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## **PROPERTY RIGHTS in AUSTRALIA**

Australia is a **Common Law** country, and property-owners have rights at law, particularly through the High Court ruling by Mr Justice Kirby in September 1998. Property owners whose land is held under **Deeds in Fee Simple** have the right to refuse to agree to the takeover of their land for this or any other purpose.

### **Private Property Owners and their Rights:**

Property Owners' Rights in Australia are guaranteed in three ways by three different legal instruments, as under...

- (1) Deeds in Fee Simple**
- (2) Magna Carta 1215, and**
- (3) The Bill of Rights 1688/9**

Fee Simple rights, particularly the High Court ruling given by Mr Justice Kirby, in September, 1998, when he made his decision by using an earlier High Court case (1923) when Mr Justice Isaacs settled a dispute by confirming to the property owner in the case the rights conferred on all property-owners under their **Freehold Deeds in Fee Simple**.

Under the current laws in Australia, both State and Federal, it is absolutely illegal for the Government "to take what it wants", or indeed to dictate in any way what property-owners must do or not do in regard to their lands held under **Deeds in Fee Simple** so long as we retain our Common Law status under our legally unchangeable Christian Monarchical Constitutions, which apply both State and Federally.

Certain politicians are trying illegally to change our unchangeable Federal Constitution, (*except via referendum of the people*) because they want to deny people the right to hold private property under our Monarchical laws.

### **Evidence of present protection of our rights through "Fee Simple"**

In the High Court of Australia, in a decision in the case **The Commonwealth v New South Wales**, Justice Isaacs spoke of "fee simple" as follows...

"In the language of the English law, the word fee signifies an estate of inheritance as distinguished from a 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 are "**Fee Simple**", and therefore the majority of property-owners have rights that override any Government Department or any Municipal Council. Unfortunately many landowners are not aware of their rights There are also other court rulings [such as Plenty v. Dillon in 1991] and Parliamentary legislation that further confirm the fact that property-owners in this country have the law entirely on their side.

**PLENTY v. DILLON (1991) 171 CLR 635 F.C. 91/004 - (HIGH COURT OF AUSTRALIA)**  
states in part...

- a) Consent to an entry is implied if the person enters for a lawful purpose. In Robson v. Hallett (1967) 2 QB 939, Lord Parker C.J. said (at p 951): "... the occupier of any dwelling-house gives implied licence to any member of the public coming on his lawful business to come through the gate, up the steps, and knock on the door of the house." This implied licence extends to the driveway of a dwelling-house: Halliday. However, the licence may be withdrawn by giving notice of its withdrawal. **A person who enters or remains on property after the withdrawal of the licence is a trespasser.** In Davis v. Lisle (1936) 2 KB 434, police officers who had lawfully entered a garage for the purpose of making enquiries were held to have become trespassers by remaining in the garage after they were told by the proprietor to "get outside".
- b) The general policy of the law is against government officials having rights of entry on private property without the permission of the occupier, and nothing concerned with the service of a summons gives any ground for creating a new exception to the general rule that **entry on property without the express or implied consent of the occupier is a trespass.**
- c) If the courts of common law do not uphold the rights of individuals by granting effective remedies, they invite anarchy, for nothing breeds social disorder as quickly as the sense of injustice which is apt to be generated by the unlawful invasion of a person's rights, **particularly when the invader is a government official.**

The Australian Constitution incorporates the view that individual freedom should prevail alongside a limited role for government. Section 51(xxxi) requires that if the government acquires property from any State or person, it does so on just terms. Just terms have been defined by the High Court as 'full and adequate compensation' where the acquisition is a compulsory taking.

**Section 51: (xxx) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws:**

However, it must be noted that section 51 (xxx) only applies to the Commonwealth. It does not bind the States nor do the States have 'just compensation' clauses in their own constitutions.

For this reason, the argument that section 109 of the Australian Constitution takes precedent over the Queensland State Constitution is, I believe, untenable.

**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.**

Property rights are essential to freedom, justice, peace and prosperity. They are basic rights. Despite common law and constitutional protections, property rights are increasingly being eroded by the modern regulatory state. The time has come to restore respect for property rights for all landowners.

The attached **TRESPASS NOTICE** is in fact a withdrawal notice to the common law '... implied licence to any member of the public coming on his lawful business to come through the gate, up the steps, and knock on the door of the house', and must be clearly displayed at each access to a **FEE SIMPLY** owned property.

For further information on **PROPERTY RIGHTS**, contact Selwyn Johnston...

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