The Fee Simple Alienation Argument

There is a premise that contends that since land owned in fee simple is "alienated from the Crown", the laws passed by governments regarding regulation of activities on that land is beyond power. As you will note from the plentiful amount of case law surrounding this premise, the primary authority that overrules the fee simple alienation argument is found in ***Bone v Mothershaw [2002] QCA 120***

https://freemandelusion.com/wp-content/uploads/2020/06/bone-v-mothershaw-2002-qca-120.pdf

This decision was appealed to the High Court, where leave to appeal was rejected in **Bone v Mothershaw [2003] HCATrans 779**

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The case law also carries with it identical conclusions reached in the other States, as well as in Queensland, which we will now explore...

Queensland

Canaway v Chief Executive, Department of Natural Resources and Water [2009] QLC 120 (From 16)

"I note that the contentions by the appellant were rejected by the Court of Appeal in Bone v Mothershaw, and that numerous decisions of various Queensland courts have confirmed the decision in Bone v Mothershaw. It would also be remiss of me not to note the comments of the Queensland Court of Appeal in the recent decision of Millmerran Shire Council v Smith & Anor. Although that case related to a challenge to the validity of the Integrated Planning Act 1997 Queensland, and not the VMA, similar arguments were advanced to those under consideration here. As Keane JA (with whom the other Members of the Court agreed) noted:

> *"The 'Deed of Grant' argument is also legal nonsense, which was rejected as such in Bone v Mothershaw and Burns v State of Queensland and Croton. There is no occasion for this Court to reconsider these earlier decisions which gave the quietus to these legal fantasies."*

*In perhaps the best way of summarising not only this contention but all the contentions of the appellant, I can do little better than to quote from the decision of McPherson JA in **Bone v. Mothershaw [2003] 2 Qd R 600**. Bone v Mothershaw involved a challenge which related to a notice under chapter 22 of the Brisbane City Council Ordinances by which the Council had made a vegetation protection order in respect of vegetation on specified land owned by Mr Bone. The vegetation on Mr Bone's land, despite the existence of the notice, was subsequently destroyed and removed, resulting in a conviction of Mr Bone for a contravention of the Brisbane City Council ordinances Mr Bone appealed. McPherson JA stated as follows:*

> *"In a memorable observation, Pollock and Maitland once remarked that English law conceived of land ownership as being "projected on the plane of time". Vegetation does not grow on the plane of time. But to grant a fee simple estate in land is to confer the largest interest in land that is known to the common law, and one which is said to invest in the grantee "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": **Commonwealth v New South Wales [1923] HCA 34**; **(1923) 33 CLR 1**, 42 (Isaacs J), recently applied in **Fejo v Northern Territory of Australia [1998] HCA 58**; **(1998) 195 CLR 96**, 126. Accordingly, the argument proceeds, for chapter 22 to deny a fee simple owner in Brisbane the right, liberty or power to clear vegetation from his land is inconsistent with the proprietary rights that, under s 6(1) of the Land Act, are intended to be conveyed by the Crown to a grantee of a fee simple estate in Queensland, and so is invalid by force of s 31 of the Local Government Act.*

*It is, however, a mistake to suppose that s 6(1) of the Land Act 1962 is directed to defining the extent of the rights conferred on a grantee of land from the Crown. The section is one of several successive re-enactments of earlier statutory provisions, of which in Queensland the first was the Crown Lands Alienation Act 1860; 22 Vic No 1 (1 Pring's Statutes 833). Section 2 of that Act, and comparable provisions of other statutes that applied here before Separation in 1859, represented the culmination of a political struggle with the imperial government over local control of the waste lands of the Crown and the revenue arising from their sale. As sovereign of Australia, the King exercised through the colonial governor as his local representative a prerogative power at common law of granting out parcels of the unalienated land of the Crown that in English legal theory was vested in him in that capacity. The immediate effect of the legislation in question was to supersede the Crown's prerogative by a statutory power to make grants of land, and so to bring its alienation or disposal under the authority of the colonial legislature. The subject is discussed in the reasons for judgment of Windeyer J in **Randwick Municipal Council v Rutledge [1959] HCA 63**; **(1959) 102 CLR 54**, 71, of Brennan J in the **Tasmanian Dam Case [1983] HCA 21; (1983) 158 CLR 1**, 209-212, and in many historical accounts of the evolution of representative and responsible government in Australia. The royal prerogative is, it is well settled, displaced by legislation that covers the same subject matter: **Attorney-General v De Keyser's Royal Hotel [1920] UKHL 1; [1920] AC 508**, 560. The primary function of s 6(1) and other such legislation is facultative. Its object and effect are to confer on the Crown legislative, as distinct from prerogative, authority to grant waste lands, and so to transfer the power of doing so from the uncontrolled discretion of the Crown to the Governor in Council acting under the direction of the legislature, while at the same time limiting the range of interests that can be granted in such land to those designated in the section. Crown land may be granted, demised or dealt with only "subject to this Act".*

*In addition to historical considerations like these, a mere reference in a statute to an interest in land that is recognised at common law, such as an estate in fee simple, does not have the effect of transforming that interest, or the rights incidental to it, into statutory interests and rights. If it were so, s 24 of the Australian Courts Act 1828 (Imp) in introducing English law into eastern Australia would have had the effect of converting the whole of the common law received here in 1828 into a body of statute law, which, moreover, would have had the status and force under s 24 of an imperial enactment, with all the consequences which that entailed. Quite plainly, that is not what happened. The common law received in Australia under that Act was received as a body of common law and not of enacted law. A suggestion to the contrary in the Hong Kong case of **Mitchell v Lemm (1908) 3 HKLR 75**, 78, has been rightly condemned by Mr Wesley-Smith as "merely eccentric" (P Wesley-Smith, The Sources of Hong Kong Law, at 131, n2). The whole notion is, in any event, opposed to the established view that local laws or by-laws are capable of altering the received English law, as was recognised in **Widgee Shire Council v Bonney [1907] HCA 11; (1907) 4 CLR 977**, 982, 986-987, in the passages referred to above. Otherwise, as it was said in that case, the power to make municipal by-laws would be nugatory. The provisions of chapter 22*

prohibiting an owner in fee simple of land from clearing vegetation from his land are no more inconsistent with s 6(1) of the Land Act 1962, or with s 14(1) of the current Land Act 1994, than are the provisions of the Brisbane City Council ordinances prohibiting, for example, the growing of stinking roger (tagetes minuta), the keeping of roosters or reptiles, or the lighting of incinerators on residential land, to name only a few of the many other intrusions effected by local laws upon rights of fee simple owners within the city."

Having carefully considered all of the relevant authorities, I am in no doubt that the VMA is a valid Act of the Queensland Parliament and applicable to the appellant's land. (Bone v. Mothershaw [2003] 2 Qd R 600; Burns v State of Queensland [2004] QSC 434; Wilson v Raddatz [2005] QDC, Brabazon DCJ, Maryborough, 24 August 2005; Burns v State of Queensland [2004] P & E Court, White DCJ, Cairns, 2 August 2004; Dore v State of Queensland [2004] QDC, Bradley DCJ, Cairns, 5 August 2004; Glasgow v Hall [2006] 042 at para 12; Watts v Ellis [2006] QCD 056; Burns v State of Queensland & Croton [2006] QCA 235; and Watts v Ellis [2007] QCA 234.) I note that the contentions by the appellant were rejected by the Court of Appeal in Bone v Mothershaw, and that numerous decisions of various Queensland courts have confirmed the decision in Bone v Mothershaw."

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Dore v State of Queensland and Anor [2004] QDC 364 (From 14):

"As I understand it, the brothers' central argument with respect to the clearing of vegetation on their own land, is that they own their property in fee simple as stated on the relevant Deed of Grant and the property has therefore been "alienated from the State". Thus, the brothers argue that "the State or its officers have no jurisdiction over the clearing of the native vegetation on our registered freehold land". Indeed, for centuries the right of the State to impose restrictions on the ownership of land has been recognised, and in fact, at common law there is no right to compensation where mere restrictions are imposed by the State, unlike the generally accepted right to compensation in the event of land being acquired by the State. The rights of fee simple owners have at common law always been restricted by the torts of nuisance, negligence and the law relating to restrictive covenants and to easements.

*It has been said that a grant of an estate in fee simple in land is a grant of the largest interest in land known to the common law, and one which gives the owner "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". But the right to use such land has in modern times, been severely restricted. (See **Bone v Mothershaw [2002] QCA 120**) In Queensland the Constitution Act 1867 gives the Executive power, with the advice and consent of the Legislative Assembly, to "make laws for the peace, welfare and good government of the colony in all cases whatsoever." These words have traditionally been used to confer "the widest legislative powers appropriate to a sovereign". (See **Ibralebbe v The Queen1964 AC 900** at 923 and **Union Steamship Co of Australia Pty Ltd v King (1998) 166 CLR 1** at 9-10) Such words permit the Legislative Assembly of Queensland to pass laws restricting, modifying or even removing common law rights. The Legislative Assembly of Queensland is the supreme law-making authority in the State of Queensland and there is no doubt that it had the power to pass the Integrated Planning Act and the Land Act. Equally there is no doubt that the Integrated Planning Act applies to the*

land owned by the three brothers or that the Land Act applies to Bellenden Road. The brothers' property has not been "alienated from the State" in the sense that Queensland State law does not apply to the property or that the Queensland legislature is precluded from passing laws adversely affecting the property."

https://freemandelusion.com/wp-content/uploads/2020/10/dore-v-state-of-queensland-anor-2004-qdc-364.pdf

Appeal dismissed in ***Dore and Ors v Penny [2006] QSC 125***

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Christopher Holeszko v Daniel McDonald and Katrina McDonald (No 2) [2017] QMC 23

https://freemandelusion.com/wp-content/uploads/2020/06/christopher-holeszko-v.-daniel-mcdonald-and-katrina-mcdonald-no-2-2017-qmc-23.pdf

McDonald v Holeszko [2018] QDC 204 (At 49):

*"However, as the learned magistrate correctly identified in his decision, in **Burns v. The State of Queensland & Croton [2006] QCA 235** Jerrard JA stated:*

"…the sovereign law making power of the Queensland Parliament, considered in a somewhat similar context in the decision in Bone v. Mothershaw [2003] 2 Qd R 600 included the power to impose upon Mrs Burns the requirement that she have a development permit prior to changing the complexion or presentation of her land by clearing it. … Parliament was clearly empowered to authorise planning schemes which restricted what the owners of estates in fee simple might lawfully do with that land. If this challenge is correct, then there would seem no limit at all that a State Parliament could impose on the use to which a fee simple land owner put her or his land. Any such title holder could build, clear, or grow what they pleased; which activities would include growing cannabis, opium poppy, or noxious weeds, destroying historic buildings, or constructing buildings of any kind wherever they pleased."

(From 119)

"This argument has been raised in matters coming before the superior courts of this state on many previous occasions. Further, the High Court of Australia has also refused to entertain an appeal based on this contention. The weight of authority from superior courts in this State against this proposition is almost crushing. Arguments such as the present one were rejected by the Queensland Court of Appeal in Bone v. Mothershaw [2003] 2 Qd R 600 in a judgment delivered on 12th April 2002. The grant of special leave on this ground was refused by the High Court in Bone (above) on 25th June 2003 on the basis that there were insufficient prospects of success. At paragraph [19] of Bone (above) McPherson JA addressed the issue in the following terms:

"In addition to historical considerations like these, a mere reference in a statute to an interest in land that is recognised at common law, such as an estate in fee simple, does not have the effect

*of transforming that interest, or the rights incidental to it, into statutory interests and rights. If it were so, s 24 of the Australian Courts Act 1828 (Imp) in introducing English law into eastern Australia would have had the effect of converting the whole of the common law received here in 1828 into a body of statute law, which, moreover, would have had the status and force under s 24 of an imperial enactment, with all the consequences which that entailed. Quite plainly, that is not what happened. The common law received in Australia under that Act was received as a body of common law and not of enacted law…"An argument on the same basis was presented to the Trial Division of the Queensland Supreme Court in **Dore & Others v. Penny [2006] QSC 125** and rejected in a judgment delivered on 5th May 2006. Essentially the same argument was presented in **Burns v. The State of Queensland & Croton [2006] QCA 235** and rejected by the Court of Appeal in a judgment delivered on 23rd June 2006. Similar submissions were made in **Wilson v. Raddatz [2006] QCA 392** and rejected in a brief judgment of the Court of Appeal delivered on 10th October 2006. With similar brevity (and increasing terseness) in **Glasgow v. Hall [2007] QCA 19** the same proposition was again rejected by the Court of Appeal. In that case, Holmes JA, as Her Honour then was, dryly observed at [5]: -*

"…The absence of merit of the argument must surely be becoming apparent even to Mr. Walter".

*Notwithstanding Her Honour's admonishment, the same arguments were raised and the same orders dismissing the appeal resulted in **Watts v. Ellis [2007] QCA 234** before the Court of Appeals"*

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McDonald v Holeszko [2019] QCA 285 (at 23):

"Mr McDonald also submits that both the magistrate and the primary judge failed to give proper consideration to the application of s 682 of the SPA. Section 682, however, does not apply to the present matter. Mr McDonald further submits that the offence provision under s 578 is incompatible with the rights of the owner of freehold property under the Land Act 1994 (Qld), the Property Law Act 1974 (Qld) and the Land Title Act 1994 (Qld). Such a proposition is contrary to authority."

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Lade v Department of Natural Resources and Mines [2007] QLC 49 (At 11):

"The learned Chief Justice went on at [5] to say in Burns:

"These contentions are plainly untenable. Mrs Burns certainly has an indefeasible interest as registered proprietor of an estate in fee simple in the land. But the sovereign law making power of the Queensland Parliament, considered recently in a somewhat similar factual context in Bone v Mothershaw [2003] 2 QdR 600, amply embraced its imposing this requirement as a requirement as a prerequisite to her changing the complexion or presentation of her land in this way. In a different, though analogous way, the Parliament is clearly empowered to authorize planning schemes which restrict what the owners of estates in fee simple may lawfully do with their land. …"

https://freemandelusion.com/wp-content/uploads/2020/06/lade-v-department-of-natural-resources-and-mines-2007-qlc-0049.pdf

Lade and Company Pty Ltd v Finlay; Lade v Franks [2010] QSC 382 (At 25):

> *"The proposition, I think, is that public servants acting under the authority of Acts of Parliament derogate in some way from Mr Lade's title by dealing with it as the legislation provides, and the relevant Minister is therefore liable to him for the alleged diminution in value brought about by that adverse derogation. Assuming, for the sake of argument, that there is such a derogation, the fallacy in the proposition is the notion that Parliament is precluded from so derogating once an estate in fee simple has been granted. So much has been established in a number of decisions that Ms Hartigan has taken me to: Bone v. Mothershaw [2003] 2 Qd R 600; Burns v State of Queensland [2006] QCA 235; Wilson v Raddatz [2006] QCA 392; Glasgow v Hall [2007] QCA 19. Special leave to appeal to the High Court was refused in Bone and Glasgow."*

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Fletch Pty Ltd v Gladstone Regional Council and Anor [2010] QPEC 63:

> *"The point, for purposes of this Court, in my view, must be regarded as determined against what might be called the common law rights or interests of a land owner by Bone v. Mothershaw [2003] 2 Qd R 600. The High Court refused special leave to appeal from Court of Appeal's decision in B29/2002 [2003] HCATrans 829 (25 June 2003)."*

https://freemandelusion.com/wp-content/uploads/2020/06/fletch-pty-ltd-v-gladstone-regional-council-2010-qpec-63.pdf

Booth v Frippery Pty Ltd and Ors [2007] QPEC 99 (At 65):

> *"Reference is made to Quick & Garran's failure to list any new powers relating to alienated land accruing to the States after Federation in their list of exclusive powers, residuary powers and new legislative powers extant after Federation. Mr Fitzgibbon advises that Burns v State of Queensland [2004] QSC 434, in which he appeared, is currently the subject of application 44 of 2007 to the High Court of Australia seeking special leave to appeal. The Chief Justice's reasons make reference to the Court of Appeal decision in Bone v. Mothershaw [2003] 2 Qd R 600 (an appeal from a decision of my own). The Sovereign power of the State legislature to regulate what may and may not be done in relation to freehold land is clearly established by such authorities."*

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Burns v State of Queensland & Croton [2007] QCA 240 (From 4):

> *"The essential argument presented in the written outlines Mr Walter prepared for presentation in this and the other Courts, and when appearing before the Planning and Environment Court, was that the State of Queensland lacked legislative power to impose the requirement that, before*

clearing native vegetation from her freehold land, Mrs Burns had first to obtain a development permit to do that. He argued that the owner of freehold land had a right, with which the State of Queensland could not interfere, to clear such vegetation as the owner pleased. That issue had already been decided adversely to Mr Walter's arguments by this Court in Bone v. Mothershaw [2003] 2 Qd R 600. The written submissions Mr Walter filed in this Court on the primary appeal recognised that the decision was against his argument. This matter was not the first time Mr Walter had unsuccessfully advanced that same argument, which was contradicted by Bone v Mothershaw. The State of Queensland, in its written submissions on costs in this matter, has drawn the court's attention to the proceedings in Wilson v Raddatz (District Court Maryborough 24 August 2005), in which Mr Walter appeared by leave on behalf of a Mr Wilson, in an appeal to the District Court seeking to overturn Mr Wilson's conviction in the Hervey Bay Magistrates Court on a count of starting an assessable development, namely the clearing of native vegetation on freehold land, without a development permit for that development. The judgment of Brabazon QC DCJ records that Mr Walter, who appeared as agent with leave of the court, forcibly argued against the legitimacy of the Integrated Planning Act 1997 (Qld) and the Vegetation Management Act 1999 (Qld). As quoted by Brabazon QC DCJ, the essence of Mr Walter's submission was that those statutes could not adversely affect the conduct of owners of freehold land.

Brabazon QC DCJ applied the decision in Bone v Mothershaw, and likewise the decision of White DCJ in the appeal to that judge in the Planning and Environment Court in this matter, and also the decision of the Chief Justice at first instance in the primary appeal in this matter. Brabazon QC DCJ also referred to a matter of Dore v State of Queensland & Anor [2004] QDC 364, heard by Bradley DCJ in the Cairns District Court on 5 August 2004, in which similar arguments had been prepared in written submissions by Mr Walter for the appellants in that matter, and dismissed, with reasons, by Bradley DCJ. Brabazon QC DCJ noted that the fundamental point presented by Mr Walter in his argument was that ownership of freehold land meant that the provisions of the Integrated Planning Act and Vegetation Management Act were invalid to that extent. Brabazon QC DCJ dismissed the argument and the appeal.

In Glasgow v Hall [2006] QDC 042 Mr Walter had also appeared as the agent for the appellant in that matter, who had been convicted in February 2005 of an offence of starting an assessable development without a development permit, constituted by clearing remnant vegetation on freehold land. Nase DCJ recorded in his judgment delivered on 2 March 2006, that Mr Walter argued that the term "freehold" or "freehold land" used in the Integrated Planning Act did not include land held in fee simple, and should be understood as a reference to freehold land owned by the State as distinct from privately owned freehold land; His Honour dismissed both arguments, applying Bone v Mothershaw, the judgment of de Jersey CJ at first instance in this matter, and referring to the judgments in the District Court in Wilson v Raddatz, Dore v State of Queensland, and in the Planning and Environment Court in this matter. That appeal was dismissed with the appellant ordered to pay the respondent's costs. Similarly costs orders had been made against the unsuccessful appellant in Wilson v Raddatz; and costs orders were made against Mrs Burns by the Chief Justice on 8 December 2005, following the dismissal of the applications filed in the Supreme Court on her behalf.

Mr Walter has thus exposed Mrs Burns, Mr Glasgow, and Mr Wilson to costs orders incurred when he appeared for them arguing against the essential proposition established by the decision

of this Court in Bone v Mothershaw. He had heard judges follow that decision, and had the opportunity to read their reasons which gave independent judgments leading to the same conclusion as in Bone v Mothershaw. Nevertheless, he persisted with preparation of the written argument in the primary appeal in this matter, which was heard on 1 June 2006, although for that appeal to succeed, this Court would have to reverse its earlier decision in Bone v Mothershaw. The respondent's written submissions on costs in this matter included material showing that Mr Walter had also appeared in person for a Mr Watts in a matter of Watts v Ellis, heard before Wall QC DCJ on 3 March 2006, with leave from that Court, presenting similar arguments. That learned judge had also advised that the judge was bound by the decision in Bone v Mothershaw, and that Mr Walter would have to persuade this Court to reconsider that decision, and if unsuccessful ask the High Court to reverse it.

Mr Walter has been very persistent in presenting those arguments in Court in person, with leave, or in writing, on behalf of different applicants or appellants for some years. He may not have known until shortly before the hearing of the primary appeal in this matter of the unsuccessful special leave application in Bone v Mothershaw. He did know he had repeatedly failed to persuade Judges and Magistrates that the decision was wrong, and he had been given independent reasoning by a number of Judges and Magistrates dismissing his arguments and supporting the conclusion in that case.

Once Mr Walter learnt of the earlier refusal of special leave, persistence with the appeal in Burns v State of Queensland would have been self-evidently pointless, unless a further special leave application was intended. Sufficient grounds therefore exist for making an order against Mr Walter, in the exercise of the power recognised in Knight v FP Special Assets and further discussed in Kebaro Pty Ltd v Saunders. Because he may not have known of the unsuccessful earlier special leave application in Bone v Mothershaw until shortly before this appeal was to be heard, and because he had obtained no benefit himself from his efforts for Mrs Burns, I would not exercise a discretion against him in this matter."

https://freemandelusion.com/wp-content/uploads/2020/10/burns-v-state-of-queensland-croton-2007-qca-240.pdf

Appealed from ***Burns v State of Queensland [2004] QSC 434***

https://freemandelusion.com/wp-content/uploads/2020/10/burns-v-state-of-queensland-2004-qsc-434.pdf

Watts v Ellis [2007] QCA 234:

"Arguments to that effect were rejected by this Court in the decision in Bone v Mothershaw [2003] 2 Qd R 600 and, in particular, in the passages in the judgment of McPherson JA at pages 609 and 610. The High Court refused special leave to appeal from that decision on the 25th of June 2003. Despite that fact, an argument, on the same basis, regarding an estate in fee simple was represented to Jones J in the Supreme Court in Cairns in the matter of Dore & Others v Penny [2006] QSC 125 on the 3rd of February 2006 and rejected by his Honour in a judgment delivered on 5th May 2006.

That matter had concerned the Integrated Planning Act 1997 (Qld) and the argument before Jones J followed that rejected in Bone v Mothershaw being an argument that the grant was a contract between the landowner and the sovereign giving the land to the landowner free of any restrictions on its use which were not contained in the deed of grant. That matter also concerned the Integrated Planning Act 1997 and the Vegetation Management Act 1999 (Qld) and once again Mr Walter in the written submissions prepared for that applicant invited this Court to reconsider and reverse the decision in Bone v Mothershaw."

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Appealed from ***Watts v Ellis [2006] QDC 56***

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Glasgow v Hall [2006] QDC 42

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Appeal dismissed in ***Glasgow v Hall[2007] QCA 19***

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Booth v Yardley and Anor [2006] QPEC 119

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Wilson v Raddatz [2006] QCA 392

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New South Wales...

Spencer v Australian Capital Territory [2007] NSWSC 303

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Shoalhaven City Council v Ellis [2012] NSWLEC 225 (at 8):

"Thirdly, the respondents submit that because they are the holders of estates in fee simple, they are not subject to the requirements of the EPA Act and this Court has no jurisdiction. The argument is misconceived. Ownership of an estate in fee simple does not mean that the law does not apply in respect of that land. The respondents cite Fejo v Northern Territory of Australia [1998] HCA 58, 195 CLR 96 at [47] per Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ:

> *"Subject to whatever qualifications may be imposed by statute or the common law, or by reservation or grant, the holder of an estate in fee simple may use the land as he or she sees fit and may exclude any and everyone from access to the land."*

The respondents' reliance on Fejo is misplaced. As the opening words of the quotation make clear, restrictions on the use of land, including by the holder of an estate in fee simple, may be imposed by statute or the common law. Relevantly, the EPA Act imposes restrictions on the use of land within New South Wales, including the Jerberra Estate. The present proceedings are brought to restrain breaches of those restrictions."

The respondents also cited imprecisely the judgment of Isaacs J in The Commonwealth of Australia v The State of New South Wales [1923] HCA 34, 33 CLR 1 and cited s 36 of the Imperial Acts Application Act 1969 which provides:

> *"36 Alienation of fee simple – Land held of the Crown in fee simple may be assured in fee simple without licence and without fine and the person taking under the assurance shall hold the land of the Crown in the same manner as the land was held before the assurance took effect."*

I can see nothing in either which supports the respondents."

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Victoria...

Cardinia Shire Council v Kraan [2017] VMC024 (From 15):

> *Submission 4 - "Fee Simple is clearly stated in Fejo v The Northern Territory HCA 58 of 1998 at paragraph 93 it states; "This court has expressed in the most ample terms the meaning of an estate in Common Law in the Commonwealth v New South Wales, Isaacs J said (138) "In the language of English Law, the word Fee signifies An Estate of Inheritance as distinguished from a Less Estate, A Fee Simple is the most Absolute in respect to the Rights 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".*
>
> *This submission misstates **Fejo v Northern Territory (1998) 195 CLR 96** which provides: (at p. 93) "Before the decision of this Court in Mabo v Queensland [No 2] ("Mabo [No 2]") which gave rise to legal claims of native title in Australia, the Court had expressed in the most ample terms the meaning of an estate in fee simple at common law. In The Commonwealth v New South Wales, Isaacs J said:*
>
> *"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".*

This case is wholly irrelevant to this prosecution. Insofar as Mr Kraan is attempting to restate that he, as the owner of his land, is not subject to the laws of Australia, that submission has been considered and dismissed in the ruling of 13 July 2017."

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