**PROPERTY RIGHTS IN AUSTRALIA**

Common law protection of real property - Supporting High Court Cases

**Issues related to Local Council authority and trespass**

The Common Law has long regarded a person’s property rights as fundamental.

William Blackstone said in 1773: “There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property.

In his *Commentaries,* Blackstone called the right to property an **absolute right**, anchored in the Magna Carta (1215), and described the limited power of the legislature to encroach upon it in terms that are still reflected in laws today:

**Plenty v Dillon** **1991** **HCA**– Justices (Masson CJ, Brennan and Toohey JJ) said that the principle in **Entick v Carrington** **HCA** applies to entry by persons purporting to act with the authority of the Crown as well as to entry by other persons: The principle applies to officers of government and to private persons.

**A Police Officer or council representative who enters or remains on private property without the leave and licence of the person in possession or entitled to possession commits a trespass and acts outside the course of his duty.**

No one, not even Police can enter property without consent, or proper judiciary order, and an order by a single magistrate is not a judicial order.

It is illegal because it is in violation of Common Law – Criminal Code Act 1995 Section 268 (10)

Similarly, in **Halliday v Nevill** **HCA -** Brennan J said: “*The principle applies alike to officers of government and to private persons. A Police officer whom enters or remains on private property without the leave and licence of the person in possession or entitled to possession commits a trespass and acts outside the course of his duty unless his entering or remaining on the premises is authorised or excused by a positive law”.*

***Section 109 of the Constitution is activated if a State Act or Statute contravenes Common Law***

***States*** of the Commonwealth are a creation of the process of Federation and are subject to the Australian Constitution.

**Chief Justice Sir Samuel Griffiths HCA** stated: “*The Common Law favours interpretation of statutes which minimise the effects upon property rights”’*

*“It is a general rule to be followed in the construction of Statutes…that they are not to be construed as interfering with vested interest unless that intention is manifest”.*

*“In absence of express language or necessary implications to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual”.*

**Chief Justice Latham in S.A v Cth 1949** stated: “ *A pretend law made in excess of power is* *not and never has been a law at all*”.

“A State law which contravenes a Common Law is in contravention of Australia’s Constitution, which in turn would activate section 109 of “the” Constitution”.

**“All State Laws and State Constitutions must be read subject to Australia Constitution Act 1901 (“the Law”)”.**

**HCA 1996 Kable principle:** it was declared by the justices that: *“the Commonwealth remains one and indivisible, just as our Constitution with one judicial power, not different rules in each State”.*

**HCA 2006 Forge v ASIC** (7) seven High Court judges stated: “our Constitution Rayne supreme, and all other laws and rules are subject to it, and that if any conflict they are invalid and illegal”. (sect 109)

**Constitution Act Amendment Act 1977:** (2) Every Bill, after its passage through the Legislative Assembly, shall be present to the Governor for assent by or in the name of the Queen and **shall be of no effect unless it has been duly assented to by or in the name of the Queen.** The LGA has never received **Royal Assent**.

**Lord Camden L.C.T v Carrington:** BY LAWS OF ENGLAND (AUTRALIA), EVERY INVASION OF PRIVATE PROPERTY, BE IT EVER SO MINUTE, IS A TRESPASS.

NO MAN CAN SET FOOT UPON MY GROUND WITHOUT MY LICENCE, BE HE IS LIABLE TO AN ACTION, THOUGH THE DAMAGE BE NOTHING……IF HE ADMITS THE FACT, HE IS BOUND TO SHEW BY WAY OF JUSTIFICATION, THAT SOME POSITIVE LAW HAS EMPLOYED OR EXCUSED HIM

THE POOREST MAN MAY IN HIS COTTAGE BID DEFIANCE TO ALL THE FIRCES OF THE CROWN

IT MAY BE FRAIL – ITS ROOF MAY SHAKE – THE WIND MAY BLOW THROUGH IT – THE STORM MAY ENTER – THE RAIN MAY ENTER – BUT THE KING OF ENGLAND (AUSTRALIA) CANNOT ENTER – ALL HIS FORCE DARES NOT CROSS THE THRESHOLD OF THE RUINED TENEMENT. SO IT BE – UNLESS HE HAS JUSTIFICATION BY LAW

TO EVERY INDIVIDUAL IN NATURE IS GIVEN AN INDIVIDUAL PROPERTY BY NATURE NOT TO BE INVADED OR USURPED BY ANY. FOR EVERYONE, AS HE IS HIMSELF, SO HE HAS A SELF PROPERTIETY, ELSE HE COULD NOT BE HIMSELF; AND OF THIS NO SECOND MAY PRESUME TO DEPRIVE OF WITHOUT MANIFEST VIOLATION AND AFFRONT TO THE VERY PRINCIPLES OF NATURE OF THE RULES OF EQUITY AND JUSTICE BETWEEN MAN AND MAN. MINE AND THINE CANNOT BE, EXCEPT THIS. NO MAN HAS POWER OVER MY RIGHTS AND LIBERTIES, AND I OVER NO MAN.

**Cruden v Neale** *“every man is independent of ALL LAWS except those prescribed by nature. He is NOT bound by any institution formed by his fellow men “without” his consent”.*

High Court**: Justice Kirby 10 Sept 1998** – supporting HCA case in 1923 (Cth v N.S.W)

(Fejo v N.T Govn’t) HCA 58 **Fee Simple protection in all States of Australia**

Justice Kirby stated: *“No-one, not even the Queen, can trespass or take away property held in Fee Simple”.*

The Banks, Bailiff, Police, must obtain a High Court Order to override Fee Simple protection.

Australia is a Common Law country, and property-owners have rights at law.

Property owners in Australia are guaranteed in three different legal instruments, as under….

1. Deeds in Fee Simple

2. Magna Carta 1215, and

3. The Bill of Rights 1688/9

*“In the language of the English law, the word fee signifies an estate of inheritance as distinguished from the less estate…..A fee simple is the most extensive in quantum, and the most absolute in respect to the rights, which it confers, of all estates known to the law.*

*It confers, and since the beginning of legal history it always has conferred, the lawful right to exercise over, upon, and in respect to, the land, every act of ownership which can enter into the imagination, including the right to commit unlimited waste; and, for all practical purposes of ownership, it differs from the absolute dominion of a chattel, in nothing except the physical indestructibility of its subject. Besides these rights of ownership, a fee simple at the present day confers an absolute right, both of alienation inter vivos and of devise by will”.*

Most non-leased properties in Queensland and Australia as awhole are “Fee Simple”, and therefore the majority of property-owners have rights that override any government department or any municipal council.

**HCA 34 Cth v NSW 1923 33 CLR 1 (9 Aug 1923)**

*“No implied limitation can be placed on the fullest meaning that can be given to the word “property” in s51 (xxxi) and s85 of the Australian Constitution……s22 Act Interpretation Act 1901….so as to include ‘messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate or interest therein and estate to include any estate or interest, charge, right, title, claim, demand, lien or in cumbrance at law or in equity”. “the full contents of the parcel of land pass; the ‘land’ being measured superficially by metres and bounds and extending actually downward indefinitely and notionally upward indefinitely, is that which is ‘passing to the Commonwealth’”.*

To emphasise – these 4 elements of ownership allow the private land owner to build or change buildings – without the need to ask permission.

To use the natural elements of his land – without the need to ask permission.

To start an enterprise on his land – without the need to ask permission.

**HCA case Hobson Bay City Council v Viking Group Holdings Pty Ltd 2010**

“Council cannot charge Courts costs as that is what taxes are for”.

**HCA case Metwally v Wollongong Shire 1992**

“one does not have to have services not required or need and, neither do they have to pay for them”. High Court ruled in Metwally that where S.109 applies any invalid law can simply be ignored.

**Universal Declaration of Human Rights (UDHR) 1948 Article (17) – International Law Obligations - United Nations**

“No one shall be arbitrarily deprived of their property”

\* Note: see separate document in regards to Australia’s International Law obligations, and HCA cases reference to International Laws

**Arbitrary** – definition: (of power or a ruling body) unrestrained and autocratic in the use of authority “a country under arbitrary government”

*Synonyms:* despotic, tyrannical, tyrannous, peremptory, summary, autocratic, dictatorial, authoritarian, draconian, autarchic, anti-democratic; more…………

**DEMOCRACY:** democracy is the Rule of Law in Australia.

Why is there a Chief Executive Officer in charge of Local Councils?

Councillors are voted in by the people and the people believe the Mayor is in charge of Councils.

Who then is the CEO of Council who is sneakily hiding behind the scenes in Council?

Administrator of the corporation called Local Council, which has an ABN.

Who is the **“Head of Power” (Placitiums) of Council**? No head of power no authority.

**Note:** see **Hume Doors & Timber v Logan Shire Council** – No head of power whereby fees & charges could be levied.

**Engel Case:** Questions Head of Power

**Sir Harry Gibbs** (High Court Judge and Chief Justice)

Quote: *“I therefore have come to the conclusion that the current legal and political system in use in Australia and its States and territories has no basis in law”.*

**HCA 1942 (uniform tax case) Chief justice Latham:** *“The words “under the Constitution” are words of limitation and qualification, not all enactments purporting to be laws made by the Parliament are binding; but laws made under, in pursuance of, and within the authority conferred by the Constitution, and those only, are binding on the courts, judges, and the people. A law in excess of the authority conferred by the Constitution in no law; it is wholly void and inoperative; it confers no rights, it imposes no duties; it affords no protection.*

*The Act itself is binding without limitation or qualification because it is passed by the sovereign parliament (UK), but the laws passed by the Parliament of the Commonwealth, a subordinate Parliament, must be within the limits of the delegation of powers or they will be null and void”.*

**Acts Interpretation Act 1901 PART 3**

**Part 3 – Commencement of Acts, section 3A Commencement of Acts;**

(1) This section dos not apply to an Act so far as it provides for its commencement.

(2) An Act (other than a Act to alter the Constitution) commences on the 28th day after the day on which that Act receives Royal Assent.

(3) An Act to alter the Constitution commences on the day on which that Act receives the Royal Assent.

AND,

**Acts Interpretation Act 1901 PART 3**

**Part 3 – Commencement of Acts, section 6 Evidence of date of assent;**

The date appearing on the copy of an Act printed by the Government Printer, and purporting to be

the date on which the Governor-General assented thereto, or made known the Sovereign’s assent,

**shall be evidence** that such date was the date on which the Governor-General so assented or made known the Sovereign’s assent, and **shall be judicially noticed.**

**Constitution Act Amendment Act 1977, section 3,**

**3. New s. 2A** The Principal Act is amended by inserting after section 2 the following section:--

**2A. The parliament.** (1) The Parliament of Queensland consists of the Queen and the Legislative Assembly referred to in section 1 and 2.

(2) Every Bill, after its passage through the Legislative Assembly, shall be presented to the Governor for assent by or in the name of the Queen and **shall be of no effect unless it has been duly assented to by or in the name of the Queen.**

**HCA WAKIM 1999** *“A legislature can not, by preambular assertions, recite itself into Constitutional power where none exists”* (Para 193)

**HCA 1949 Chief Justice Latham S.A v Cth**

(Para 13) *“A pretend law made in excess of power is not and never has been a law at all”.*

**HCA Chief Justice French**

*“The Constitution creates the space in which all other domestic laws operate in this country”. “It defines the extent of our legal universe”.*

**CONTRACT:** All law is by consent or contract; the Maxim “**Consensus facit legem –** Consent makes law. A contract constitutes law between the parties agreeing to be bound by it.

**CONSENT –** means free and voluntary agreement.

If persons do not consent to an Act:

1. The person submits to the Act because of force, or the fear of force to the person or someone else.

2. The person submits to the Act because the person is unlawfully detained.

3. The person is incapable of understanding the essential nature of the Act.

4. The person is mistaken about the essential nature of the Act.

5. The person submits to the Act because of psychological oppression or abuse of power.

6. The person submits to the Act because the perpetrator taking advantage of a coercive environment.

**Commonwealth of Australia Constitution Act**

**Chapter V**

**The States inconsistency of laws: Section 109 –** *When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.*

**Three major inconsistencies that are clearly in existence:**

1. State and local governments’ interference in the rights you purchased under contract with the Chief Executive of the Commonwealth of Australia Constitution Act – ie the Fee Simple Grant.

2. Intergovernmental Agreement on the Environment, SIGNED with wet-ink signatures 1st May 1992 by the heads of Commonwealth, the States, the Australian Capital Territory, the Northern Territory and the Australian Local Government Association.

Paragraph 5 Schedule 2

*“Within the policy, legislative and administrative framework applying in each State, the use of natural resources and land, remain a matter for the owners of the land or resources, whether they are Government bodies or private persons”.*

3. Corporate Bodies Contracts Act 1960

1960 Chapter 46

1 Cases where contracts need not be under seal.

(1) Contracts may be made on behalf of nay body corporate, wherever incorporated, as follows: - (a) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the body corporate in writing signed by any person acting under its authority, express or implied.

2 This Act shall apply to any company formed and registered under the Companies Act 1948, or an existing company as defined in that Act.

**Note:** Men and women acting in governmental roles including that of Local Council, signed a binding agreement stating that the bodies they signed for (including mine and your Local Council), would not interfere in the ownership of private land without permission – then went ahead and did it anyway.

That means they knew very well you and I owned the land under a superior contract, protected by our Constitution, yet they ignored those facts.

**Section 114: Commonwealth & States cannot tax each other without consent**

In the case of Local Council Rates, the Commonwealth claims exemptions from rates, but “contributes” to local government in the form of grants to at least cover services provided, such as electricity, sewage, rubbish disposal and the like, but not for road works, parks, general administrative expenses, etc…….