Court in terms of the federal legislation to which I have referred.

[55] It is expressly called a Tribunal in the QCAT Act sections 3, 4, 5, 6, and 7, section 8 with regard to the dictionary in Schedule 3 and the definitions of "QCAT" and "QCAT matter" and the various categories of membership including members and adjudicators, section 9, and elsewhere, extensively throughout the Act and the Tribunal's Rules.

[56] QCAT is also expressly referred to as a Tribunal in the definition of "QCAT" in Schedule 1 of the *Acts Interpretation Act* 1954 (Qld), not a Court.

[57] Its Members and Adjudicators perform adjudicative functions (as defined in SEPA) who individually are not, on any view, an "authority" as defined in SEPA. They make decisions (not judgments that are the preserve of courts of law) in connection with their adjudicative function which have to be registered in a court of law if they need to be enforced.

[58] The Governor-General of the Commonwealth of Australia made the *Service and Execution of Process Regulations* 2018 (Cth) on 12 July 2018 pursuant to *the Service and Execution of Process Act* 1992 (Cth).

[59] In terms of regulation 6 and notices required for service of process interstate, a Form 1 SEPA[21] Notice must accompany an initiating process where issued out of a Court to be served in another State or Territory and a Form 4 SEPA Notice must accompany an initiating process issued out of a Tribunal to be served in another State or Territory.

[60] Form 1, in content, refers expressly to a process issued by a Court. Form 4 refers expressly to a process issued by a Tribunal. I need not however decide whether

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20 My emphasis.

21 The acronym for Service and Execution of Process Act.

attachment of a Form 1 to the Application in this case invalidates service because, again, the outcome in this matter turns on the other considerations to which I refer.

[61] On the other hand, section 164 of the QCAT Act provides that the tribunal is a court of record and must have a seal kept under the direction of the principal registrar. It is that section, in combination with the aggregation of factors and provisions of the QCAT Act, notwithstanding the lack of tenure of Members and Adjudicators of the Tribunal, on which the decision in *Owen* apparently turned.

[62] In that regard, Chief Justice de Jersey (as he then was) said at [11]:

> As observed by Kirby J in *K-Generation Pty Ltd v Liquor Licensing Court* (2009) 237 CLR 501, 562, while not conclusive, that designation may constitute a "very strong consideration" in determining the true nature of the body.

[63] By contrast, the same lack of Tribunal tenure of Members of the Victorian Civil and Administrative Tribunal (VCAT) and the New South Wales Civil and Administrative Tribunal (NCAT) has been held decisive by the Courts of Appeal of Victoria and New South Wales in finding that they are not Chapter III courts.

[64] In *Meringnage v Interstate Enterprises Pty Ltd & Ors* [2020] VSCA 30 (*Meringnage)* the Victorian Supreme Court of Appeal found that that VCAT is not a State Court and that it therefore lacks federal diversity jurisdiction enabling it to decide disputes between residents of other States.

[65] The decision in *Meringnage* referred to the fact that the overwhelming proportion of members of the Victorian Civil and Administrative Tribunal,[22] whose reappointment is dependent on executive discretion, lack security of tenure and found that to be the most significant in an aggregation of factors leading to the conclusion that VCAT is not a State Court.

[66] In *Burns v Corbett* [2018] HCA 15 (*Burns*), a majority of the High Court of Australia (Kiefel CJ, Bell, Gageler and Keane JJ) held that Chapter III of the Commonwealth Constitution impliedly limits State legislative power and that State Parliaments have no power to confer judicial power with respect to matters in sections 75 and 76 on State Tribunals that are not courts.

[67] The High Court in *Burns* held that the Civil and Administrative Tribunal of New South Wales (NCAT) did not have diversity jurisdiction to hear matters between residents of different States.

[68] On the other hand, in *Johnson v Dibbin; Gatsby v Gatsby* [2018] NSWCATAP 45 (*Gatsby)* NCAT decided that it was a court of a State capable of exercising federal diversity jurisdiction, but that decision was reversed on appeal in *Attorney General for New South Wales v Gatsby* [2018] NSWCA 254 (the Gatsby appeal).

[69] On the question of whether it was a court, the New South Wales Court of Appeal in the Gatsby appeal held that NCAT was not designated "a court of record," that it was expressly distinguished from "a court of law," and that most members of the Tribunal did not have the tenure and protection comparable to that held by judges

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22 Constituted under the *Victorian Civil and Administrative Tribunal Act* 1998 (Vic).

and lacked the necessary institutional independence and impartiality required for a body to be described as a "court of a State."[23]

[70] The South Australian Civil and Administrative Tribunal has also decided in *Raschke v Firinauskas* [2018] SACAT 19 (Hughes P) that it is not a court of the State of South Australia. The parties in the subsequent appeal in *Attorney General (SA) v Raschke* (2019) 133 SASR 215 (218-19, [7] – [9] (Kourakis CJ)) accepted the Appeal Panel's finding in that regard.

[71] Though this Tribunal is referred to in section 164 of the QCAT Act as a court of record, there is no provision in the Act referring to it as a court of law or a court of the State of Queensland.

[72] I am bound by the decision in *Owen v Menzies* but the finding in that case that QCAT is a Court for purposes of Chapter III of the *Australian Constitution* is, in my respectful opinion, not determinative in making QCAT a Court for all purposes where the expression "court" or "court having jurisdiction for recovery of debts up to the amount of the debt" is used in federal legislation.

[73] In terms of section 109 of the *Australian Constitution*, federal legislation covering the field prevails to the extent of any inconsistency with State legislation. Courts in which child support debt recovery proceedings provided for by sections 104, 113 and 113A CSRACA may be brought are State Magistrates Courts and the Federal Circuit Court of Australia subject to any monetary and geographical limitations.

[74] Those CSRACA sections do not refer to a State Tribunal having jurisdiction. Section 104(2) invests "each court of summary jurisdiction of each state" with federal jurisdiction but, as I said earlier in these reasons, "court of summary jurisdiction" as defined in section 2B of the *Acts Interpretation Act* 1901 (Cth) means any justice of the peace, or magistrate of a State or Territory, sitting as a court of summary jurisdiction. This Tribunal is not such a court.

[75] In conclusion, I find that this Tribunal does not have jurisdiction to hear this matter, having regard to sections 104, 113 and 113A CSRACA for the reasons to which I have referred.

[76] A finding otherwise would, in my respectful opinion, ignore the ordinary meaning conveyed in the text of those sections and potentially lead to the manifestly absurd or unreasonable result that a child support claimant such as the Applicant in this case might be successful if he sued in QCAT but unsuccessful if he sued in VCAT, NCAT or SACAT, given the decisions of Courts in those States.[24]

[77] Alternatively, if I am wrong in that finding, I do not consider that this Tribunal has locality jurisdiction as none of the parties reside in Queensland. See, in that regard, *Parcelvalue SA by its Australian Agent, Australian Commerce Systems Pty Ltd v Ozepost Pty Ltd* [2015] QCAT 463 (*Parcelvalue)* and *Brayalei Pty Ltd v ABC Scaffolds Pty Ltd* [2018] QCAT 299 *(Brayalei)*.

[78] CAROP was the collection agent in *Brayalei*. In both *Parcelvalue and Brayalei*, as also in the present case, the place of business of the collection agent was the only

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23 [184]-[192] (Bathurst CJ); [197] (Beazley P); [198], [201]-[205] (McColl JA); [223]-[228] (Basten JA); [279] (Leeming JA).

24 *Acts Interpretation Act* 1901 (Cth), section 15AB(1) and (3) and see also section 15C.

connection with the State of Queensland. I therefore dismissed the applications for the reasons stated in those cases and I would do likewise in this case.

[79] Alternatively, I would decline to exercise jurisdiction because, subject to geographical and monetary limitations, a State Magistrates Court closest to a Respondent's place of residence would be the appropriate and most convenient court in which to obtain, and enforce, a judgment for a child support debt, or in the Federal Circuit Court of Australia.

Orders

[80] The orders are as follows:

1. Collection & Recovery Options Pty Ltd has leave retrospectively to represent the Applicant.
2. A non-publication order is made with respect to the identity and address of the Applicant and Respondent which shall not be published except to the parties and Collection & Recovery Options Pty Ltd.
3. Nothing in Order 2 prevents the publication and reporting of this decision.
4. The Request for a Default Decision is refused.
5. The Application for minor civil dispute – Minor Debt filed at Southport on 14 November 2019 is dismissed for lack of jurisdiction.