CASE NOTE

GUARDIANSHIP AND ADMINISTRATION LITIGATION IN STATE TRIBUNALS: *BURNS V CORBETT* (2018) 353 ALR 386 AND *GS V MS* [2019] WASC 255

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The increasingly porous nature of an individual's mobility is often seen as an impediment to commencing and settling proceedings in their best interests under the Guardianship and Administration Act 1990 (WA). This case note argues that a potential and novel solution to the non-recognition of cross-jurisdictional determinations of guardianship and administration matters by non-court State Tribunals can be resolved by the enactment of reciprocal recognition statutes. In doing so, this paper explores the seldom-discussed concept of federal diversity jurisdiction as it applies to non-court State Tribunals in the guardianship and administration stream. Focussing on the ex-parte nature of guardianship and administration matters, this case note explains the concept of protective jurisdiction and other associated concepts as espoused in the High Court decision of Burns v Corbett ('Burns') (2018) 353 ALR 386 *as it applied to GS v MS* [2019] WASC 255. *This case note argues that the Chapter III limitation espoused in Burns is not at all enlivened in matters concerning guardianship and administration. The corollary of this, is that non-court State Tribunals have jurisdiction to hear and determine guardianship and administration matters affecting the rights and obligations of a non-resident party. It is thus open to State Legislatures to enact reciprocal recognition statutes as a novel solution without engaging the limit in Burns.*

I INTRODUCTION

The State Administrative Tribunal (SAT) is 'one of the various "super tribunals" in Australian state jurisdictions conferred with wide statutory jurisdiction to conduct review of administrative decisions by government agencies and local governments, as well as determination of certain civil and

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commercial disputes'.[1] Expressed differently, these "super-tribunals are not courts, although in some instances they may exercise the powers of a court if so enabled by the relevant statute". The legality of State Tribunal's ability to exercise the powers of a State Court was recently examined by the High Court in *Burns v Corbett* ('*Burns*'),[2] a judgment shedding new light on the scope of state tribunals to adjudicate matters between residents of two jurisdictions. To adjudicate matters between residents of two jurisdictions would invoke federal jurisdiction, which is 'authority to adjudicate federal controversies'.[3] The Australian Constitution ('Constitution') invests only a 'state or federal court' with such jurisdiction. The *Burns* Court (Kiefel CJ, Bell, Keane, Gordon, Nettle, Gageler and Edelman JJ) grappled with this concept as it relates to state tribunals, and held, through four similar sets of reasons that federal diversity jurisdiction, that is the power to adjudicate matters between residents of different states *could not* be exercised by 'non-court state tribunals'. This meant that any delegation of power from Commonwealth or State Parliament to State Tribunals to exercise the powers of a State Court would be unlawful.

Given that inter-state travel and relocations are quite common in this contemporary age, does it necessarily follow that *Burns* will detrimentally impact inter-state Guardianship and Administration matters?

Arguably, this case note demonstrates that *Burns* has no effect on Guardianship and Administration matters. The implications of this analysis is that the State Administrative Tribunal and other equivalent State Tribunals may have the scope to reach out of its borders, in relation to Guardianship and Administration matters.

This case note explores this possibility by discussing *Burns* and *GS v MS* and does so by examining the Tribunal's extraterritorial application of jurisdiction in the context of its protection of the vulnerable. The note then examines issues in cross-jurisdictional Guardianship and Administration matters, finally proposing that it is open to state legislatures to enact harmonised legislation on inter-state recognition of State Tribunal's guardianship and administration decisions.

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[1] See, eg, Bertus De Villiers, "Accessibility to Law: Adjusting Court Proceedings to the Modern Era – Novel Practices and Procedures from Down Under" (2016) 14 *New Zealand Journal of Public and International Law* 229, 230.

[2] *Burns v Corbett* (2018) 353 ALR 386 ('*Burns*').

[3] Mark Leeming, *Authority to Decide: The law of jurisdiction in Australia* (Federation Press, 2012). See further, eg, Sir Philip Phillips, 'Choice of Law in Federal Jurisdiction: Part II' (1962) 3(5) *Melbourne University Law Review* 348.

II GUARDIANSHIP AND ADMINISTRATION PROCEEDINGS

A *Power to make Guardianship & Administration Orders as Exercise of Parens Patriae Jurisdiction*

The exercise of State Jurisdiction for the protection the vulnerable is closely linked to the inherent protective or 'parens patriae' jurisdiction of State Courts and Legislatures. In Western Australia this principle finds expression in s 16 of the *Supreme Court Act 1935* (WA), which gives State Courts the power to 'protect persons unable to care for themselves'.[4] As Edelman J notes in *Cheyne v Perpetual Trustee Co Ltd*, "[the broad prerogative] power flows from the responsibility of the Crown to look after those who cannot look after themselves" and is exercised by refence to the represented persons benefit and best interests.[5] The purpose of the "protective jurisdiction" enables the state to care for an individual who is unable to take care of himself or herself.[6] Order 70 of the *Rules of the Supreme Court* confers on personal representatives the responsibility to govern conduct of "civil litigation of disabled persons, ordering a compromise and sets out how proceeds of litigation are to be handled".[7]

The existence of a protective jurisdiction is well justified. It was recently summarised in *Sergi*.[8] In this case the Court reiterated that the purpose of the protective jurisdiction or parens patriae jurisdiction was to accommodate:

> [t]he need to protect minors and disabled persons from any lack of skill or experience of their legal advisors which might lead to a settlement of the money claim for far less than it is worth; to provide means by which a defendant may obtain a valid discharge from an inference or a disabled person's claim; to ensure

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[4] See position on compromise of costs per *Sosa v Carter* [1978] WAR 123; *Re Barbour's Settlement* [1974] 1 AER 1191, *Grimwade v Meagher* [1995] 1 VR 446. See further, eg, *Supreme Court Act 1935* (WA) s16(1) and s23, *Taylor v Walawski* (unreported, Full Court of the Supreme Court of WA, Library No 8992, 9 August 1991), *Farrell v Allregal Enterprises Pty Ltd* [No 2] [2009] WASC 65 [21]-[27], *Re Eve* (1986) 31 DLR (4th) 1, *K v Public Trustee* [1985] 3 WWR 204, *Morris v Zanki* (1997) 18 WAR 260, *Donaldson v Nolan* [No 5] [2017] WASC 44, *Dalle-Molle v Manos* [2004] SASC 102, *Max Elio Naso by his next friend Sabatino Naso & Anor v Cottrell* [2001] WADC 7 *Wood v Public Trustee* (1995) 16 WAR 58 [62], *Cadwallender v Public Trustee* [2003] WASC 72 [29]. See also *Rules of the Supreme Court 1971* (WA) O70 r2-4 and 10 and *Consolidated Practice Direction Civil Jurisdiction* p.10.3.

[5] (2011) 42 WAR 209. See also *K v Public Trustee* [1985] 3 WWR 204 and *MR CDJ* [2001] WAGAB 1.

[6] See, eg, *AC v OC (a minor)* [2014] NSWSC 53.

[7] See, eg, *RZ (by his litigation guardian) v PAE* [2007] QCA 166.

[8] See especially, *Dion Guiseppi Sergi by next friend Aileen Solowiej v Sergi* [2012] WASC 18. See further, eg, *Bondelmonte v Blanckensee* [1989] WAR 305.

> that the solicitors acting for an infant or a disabled person are paid their proper costs and no more; and to make sure that money recovered by or on behalf of the infant or disabled person is properly looked after and wisely applied.[9]

Parens patriae jurisdiction exists to "look after those who cannot look after themselves".[10] While Order 70 is rather prescriptive and textually rigid, it should be 'read and applied, having regard to the nature and purpose of the jurisdiction rather than as a code'.[11] In the context of Guardianship and Administration, parens patriae jurisdiction is convened by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* (WA). This conferral of jurisdiction by statute however does not in any way affect the inherent jurisdiction of the Supreme Court.[12]

Guardianship and Administration orders may be made against anyone whom the Board or Body responsible for the administration of the mentally ill determines to be of unsound mind. The *Guardianship and Administration Act 1990* (WA) came into force in 1992, initially vesting power in the Guardianship and Administration Board. Abolished in 2005, the Guardianship and Administration Board was superseded by the State Administrative Tribunal.

The State Administrative Tribunal can give effect to the management to the estate of a 'represented person' to the Public Trustee on the following grounds: mental illness,[13] intellectual, psychiatric or other disability and dementia.[14] The decision to appoint the Public Trustee is usually done because financial or legal

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[9] Ibid [39].

[10] *Gardner; Re BWV* [2003] VSC 173.

[11] *P v P* (1994) 181 CLR 583. See especially, *Harold Joseph Martin Cadwallender By His Next Friend Stavaroulla Cadwallander v The Public Trustee* [2003] WASC 72 [30]-[31] and citations cited therein.

[12] See, eg, *Camp v Legal Practioners Complaints Committee* [2008] WASCA 198 and Wendy Lacey, "Inherent Jurisdiction, Judicial Power and Implied Guarantees Under Chapter III of the Constitution" (2003) 31(1) *Federal Law Review* 57

[13] Ie, mental disability. It is not merely enough for the person to be vulnerable. A physical disability too is not enough. The requirement is that the proposed represented person has a mental disability that includes any disability but not limited to those identified in s3(1); *Public Trustee v KMH* [2008] WASAT 171. See also *S and SC* [2015] WASAT 138 [17], *Tokyo Mart Pty Ltd v Campbell* (1988) 15 NSWLR 275 [283] and *FH* [2016] [80], *SM* [2015] WASAT 132.

[14] See *Guardianship and Administration Act 1990* (WA) s3(1). See also *S and SC* [2015] WASAT 138 [17] and *FH* [2016] WASAT 95 [80]; these must Affecting the capacity to make reasonable judgements: the disability must contribute to the inability disabling the person from making reasonable judgements, referring to a lack of competent ability, mind or intellect affecting, to a degree, the person's ability to make decisions in their best interests. See especially s4(3) *Guardianship and Administration Act 1990* (WA). See also *FS* [2007] WASAT 202 at [101]-[105] and *S v State Administrative Tribunal of Western Australia* [No 2] [2012] WASC 306

administration of a represented person "cannot be facilitated by other means less restrictive".[15]

Each State would have a specialised body responsible for such matters. However, inter-state travel, migration and emigration posed a problem. There is confusion as to which State Guardianship and Administration Body should exercise their powers. Initial administration of the mentally ill through the provisions of the *Lunacy Acts* (WA) recognised some likelihood of patients being transferred interstate.[16] The responsibility for the care of those who travelled inter-state fell on "the Minister under agreement with another State to make transfer as long as he first-mentioned Government is responsible for the payment of his maintenance therein".[17] Residents of WA and other states, who could travel inter-state, and who are of sound mind continue to be covered by reciprocal recognition provisions contained in the *Guardianship and Administration Act 1990* (WA).[18] While there have been some arrangements for the care of the mentally ill who travelled inter-state, the problem still persisted. This is largely due to lacuna in the law, and a paucity in the application of protective laws to vulnerable people caused by confusion about the concept of jurisdiction applicable in inter-state Guardianship and Administration matters.

Crucially, there is a fundamental uncertainty as regards which State body should exercise its *parens patriae* protective jurisdiction to the exclusion of other State Bodies. There is also uncertainty, as a necessary implication of that, whether

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[15] See *AS* [2018] WASAT 1 [51]-[53], *NJH* [2017] WASAT 98 and *FS* [2007] WASAT 202 at [125]-[129].

[16] See *Lunacy Act 1903-20* (WA) ss21-25 and ss147-65.

[17] See further *Public Trustee Act 1941* (WA) ss24-6 and ss34-6; *Mental Health Act 1962-8* (WA) ss64 and 68, Regulation 9(4) and Form 4 *Mental Health (Administration) Regulations 1965* (WA) and *Mental Health Act 1996* (WA).The primary role of the Public Trustee is to administer the financial affairs of persons deemed by the Tribunal to need protection. This is facilitated by advancing the best interests of the represented person as far as possible from the viewpoint of the administrator, see, eg, *Guardianship and Administration Act 1990* (WA) s68 and *Public Trustee Act 1941* (WA) s24. In 2005, the Guardianship and Administration Board was abolished. The objective role of the State Administrative Tribunal is to achieve and facilitate cost-effective resolution of questions, complaints or disputes. The Tribunal may appoint an administrator on satisfaction that an application made meets the criteria pursuant to s64 (1) of the *Guardianship and Administration Act 1990* (WA). This requirement is satisfied provided a review is conducted at least every five years. On this point, see, eg, Division 3, State Administrative Tribunal Act 2004 (WA); See also, David Parry and Bertus DeVilliers, *Guide to proceedings in the WA State Administrative Tribunal* (Thomson Reuters, 2012), *RC and LP and AC* [2007] WASAT 171 [13] and *State Administrative Tribunal Act 2004* (WA) s27(2).

[18] See *Guardianship and Administration Act 1990* (WA) s123; *Guardianship and Administration Act 1990* (WA) Schedule 5; *Mental Health Legislation Amendment Act 2014* (WA) ss7, 22-4.

Tribunals have extraterritorial reach in the exercise of federal diversity jurisdiction. These uncertainties are exacerbated by the following issues.

B *The Problem of Domestic Nationality*

The concept of domestic nationality has an important sociological foundation in explaining the extraterritorial reach of guardianship and administration orders, encapsulated by the decision in the following way. GS resided in WA, and even where the applicant MS resided in NSW, the nature of acting in the best interests of the represented person provides scope for another state 'to assert jurisdiction beyond its territorial boundaries, so long as there is a bond which unites a person to that given state'.[19] The jurisdiction of a tribunal here must however be noted as being different to a court. There is no judicial power.[20] The authority is instead has an administrative character, because future and not present rights must be determined.[21] These problems are, as discussed in *GS* where a matter has an interstate element, a case specific to the guardianship and administration context. The following considerations pose a difficulty as to which State Body should exercise their protective jurisdiction.

1 *Capacity to Self-Determine One's Own 'Domestic Nationality'*

The interstate element also raises interesting questions of capacity, domicile and residence arising out of the *ex parte* effect on rights and obligations. This means that a competent person would need to have sufficient mental capacity to consider and weigh up all of these matters and make reasonable judgements and be able to turn her mind to why a change of residence was appropriate in the circumstances.[22] However, the law does not describe any fixed standard of sanity as requisite for the validity of all transactions.[23] It requires in respect of every transaction a capacity in each party to understand the general nature of what lie is doing by participating in that transaction, the requirement is satisfied, where a

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[19] *Nationality decrees Issued in Tunis and Morocco* [1923] PCIJ Rep, Ser B No 4, p24.
[20] See, eg, *R v Trade Practices Tribunal, Ex parte Tasmanian Breweries Pty Ltd* (1970) 123 CLR 361 citing *R v Davison* (1954) 90 CLR 367,370.
[21] *R v Kirby; Ex parte Boilermakers' Society of Australia (Boilermakers' case)* (1956) 94 CLR 254.
[22] *EMG v Guardianship and Administration Board of Victoria* [1999] NSWSC 501 at [30]. See also *Kertesz v Kertesz* [1954] VLR 195 at [197] and *Transport Accident Commission v Sweedman* [2004] ALR 40.
[23] *Gibbons v Wright* (1954) 91 CLR 423.

transaction is contained in a written instrument, if each party is capable of understanding the general purpose of the instrument when it is explained to him. In Western Australia it must be emphasised that this is a question of whether an individual "has capacity to manage his own affairs and not objectively construe against the ordinary routine affairs of man".[24]

2 *Domicile and Residence*

Such considerations arise out of the need to make an application for recognition of Western Australian authority interstate when a party under administration is settled interstate. Whilst the presumption can be rebutted, the Tribunal generally only has jurisdiction to make a guardianship order for someone who is a resident of a state or physically present in a state at the time of the hearing, even if not actually a resident.[25] The word "reside" is a familiar English word and is defined in the Oxford English Dictionary as meaning "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place".[26]

The qualification is stated in an affirmative form, namely, where the person has his permanent place of abode outside Australia. The qualification is not concerned with whether a person has abandoned his Australian domicile or has acquired a new domicile or not. The qualification is "concerned with the [person's] permanent place of abode".[27] The phrase "place of abode" may have many meanings, "it can refer to the building or place where a person sleeps, and it can refer to the building or place where he is usually found, for instance, "his place of business".[28] The real question is therefore whether the place of abode outside Australia "was permanent or not".[29] Physical presence and intention will

[24] *Re D* [2012] NSWSC 1006 at [42], *KMC* [2014] NSWCATGD 43 and *PB v BB* [2013] NSWSC 1223.
[25] *FS* [2007] WASAT 202 citing *Re Macgregor* [1985] VR 861. See also *P.Y. v R.J.S.* [1982] NSWLR 700 and *MS v ES* [1983] 3 NSWLR 199. See also *Haque v Haque* (1962) 108 CLR 230 and *In the Estate of Milind Bedake* (2015) 300 FLR 63. See also *Bestolov v Povarenkin* [2017] EWHC 1968, *Owusu v Jackson (t/a Villa Hollidays Bal Inn Villas)* [2005] QB 801, *Canada Trust v Stolzensberg* [1998] 1 WLR 547, *Levene v Commissioner of Inland Revenue* [1928] AC 217, *IRC v Lysaght* [1928] AC 234 and *High Tech International v Oleg Vladimirovich Deripaska* [2006] EWHC 3276.
[26] See, eg, *Commissioner of Taxation v Miller* (1946) 73 CLR 93 citing *Levene v Inland Revenue Commissioners* (1928) AC 217 at 222.
[27] *Harding v Commissioner of Taxation* [2019] FCAFC 29. See also *Applegate v Commissioner of Taxation* [1978] 1 NSWLR 126.
[28] Ibid.
[29] Ibid.

coincide for most of the time. But few people are always at home. Once a person has established a home in a particular place - even involuntarily – a person does not necessarily cease to be resident there because he or she is physically absent. The test is whether the person has retained a continuity of association with the place.

Further, a person will not be able to acquire a new domicile of choice if they lack the capacity to form an intention to do that, as a domicile of choice is lost when both the residence and the intention which must exist for its acquisition are given up.[30] There must be an actual persuasion of the mind to give up the domicile of origin to create a new residence.[31] At common law, "clear evidence is required to establish a change of domicile and this is particularly so to displace the domicile of origin with a domicile of choice".[32] Residence, however extensive, which is "neutral or colourless or indeterminate in character" will be insufficient.[33] In *Parnell-Schoneveld*, Jacobson J added alternatively that "on the other hand, a mere "floating intention" to return to the country of origin will not be sufficient to retain a domicile of origin if a person has settled elsewhere with an intention to remain for an indefinite period of time".[34] Take further, for example, a situation where the question of residence involves a matter where a child is the primary applicant. Such a situation was discussed in *Re Beaumont* which is authority for the proposition that a dependent child does not take the domicile of choice acquired by his or her widowed mother on her remarriage unless the mother so intends in the best interests of the child.[35]

III THE JURISDICTIONAL ISSUE: *BURNS V CORBETT*

State Tribunals are creatures of statute. Legislation is passed conferring authority under the legislative power to 'pass laws for the peace, welfare and good government' of the jurisdiction. As O'Keefe posits, jurisdiction encompasses three distinct rights, traditionally labelled as 'jurisdiction to prescribe, jurisdiction to adjudicate and jurisdiction to enforce'. These concepts are

[30] Ibid.
[31] *Hyland v Hyland* (1971) 18 FLR 461 [466].
[32] *Parnell-Schoneveld v Repatriation Commission* [2003] FCA 153.
[33] Ibid.
[34] Ibid.
[35] *Re Beaumont* (1902) 1 Ch 889.

traditionally thought to be of a territorial nature.[36] State Parliaments, , were only, unless the legislation so intended, conferred with the authority to 'pass laws' within their jurisdiction or territory.[37] In 2020, however, the world is increasingly interconnected. This presents a now common problem.

A legal issue which arose in *Burns v Corbett* was whether s 75 of the *Constitution* places a hurdle on the conferral or prescription of federal diversity jurisdiction to non-court State Tribunals. Whether s 75 supports or does not place a hurdle, for the conferral or prescription of federal diversity jurisdiction, as this note will demonstrate, depend in the subject matter of a case, and the classification of rights which the Tribunal purports to adjudicate on. This will invariably involve the characterisation of the rights and interests at stake in the dispute, and whether the Tribunal can validly exercise decision-making power in the adjudication of these matters.

A *Facts*

In May 2014, Mr Burns complained to the Anti-Discrimination Board alleging three complaints of unlawful discrimination under s49ZT of the *Anti-Discrimination Act 1977* (NSW) ('Anti-Discrimination Act') by Mr Gaynor and Ms Corbett to which Mr Burns claimed were 'public acts which vilified homosexuals'.[38] At all material times, Mr Burns was a resident of New South Wales, Ms Corbett resident in Victoria and Mr Gaynor resided in Queensland. A live issue central to the dispute was whether the New South Wales Civil and Administrative Tribunal ('NCAT') was a Court of the State.[39] The Court of Appeal heard this issue and held that NCAT did not have jurisdiction to resolve matters enlivening federal jurisdiction.[40] In short, *Burns* purports the understanding that State Parliaments cannot delegate its adjudicative jurisdiction where there are matters engaging questions of federal diversity

[36] *Morgan v White* (1912) 50 CLR 1. See generally, eg, Justice Bradley Selway, 'The Australian 'Single Law area'' (2003) 29(1) *Monash University Law Review* 30 and Vince Morabito and Henriette Strain, 'The Section 109 "Cover the Field" Test of Inconsistency: an Undesirable legal fiction" (1993) 12(2) University of Tasmania Law Review .

[37] Roger O'Keefe, 'Response: "Quid", Not "Quantum": A Comment on "How the International Criminal Court Threatens Treaty Norms" [2016] 49 *Vanderbilt Journal of Transnational Law* 433, 436. See generally, Robert Austin, 'Resolving Commonwealth Ambiguity with reference to State laws' (1974) 7(6) *Federal Law Review* 178.

[38] *Burns v Corbett* [2018] HCA 15 [6] (Keifel CJ, Bell and Keane JJ).

[39] Ibid [29].

[40] Ibid [122].

jurisdiction to a body that this not 'a Court of the State'.[41] This was, as already identified, Chapter III matters could only be exercised in a scheme by actors mandated through qualified constitutional characteristics that were in turn delegated by the Executive courtesy of ss75-77 of the *Constitution* and s39(2) of the *Judiciary Act 1903* (Cth).[42]

B *Judgment of Kiefel CJ, Bell and Keane JJ*

Their Honours characterised the issue as having two sub-issues, namely the Implication Issue and the Inconsistency Issue.[43] Both issues are distinct, with their Honours adopting the view that the 'resolution of the Inconsistency Issue is not determinative of the Implication Issue.[44] They argued that 'whil[st] Chapter III does not mandate the establishment of a single federal judicial system it does establish the federal "Judicature" which may exercise adjudicative authority with matters listed in ss75 and 76 of the *Constitution*.[45] Where the Commonwealth did not purport to confer such authority, their Honours opined that matters, as defined under ss75-77 ('matters') would not be capable of being adjudicated by a body not conferred with Chapter III authority.[46] This proposition in turn reverts to how the *Constitution* is interpreted. At the Court of Appeal Leeming JA with whom Bathurst CJ and Beazley P agreed, held that the extent of adjudicative authority should be exercised is inconsistent with an implication that the *Constitution* itself denies the conferral of adjudicative power on states.[47]

On appeal for determination was the issue of whether the provisions of Chapter III 'deny the possibility that the authority to adjudicate any of the matters may be exercised by an organ other than a court of a state. Their Honours at [47] reasoned that "Chapter III, in providing for the establishment of the federal Judicature, is not concerned solely with the conferral of the judicial power of the Commonwealth and the limits of the conferral of that power", but rather that Chapter III confers only judicial power to State Courts, and to Courts of the

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[41] Ibid [11].
[42] Ibid [39].
[43] Ibid [1] – [5].
[44] Ibid.
[45] Ibid [15] citing Rizeq v Western Australia (2017) 91 ALJR 707, 713 [12].
[46] Ibid [36].
[47] *Burns v Corbett* [2017] NSWCA 3 (Bathurst CJ and Beazley P in agreement with the judgment of Leeming JA.

Commonwealth, as "Chapter III leaves no room for the Commonwealth Parliament to choose to co-opt an agency of the executive government of a State into the federal Judicature".

As to questions of adjudicative authority belonging to "courts of the States", their Honours were of the view that matters contained in Chapter III can only be adjudicated by courts where a justiciable controversy enlivens a federal element such as a dispute between residents of two states, thereby excluding agencies, and tribunal possessing administrative authority.[48] This proposition supports the decision in the *Boilermakers' Case* which "established that the adjudicative authority of the Commonwealth was exercisable only by courts of the federal Judicature", rather than historical constructs of state administrative bodies exercising judicial power at the time of federation.[49] Therefore, as NCAT is not a court of the state, the purported conferral of judicial authority was invalid, their Honours being of the view that NCAT did not have the authority to determine matters enlivening federal diversity jurisdiction such as matters between residents of two different states.[50]

C *Judgment of Gageler J*

The issue central to his Honours concern was the question of whether the exception of a State Parliament purporting to confer state judicial power on a body that is not a court of a state was warranted.[51] His Honour agreed with Keifel CJ, Bell and Keane JJ on the issue but set out his own approach to why he came to the same conclusion.[52] His Honour contextualised that state courts as they existed at the time of federation were different to the establishment of federal Judicature post *Boilermakers'*, and that the historical jurisdiction of states to adjudicate between residents of say Victoria and New South Wales could not be taken to be an indicator of a tribunal's authority to exercise adjudicative power as defined under Chapter III.[53] Instead his Honour adopted the view that "the power conferred by s77(iii) is limited to a power to invest federal jurisdiction in

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[48] Ibid n167 [45].
[49] Ibid [63] citing *Brandy v Human Rights and Equal Opportunity Commission* (1995) 183 CLR 245; *Forge v Australian Securities and Investments Commission* (2006) 228 CLR 45. .
[50] Ibid [64] – [66].
[51] Ibid [67] citing *K-Generation Pty Ltd v Liquor Licensing Court* (2009) 237 CLR 501, 544 [153].
[52] Ibid [69].
[53] Ibid [72] – [73], [90] citing *Wenn v Attorney-General (Vic)* (1948) 77 CLR 84,120.

a court of the state".[54] So the indicia identified above, such as the presence of non-judicial members point to the argument that a tribunal is not a court as defined under Chapter III. His Honour reasoned that the conferral of such power was not found in non-court state tribunals stating that "I cannot see that it is possible to treat s77(iii) as extending by implication to permit the Commonwealth Parliament to exclude the adjudicatory authority of non-court state tribunals, an exclusion affected by s109 of the *Constitution*."[55] Here "the inconsistency lies in the disparity of the legal incidents of the dual sources of the authority to adjudicate", as the provision advances the restriction that 'a State law which confers State jurisdiction on a State court is rendered invalid, to the extent that the State law would otherwise operate to confer that State jurisdiction on a matter that has a federal element, and that conferral would alter, impair or detract from the conditional and universal operation of federal law'.[56] His Honour however disagreed with the advancement of this proposition. Instead, his Honour was unable to see 'how a State law can impair or detract from the operation of a Commonwealth law by reason of the State law impairing or detracting from the conditional or universal application of that Commonwealth law except to the extent that the State law has legal or practical operation within the universe of the conditional legal operation of the Commonwealth law'.[57] To this point, a state tribunal is not a state court by implication of the non-conferral of commonwealth adjudicative power.[58] There is no conferral of judicial power. Therefore his Honour found that no s 109 inconsistency arose, agreeing with the plurality that the conferral of state judicial power on a state tribunal that was 'not a Court of a State' is invalid.[59]

D *Judgment of Nettle J*

The reasons of Nettle J should be viewed in light of Gordon J despite coming before her Honours reasons in the judgement of the Court.[60] His Honour termed jurisdiction as referred to by Chapter III as referring "to the authority upon a

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[54] Ibid [78] citing eg, *Le Mesurier v Connor* (1929) 42 CLR 481,496 and *Russell v Russell* (1976) 134 CLR 495, 516-517.
[55] Ibid [79].
[56] Ibid [82] citing *Burns v Corbett* (2017) 343 ALR 690,709 [78].
[57] Ibid [87] citing cf *The Commonwealth v Australian Capital Territory* (2013) 250 CLR 441, 454 [9], 463 [38], 467-468 [56]-[59].
[58] Ibid [88] citing *Airlines of NSW Pty Ltd v New South Wales [No 2]* (1965) 113 CLR 54,156.
[59] Ibid [119] – [121].
[60] Ibid [123].

class of questions concerning a particular subject matter".[61] As a matter giving rise to a justiciable controversy is identified, it was then a question for his Honour whether 'the *Constitution* prohibits a non-state tribunal to resolve matters between residents of different states in the exercise of State jurisdiction'.[62] Justice Gordon, on one hand, found s77(iii) facultative.[63] That is, the power to adjudicate contained in Chapter III is "exclusively federal", such that the exercise of this power is not 'undermined by the choice of a State Parliament to vest like jurisdiction in a non-judicial tribunal', which would otherwise be constrained by federal considerations found in the exercise of federal diversity jurisdiction.[64] To this proposition his Honour referred to the terms of s77(ii) and said "that the legislative power of parliament to invest State courts with federal jurisdiction includes the implied power to prevent State courts from continuing to adjudicate such matters in the exercise of state jurisdiction" and this question then turns on whether s39(2) of the Judiciary Act excluded the state jurisdiction of non-court state tribunals. In agreement with the plurality, his Honour held that as NCAT is not a court of the state, 'it could not enliven the powers that can be purported to be conferred on a court with federal capacity' and to do so otherwise would 'substantially undermine the federal diversity jurisdiction of State courts'.[65] I understand this conclusion to mean that 'the existence of the exclusivity of federal jurisdiction' points, 'ineluctably to the investment of the Commonwealth Parliament of federal jurisdiction only on State Courts'.[66]

E *Judgment of Gordon J*

The crux of Gordon J's judgement begins with the discussion of jurisdiction and the question of 'whether a State Parliament can validly vest in an administrative

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[61] Ibid [124] citing *Baxter v Commissioners of Taxation (NSW)* (1907) 4 CLR 1087, 1142 per Isaacs J and *CGU Insurance Ltd v Blakeley* (2016) 259 CLR 339, 349 [24] per French CJ, Kiefel, Bell and Keane JJ.

[62] Ibid [122] citing *Burns v Corbett* (2017) 343 ALR 690, 714 [101], 716 [109]-[110] per Leeming JA (Bathurst CJ and Beazley P agreeing at 693 [1], [2]) .

[63] Ibid [179] (Gordon J).

[64] Ibid [184].

[65] Ibid [140] (Nettle J) citing *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51,102-104 per Gaudron J, 115-116 per McHugh J; *APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322,405-406 [227]-[230] per Gummow J; *Wainohu v New South Wales* (2011) 243 CLR 181, 209-210 [45]-[47] per French CJ and Kiefel J, 228-229 [105] per Gummow, Hayne, Crennan and Bell JJ; *Alqudsi v The Queen* (2016) 258 CLR 203,266 [171] per Nettle and Gordon JJ; *Rizeq v Western Australia* (2017) 91 ALJR 707,719-720 [58]-[62] per Bell, Gageler, Keane, Nettle and Gordon JJ; 344 ALR 421,434-435 .

[66] Ibid [141].

tribunal, not being a court of a State, jurisdiction in a matter between residents of different States within the meaning of s75'.[67] ss75 and 76 collectively have nine classes of matter.[68] Collectively under s75,76 and 77, her Honour explained that "[f]ederal jurisdiction is the authority to adjudicate on those matters by the authority to adjudicate which is vested by the Constitution or by the Commonwealth laws enacted by it".[69] Her Honour, like all others on the bench, found after some analysis of the provisions, and the law, that only state Courts could validly exercise federal diversity jurisdiction, as the words of ss75-77 limited conferral only to these adjudicative bodies.[70] An interesting aspect of her Honours reasoning is supported by her belief that s77(ii) was facultative.[71] Through this, her Honour reasoned that under these provisions, 's77 recognised that matters under those nine classes by a scheme with actors participants exhaustively identified'.[72] It follows that the 'structural implication of the Constitution' did not permit non-actors from exercising federal diversity jurisdiction.

F *Judgment of Edelman J*

Justice Edelman found similarities in the approach of construing s77(iii) of the *Constitution* with Art III s2 of the *United States Constitution*. Following this reasoning his Honour pointed out that tribunals were administrative in character and did not purport to convey any judicial capacity, holding that to suggest considering a tribunal being constructively alongside a court was 'legally embarrassing'.[73] Some review of tribunal cases were considered. From these cases, his Honour saw the word 'court' as a word conveying "protean quality" which he analogized at a State level to not be 'easily differentiated from a non-court tribunal'.[74] However, the direct exclusion purported by s77 of the *Constitution* and the argument that state tribunals lack 'the minimum degree of independence and impartiality as required by Chapter III'[75] would therefore

[67] Ibid [158] – [159].
[68] Ibid [160].
[69] Ibid [159].
[70] Ibid [167].
[71] Ibid n192.
[72] Ibid [187].
[73] Ibid [224] citing *Royal Aquarium and Summer and Winter Garden Society v Parkinson* [1892] 1 QB 431,446-447.
[74] Ibid [241] citing *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531,573 [69].
[75] Ibid [258].

purport the inoperability of the understanding that the *Anti-Discrimination Act* could rightfully confer state legislative power (that is the power to adjudicate questions of law and fact) on non-court state tribunals.[76]

G *Significance*

This decision remains significant for the following reasons. First, it points to State Tribunals like SAT not being invested with federal diversity jurisdiction such as those invested in by Chapter III of the *Constitution*. Instead it points to the understanding that SAT, and similar tribunals have an administrative purpose, as it relates to guardianship and administration. Therefore, necessarily, the Tribunal does not make judicial decisions on questions of law and fact giving rise to implications to inter-state parties legal rights and obligations.

IV *GS v MS*: *BURNS v CORBETT* HAS NO IMPLICATIONS FOR INTER-STATE GUARDIANSHIP AND ADMINISTRATION

Burns was recently examined by Quinlan CJ in *GS v MS* ('*GS*') in the Supreme Court of Western Australia. In that case, the applicability of the *Burns* formulation to the context of 'matters' of guardianship and administration was assessed. Quinlan CJ, delivering the sole judgment of the Court, found that an exception to *Burns* applied in cases of Guardianship and Administration. In other words, *Burns* as Quinlan CJ rightly concluded, did not apply to guardianship and administration because these matters are *ex parte* applications affecting one party only and not *inter partes* affecting the rights of two parties, and does not call into action Chapter III limitations.

A *Facts*

On 17 October 2017, MS a resident of New South Wales made an application under s40 of the *Guardianship and Administration Act 1990* (WA) seeking appointment for his mother, GS, who resided in Western Australia.[77] The preliminary view of SAT was that it had jurisdiction in hearing this matter. As a virtue of GS alleging that as residents of different Australian states, GS purported

[76] Ibid. See further, eg, *Grannall v Marrickville Margarine Pty Ltd* (1956) 94 CLR 254, 268,270.
[77] *GS vs MS* [2019] WASC 255 [1] (Quinlan CJ).

that the matter was one enlivening federal diversity jurisdiction, and following *Burns*, could not be exercised by a 'non-court state tribunal'. GS and her rights were directly in question, this case could be construed as a matter, in the context of a tribunal, involving the exercise of judicial power.[78] At first instance, Member Eddy reasoned that 'the requirement of the tribunal was to as far as possible, seek to obtain the views of the person concerned, simply as an inquiry relevant to certain facts' adding that 's 40 applications involve a question of fact and not policy'.[79] The fact that federal diversity jurisdiction is not enlivened can be explained as follows. The appointment of a guardian or administrator is not a justiciable controversy, as there is not a judicial determination but an administrative application of the best interests of the represented person at play as to suitability. Further, 'a matter cannot be between residents of different States if not all the parties on one side are from the home State and all parties on the opposing side are from a different State'. It follows that, as a party to a legal proceeding, the fact that a resident of a state is a party does not give rise to a 'matter' as found under s75 of the *Constitution*.[80] That means that even if there are external personal interests, such interests, if Member Eddy's approach is adopted, "do not come into existence until the Tribunal has made a determination of whether a person should be so appointed."[81] *The Guardianship and Administration Act 1990* (WA) differs from the *Anti-Discrimination Act* in that "the *Guardianship and Administration Act*… allows any person to be an applicant under s40, and that person need not have any legal interest or standing in order to make that application",[82] therefore not raising a situation where parties to a matter reside in different jurisdictions. At first instance, this reasoning led the learned Tribunal Member to conclude that the Tribunal had jurisdiction, implying that a *Burns* implication would not arise in matters of guardianship and administration.[83]

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[78] Ibid [11].
[79] *Re GS* [2018] WASAT 72 [38] – [45] (Eddy M) citing *Watson and Godfrey v Cameron* (1928) 40 CLR 446; *Rochford v Dayes* [1989] HCA 17 and *Precision Data Holdings Ltd v Wills* (1991) 173 CLR 167.
[80] Ibid n 77 [18], .
[81] Ibid n 79.
[82] Ibid [53], [57].
[83] Ibid n 77 [32] – [92] and cases cited therein.

B *Judgment of Quinlan CJ*

GS appealed the decision at first instance.[84] The Chief Justice framed the issue in question as 'essentially, whether the Tribunal has jurisdiction to determine a guardianship and administration orders, where parties to the dispute are resident in different states'.[85] This was seen as to fall within s75 of the *Constitution*, involving enquiries of the law and characterisation of the law in relation to the parens patriae jurisdiction of the Supreme Court. Quinlan CJ held the learned Tribunal Member was correct in holding that the Tribunal was 'not a Court of the State'. This meant the question at trial was whether guardianship and administration matters were, matters of federal jurisdiction.[86]

C *Significance*

Arguably the greatest significance of *GS* to guardianship and administration law is the understanding that unless State Parliament purports to confer otherwise, the tribunal exercises administrative and not judicial power in appointing a guardianship and administrator.[87] Therefore, the author finds in agreement with Quinlan CJ that the 'limitation identified in *Burns*' is not enlivened.[88] The best way to explain this finding is as follows. Judicial power involves ascertaining 'legal rights or obligations as applied to particular facts, and should not be a determination of what a person's rights and obligations should be and such function stands outside the realm of judicial power'.[89] A tribunal as a non-state court can interfere with a person's rights or obligations, but as new rights and obligations are not created, such exercise of power is 'distinctively administrative' evidenced by 'the creation of future rights and obligations provided by the protective nature of the jurisdiction and its repose in a specialist administrative tribunal'.[90] I am of the view that Quinlan CJ was correct to come to this conclusion. If reference is given to the speech of The Earl of Halsbury 'the care

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[84] Ibid n 77 [3]. Note the grant of adjudicative power by State Parliament through the *Guardianship and Administration Act 1990* (WA).
[85] Ibid [106].
[86] Ibid [33] – [36].
[87] Ibid [60] – [76] and cases cited therein; [90] citing *PJB v Melbourne Health* (2011) 39 VR 373 (*Patrick's Case*); [96] – [99] (emphasis added) and [100] – [104] citing inter alia *Scott v Scott* [1913] AC 417,437,442,483.
[88] Ibid [105].
[89] Ibid [65] (emphasis added).
[90] Ibid [89].

and treatment of [represented persons] forms no part of the administration of justice at all'.[91] Thus as judicial power is not involved, s75 is not involved, even if persons who may have an interest in the matter are for the purposes of the dispute resident in New South Wales, Western Australia or overseas.

IV A NOVEL SOLUTION? CROSS-JURISDICTION RECIPROCAL ARRANGEMENTS

The nature of jurisdiction is largely territorial. This means that orders for administration and guardianship have to be recognised amongst the States and Territories in order for them to have effect amongst the States and Territories. So what is usually done to give inter-state/territory force to an administration order? Reciprocal arrangements are now found in the *Guardianship and Administration Act 1990* (WA) and similar statues amongst other states allowing for the efficient use of civil procedure processes. A state-by-state approach is discussed briefly below.[92]

A *Existing Arrangements*

1 *Western Australia*

Subject to a contrary finding in s4 of the *Guardianship and Administration Act 1990* (WA), an application to the Tribunal, either orally, in writing or partly thereof "may apply for guardianship and administration of a person unable by reason of mental disability to make reasonable judgements and needs an administrator, setting out satisfied matters subject to conditions and restrictions the Tribunal thinks fit" (emphasis added).[93] The Tribunal can make an order in respect of a person who is not resident or domiciled in Western Australia, but any such order is limited to the person's estate in Western Australia.[94] In making that order, "the reciprocal nature of the arrangement should be noted, pursuant to s83D (3) to have the same force and effect as it does in Western Australia unless the arrangement is cancelled by the Minister through the Gazette".[95]

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[91] Ibid [102] citing *Scott v Scott* [1913] AC 417,442.
[92] See also, eg, Clifton Baker, 'Cross Vesting of jurisdiction between state and federal courts' (1987) 14(2) *University of Queensland Law Journal* 118.
[93] See ss3,4, 40, 64-69,83A-83D, 84 and 86 *Guardianship and Administration Act 1990* (WA).
[94] See *SG v AG* (2008) WASC 123.
[95] See s83D (3) *Guardianship and Administration Act 1990* (WA).

Drawing on s31 of the *Public Trustee Act 1941* (WA), the Public Trustee may also "authorise any person as an agent, to collect, manage, sell or otherwise dispose of or administer any property in this State which the person named in the instrument is possessed of or is entitled to or which he appears to be entitled to or in which he has or appears to have an interest having a plenary function with respect to the property".[96]

2 *New South Wales*

Pursuant to s81 of the *NSW Trustee and Guardian Act*, The Public Trustee of a reciprocating State may, by notice in writing to the NSW Trustee, authorise the NSW Trustee to "exercise specified management functions of the NSW Trustee in relation to the estate in New South Wales of a person who resides in the reciprocating State and is certified by the Public Trustee of the reciprocating State to be incapable of managing his or her own affairs".[97] Reciprocal recognition under s14 of the *Protected Estates Act 1983* (NSW) has been reconfigured pursuant to s42 of the *NSW Trustee and Guardian Act 2009* to confer power on the NSW Trustee and Guardian to "commit management of persons of other states or territories, or countries under the Act".[98]

3 *Victoria*

In Victoria pursuant to s12 of the *State Trustees (State Owned Company) Act 1994* (Vic), if the State Trustees believe that a represented person has an interest in property in a place outside Victoria, State Trustees "may by instrument in writing directed to the proper officer certify that State Trustees has the general care, protection and management of the property and estate of the person named in the instrument; and authorise the proper officer to collect, manage, sell or otherwise dispose of or administer any property in the place in which the represented person has an interest" (emphasis added).[99]

The definition of a proper officer being "an officer in a place outside Victoria (being another State or a Territory; or New Zealand or the United Kingdom; or

[96] See s31 *Public Trustee Act 1941* (WA).
[97] See ss 6, 42 and 81 *NSW Trustee and Guardian Act 2009* (NSW). See also ss14 and 25 *Guardianship Act 1987* (NSW) and s14 *Protected Estates Act 1983* (NSW).
[98] Ibid.
[99] See s12 *State Trustees (State Owned Company) Act 1994* (Vic). See also, s83A-83D *Guardianship and Administration Act 1990* (WA).

any other country with which State Trustees has a reciprocity agreement) who under the law of that place has the management of the property and estate of persons who however described under that law are incapable of managing their estates by reason of intellectual impairment, mental illness, brain damage, physical disability or senility".[100]

Pursuant to s12 (3) the State Trustees may "give a discharge to the proper officer on the payment or delivery to State Trustees of the balance of money or other property of the represented person which remains after the deduction of all costs, charges and expenses incurred by the proper officer in the exercise of the authority; and any amount which is payable in the place outside Victoria in satisfaction of the debts or other liabilities of the represented person. Further, the State Trustees may revoke or vary any authority by instrument in writing".

4 *Queensland*

Queensland requires an application to the Civil and Administrative Tribunal to determine the similarity of an order to be recognised as equivalent to an application for administration made under the *Guardianship and Administration Act 2000* (Qld).[101] The effect of registration of a registrable order is the order is treated, other than for an appeal, as if it were an order made by the tribunal.

5 *South Australia*

Reciprocal arrangements between states, gazetted by the agreement of the Minister provide the authorisation and administration of the protected person in the reciprocal state. However, I must add that s19 of the *Public Trustee Act 1995* provides little relevance in the administration of a person interstate as this section is only operational on the death of the represented person.[102]

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[100] Ibid.
[101] See ss166-171 *Guardianship and Administration Act 2000* (Qld).
[102] See s19 *Public Trustee Act 1995* (SA). See also s34 *Guardianship and Administration Act 1993* (SA).

6 *Tasmania*

Pursuant to s81 and 81A of the *Guardianship and Administration Act 1995* (Tas), "where it appears to the Minister that a law in force in another State, a Territory or another country has substantially the same effect as this Act, the Minister may, by notice published in the Gazette, declare that that law is a corresponding law for the purposes of this section".[103] Procedure requires that "[w]here the Board is satisfied that a person has under a corresponding law been appointed guardian of another person or the administrator of the estate of another person; and the applicant furnishes the Board with the original instrument of his or her appointment, a certified copy of that instrument or other evidence satisfactory to the Board of that appointment, the Board must register the instrument".[104]

In Tasmania, "a certificate, from an Australian legal practitioner or from the Registrar of a relevant Court, Board or Tribunal exercising a guardianship jurisdiction, that the instrument appointing an enduring guardian satisfies the requirements of the relevant corresponding law is evidence of that fact".[105] Upon registration of the instrument, the applicant is "taken to be the administrator of the estate of that person as if the applicant had been appointed as such by the Board for the purposes of this Act and the Board must notify the appropriate authority in the relevant State, Territory or country of that registration; and any subsequent revocation of the appointment as well as any other action taken by the Board relating to the appointment".[106]

7 *The Territories*

Currently there is no provision for under Northern Territory law to recognise an Interstate administration order.[107] Section 10 and 94 provide little direction as to an administrator and are irrelevant for the considerations of this paper, but it may be in the best interests of a represented person's administrator to seek a

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[103] See ss 81 and 81A *Guardianship and Administration Act 1995* (Tas).
[104] Ibid.
[105] Ibid.
[106] See s81A (4) *Guardianship and Administration Act 1995* (Tas).
[107] See, eg, *Guardianship orders* (NT) < https://nt.gov.au/wellbeing/mental-health/adult-guardianship-and-orders> (Accessed on 27 May 2018). See further ss10 and 94 *Public Trustee Act 1995* (NT). See also, s151 *Land Title Act 2000* (NT).

direction from the Public Trustee of the Northern Territory to "appoint an agent to assist in the administration of his or her affairs in that State".[108]
The ACT requires registration, upon satisfaction that the laws pertaining to the administration of the represented person is substantially similar to that proposed under the *Guardianship and Management of Property Act 1991* (ACT).[109]

B *The Need for Reciprocity: The Practicality of The Problem*

Given the inter-state nature of private life, in Western Australia, the Public Trustee primarily deals with, on a regular basis, matters of inheritance, personal injury, or criminal compensation and on occasion matters involving child welfare and maintenance across borders. All possible claims are limited by the presumption against extraterritoriality. Statutory or intergovernmental recognition is required, often enforced by seal in a comparative tribunal, or court. Potential problems persist should the represented person live interstate. Constitutional limitations can come into consideration influencing the effect of enforcing a writ inter-state, and summons or subpoena can potentially be limited due to the inability of the Tribunal to enforce federal jurisdiction on other State jurisdictions.[110] Thus it is important to assess the importance of identifying a matter that can affect a person's legal rights and obligations. As *GS* demonstrates, the 'rights focused' analysis of guardianship and administration matters can untie the gordian knots purportedly imposed by the High Court in *Burns v Corbett*.

V CONCLUSION

Burns is a helpful authority for the proposition that state tribunals' exercised primarily an administrative rather than judicial functions through the absence of key 'court-like' features. This implication meant non-court state tribunals, as referred to in *Burns* could not exercise federal diversity jurisdiction, as the State parliament did not vest the tribunals with such authority, implying that tribunals'

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[108] See s10 *Public Trustee Act 1995* (NT).
[109] See s12 *Guardianship and Management of Property Act 1991* (ACT).
[110] *Burns v Corbett* [2018] HCA 15. See also s47(2) *Public Trustee Act 1941* (WA) and *Freedom of Information Act 1992* (WA).

dismissed the matter for want of jurisdiction where for example, a matter involved residents of two states.[111]

As regards inter-state Guardianship and Administration matters, the WA Supreme Court recognized an exception. Quinlan CJ decided that guardianship and administration was inherently administrative. Examining concepts of jurisdiction parens patriae,[112] his Honour identified that matters of guardianship and administration involve the *ex parte* assessment of the capacity of an individual to make reasonable decisions with respect to his or her finances, health, wellbeing and safety.[113] This implication implied that the restriction in *Burns* was not enlivened. Matters in guardianship and administration do not obtrude the rights of others.[114] That is, unlike *Burns*, matters of guardianship and administration are not matters between two people resident in two states, as orders for administration are separate and independent on each represented person.[115] In such matters the Tribunal's jurisdiction is not cross-jurisdictional, meaning that there is not a dispute between 'residents of two states' as found in *Burns*.. However, with ongoing legislative amendments to guardianship and administration statute proposed, this area of the law presents the scope for interesting judicial analysis and debate through more spilt ink, now and well into the future.[116]

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[111] Ibid n 77 [105].
[112] Ibid n 77.
[113] Ibid [42] – [44], [51] – [59].
[114] Ibid [116] – [117] citing with approval of the High Court in *In re Judiciary and Navigation Acts* [1921] HCA 20; (1921) 29 CLR 257, 266-267 (Knox CJ, Gavan Duffy, Powers, Rich & Starke JJ).
[115] Ibid [105].
[116] See especially, Hayley Cormann, 'Diversity Jurisdiction in the State Administrative Tribunal (WA) – Desirability of addressing the issue as a priority' (Letter, Law Society of Western Australia, 20 December 2018) 1-3.