

CONSTITUTIONAL PROPERTY RIGHTS COMMITTEE (C.P.R.C.)

Bevan O'Regan

"Response To Draft Productivity Commission of Inquiry into Impacts of N.V. Regulations."

Thank you for the inclusion of our entry into your draft report.

Coming from the angle of our C.P.R.C. I am amazed or perplexed that anyone could even contemplate that there could be an alternative to the basic law of property ownership, or as we call it, as property right, or 'Fee Simple'.

'Fee Simple' is not a dreamed up idea to identify property ownership, it is a safety net identified in the 'Land and Valuation Act 1916' and is very much part and parcel of Local Government's 1979 Environmental Planning and Assessment Act (E.P. & A.A.) used by Local Government.

Property ownership, property zoning, and property rating are all identified in Section 149 of the Local Government's E. P. & A. Act for any owners' information.

A property owner whether a recent purchaser or a long time inheritor has the "Fee Simple" protection guaranteed by all Local Councils' planning officers.

Any legal searcher when they do their searches rely on the Local Government's planner to get it right.

Any planning attempt or would be attempt to stray from the council's planning certificate will be automatically flawed.

Schedule 4 of the 1997 N.V. & C. Act which is a Savings Clause, states that every instrument in place before this 1997 Act was enacted takes precedent over subsequent Acts.

Simply no attempt has ever been made to revoke or modify this area of the E.P. & A.A. 1979 in New South Wales.

The principle reason no one particular government could even or have an attempt to modify this Act is that this Act which is made up of the Land and Valuation Act, the Conveyancing Act, The Real Property Act and the Local Government Act simply is an Act that reflects all that is good about our democracy which includes the identification of "Fee Simple" for property owners.

For the old D.L.A.M.C. to blatantly ignore this age old common law right by trying to implement S.E.P.P. 46 and now the 1997 N.V. & C. Act is a desperate move to try and make changes to an existing and continuing "use right" legislated specifically to guard against anarchy by any authority.

“Fee Simple” is simply a commercial contract of exchange based on serious intent when stamp duty (money) is paid to the Crown for in turn, a reciprocal protection by the Crown's Title Office for the ongoing use of that property by the owner.

Stamp duty relates to the intent to cement a contract of purchase.

Stamp duty on cars, on insurance policies, on strata units, on town houses and rural properties is only paid on the expectation that the fee simple process will always prevail for the purchaser forever.

No one would ever expect the resumption of all or part of a car or an insurance policy or even a town house in suburbia.

This last statement highlights the impossible belief that a N.V. & C. Act could ever lock up or ask for a farmer to fence off portions in the name of the environment.

The word environment means, "all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings."

No law can ever be legislated to make property owners feel guilty or feel responsible if they either clear, plough, or graze rural properties, or if they clear to erect a house for their use in a town.

The environment is not answerable to Common Law. Common Law is owed to individuals. (man).

A duty of care can never be attributed to the environment.

In conclusion, it is wrong to even suggest that the principle of "fee simple" as the culmination of a legal contract between the owner and the Crown should ever be jeopardised to suggest that a property owner has any obligation to the environment. Private property ownership is bestowed on less than 20% of Australia's land mass.

"Fee simple" has no peer when we argue the right of any property owners to manage their air, their soil, their water and their vegetation.

Any diminution of these rights would result in at least civil disobedience.

Cr. Bevan O'Regan