This document was prepared on 8 January 2008 by

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Farmers Land Ownership Rights in Australia FLORA

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Background

My husband grew up on a coastal dairy farm, we married in 1971. In 1976, the family purchased a sheep & cattle property in the Central West.

We moved there to begin the work, while the remainder of the family were to follow. As often happens, they did not follow, and after 20 years inter-family issues arose, resulting in a legal battle. This was finalised in 2004 when we purchased the property from the remaining family members.

At that time, our local council, under Mr Sartor's instructions, was planning on implementing an LEP – Land & Environment Plan throughout the Central West. Figuring largely in this plan was the removal of building rights on properties of less than 1000 acres (400 hectares).

As 67% of farms in our Shire were less than that size, this impacted extremely on all farmers. It removed and/or interfered with retirement plans, succession planning, superannuation plans, land sales, the growth of the wider community and more.

Along with other Shires in the Central West, farmers and concerned citizens began meeting, submitting and protesting this action. One of the constant refrains was that the action of removing housing rights was illegal, but no-one could define illegal.

In August 05, my husband heard an expression via a lawyer speaking on the radio. Fee simple. We googled it and were astounded at the information, but were completely unsure where to go for more info until I read a letter in The Land re Fee Simple ownership, rang the writer, was directed to a larger group researching our ownership rights, and consequently became a member of that research team.

Since that time, I have read countless High Court cases, Federal, State and International Government Acts, and reams of associated information. I have read Blackstone's Commentaries on English Law 1765 & 1769, Quick & Garran's Commentaries on the Constitution, many Hansard's….

I learned to focus on CLR HC cases in preference as they created a precedent and to ignore the dissenting judges comments no matter how eloquent they were. I learned to stop at every numbered reference and go to the appropriate case in order to fix that point in my thoughts before I continued the original reading.

I learned to read with several dictionaries open so that no word was misunderstood – and on that point I was amazed at how different a legal definition of a word often was compared with common usage.

Everything was cross-referenced against the Australian Constitution via the Acts Interpretation Act.

I took copious notes, filled folders. And of course, every step was governed by constant contact with the other researchers, guided by the legal team involved.

The focus was to both clearly learn what we owned and could do with our ownership, versus what we were told we could do from government bodies. Please note, when I use the word WE I am referring to both the researchers from 4 states and the legal team.

One major goal with the research was to find where we were wrong in our approach – to find out where government could remove rights, could fine and punish and legislate on land ownership.

And the astounding thing was – we could find none.

History of Land under Common Law

We have 2 major styles of law in the world.

Roman/Civil law and Common law.

Civil law or statute law is largely world-wide with an emphasis on government regulation, judge controlled decisions, individually varying decisions and the belief that government exercise uncontrolled legislative authority. *"The law is subject to all the fluctuation in practice which grows out of the different principles of interpretation….much certainty of law is lost…(Walter C Morrison 1989, Roman Civil Law Inferior to the common Law.)*

For example, the Writ of Habeus Corpus is unknown in Civil Law. (http://www.habeascorpus.net/asp/)

Common law, now largely restricted to Canada, the US and Australia, has created a fixed rule of decisions in order that rights and property may be stable and certain. It has always preferred the court/jury decision and repudiated outside authority. It has been equated with stability and just equality and "*has great superiority over civil law as a practical jurisprudence regulating the affairs of society. It excludes private interpretations and controls the arbitrary discretion of judges." (Walter C Morrison 1989, Roman Civil Law Inferior to the common Law.)*

Simply put, Civil law is government law. Common law is the people's protection against government law.

In the 11th & 12th C Civil law began to encroach on the Anglo-Saxon system that had prevailed in England. An uprising of the English common folk against the arbitrary personal & land control of the English nobility, resulting in the Magna Carta – proclaimed the great fundamental of common law.

The Magna Carta gave a surety of ownership to the freemen of England. Inheritance, land, earnings were all protected and the Crown could no longer dispossess a freeman at their will, but only under just laws. It was not perfect but it was a huge step towards a just system. And as such, over the centuries, great jurists and constitutionalists supported and discussed it.

Lord Edward Coke a common law judge in the Elizabethan courts stated, *"the English constitution draws its whole life from the common law, and is but the framework of its living spirit."*

*"**COMMON LAW** doth control Acts of Parliament (ie: **STATUTE LAW**) and adjudges them when against common right to be void"*
By common law *"every man's house is called his castle. Why? Because it is surrounded by a moat or defended by a wall? No! It may be a straw-built hut but the wind may whistle through it, the rain may enter, but the king cannot."*

As the decades passed from 1215, civil law again crept in until the 1600's where the freemen of England rose against it, with men such as John Lilburne leading one-third of London's population to the Parliament to deliver the Petition of the Freemen of England, demanding the return and protection of their Common Law.

His soldiers in Cromwell's army tucked pamphlets in their belts as they battled, fighting for the equality and right of all men in England.

From this century of unrest came the Petition of Rights 1627, Habeus Corpus 1640, Bill of Rights 1689, all of which extended the rights gained under the Magna Carta. The Bill of Rights in particular placed a demand on the Monarchy to honour its role to protect the freeman of England. Consequently William & Mary swore upon their lives and bound their future monarchy to defend the people's rights forever.

When Australia was settled and an Australian Constitution was framed, these documents were part of the thought process and background of the questions and answers that went into the document. The framers did not define an Australian Bill of Rights because they believed these rights were inherent through the 1689 Bill which still stood. http://ses.library.usyd.edu.au/bitstream/2123/850/1/adt-NU20020917.11150501front.pdf

Remember, the US Bill of Rights reflected their stand as a Republic and so separate from England, while Australia was not. Even Canada only gave itself a Bill of Rights in 1960.

The Framers of the Constitution simplified English law for our Constitution. Rather than carry through all the various kinds of laws, they lodged in the Constitution the best and fairest forms, and…..

"under the Constitution, the people of Australia have enjoyed a century of stable government based on the ideas of responsible government and representative democracy. Indeed, Australians should look back with pride at the magnificent achievement of the framers. Professor John La Nauze said:" (Foundation Professor of Economic History in the University of Melbourne, Professor of History in the Institute of Advanced Studies at the Australian National University, first Professor of Australian Studies at Harvard in 1978.)

Currently we are told that our Constitution is outdated, outmoded, even non-existent. It is not. And with our Common Law rights of precedent interpretation, it is still relevant.

We are told we never had a Bill of Rights. Why then, in 1997, did the Federal government use Article 9 of the Bill of Rights 1689 says that: "the freedom of speech and debates or proceedings in parliament ought not be impeached or questioned in any court or place out of parliament".
http://ag.gov.au/www/agd/agd.nsf/Page/Evidence_Parliamentaryprivilege

We are also told that we are a separate nation from England via the Australia Act 1986, yet in 2004, several prominent Constitutional legal persons, had a win in the UK High Court regarding the validity of our government.

So, sovereign Australians, are told lots of things, that are not to be true.

Why?

If you read and understand the Constitution, it carries very strong rights for every Australian. Rights that, under Common Law especially, do not allow governments to make arbitrary regulations and take on an uncontrolled legislative authority.

The Constitution has been designed to provide Separation of Powers.

Essentially the Crown has the role and responsibility of both protecting and acting on behalf of the People. All acts, laws, etc are meant to protect our Common Law & Constitutional rights.

Under Common Law, Government are chosen by the People, approved by the Crown for the people, in order to carry out the People's wishes and maintain the People's rights.

When you look at the sovereign people, you see the Crown, when you look at the Government, you see the Servants of the Crown/People.

Crown land, for example, is land the government looks after for the people.

Under Civil Law, the opposite is true. Government tell the People what sort of rights they can have and the People are the property of the government to order and rule as desired.

Under our Constitution, any proposed law must not breach the Constitution. The law is debated in the lower house, goes to the Senate to be checked and finally must be double checked by the Governor General before being approved.

However, regulations, acts, amendments, etc do not have that level of checks, although they must be attached to or under a law to be acceptable. Which is why we have such a proliferation of acts, regulations, etc rather than fixed and firm laws.

No government likes Common Law. England, the home of Common law, has removed it from her shores by signing the International arrangement with the European Union.

"While many federations have come and gone in the twentieth century the four whose constitutions were framed and adopted before the end of the nineteenth – the United States, Switzerland, Canada and Australia – have, so far, survived". Sir Robert Garran – Quick & Garran

4 left. 3 that are served by Common Law. Based on the number of emails we receive and the amount of web-sites , US citizens are frantically trying to retain their constitutional rights while Canada is pursuing its own eroding loss of common law. I will tell you where Australia is in this battle shortly.

Why is Common Law so vital? " *Because the basic laws of contracts, torts and property do not exist in statute, but only in common law. Because there is common law to give reasonably precise guidance on almost every issue, parties (especially commercial parties) can predict whether a proposed course of action is likely to be lawful or unlawful. This ability to predict gives more freedom to come close to the boundaries of the law.[10] For example, many commercial contracts are more economically efficient, and create greater wealth, because the parties know ahead of time that the proposed arrangement, though perhaps close to the line, is almost certainly legal. Newspapers, taxpayer-funded entities with some religious affiliation, and political parties can obtain fairly clear guidance on the boundaries within which their freedom of expression rights apply. In contrast, in non-common-law countries, fine questions of law are redetermined anew each time they arise, making consistency and prediction more difficult. Thus, in jurisdictions that do not have a strong allegiance to a large body of precedent, parties have less a priori guidance must often leave a bigger "safety margin" of unexploited opportunities*." *Wikipedia.*

Land Ownership

What do you buy?

How many people know what they own when they purchase a parcel of land?

Most people asked that question would say that they own Freehold land. And they do. But that is the generic name.

In fact, you are the purchaser of a Grant in Fee Simple title deed. England had a great number of forms of land ownership and as I previously stated our Constitutional Framers placed into it only one (1) form – Fee Simple Absolute. All land in Australia at colonization became Crown land and can only be passed into private ownership through a Grant in Fee Simple.

Remember the land always continues, while the ownership changes, going from a purchaser, to an inheritor to a recipient of a gift for example.

Therefore the title of the land also continues, with only changes in the name attached to the title legally.

The title is for always. It has been stated that we do not own the title so much as we attach ourselves to the immense rights inherent in that title.

Because a Grant in Fee Simple title encapsulates the elements of ownership, inheritance, personal rights, income, equity, even bankruptcy – it is the basis of Common Law. Remember from where it developed – the Magna Carta - where the common man claimed his right of ownership.

It is superior to all government regulations, acts, etc and because it is enshrined in Common Law it is also protected by the Australian Constitution & the Separation of Powers. Because it is the basis of Common Law, it is superior to any law government may create as most laws today deal with commerce & contracts in varied forms.

When you purchase a Grant in Fee Simple title deed, you purchase four (4) elements of ownership. These elements are indefeasible and inalienable. They cannot be taken away or made null or void.

1. **Tenements** – any structures on the land. Houses, shed, fences, etc
2. **Messuages** – the right to build a structure of any kind on the land
3. **Corporeal Hereditaments** – the land itself, trees, rocks, soil.

Blackstone's Commentaries on English Law 1765-1769 Bk2, Ch 2: This consists of substantial and permanent elements of the land – the ground, soil, or earth whatsoever; as arable, meadows, pastures, woods, moors, waters, marshes, furzes, and heath. It legally includes buildings, as they use the land as their foundation. Water cannot be owned, but the land which holds it can. In its legal significance, land has an indefinite extent both upwards and downwards to the centre of the earth.

4. **Incorporeal Hereditaments** - This is a right issuing from the physical element of land, such as rent, incomes from an enterprise on the land. They are a right to have an idea that will become physical on

the land, ie to develop a business and produce an income. An incorporeal hereditament is the things we do with our land including waste it.

Blackstone's Commentaries on the Laws on England 1765 – 1769 Bk2, Ch 3: puts it this way – It is not the thing corporate itself, which may consist in lands, houses, jewels, or the like; but something collateral thereto, as a rent issuing out of those lands or houses, or an office relating to those jewels. In short, as the logicians speak, corporeal hereditaments are the substance, which may be always seen, always handled : incorporeal hereditaments are but a sort of accidents, which inhere in and are supported by that substance; and may belong, or not belong to it, without any visible alteration therein. Their existence is merely in idea and abstracted contemplation; though their effects and profits may be frequently objects of our bodily senses. http://lonang.com/exlibris/blackstone/

As an element of our Fee Simple ownership we also have the following responsibilities.

- At common law, landowners are not entitled to use their land in ways detrimental to their neighbours' use of their own land.
- An owner of land may be able to sue for nuisance against someone who does something that adversely affects the landowner's land.
- Landowners, or anyone else entitled to the possession of land, have a legal right to exclude trespassers.

A trespasser is anyone who does not have your permission to enter your property – no matter their title.

Many people question the right to exclude trespassers, however the High Court ruled in the case of Plenty vs. Dillon [1991] HCA 5; (1991) 171 CLR 635 F.C. 91/004 (7 March 1991) that not even a policeman could enter your property without your permission. This was doubly upheld in December 2006 in the case of New South Wales v Ibbett [2006] HCA 57 (12 December 2006)

Remember, Lord Coke's quote - "every man's house is called his castle. Why? Because it is surrounded by a moat or defended by a wall? No! It may be a straw-built hut but the wind may whistle through it, the rain may enter, but the king cannot."

If a Grant in Fee Simple title belongs to the land and carries all the listed rights, then a land owner is not able to change that Title in any way, either by selling off one of the rights, or keeping one of the rights from a sale, because he does not own the rights of the land, so much as he has an attachment to them for a period of time. To do so, would render the Title less than it is and the owner does not have the legal right to change a law and/or the Common Law Grant in Fee Simple title deed without interfering with the Constitution, which of course, requires a referendum of the Sovereign People. And remember, there is no other type of land recognized in Australia.

In fact, when government purchase Fee Simple land it automatically reverts to Crown land. If they then sell it again, but with restriction on any of the listed rights, they are selling something that is not Fee Simple, and again, Australia recognizes no other types of land ownership.

So selling a portion of the title, would only be applicable (perhaps) during that particular ownership, not any following.

It is important to comment on Native Title.

Under the Australian Constitution, there can be no recognition of any other form of land title, so when the High Court ruled for the Aboriginal communities in the Mabo & Wik cases, the government of the day should have placed all native lands under a Fee Simple Title and sold it to the Aboriginals for a nominal sum. This would then have given them ownership recognized by Common Law.

Instead, by creating legislation via the Native Title Act, they were instead given title which is subject to the whims and changes of the government of the day, offering no security or future inheritance.

Regarding other forms of land ownership, there was a title called Fee Tail (Fee Taille) in which the land owner could entail his land so that it could only pass to his heirs (of his body) and on through that line.

It was a form of fee title without the surety of sale, gift or inheritance out of the personal line and consequently has been banned since 1971 *(Conveyancing Act 1919 Sect 19A, Real Property Act 1900*) and all such land in Australia has been reverted to Fee Simple Title.

This title was not officially recognized by the Australian Constitution and Common Law, because it did not support the laws of inheritance and alienation, however, it was a title that had been popular in feudal times as an English Common Law system used by landed nobility in order to create family settlements and to make certain that the land stayed in the family.

It was not a form of ownership that could be sold out of Crown hands by the Crown's agents. It could only be placed on land by the private owner.

How do you buy land?

A Grant in Fee Simple Title is purchased under a contract. It is a commercial agreement.

In the **Real Property Act 1900 No 25 3 Definitions –** we find the following definitions

[of special note: Instrument means Any Grant (as in title) and Certificate of title (as in title).]

a) the following terms shall bear the respective meanings set against them:

Dealing – *Any instrument other than a grant or caveat which is registrable or capable of being made registrable under the provisions of this Act, or in respect of which any recording in the Register is by this or any other Act or any Act of the Parliament of the Commonwealth required or permitted to be made.*

Instrument – *any grant, certificate of title, conveyance, assurance, deed, map, plan, will, probate or exemplification of will, or any other document in writing relating to the disposition, devolution or acquisition of land or evidencing title thereto.*

Land – *Land, messuages, tenements, and hereditaments corporeal and incorporeal of every kind and description or any estate or interest therein, together wth all paths, passages, ways, watercourses, liberties, privileges, easements, plantations, gardens, mines, minerals, quarries, and all trees and timber thereon or thereunder lying or being unless any such are specially excepted.*

Proprietor – *Any person seised or possessed of any freehold or other estate or interest in land at law or in equity in possession in futurity or expectancy.*

In the first instance, the land was purchased from the English Crown, via the government of the day.

A contact was entered into, money was exchanged. The government of the day took the money, which entered Consolidated Revenue and was distributed as needed, which concluded the contract.

All land is sold with the following contractural obligations - that no money is owed on it and that it is sold in the same manner as the previous owner held it. The Crown held the land without debt, such as rates and taxes, so it is sold in the same manner

Fee Simple land is simply land that the Crown has once managed, has sold, for an exchange of money, into private ownership and has no more right to govern, interfere with or remove from the owner without compensation.

The purchase of real property is a legal and consensual relationship between the seller and the purchaser. This land is now *alienated* from the Crown, which means that the ownership of the property and all property rights are now transferred into the hands of another.

The Crown can sell that land into private ownership with limitations, eg. mining rights may be excluded from the sale. This then enables the Crown to sell those mining rights separately, but where those rights impinge on private ownership, the owner must be compensated for any imposition, such as access.

Property Law Act 1974 QLD

> **s 21 Alienation in 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.
>
> **Schedule 6 - Dictionary**
> **"assurance"** includes a conveyance and a disposition made otherwise than by will.
>
> **"fine"** includes premium or foregift, and any payment, consideration, or benefit in the nature of a fine, premium or foregift.

From 1 (one) of our cases regarding a MrsBurns.

I am the holder of registered land under the *Land Title Act 1994*, section 47 and that land is legally held in a Deed of Grant in Fee Simple and was purchased in accordance with the laws of the State and the *Property Law Act 1974.* s21 shows that I own the land in the same manner as the Crown held the land before the assurance took effect.

The Crown does not rate itself for its own land as it is the owner of the land. I am the registered owner of my land in fee simple as cited under section 21.

It would seem therefore that Section/s 19 and 21 of the *Property Law Act 1974* clearly absolves me from the payment of rates for the value placed on the land by a public official .

I refer to the Constitution of Australia - section 109 - Inconsistency of Laws located under Chapter V - The States.

> *Section 109 - Inconsistency of Laws*
> *"When a law of the 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."*

High Court of Australia - The Commonwealth of Australia v State of New South Wales and Another [1923] 33CLR 1 (9 August 1923). ***"The grant of exclusive power carries an inference with it. It shows that the proprietorship and the sovereignty are intended to go together."***

……. under sec. 52 of the Constitution the Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order and good government of the Commonwealth with respect to (1) the seat of government of the Commonwealth and all places acquired by the Commonwealth for public purposes. In my opinion, the words "places" acquired by the Commonwealth in sec. 52 do not apply to lands acquired

as property under the Lands Acquisition Act; they refer to "places" acquired in the sense of sec. 122, any territories acquired in a political sense.

In Mrs Burns case notes it is stated that-

The property was alienated from the Crown lands in the State of Queensland by Her Majesty Queen Elizabeth II, Sovereign of Australia and the Chief Executive of the Commonwealth of Australia as cited under section 61 of the Constitution of Australia - Executive Power.

iii) The land was alienated from the Crown land in the State of Queensland in accordance with the laws and regulations of the *Land Act 1962 - 1968*.

iv) Her Deed of Grant has been signed by the representative of the Sovereign of Australia in the State of Queensland, Sir Alan James Mansfield, the Governor 'in and over Our State of Queensland and its Dependencies in the Commonwealth of Australia, at Government House, Brisbane in Queensland'. Her Deed of Grant has been sealed with the Seal of the Sovereign of Australia.

v) Her majesty, in accordance with the laws and regulations in the *Land Act 1962,* section 6(3), reserved the right in the gold, minerals, helium and petroleum, to the Crown.

vi) As required under the *Constitution Act 1867*(Qld) section 34 the sum of $525.00 was paid into the Treasury of the Crown, thus completing the contract with the Crown.

vii) I hold the Deed of Grant in an estate of inheritance which is a common law contract with Her Majesty Queen Elizabeth II, the Sovereign of Australia.

Land Registration

As a protective element and in order to determine and record land ownership, the system of Torrens Title was legislated. It was not developed to create an ownership title, but to ensure that the legitimate owner of the Title was known legally. It is "*not a system of registration of title, but a system of title by registration." Breskar v Wall (1971) 46 ALJR 68 at 70 (Barwick CJ)*

Under this system, a title deed carried any and all restrictions, modifications, easements, etc that were related to the land ownership. A purchaser could determine whether the land was legitimately owned by the seller, if money was owed, any easements that would affect a new ownership, and etc. If any information was not legally listed on a title deed then the new owner was not legally responsible and able to be held to any new impediment to his ownership that could arise. Most importantly, any unrecorded easement is extinguished and no easement by prescription of implication can be claimed.

Government legislation that is not attached legally to that title deed cannot be enforced on a Grant in Fee Simple title.

The foundation of the Torrens system is the principle that what is recorded on the register is paramount…This conclusiveness of the register of the immunity from attack by adverse claim to the land that the registered proprietor enjoys is called indefeasibility of title. Land Title Act 1994 (QLD), Real Property Act 1886 (SA), Land Titles Act 1980 (Tas), Land Title Act 2000 (NT), Real Property Act 1900 (NSW), Land Titles Act 1925 (ACT), Transfer of Land Act 1893 (WA).

High Court cases in support of our Title of Ownership and attachments re Torrens Title.

- Lapin and Another v Abigail [1930] HCA 6; [1930] 44 CLR 166 (28 March 1930)
- Pirie v Registrar-General [1962] HCA 58 (1962) 109 CLR 619 (30 November 1962)
- Hillpalm Pty Ltd v Heaven's door Pty Ltd [2004] HCA 59 (1 December 2004)

Pirie v the Registrar-General is vitally important because the High Court clearly stated that any and all attachments to a Title Deed registered with the Lands Department are the province of the owner of that title to attach and/or remove. The Registrar-General must obey the owner in his/her desires regarding his/her ownership of the title deed.

So – a Grant in Fee Simple gives the purchaser a near-absolute right to do whatsoever they wish with their land, and no person or body or government can interfere with those rights, make legislation to remove those rights, or govern those rights.

The only thing government can do with your land is buy it from you under Just Terms Compensation if they require it for a public purpose. This was an issue recently in Sydney where Parramatta council was resuming private property for a private concern. The courts ruled that this was not possible.

And your title deed is vital because if there is no attachment to your land at the time of purchase, no person, body or government can attach anything without your permission.

That is why, when the land was sold from out of Crown hands, things such as mineral rights were attached at that time. They cannot be attached after the sale and when the land is in another's hands.

Fee Simple is what we commonly call Freehold and is the only Common Law tenure recognised by the "*skeleton"* of Land Law and at Common Law. The tenurial rights of ownership in Fee Simple are recognised world wide and are defined as…"*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."* (HCA 34; (1923) 33 CLR 1 (9 August 1923).

Compensation

Once land is alienated (sold) from the Crown to a subject by a Deed of Grant (title) it then becomes "Real Property"; it is then the "Private Property" of the owner of the Deed whoever that person or entity may be. There is strict law in the Constitution regarding Private Property. There is power to regulate but it is limited and…"*if there is such serious interruption with the common and necessary use as to practically destroy its value, it would be a taking*"… (Quick and Garran (1901) page 642). "Taking" is a legal term for acquiring, acquisition.

And, when a government…. "*appropriates private property, it is under an implied obligation to make just compensation therefore; and, upon failure to do so, the owner may sue upon such obligation; although there may have been no formal act looking towards such compensation*." (Quick and Garran (1901) page 642)

A gentleman called Peter Spencer purchased 23,000 acres of land at Cooma. Fragile land, he spent some time studying it and developed an eco-tourism plan for it. This was refused by the state government.

He then developed a Fish farm enterprise, again with eco-tourism aspects. Soon after the State Government changed the rules, effectively destroying this enterprise.

He then linked with the Uni of New England, breeding sheep. This was successful until the disastrous alpine region fires. Wild dogs, driven out of the state reserves, combined with the smoke and fire destroyed most of his flock.

2 year ago, he applied for Drought Relief and was assessed as unviable. At this time, The Deparment of Natural Resources was beginning their gestapo-style raids on farms regarding suspected land clearing. Rules and regulations, fear and domination were destroying both farming enterprises and farming families.

Meanwhile the Federal government were proclaiming their success in meeting Kyoto guidelines through the banning of clearing. While refusing to recognize any Compensation to the farmers who were losing their businesses.

Consequently, Peter billed the Federal government for $10.5 billion for carbon income created from farming restrictions. They dishonoured the bill, and using much of the information I have presented and more, Peter spent much of the last year in court.

2 days before Christmas 2007, the Supreme Court ruled that the Federal government had a case to answer.

Stop Press: **Today (10.1.2008) the Vacation Judge in the Supreme Court of NSW, the Hon Justice John Perry Hamilton, made orders restraining the Minister for Climate Change the Hon Phil Koperberg and the Conservation Trust of NSW administered by his Department on the application of Murrumbidgee farmer Peter Spencer…….**

Mr Spencer said to day "I am relieved that the Court has given me an opportunity to put my case on these questions. I believe it is unconscionable that the Conservation Trust has accepted my case that on the one hand the Native Vegetation Act 2003 has put me out of business and then on the other hand seeks to make a profit out of me by buying the land at a gross undervalue, only then to re-sell it later at a profit."

When we look at Native Vegetation regulations, allowing govt officials to enter property without permission, causing farmers and others to be penalised, fined substantial amounts of money, prevented from earning a living – it is quite clear that rights have been removed. Without compensation.

When we are prevented from building on our land, developing a business, zoned and regulated with rules that change daily –it is quite clear that rights have been removed. Without compensation.

When we see land regulated out of private ownership and placed into Crown land control via green belts, only to be sold at a later date to a private developer, yet we as individuals have been denied the rights of our ownership – it is clear that rights have been removed. Without compensation.

How is this happening?

1. Because very few of us know our rights.
2. Because our fellow citizens demand through their "fear" that we be stopped, having been told they have the right to interfere in our ownership.
3. Because all governments have spent decades getting to this point and have created a labyrinth of rules and regulations that most individuals would cringe from in bewilderment.

There is Just Terms compensation available, but that is stated as being only from the Federal government and it is councils and state governments that implement these restrictive regulations. Interestingly enough, the Powers of the Parliament Chapter 1 Part V Section 51, state that the Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the commonwealth with respect to 39 issues. The only one that mentions land says at *xxxi 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.*

There is absolutely no law to do with property regulation outside of that specific ruling.

And while States refuse to discuss compensation, putting it at the Federal Government's feet, the Preamble to the Constitution states at *Part 5. This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State;….*

And at *Chapter 5 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.*

Governments at all levels constantly state that they are not removing ownership, because the owner can continue to live on his land.

Yet, to quote the words of *Judge McPherson JJA in Bone v Mothershaw [2002] QCA120:- "He (Mr Bone) retains unimpaired, for what it is worth, his estate in fee simple absolute in the land. He has been stripped of virtually all the powers which make ownership of land of any practical utility or value".*

"For this severe limitation on his rights as owner, he has received and will receive no compensation, although he continues to enjoy the privilege of paying the rates that the Council levies on his land. The action taken by the Council was no doubt undertaken in the public interest, as it claims, of the citizens of Brisbane; but it is not they who will bear the financial disadvantages of the action taken in their interest.

From a circular of the *Department of Planning 31 March 2006 – given to me by my Local Council manager – An existing use is a use that is lawfully commenced but subsequently becomes a prohibited use under a new local environment plan LEP……..Where feasible, councils will be encouraged to identify development that would have existing use rights and include 'permitted additional uses' on that land in their LEP, so that the land use is no longer prohibited, (in effect, remove existing use rights).*

From *Wollongong City Council Proposed Land Use Planning – 10.2.11……the action of rezoning areas of the escarpment to a more restrictive zoning would, by prohibiting certain uses create existing use rights……if a dwelling is not lived in for whatever reason for a period of over 12 months, it will lose the existing use rights.*

Under the Tradeable Development right……Wollongong City Council and DIPNR (now DNR) propose: that the value of the existing and continuing use rights which now belong to the owners of escarpment land, will need to be purchased by owners of the Commercial Properties. (in order to develop their business) West Dapto Rural Rate-Payers Association

8 cases for your information

1 fellow - prosecuted by an officer of the State for cutting native tea tree to feed his starving livestock in this time of severe drought. The Warrant to Enter executed by the public officials of this State was not for his property but was for a property approximately 17 kilometres away. The District court Judge stated that the fellow had purchased the property in the 1980's, in fact he had never owned that property. Cost of remediation - $350,000.

1 fellow - prosecuted by an officer of the State for repairing severe erosion on a watercourse on his property by filling the degraded areas in with dead and dying black wattle and other vegetation and weeds which were of no value to the livestock as a food source. He then covered the vegetation with soil and replanted the areas with pasture grass. Fine - $27,559.25

On that point, we have a portion of creek through our property, where a rock bar has become exposed and is spearing the water into soft soil on our boundary, causing considerable erosion. We discussed blowing a small channel through the rock bar in order to return the creek to its original channel and were told by the Lachlan Catchment Management officials that the *"creek had the right to do whatever it wanted*." These were the same men, from the same government organization, who entered into a scheme with our opposite neighbour to fence off the creek on our land without any discussion with us whatsoever. Needless to say, these gentlemen were informed of the rules of trespass.

1 couple in their 60's – long-term Lychee farmers, using regulation low-voltage electricity structures to deter common fruit bats. Obeying all necessary legislation. A University lecturer, with a fondness for bats, complains to the Environmental Defenders Office EDO, who institute legal proceedings. The farm was raided by police, who went through every cupboard and drawer in the house, including the families underwear drawers, ostensibly searching for paperwork and dead bats. The bat protection was removed, destroyed and within 1 week the entire orchard and farming enterprise had been destroyed by bats. The couple have had no income for 4 years are unable to access govt financial support while the case is ongoing.

1 fellow who dug a huge dam on his property with the view of supplying water free to a nearby retirement village in exchange for future accommodation. DNR have refused him the right to fill the dam, and are pumping the water out when necessary.

1 lady in her late 60's – Mrs Burns - who wanted to develop 23 acres and sell it off in order to build a home for her retirement. All land around her had been developed with the exception of a parcel that had a restricted animal order over it – for the Mahogany Sugar Glider. Her land had been checked previously and was not included. At this time, she was refused the right to develop in case the animals *wanted to visit her land. Judge White of the Planning and Environment Court in Cairns stated - : I just find this astounding. Soviet Russia would be proud of these laws."* Yet he upheld them.

1 couple - applied for permission to extend decking and received it. They notified council who did not come to check it. 12 months later, council contacted them wanting to know who gave them permission to build. Demanded it be pulled down. The couple protested, police came with a warrant, the owner was arrested, now faces $125,000 fine and/or 5 years in jail. After high level complaints about the police treatment, the couple have had their computers bugged, they have been followed and returned home to find an attempt had been made to destroy the decking, with drill holes, piers knocked askew and etc.

A farming family cleared land adjacent to the protected Gwydir Wetlands. Their land was not protected and they had all necessary departmental permission. The Wilderness Society flew over the land taking photos and the EDO began legal proceedings. Both that farm and a property they owned in QLD were raided and all farming operations on both properties were forcibly closed down. This story is still being used by the media and the Wilderness Society to point the finger at farmers re land clearing, even though the government themselves agreed this family had been given permission. Yet that family are now having to legally battle this issue, trying to recover their rights to farm. Please note, the aerial photographs were digital, which is illegal to use in court.

1 lady – bought 18 acres and received council permission to move a house to the land, providing she put a verandah around it. She moved the house, lodged a DA for the verandah. Since Christmas 2006, she has alternately been refused the DA and yet is received threats from the council re not having the verandah finished. Her land is adjacent to a large development in which her local council has an involvement, she finds gates left open, tyre shredding devices in her driveway etc. She believes she is being forced off her land.

A family retired on a small holding in 2 portions, being environmentally conscious and prepared to keep the land natural because of eagle eyries. Minerals were found on the property, right at the access between both properties and the owner was expected allow ongoing truck access through his main acreage, and to forego

his right to enter the second property. Local council passed the miner's DA before any financial negotiations had begun, and the owners were told to agree or the Warden's Court would decide for them. The Warden's Court is specifically for mining issues.

1 suicide, 1 fellow in a mental institution due to the ongoing harassment of government officials, stress, depression, family break-downs….

All without Just Terms Compensation.

Why is land ownership so important?

Hernando de Soto – president of the Institute for Liberty & Democracy in Peru – "Powerlessness and poverty go hand in hand, yet neither is inevitable…….The problem is twofold. Illiteracy is a major reason poor people often choose not to seek the protection of local courts, since in many countries, laws established under colonial rule have never been translated into local languages. When would-be entrepreneurs do set out to legally register a business, they are easily discouraged by the mass of bureaucratic red tape and costly fees……As a result, the poor have no choice but to accept insecurity and instability as a way of life. But when governments grant people legal means to control their assets, they empower them to invest and plan for the future……..In San Francisco Solano, a barrio outside Buenos Aires, Argentine economists studied the experience of two communities-one that received title to its land in the early 1980s, another that did not. The group of neighbors that had received legal title to its land surpassed the group without title in a range of social indicators, including quality of house construction, education levels and rates of teen pregnancy…….

Private ownership of land is not compatible with socialism, communism, or with global governance as described by the United Nations. Stalin, Hitler, Castro, Mao - all took steps to forcefully nationalize the land as an essential first step toward controlling their citizens. The UN, without the use of military force, is attempting to achieve the same result.

The land policy of the United Nations was first officially articulated at the United Nations Conference on Human Settlements (Habitat I), held in Vancouver, May 31 - June 11, 1976. Agenda Item 10 of the Conference Report sets forth the UN's official policy on land. The Preamble says:

> "*Land...cannot be treated as an ordinary asset, controlled by individuals and subject to the pressures and inefficiencies of the market. Private land ownership is also a principal instrument of accumulation and concentration of wealth and therefore contributes to social injustice; if unchecked, it may become a major obstacle in the planning and implementation of development schemes. The provision of decent dwellings and healthy conditions for the people can only be achieved if land is used in the interests of society as a whole. Public control of land use is therefore indispensable...."*

Under the UN's concept of land and resource management, the owner is not even considered as one who may have a right to determine how his land is to be used. It is a higher authority that represents the "community" to whom "proof" must be offered that a proposed use is justified. This process effectively separates the right of ownership from the right of use, an objective discussed in Recommendation D.5(c)(v) of the 1976 document. And who, exactly, is this "higher authority" to whom proof must be presented? The authority envisioned by the UN is not local elected officials, but rather local "stakeholder councils" dominated by Non Governmental professionals.

Yet, China – the epitomy of communism with total control over its citizens, is now opening its doors to private ownership rights with well over 40,000 farmers demanding the Chinese government recognize their right to own the land they have farmed for the collective under extreme duress, for decades.

One of the best ways to implement government policy and minimize public anger is to attach the issue to a fear campaign.

When the UN introduced *Global Biodiversity Assessment* in 1976, it was relatively easy to enforce in civil law countries, but not in common law countries.

So, the fear campaign began using environmental issues, animal rights, native vegetation rights, land clearing, culminating in the global warming issue. During that period Gough Whitlam was Prime Minister.

One of the first things he did was organize the Royal commission into Land Tenures. In 1976, the panel decided……*"2.19 a & b: Elimination of private gains and losses from planning decisions is desirable as a matter of social equity. ….Reservation of development rights will improve the planning process. Once the prospect of private profit or loss is removed, a landowner has no financial interest in rezoning decisions"*

"2.22 First, there is no longer a 'free enterprise' market in urban land. All urban land in Australia is controlled, in one way or another,by limitations on use proposed by government agencies.

"2.23 Secondly, we believe that the reservation of future increments in development value on behalf of the community can hardly be termed an expropriation of any existing benefit. All that a particular land owner has, at the commencement of the new system, will be preserved to him: he will merely be deprived of the opportunity of making windfall gains as a result of zoning decisions based on perceived community needs.

"Because development rights are privately owned under the existing system, planning authorities need to devise statutory and code controls which will prevent over-exploitation of sites.

The rise of groups with Green agendas continually speaking into the public arena on these issues, the gradual infiltration of public rights over private ownership, the rise of 'stakeholders' 'community demands' "land managers (never land owners), combined to create a perspective that subtly but clearly removed the understanding of ownership rights.

And it worked very well, because much of the blame for these fear campaigns was laid at the feet of farmers. When government & media gave the many millions in Sydney, Melbourne, Brisbane and other major cities & towns the right to punish individuals they had never met, in order to calm their fears, it was accepted and has become acceptable.

Again……Why is land ownership so important?

1. Inheritance - vii) I hold the Deed of Grant in an estate of inheritance which is a common law contract with Her Majesty Queen Elizabeth II, the Sovereign of Australia.

With regards to land ownership those rights are tied up in an "Inheritable Estate" which in this country can only be Fee Simple. Lease hold titles are not inheritable because they are titles by virtue of a "Statute" and that statute can be altered or repealed therefore there is no security of inheritance.

There is no such thing as a "Statutory" Fee Simple title and Common law can only exist in a Fee Simple title and without statutory interference. This is because of the word *"Inheritance"*

Questions - How can a Statutory Fee Simple title be an *"Estate of Inheritance"* if the estate is subject to the whim and free will of the *"Legislature"?*

How does the Legislature *"Guarantee"* this estate of inheritance??? Surely not by another statute!

Answer:- Statutory Fee Simple does not exist or if it does it is NOT Fee Simple because Fee Simple can only exist at Common Law because it must be an inheritable estate. If we have purchased Fee Simple where the inheritance is not guaranteed then what have we purchased, because it is not Fee Simple?

2. Wealth Equity – uncounted trillions of dollars are supported by the value of land in this country alone. Land is the premier form of collateral for loans. Every bank in Australia alone would carry $billions of equity in land via mortgages and the like.

3. Power: Personal ownership rights vs International, Federal & State – Remember the original quote " every man's house is called his castle. Why? Because it is surrounded by a moat or defended by a wall? No! It may be a straw-built hut but the wind may whistle through it, the rain may enter, but the king cannot."

There is huge financial gain to be made from land ownership on the International Markets.

Government moved into the Carbon Credit system in the early 2000's. In August 2006, there were 9 billion tonnes available to trade at $5-6 per tonne US. Western Governments, have bought whole sections of third world countries such as Papua specifically to obtain the credits to either offset or trade.

Forest NSW, Greening Australia are registered companies who are locking up land under forestry carbon credit schemes. In order for a land owner to benefit by selling carbon credits through these registered companies, he must allow the company to become attached to his title deed, and become a part owner of the property.

Yet is this truly to do with the environment?

Trees have a slowly depreciating carbon storage structure – 20 years sees most of them rendered non-storing.

Annual crops such as Oats and Wheat carry more carbon credits than trees and are replaced yearly. Yet farmers are being prevented from clearing their land to grow them. As well as providing an essential food source to the community, as well as the export market. (Currently wheat for bread, etc is being imported into Austraia.)

Why? If it was about the global issues, this would be a godsend, because food crops would be available, carbon credits in constant restoration, income and family growth sustained.

However, it would also allow the farmers to maintain their rights on their land.

Instead, these registered companies are expecting farmers to allow them partial ownership of the property, impossible to remove, and under MIS schemes benefit from substantial government sponsorship, not available to the farmer himself, in order to return profits to shareholders.

Farmers are also being forced into animal registration schemes that purport to allow disease to be traced to the source property. At the same time government are reducing our quarantine regulations which are a uniquely Australian structure which has prevented our shores from being hit by such deadly animal diseases as "Mad Cow." The reduction of protection, the implementation of disease checks, suggests that we are going to be allowing foreign (and potentially diseased food sources, such as animals, fruit, vegetables, etc) into this country, by destroying our internal and external market protection.

Land control. Taken from the legal owner by government and given to others.

Further information on the UN and Property Rights. – http://www.sovereignty.net

United Nations Conference on Human Settlements (Habitat I), held in Vancouver, May 31 - June 11, 1976.

> **(b)** All countries should establish as a matter of urgency a national policy on human settlements, embodying the distribution of population...over the national territory.
>
> **(c)(v)** Such a policy should be devised to facilitate population redistribution to accord with the availability of resources.

Recommendation D.1

> **(a)** Public ownership or effective control of land in the public interest is the single most important means of...achieving a more equitable distribution of the benefits of development whilst assuring that environmental impacts are considered.
>
> **(b)** Land is a scarce resource whose management should be subject to public surveillance or control in the interest of the nation.
>
> **(d)** Governments must maintain full jurisdiction and exercise complete sovereignty over such land with a view to freely planning development of human settlements....

Recommendation D.2

> **(a)** Agricultural land, particularly on the periphery of urban areas, is an important national resource; without public control land is prey to speculation and urban encroachment.
>
> **(b)** Change in the use of land...should be subject to public control and regulation.
>
> **(c)** Such control may be exercised through:

(i) Zoning and land-use planning as a basic instrument of land policy in general and of control of land-use changes in particular;

(ii) Direct intervention, e.g. the creation of land reserves and land banks, purchase, compensated expropriation and/or pre-emption, acquisition of development rights, conditioned leasing of public and communal land, formation of public and mixed development enterprises;

(iii) Legal controls, e.g. compulsory registration, changes in administrative boundaries, development building and local permits, assembly and replotting.

Recommendation D.3

(a) Excessive profits resulting from the increase in land value due to development and change in use are one of the principal causes of the concentration of wealth in private hands. Taxation should not be seen only as a source of revenue for the community but also as a powerful tool to encourage development of desirable locations, to exercise a controlling effect on the land market and to redistribute to the public at large the benefits of the unearned increase in land values.

(b) The unearned increment resulting from the rise in land values resulting from change in use of land, from public investment or decision or due to the general growth of the community must be subject to appropriate recapture by public bodies.

Recommendation D.4

(a) Public ownership of land cannot be an end in itself; it is justified in so far as it is exercised in favour of the common good rather than to protect the interests of the already privileged.

(b) Public ownership should be used to secure and control areas of urban expansion and protection; and to implement urban and rural land reform processes, and supply serviced land at price levels which can secure socially acceptable patterns of development.

Recommendation D.5

(b) Past patterns of ownership rights should be transformed to match the changing needs of society and be collectively beneficial.

(c)(v) Methods for the separation of land ownership rights from development rights, the latter to be entrusted to a public authority.

The UN, working in collaboration with its incredible **NGO** (Non Government Organization) structure, operating at the behest of the International Union for the Conservation of Nature (IUCN); the World Wide Fund for Nature (WWF); and the World Resources Institute (WRI), made sure that the decade of the 1980s was awash with propaganda about the loss of biodiversity and the threat of global warming.

The foundation for the propaganda campaign may be found in three publications published jointly by the UN and its NGO collaborators: *World Conservation Strategy*, (UNEP, IUCN, WWF, 1980); *Caring for the Earth*, (UNEP, IUCN, WWF, 1991); and *Global Biodiversity Strategy*, (UNEP, IUCN, WRI, 1992). These documents, along with *Our Common Future*, the report of the 1987 Brundtland Commission (UN Commission on Environment and Development) set the stage for Earth Summit II, the UN Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992.

This conference produced *Agenda 21*, the ultimate plan of action to save the world from human activity. The document echos the 1976 document on land use policy, though in somewhat muted terms. From Section II, Chapter 10 (page 84):

> "Land is normally defined as a physical entity in terms of its topography and spatial nature; a broader integrative view also includes natural resources: the solid, minerals, water and biota that the land comprises. Expanding human requirements and economic activities are placing ever increasing pressures on land resources, creating competition and conflicts and resulting in suboptimal use of both land and land resources. It is now essential to resolve these conflicts and move towards more effective and efficient use of land and its natural resources. Opportunities to allocate land to different uses arise in the course of major settlement or development projects or in a sequential fashion as land becomes available on the market. This provides opportunities...to assign protected status for conservation of biological diversity or critical ecological services."

Objective 10.5

The broad objective is to facilitate allocation of land to the uses that provide the greatest sustainable benefits and to promote the transition to a sustainable and integrated management of land resources:

> **(a)** To review and develop policies to support the best possible use of land and the sustainable management of land resources, by not later than 1996;
>
> **(b)** To improve and strengthen planning, management and evaluation systems for land and land resources, by not later than 2000;
>
> **(d)** To create mechanisms to facilitate the active involvement and participation of all concerned, particularly communities and people at the local level, in decision-making on land use and management, by not later than 1996.

Activities 10.6:

> **(c)** Review the regulatory framework, including laws, regulations and enforcement procedures, in order to identify improvements needed to support sustainable land use and management of land resources and restrict the transfer of productive arable land to other uses;
>
> **(e)** Encourage the principle of delegating policy-making to the lowest level of public authority consistent with effective action and a locally driven approach.

Activities 10.7:

(a) Adopt planning and management systems that facilitate the integration of environmental components such as air, water, land and other natural resources using landscape ecological planning... for example, an ecosystem or watershed;

(b) Adopt strategic frameworks that allow the integration of both developmental and environmental goals; examples of those frameworks include...the *World Conservation Strategy, Caring for the Earth*....[2]

The UN is very involved with and conferences with green groups such as the Sierra Club, World Wildlife International, the Wilderness Society, etc.

Current Situation

Removal of Common Law

Although much of the following information relates to Queensland, it is slowly being duplicated in every other state including NSW.

In 29th January 199, a Queensland politician, tabled a document in the Queenland Parliament. That document sat for 12 months and because not one elected parliamentarian questioned the proposal, it became legal. It moved the Governor of the State of Queensland, the Representative of the Crown in Queensland into the *Constitution Act 1867* as a parliamentary secretary and a public official. The Governor now conducts the daily business of the corporation of the State and with the use of the Public Seal of the State, seals all documents signed by the Crown.

This fractured the separation of powers and common law in the State of Queensland and also removed Queensland as a State of the Commonwealth of Australia and out of the *Commonwealth of Australia Constitution Act* without a referendum of the sovereign people to remove the entrenched provisions as described in the *Constitution Act 1867*, section

At the time the Governor signed into law the new QLD Constitution he created a situation where –

1. It was done without a referendum of the people
2. The entrenched provisions were removed.
3. The Legislative Assembly have only one vote and the Premier/President has the vote of veto on anything.
4. The Supreme and District Courts, Judges of those Courts and the Police Force no longer operate under the Judicial Code of the Australian Constitution but under regulations of the QLD State Government.
5. The public officials of "the State" - no longer public servants of the Crown but public servants of "the State", have their powers delegated to them from the Minister of the State and have policing powers.
6. Removed the Separation of Powers from QLD.
7. Removed Common Law from QLD.
8. QLD no longer recognizes either the High Court of Australia or the Federal Court.
9. Moved the state of QLD back past the QLD Constitution 1867 and effectively rendered QLD an independent and sovereign state within the Federation of Australia.

The common law has been removed from the *Supreme Court Act 1995* which now follows the Uniform Civil Procedure Rules. Qld is now subject to civil and statute law only.

Civil law and statute law have a very different requirement for the committing of any offence, whether an indictable offence, a summary offence, a simple offence or an absolute offence such as a traffic offence where a guilty mind is not required to commit that offence.Under the civil law system, which is now subject to the Uniform Civil Procedures Rules of the *Supreme Court Act 1991*(Qld), every person is guilty until they prove their innocence.

The jurisdiction of the Supreme Court of Queensland is now found in the *Constitution of Queensland 2001*, Part 5 - Powers of the State. The Judges of the Supreme and District Courts of Queensland must protect the 'assets' of the State of Queensland and find only in favour of the State.

Queensland is now the Brigalow Corporation and all citizens are chattels under that corporation. All ownership rights have been assimilated into the Corporation including bank accounts, land ownership and more. The citizens, including the Aboriginal population, hold only statutory title.

Brigalow Corporation (of the State of Qld) originated in the old Qld Crowns Lands Act and came about through the Qld government borrowing from the federal government funds to develop what was termed the "Brigalow Belt" (about 4 mil acres) out from Rockhampton during the 1960's.

The old crowns lands act (Qld) has now been converted to the "Land Act 1994 (Qld)" and this is where **you can find the "Brigalow Corporation"** today. . In essence the government of Qld has moved all the crowns land **AND** all crown land that was sold (fee simple) into the Brigalow Corporation through the Land Act, Land Title Act, Property Law Act, etc, etc, etc. This was achieved through a series of Constitutional changes that were "Reprinted" into and out of the 1867 Constitution commencing in 1996 with "Reprint no 1" and ending with the introduction of the 2001 Queensland Constitution Act (whole new constitution) all without a referendum of any sort. Once the necessary changes to the "Engine" have been made then moving or amending all subordinate laws is very simple, just reprint them starting with the Acts Interpretation Act 1954 (Qld).

The "Brigalow Corporation" in **not Listed as a "Public" company** on the Stock Exchange, it is an "Exempt Public Authority" which is found by definition at *s9 and 5A of the Corporations Act 2001 (C'wth)* (in right of the crown), except there is no "Crown" in Qld just "the State". The term "The State" or as written in most the modern Qld statutes, "This Act binds **the state**" is reminiscent of Stalin's Russia where everything was the property of "The State".

The Brigalow corporation of Queensland, when it was formed, had no assets, it had to acquire assets if they wished to borrow. Under the *Queensland Government (Land Holding) Amendment Act 1992*, they immediately took all the Crown land and estates in fee simple registered under the *Property Law Act 1974* as equity for the corporation without compensation to the registered owners of the property whether they live in Queensland or anywhere else and converted that property for their own use, contrary to Chapter 7 of the *Criminal Code Act 1995*(C'wth) - The proper administration of Government.

All laws in QLD are being frantically reprinted with the necessary changes to reflect QLD new status, and to remove all previous knowledge.

The various government departments have been destroying old documentation carrying the Crown Seal, including title deeds. Documents now carry the Brigalow Corp Seal.

The sovereign people of the Commonwealth of Australia have never been required at a referendum by virtue of section 128 of the *Constitution of the Commonwealth of Australia* to vote to allow "the State" of Queensland to fracture the Commonwealth and become an independent sovereign state.

Please note: New South Wales removed the Governor under the *Consolidated Amendment Act 1987*. WA is very close to the same situation as QLD. Vic and SA have begun their own moves to do the same. Tasmania appears to be the only state that has not made such moves to the same degree. As all will know every level and branch of government are being redesigned as corporations and often being sold.

It became obvious that all these issues must have been apparent to the Federal government at that time, yet this was never brought to the attention of the public because our research has shown that while the Labor Party clearly involve themselves in the removal of Constitutional rights, the Liberal Party allows them to do so in order to benefit from that removal.

We believe John Howard did not sign the Kyoto Treaty because the signing of a foreign treaty is unconstitutional without a referendum and neither government wants the people to understand their rights in this matter. Kevin Rudd – who was the right hand man to the Premier of QLD, holds a seat in QLD (a state which no longer honours the Federation or Constitution) and would clearly and unequivocably have known what was going on, made it his first move as Prime Minister to sign into existence a Treaty that was not agreed to by referendum. Clearly he has no respect for our Constitutional rights either.

These issues regarding our land ownership rights and the situation in QLD has been placed before the High Court of Australia

QLD can totally ignore the High Court because QLD does not know them under their new Constitution – which could destroy the High Court's ability to be obeyed in any court of Australia.

If the High Court does not rule for the people, then the Justices are giving government free licence to arbitrarily inflict more and more severe regulations and acts upon the people, in every State, as well as effectively destroying the Constitution this court was established to protect.

Therefore if the legislature removes the "Inheritance" or can not guarantee the inheritance of a "title of inheritance" that once existed, but by virtue of a statute has been removed and IN DOING SO also imposes a penalty (for destroying ones inheritance and therefore private property) therein lies an "ABSOLUTE TAKING". The "Penalty" and criminal prosecution means that you have destroyed "Their Property" **NOT YOURS** therefore the inheritance has transferred to the Government and the "Public".

There are those here who will be advocates of a Republic. Advocates of a Civil law system.

European Civil law can recognise Fee Simple **BUT** it is enshrined in an extremely tight constitution where it can not be interfered with. The problem that our legislatures have is that statute law can not guarantee rights because the statute can be changed or even repealed. In civil law countries (France, Germany etc) these rights are **enshrined in their very tight constitutions**. In common law countries these rights are enshrined in the common law itself although it must be said that civil law countries have elements of common law as well, and vice versa. However, in Australia they are progressively extinguishing the common law and replacing it with civil law **without any enshrined constitutional mechanism that protect the rights lost** by

the removal of the common law. Single or multiple statutes can not accommodate those rights because they can be removed or altered at the whim of the parliament.

On Thursday 3rd October 2007, several Queensland court cases went through the High Court of Australia and the Judges presiding made rulings over residential and rural land that effectively removes all land ownership from the people of Queensland, and puts that land ownership squarely into the hands of the State Government. On 3rd October 2007 the ruling that 'fee simple' and the 'common law' are now no longer recognised in Queensland, upheld by the High Court of Australia, means that Queenslanders no longer are part of the Commonwealth, and that they no longer have ownership or say in their land, and that Queensland is a separate entity that can make its own laws.

Why did the High Court make this ruling?

Under "Peace, Order and Good Government", State & Federal government can make laws that cannot be called illegal.

To question them, they must be taken to court. However, the judicial system can only recognize a properly constructed case. A judge cannot tell you where you have gone wrong, or offer you advice in the middle of a case. They are also hindered or helped by existing laws, acts, regulations and such.

Many believe we have no justice left in this country, in fact, justice is blind. She can only answer what she is asked to answer. If we don't ask the right questions, we get the wrong answer.

We believe we are now asking the right questions. There can be only 2 responses from the High Court.

1. We lose, in which case, they will be clearly telling every Australian that Common Law, the Australian Constitution, Fee Simple land ownership are gone.

2. We win, in which case all government levels in Australia have been removing our rights fraudulently.

Think clearly about what a loss will mean. Remember the legal battles I listed.

Human Rights and Equal Opportunity Commission Act 1986 – states in

Schedule 2—International Covenant on Civil and Political Rights

PART I
Article 1

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

Clearly this civil law that all tiers of government in this country are arbitrarily forcing on the Sovereign People is prepared to not only ignore our Constitution but International Human Rights as well.

Yet, the High Court has stated in Mabo and Others Vs The State of Queensland (No 2) 1992 HCA 23; (1992) 15 CLR 1 F.C. 92/014 (3 June 1992)

"The common law of Australia has been substantially in the hands of this Court. Here rests the ultimate responsibility of declaring the law of the nation".

"in discharging its duty to declare the common law of Australia, this Court is not free to adopt rules that accord with contemporary notions of justice and human rights if their adoption would fracture the skeleton of principle which gives the body of our law its shape and internal consistency".

RW writes with reference to a letter of 5th April 2007 in QCL titled *"Time to Wind Back Qld's Land Laws".*

In short what is needed is not really a review of current land laws in Queensland but action to uphold the rights in law of real property and certain Constitutional rights that have operated in the Westminster system of Government at least since 1215.

In this system ordinary Government power is the delegated power of the Crown transferred and limited via the Australian Constitution Act to the State and Federal Governments; Her Majesty Queen Elizabeth II is Head of State and owner of all Land by radical title. When Queen Victoria granted self government to Queensland in 1867 she ordered that <u>all</u> "Waste Land" (Crown Land) be sold in "Fee Simple" to her subjects and after Federation in 1901, when sovereign Colonies ceased to exist, the now new State of Queensland only had Crown delegated power to regulate and govern subject to the Australian Constitution.

Fee Simple is what we commonly call Freehold and is the only Common Law tenure recognised by the "skeleton" of Land Law and at Common Law. The tenurial rights of ownership in Fee Simple are recognised world wide and are defined as…"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." (HCA 34; (1923) 33 CLR 1 (9 August 1923).

Once land is alienated (sold) from the Crown to a subject by a Deed of Grant (title) it then becomes "Real Property"; it is then the "Private Property" of the owner of the Deed whoever that person or entity may be. There is strict law in the Constitution regarding Private Property. There is power to regulate but it is limited and…"if there is such serious interruption with the common and necessary use as to practically destroy its value, it would be a taking"… (Quick and Garran (1901) page 642). "Taking" is a legal term for acquiring, acquisition.

And, when a government…. "*appropriates private property, it is under an implied obligation to make just compensation therefore; and, upon failure to do so, the owner may sue upon such obligation; although there may have been no formal act looking towards such compensation.*" (Quick and Garran (1901) page 642)

Finally 2 quotes from the great jurist Sir William Blackstone's Commentaries on English Law 1765 – 1769

"SO great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men, to do this without consent of the owner of the land. In vain may it be urged, that the good of the individual ought to yield to that of the community; for it would be dangerous to allow any private man, or even any public tribunal, to be the judge of this common good, and to decide whether it be expedient or no. Besides, the public good is in nothing more essentially interested, than in the protection of every individual's private rights, as modelled by the municipal law. In this, and similar cases the legislature alone, can, and indeed frequently does, interpose, and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner; but by giving him a full indemnification and equivalent for the injury thereby sustained.

"With regard to these and some others, as disturbances and quarrels would frequently arise among indviduals.....And thus the legislature of England has universally promoted the grand ends of civil society, the peace and security of individuals, by steadily pursuing that wise and orderly maxim, of assigning to everything capable of ownership a legal and determinate owner.

Government Affiliations

The Liberal Party is a member of the International Democrat Union. Strong opposition to socialism and communism in Australia and internationally was one of the foundation principles of the Liberal Party.

The **International Democrat Union** (IDU) is an international grouping of conservative, nationalist, classical liberal, anti-Communist and some Christian democratic political parties.

Formed in 1983, the IDU provides a forum in which political parties holding similar beliefs can come together and exchange views on matters of policy and organizational interest, in order that they might act cooperatively, establish contacts, and present a unified voice toward the promotion of centre-right policies across the globe. The group was founded by several prominent heads of state and government, including Prime Minister of the United Kingdom Margaret Thatcher, then-Vice President of the United States George H.W. Bush [1], Chancellor of Germany Helmut Kohl and then-Mayor of Paris Jacques Chirac.

At present, the organization, headquartered in Oslo, Norway, and comprising 45 full or associate members, is chaired by John Howard, Prime Minister of Australia from 1996 to 2007.

Although Labor has never officially been a socialist party, it has always had a section of socialists in the party. The Labor Party is commonly described as a social democratic party, but its constitution stipulates that it is a democratic socialist party. The light on the hill is a phrase used to describe the objective of the Australian Labor Party.

The Australian Labor Party is commonly described as a social democratic party, but its constitution stipulates that it is a democratic socialist party

International Fabian Society - The Fabians also favoured the nationalization of land, believing that rents collected by landowners were unearned, an idea which drew heavily from the work of American economist Henry George.

Through the course of the 20th century the group has always been influential in Labour Party circles, with members including Ramsay MacDonald, Clement Attlee, Anthony Crosland, Richard Crossman, Tony Benn, Harold Wilson, and more recently Tony Blair and Gordon Brown. The late Ben Pimlott served as its Chairman in the 1990s. (A Pimlott Prize for Political Writing was organized in his memory by the Fabian Society and The Guardian in 2005, and continues annually). The Society is affiliated to the Party as a socialist society.

The **Australian Fabian Society** was established in 1947. It is Australia's longest running political think tank. Inspired by the Fabian Society in the United Kingdom, it is dedicated to Fabianism, the focus on the advancement of socialist ideas through gradual influence and patiently promoting socialist ideals to intellectual circles and groups with power.

The Australian Fabian Society has had close historical ties with the Australian Labor Party, also known as the ALP. This is evident in the number of past Australian Labor Party Prime Ministers, Federal Ministers and

State Premiers who were, and are, active members of the Australian Fabian Society. The current President of the Australian Fabian Society is former Australian Prime Minister Gough Whitlam[1].

The Australian Fabian Society has had a significant influence on public policy development in Australia since the Second World War, with many of its members having held the highest levels of political power and influence in the land.

The Australian Fabian Society cites their 'Four General Aims' on their organisation's website as being:

1. To contribute to a renaissance of left of centre and progressive thought, by generating and disseminating ideas that are original, meet the challenge of the times, and are of high intellectual quality.

2. To contribute, by getting these ideas into the public domain, to the creation of a left of centre political culture and consensus.

3. To help create an active movement of people identifying with the left of centre and engaged in political debate.

4. To influence the ideas and policies of the Labor Party (and other parties) and Labor Governments to encourage progressive reform in practice.[2]

Members of the Fabian Society

- Gough Whitlam (ALP Prime Minister 1972–75)
- Bob Hawke (ALP Prime Minister 1983–1991)
- Paul Keating (ALP Prime Minister 1991–1996)
- John Cain (ALP Premier of Victoria)
- Jim Cairns (ALP Deputy Prime Minister)
- Don Dunstan (ALP Premier of South Australia)
- Geoff Gallop (ALP Premier of Western Australia)
- Neville Wran (ALP Premier of NSW 1976–86)
- Frank Crean (ALP Deputy Prime Minister)
- Arthur Calwell (ALP Former Leader)
- John Faulkner (ALP Senator and National President)
- Julia Gillard (ALP Deputy Prime Minister)

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'Where there is no vision the people perish,
but he that keepeth the law, happy is he.' (Proverbs Ch.29 v.18)

His Excellency Major General Michael Jeffery AC CVO MC
Governor-General of the Commonwealth of Australia,
Government House,
Dunrossil Drive,
Yarralumla ACT 2600

Your Excellency,

RE: "The State" of Queensland - an independent Sovereign State outside of the Commonwealth of Australia, without a referendum of the sovereign people under section 53 of the *Constitution Act 1867*(Qld) as of 29th January 1999.

Your Excellency I bring this extremely serious matter to your attention as the Governor-General of the Commonwealth of Australia and the Representative of Her Majesty Queen Elizabeth II.

On 29th January 1999 the Governor of the State of Queensland, the Representative of the Crown in Queensland was moved into the *Constitution Act 1867* as a parliamentary secretary and a public official. This fractured the separation of powers and common law in the State of Queensland and also removed Queensland as a State of the Commonwealth of Australia and out of the *Commonwealth of Australia Constitution Act* without a referendum of the sovereign people to remove the entrenched provisions as described in the *Constitution Act 1867*, section 53 - Certain measures to be supported by referendum, described in Reprint 2, reprinted 27th January 1998, section 53(1), section 1, 2, 2A, 11A, 11B, 14; and, section 53(1).

On 9th November 2001 the then Premier of the State of Queensland, the Honourable Peter Beattie presented to Parliament the new Constitution of Queensland 2001 Bill. The elected Members for the people of Queensland, the Members of the Legislative Assembly, passed the Bill, said only to 'modernise' the Constitution of Queensland. This constitution was assented to by the Governor on 3rd December 2001 and upon assent, under section 95 of the new Constitution, Acts subject to the *Constitution Act 1867* were repealed. Section 92 immediately came into force which repealed parts of

the *Constitution Act Amendment Act 1922*. This allowed the Parliament to move back prior to the removal of the Legislative Council at referendum in 1922 and 'recreate' the positions of that former Legislative Council.

The *Acts Interpretation (State Commercial Activities) Act 1994* amended the *Acts Interpretation Act 1954* to define "the State" to mean the Executive government of the State of Queensland. Under the provisions of this Act, "the State" may carry out commercial activities 'without further statutory authority' and 'without prior appropriation from the public accounts' {s47C.(3)} Section 47C. defines 'commercial activities to include 'commercial activities that are not within the ordinary functions of the State' and these functions may be delegated by a Minister to an officer of the State who may subdelegate delegated powers to another officer of the State. An 'officer of the State means a chief executive, or employee of the public sector or an officer of the public service'.

I refer to the following Acts - the *Reprints Act 1992*, the *Statutory Instruments Act 1992*, the *Legislative Standards Act 1992*. These Acts were used in conjunction with the *Constitution of Queensland 2001*, section 92 to create the corporation Government of the State and then further to repeal those Acts under section 95 of that Constitution. Those Acts moved back in time, one may say like the Tardis, reprinting, removing the Crown out of all Acts as far back as the Magna Carta then reprinting back to the *Australia Acts (Requests) Act 1985* and removing all the positions as cited in that Act. The only part of the *Commonwealth of Australia Constitution Act* which is recognized by Queensland is the Commonwealth Constitution commencing at section 9. The *Commonwealth of Australia Constitution Act* is not recognized which includes the High Court and the Federal Court.

By using the *Australia Acts (Request) Act 1985* section 12 in conjunction with the other three State Acts, the Acts reprinted Queensland into a corporate State. In conjunction with the *Acts Interpretation Act 1954* section 15DA(2) which allowed for the automatic commencement and assent of any Act that had been laying dormant for a period of twelve months, Acts which were framed to create the corporate State of Queensland in 1992, 1993 and 1994 were reprinted by the *Reprints Act 1992* which is under the Department of the Premier.

Queensland then became, at the completion of these matters, without assent of any of the laws by the Crown or Her Representative, an independent sovereign State and fractured the common law and the separation of powers.

When people of the State of Queensland vote in a State election, the writs are not under the Hand of the Sovereign of Australia Her Majesty Queen Elizabeth II but under the Public Seal of the State and issued by the Governor who is an entity within the Parliament of Queensland (or the Speaker for one vacant seat).

The elected Members of the sovereign people of the State of Queensland have, since 29th January 1999 taken it upon themselves, (contrary to the *Criminal Code Act 1995*(C'wth) to which they are all subject under Chapter 7 - The proper administration of Government), to create for themselves, under the *Constitution of Queensland 2001*, a corporation Government in which the sovereign people of Queensland and their property are mere chattels of the State. This surely is a breach of the trust and faith which the electors of Queensland placed in their elected members to uphold and respect the laws of the Commonwealth.

Queensland is now outside the Commonwealth of Australia as an independent sovereign State without common law, and the people are subject to civil and statute law only. The 'common law and general jurisdiction'; the 'Laws of England to be applied in the administration of justice' and 'equitable jurisdiction' have been removed under the *Supreme Court Act 1995*(Qld) Reprint number 2A dated 2nd March, 2001 under Schedule 2 of the *Constitution of Queensland 2001*.

What now happens to people who have been prosecuted, fined, imprisoned etc. under the civil law of Queensland, which does not exist elsewhere in the Commonwealth of Australia. The sovereign people of Queensland have not voted in any referendum to allow civil statute law to remove their common law rights.

The people of Queensland are still, under section 117 of the *Commonwealth of Australia Constitution Act,* subjects of Her Majesty Queen Elizabeth II and protected by Her laws as there has been no referendum under section 128 of the *Commonwealth of Australia Constitution Act* to allow the separation of Queensland from the Commonwealth of Australia.

The jurisdiction of the Supreme Court of Queensland is found in the *Constitution of Queensland 2001*, Part 5 - Powers of the State. Therefore it is assumed that the Judges of the Supreme and District Courts of Queensland must protect the 'assets' of the State of Queensland and find only in favour of the State, not in favour of the registered owners of private land who have lost, under the statute laws of Queensland, the rights to use their fee simple land as they see fit.

As stated by Chief Justice de Jersey in the Supreme Court of Queensland Appeal for Mrs Catherine Elizabeth Burns

> "[5] 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*…….. 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."

Further, Judge McPherson JJA in Bone v Mothershaw [2002] QCA120 stated:-

> "For this severe limitation on his rights as owner, he has received and will receive no compensation, although he continues to enjoy the privilege of paying the rates that the Council levies on his land. The action taken by the Council was no doubt undertaken in the public interest, as it claims, of the citizens of Brisbane; but it is not they who will bear the financial disadvantages of the action taken in their interest.
>
> [24] The question is whether our legal system permits such prohibitory action to be taken.
> The Council has not taken any interest of Mr Bone's, so as to attract the operation of the *Acquisition of Land Act 1967* or otherwise. He retains unimpaired, for what it is worth, his estate in fee simple absolute in the land. He has been stripped of virtually all the powers which make ownership of land of any practical utility or value. There is, as is attested by an affidavit

> from the valuer provided at the hearing, no doubt that the value of the land has been greatly reduced. But the law provides no remedy for this action or its consequences when it is the result of legislation validly passed under law-making authority that by its terms or nature authorises or permits such an outcome.
>
> [26] The same opinion is explicit in the reasoning of the High Court in *Durham Holdings Pty Ltd v State of New South Wales* (2001) 75 ALJR 501, holding that a State Parliament has the legislative power to deprive a person of property without compensation."

What can now be done for all the sovereign people of the State of Queensland who have no common law property rights and this also includes the aboriginal people of this State who have had their land under the *Native Title Act 1991* and the *Torres Strait Islander Act 1991* placed into the Brigalow Corporation of the State of Queensland? All people in Queensland, regardless of race, colour or creed have had their land, held in a Deed of Grant in fee simple, removed from their possession and into that of the Brigalow Corporation of the State. They now only hold a statutory title in their land.

The New South Wales Court has cited *Bone v Mothershaw* and *Burns v State of Queensland and Croton* in a matter involving Mr Peter Spencer of Queanbeyan in New South Wales.

New South Wales removed the Governor in 1987 under the *Consolidated Amendment Act 1987*.

I now draw Your Excellency's attention to the matter of Mrs Catherine Elizabeth Burns, which is before the High Court of Australia. The 78B notice pertaining to this matter is attached to this correspondence. This notice has been filed in the High Court of Australia and forwarded to all Attorney Generals of the Commonwealth of Australia. This Notice is now a public document.

In early 2003 I was approached by the Member for Hinchinbrook, Mr Marc Rowell of the State Parliament of Queensland requesting my assistance with a problem one of his constituents was involved in. The lady in question, Mrs Catherine Elizabeth Burns, a widow of some seventy three years of age, had purchased at public auction in Cardwell, Queensland in 1968, approximately 25 acres of land. Her land is situated opposite the Hinchinbrook Resort and faces the main north south highway. This land was purchased in a common law estate of fee simple, the original Deed of Grant for which Mrs Burns still has in her possession. The land was purchased under the provisions of the *Land Act 1962* and a requirement upon purchase of the Deed of Grant in fee simple was that the land was to be cleared for a productive use. The land was cleared by Mr Buddy Dingwall, inspected by the then Department of Lands and a Certificate of Title was issued under the provisions of the *Real Property Act 1861* in November 1970.

Mrs Catherine Burns, at the time of the purchase, was married to Sergeant Duncan Charles Burns, OIC of the Cardwell Police Station. Their plan for purchasing the land was, when Mr Burns retired from the Queensland Police Service, they would build some small tourist cabins on the property as it is in a prime location, facing onto the north south highway and opposite Hinchinbrook Island and they would then be self provided for in their retirement years. Unfortunately Mr Burns passed away prior to his reaching retirement age and Mrs Burns has never remarried.

As Your Excellency will be aware, a Deed of Grant in fee simple is a common law contract, the validity of which is known, upheld and recognized world wide and is held as security for all banks and lending institutions not only in the Commonwealth of Australia but world wide, when those institutions are providing money for private lending. Financial institutions and lenders do not now hold a common law estate in fee simple but a Certificate of Title to the land, subject to a statutory instrument. Technically they, as with Mrs Burns and myself, hold nothing.

In the State of Queensland, by definition under the *Acts Interpretation Act 1954*(Qld), section 36 - Meaning of Commonly used words and expressions - definition of 'person' includes an individual and a corporation. Therefore Mrs Burns (and all other people of Queensland) as a 'person' is thus tied inextricably to the State corporation.

This is also applicable, by definition, to Aboriginal and Torres Strait Islander land as an 'Aborigine' is now defined as a person of the Aboriginal race of Australia.

It must be noted that the definition of 'person' in the *Acts Interpretation Act 1901*(C'wth) section 22(1)(a) expressions used to denote persons generally (such as "person", "party", "someone", "anyone", "no-one", "one", "another" and "whoever"), include a body politic or corporate as well as an individual;

The *Acts Interpretation Act 1954*(Qld) defines property both present and future, owned by you as an 'individual and a corporation' as subject to a statutory instrument only and that statutory instrument is not only applicable to your land, but all property as you, as a person now own, as opposed to the previous common law indefeasible deed of grant in fee simple, only an interest in your land under a statutory title. All land, including private land held previously in the common law estate of inheritance in fee simple by private individuals, is now held by the corporation of the State of Queensland known as the Brigalow Corporation.

I refer Your Excellency to the Second Reading Speech of the Premier the Honourable Peter Beattie, for the Constitution of Queensland 2001 Bill and the Parliament of Queensland Bill 2001, presented to Parliament on 9th November 2001.

In this Speech, the Premier therein described the entities which were to make up the Parliament under the new Constitution.

> "But this Act is much more it is the fundamental law of Queensland that underpins our system of government.
>
> The entities it provides for include this Parliament, the Supreme and District Courts of this State and the system of local government that we know in Queensland. The office holders under this Act include the Governor of Queensland, the Ministers of the Crown and the judges of the Supreme and District Courts. This law is of supreme importance."

It is now not a Parliament elected by the sovereign people, but a State owned corporation and inside that Parliament/Corporation are the entities of the Supreme and District Courts, which handle matters under the *Property Law Act 1974*(Qld) and further Courts such as the Land Court, the Planning &

Environment Court; the Governor of Queensland, the Ministers of the Crown, the Judges of the Supreme and District Courts and the Local Government.

Further in the speech, the Premier stated "Our entity as a Sovereign State, the democratic ideals on which our State is built, rest on our Constitution".

The new *Constitution of Queensland 2001* was assented to by the Governor on 3rd December 2001. Here two questions that I propose:- The Governor of the State is now inside the Parliament as a parliamentary secretary and holds the Public Seal of the State and seals all documents signed under the Hand of the Sovereign with the Public Seal of the State, therefore rendering void, any contracts, Acts, laws etc. under the Hand of the Sovereign. The Governor is quite clearly now inside the Parliament, conducting the daily business of the Government and allocating the laws applicable to each Government Department of the State. The public servants of the State are not public servants of the Crown, they are public servants of the State and as the State owns all property within the State of Queensland, they have dominion over all property and aspects of your daily life.

The *Constitution of Queensland 2001* was assented to by the Governor which leads to two major problems:-

i) The assent of the Governor must be defective as the Governor is now inside the Parliament as a 'parliamentary secretary'

ii) To have Queensland become an independent Sovereign State and to remove the common law, set up statutory civil law and have Queensland not recognize the *Commonwealth of Australia Constitution Act* but only that Act from section 9 onwards, a full referendum would have been required of the people of the Commonwealth of Australia to enact, validly, that Queensland, from 29th January 1999 was now independent of the Commonwealth of Australia and a State in its own right.

In the Second Reading Speech for the Constitution the Premier stated that the Constitution would be 'broadly accessible' to the people of Queensland. Considering that this Act has effectively removed all common law property rights from the people of Queensland it should, one would reasonably assume, have been put to a referendum of the people.

However in the Second Reading Speech the Premier stated -

"… The Constitution of Queensland 2001 does not include a statement of executive power vesting in the Sovereign as recommended by LCARC. The Government is of the view that LCARC's recommended expression of executive power is too narrow and does not adequately reflect the democratic convention that requires the Governor to act in accordance with advice from his or her Ministers"…and further……"Those provisions <u>that are said to be referendum entrenched</u> remain untouched in the <u>shells of their current Acts</u>."

In the matter of Mrs Catherine Elizabeth Burns, she applied for and was refused the right to clear her private land because it 'may' be used by the Southern Cassowary and was 'known habitat for the mahogany glider" even though correspondence from the Director General of the Environmental

Protection Agency stated that Mrs Burns land was not part of the Mahogany Glider Recovery Plan 2000 - 2004. The State Government of Queensland with the Natural Heritage Trust of Australia has spent $11 million dollars purchasing land in the Cardwell region under the Mahogany Glider Recovery Plan 2000 - 2004 to protect the habitat for this species. Mrs Burns was not contacted with regard to her land nor did she receive correspondence to indicate that her land was 'known habitat'. This was a decision made by a public official of the Department of Natural Resources and Mines, Mr Luke Croton.

I have assisted Mrs Burns in this matter by writing to the Premier of Queensland, to no avail and preparing and presenting this matter before three Courts in this State. All appeals have been dismissed under the Court of Appeal Queensland decision *Bone v Mothershaw* [2002] QCA 120 The Supreme and District Courts of Queensland as enties of the Parliament must, therefore, protect the assets of the State, the real property owned by the Brigalow Corporation of the State of Queensland.

This matter is now before the High Court of Australia in an attempt to obtain a resolution for Mrs Burns. She is in dire financial straits, she has had to sell her family home which has been in her family for four generations as she could not, on an aged pension, afford to maintain the family home and pay rates of more that $2000.00 per annum on the Cardwell property. She has lost all her private possessions which she had kept on her son's property in Innisfail when Cyclone Larry devastated the area. She has been forced to rely on her family for a roof over her head as she is not eligible for State housing as they advised her she owns a property in Cardwell. This is despite advising them that she, under orders from the Courts of Queensland, can do nothing with the land because it is mahogany glider habitat.

This widowed grandmother has to pay rates of approximately $2,500 per annum on the property for the public benefit of the people and the State of Queensland. There is absolutely no equity or benefit in the land for her as the registered owner of the land, she cannot build on the land or sell the land, the equity the fee simple is now owned by the State and taken with no compensation as required under section 53(xxxi) of the *Commonwealth of Australia Constitution Act*.

Under the *Constitution of Queensland 2001*, by the removal of common law in the State of Queensland, the public officials of this State can acquire an interest in private registered land without compensation, for the benefit of the State Government corporation. This also includes the property owned now and in the future as the sovereign people are in fact " an individual and a corporation" and therefore subject to the corporation Government of the State of Queensland.

The sovereign people of the Commonwealth of Australia have never been required at a referendum by virtue of section 128 of the *Constitution of the Commonwealth of Australia* to vote to allow "the State" of Queensland to fracture the Commonwealth and become an independent sovereign state.

It is quite clear when the lending institutions become aware that any persons who own any property in Queensland - especially real property which has always the main security for lending to home owners, farmers etc, the basis of their lending against real property will be compromised. There may well be a cessation of lending in this State for the purchase of private homes or land for farming and agriculture as "the State" corporate Government can render void any contract with an individual or company and acquire an interest over land without consultation or compensation and the Courts inside the

Government will protect the assets of the corporation as they have done in matters by virtue of *Bone v Mothershaw* [2002] QCA120.

The common law and references to the Crown have been removed out of the *Supreme Court Act 1995*(Qld).

Civil law and statute law have a very different requirement for the committing of any offence, whether an indictable offence, a summary offence, a simple offence or an absolute offence such as a traffic offence where a guilty mind is not required to commit that offence.Under the civil law system, which is now subject to the Uniform Civil Procedures Rules of the *Supreme Court Act 1991*(Qld), every person is guilty until they prove their innocence.

The Supreme and District Court, other courts and the Judges and Justices of those Courts are now inside the corporation of the Government, and not sworn representatives of the Crown. Under the *Constitution of Queensland 2001*, all documents are issued or signed under the Public Seal of the State. This would be any document appointing a politician, a Judge or any person who should swear an oath of allegiance to the Sovereign. The Governor now seals that document in accordance with the *Constitution of Queensland 2001* section 37 with the Public Seal of the State therefore voiding the appointment of any of those people by the Sovereign but making those people in effect 'officers of the State' and subject to the 'Powers of the State' as cited in Part 5 of the *Constitution of Queensland 2001*.

It is quite clear that those who have been put in power by the sovereign people of the State have, since 1992 when the original Acts were being framed, had a full intention in time, to bring about their own personal agendas, regardless of the wishes of the sovereign people who have, in good and open faith and intention, by secret ballot at elections, voted these people into positions of power and of trust and who must swear or affirm an oath of allegiance to Her Majesty that they will uphold Her laws for the benefit of the people of the State of Queensland. That power has turned from the power granted by the people to the Legislative Assembly to make laws for 'peace welfare and good government' on behalf of the sovereign people of Queensland using funds from taxes paid by the citizens of Queensland and all of Australia, into a totalitarian system of Government, whereby we the people are subject to the corporation Government of the State.

The ramifications caused by these actions carried out over a long period of time by the Members of the body politic dating back as far as 1992 are so vast and wide spread it will take a long time to remedy and repair the whole system of government in Queensland. The Parliament can make any laws they wish but I do not believe that under a democratic system of Government they are elected to Parliament to make draconian laws which remove the rights of the sovereign people to their use of their land without fair and just compensation.

I respectfully suggest an immediate return to a common law government of people elected by the sovereign people under a writ of the Sovereign, not under a writ of the Election Act of the State.

In the Second Reading Speech the Premier stated "Those provisions that are said to be referendum entrenched remain untouched in the shells of their current Acts."

I do not believe that the provisions are 'said' to be referendum entrenched but in actual fact are, under a Westminster system of Government.

The former Premier said in the Second Reading Speech for the constitution, 'we all look forward to the day when we are a republic'. The people of the Commonwealth of Australia at referendum in 1999 voted against a republic but wished to retain the present system of Government with a clear separation of powers under common law and for the Commonwealth of Australia to remain exactly the same with a combined Federation of States as was created in 1901.

Queensland is not a republic and if the system we have at present is the type of republic as envisaged by our leaders then, as shown in the 78B notice page 5 paragraph 15 which is attached -"An estate of inheritance in land or equity can not and must not be subject to statute law. That in effect extinguishes or regulates that same inheritance, completely, ignoring section 52 of the *Commonwealth of Australia Constitution Act*, for to do so anarchy and ruin will prevail.
For as soon as the financial institutions withdraw because of lack of tenure in land held of common law, poverty will soon follow."

The only tenure that any financial institutions hold in land in Queensland today, even though they may believe they hold an estate in fee simple, is in fact held by the corporation of the State, the Brigalow Corporation and is now the full property of the State. The lending institutions now only hold a statutory title and an interest only in the land by virtue of the *Statutory Instruments Act 1992* under which the rules of the Supreme and District Courts are found under section 12 of that Act.
Reference - *Glasgow v Hall, 2007 HCA Trans 557* (3 October 2007) and *Wilson v Raddatz, 2007 HCA Trans 558* (3 October 2007). Both Mr Glasgow and Mr Wilson were charged, convicted and fined in Queensland and that decision upheld by all Courts in Queensland including the Court of Appeal Queensland. Subsequently those matters were placed before the High Court of Australia hopefully for resolution. The international instrument, cited in those decisions, was the *Treaty No. (1193)ATS32* signed at Rio de Janeiro 5 June 1992, Section 10 of Agenda 21 under which the *Natural Heritage Trust of Australia Act 1997*(C'wth) was framed. This Act allows farmers to use their land in an ecologically sustainable way for the benefit of the people and the economy of Australia and the international economy. Under this Act $1.35 billion dollars from the partial sale of Telstra were placed in the Natural Heritage Trust of Australia Account. The farmers using their land under the provisions of this Act could receive funding for the loss of the use of their land if the cessation of their activities was of the public benefit.

Mr Gregory Wilson a builder and a grazier and his company Wilsons' Development Pty Ltd and Mr and Mrs Keith Glasgow, long term farmers and graziers both hold their land in Deeds of Grant in fee simple and their land was registered under the *Real Property Act 1861*. The land is commonly known as freehold title under the Torrens System.

The High Court of Australia have now clearly rejected, by their decision, those common law contracts and every other common contract in the Commonwealth of Australia. Those contracts are now void and are totally subject to the 'stewardship' of the Commonwealth, the State, the local government councils and the public officials employed by those entities.

No person or corporation who is an owner of any property, real or personal, in the Commonwealth of Australia has any right to the use of that property as all contracts at common law have been rendered void. Their rights to their property are all subject to the regulations imposed by the Federal, State and local Governments in the Commonwealth of Australia.

It is therefore clear that the following Act, based on an international treaty, has no relevance or validity in this Commonwealth of Australia today.

> ***Human Rights and Equal Opportunity Commission Act 1986***
> **Act No. 125 of 1986 as amended**
>
> **Schedule 2 - International Covenant on Civil and Political Rights**
> Section 3
> *The States Parties to the present Covenant*
> *Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
>
> *Article 17*
>
> 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
>
> 2. Everyone has the right to the protection of the law against such interference or attacks.

As these matters have been upheld by the High Court of Australia, it is clear that the value of land held in a Deed of Grant in fee simple, which was an estate of inheritance at common law and recognized world wide as security for lending institutions and contracts for individuals and corporations, as the asset base and security for loans etc. has been greatly reduced for the registered owners of that real property.

To quote the words of Judge McPherson JJA in *Bone v Mothershaw* [2002] QCA120:- "He (Mr Bone) retains unimpaired, for what it is worth, his estate in fee simple absolute in the land. He has been stripped of virtually all the powers which make ownership of land of any practical utility or value".

The statement abovementioned is of particular relevance to Mr and Mrs Glasgow and Mr Wilson. Mr Keith Glasgow was prosecuted by an officer of the State for cutting native vegetation to feed his starving livestock in this time of sever drought. It is of interest to note that the Warrant to Enter executed by the public officials of this State was not for Mr Glasgow's property 'Bayfield' but was for a property approximately 27 kilometres away known as 'Valentine Plains'. This fact was presented to all the Courts to which this matter was taken and ignored.

Mr Gregory Wilson was prosecuted by an officer of the State for repairing severe erosion on a watercourse on his property by filling the degraded areas in with dead and dying black wattle and other vegetation and weeds which were of no value to the livestock as a food source. Mr Wilson then covered the vegetation with soil and replanted the areas with pasture grass.

The reason that I have forwarded this document to Your Excellency is that the Federal Government is to call a Federal Election. Queensland cannot be included in those writs. As a result of *Bone v Mothershaw* being upheld by the Supreme Court of Appeal in Queensland where it upheld that Queensland is an independent sovereign State and the Queensland *Acts Interpretation Act 1954*(Qld) defines the Constitution as the Commonwealth Constitution, not the *Commonwealth of Australia Constitution Act* in its entirety, the people of Queensland are 'an individual and a corporation' and have no sovereignty in any Federal Election.

As stated, I have attached the 78B Notice for Mrs Catherine Burns for your information. I have, by attaching that document placed it there for your perusal to assist you in clarifying the problems we have in Queensland at this time and which I believe must be rectified immediately. It has not been forwarded to you to in any way pre-empt the High Court of Australia or to show them any disrespect at all.

The following information comes from a comparison document - 'A Difference Report by www.SoftInterface.com' for the *Constitution Act 1867*. This shows the amendments, deletions and alterations to the Constitution that have been carried out to support the changes to the Constitution without referendum. This shows that under the original *Constitution Act 1867* and the modified *Constitution Act 1867*, Reprint No. 2A there have been 114 changes,131 additions and 116 deletions found. The removal of the Governor under section 14 of that Act is only one of the amendments to that Constitution without any referendum of the people by virtue of section 53 of the *Constitution Act 1867*.

It shows in this comparison document that subject to section 6 and 7 of the Constitution Act 1867 the corporation clearly has the right to hold any estate, which in this case is an estate of common law fee simple, to be acquired from any other person or in or on any Crown land in Queensland to be contracted or agreed with a Suncorp Insurance Commissioner and finance. It is therefore clear that the Government corporation of the State, to which a person as an individual and a corporation is tied, holds our property, in this case our common law estate in fee simple. All that any person holding an estate in fee simple at common law in Queensland can only hold the certificate of title which is subject to a statutory instrument.

As the corporation of Queensland, when it was formed, had no assets, it had to acquire assets if they wished to borrow. Under the *Queensland Government (Land Holding) Amendment Act 1992*, they immediately took all the Crown land and estates in fee simple registered under the *Property Law Act 1974* as equity for the corporation without compensation to the registered owners of the property whether they live in Queensland or anywhere else and converted that property for their own use, contrary to Chapter 7 of the *Criminal Code Act 1995*(C'wth) - The proper administration of Government.

The owners of that property taken by the corporation can only hope that the corporation has not used our real property as an asset to borrow funds for the corporation for whatever purpose. If the independent State corporation fails or borrowing is too extensive, it will again be the sovereign people who will bear the financial consequences.

Your Excellency, I am not a legally qualified person, nor do I have a degree of any sort. I am merely a subject of her Majesty Queen Elizabeth II, and a citizen of our great nation.

I therefore request of Your Excellency to do whatever is in your executive power to return Queensland to a democratically elected common law system of Government and with all due respect, this will have to be done prior to any writs issued for a Federal Election which is now pending. No one can vote in a Federal Election as all we are voting for is a person whose authority and standing as a Federal Member has no relevance in the independent sovereign State of Queensland.

I forward this correspondence for your attention and action. If you have any queries in regard to this document I can be contacted at the above address.

Yours sincerely,

(David J. Walter)
11th October 2007

Att: 78B Notice filed in High Court of Australia

cc: The Hon John Howard MP
Prime Minister of Australia

The Hon. Phillip Ruddock MP,
Attorney General of Australia

Mr Kevin Rudd MP - Leader of the Opposition

The President of the Senate of Australia

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'Where there is no vision the people perish,
but he that keepeth the law, happy is he.' (Proverbs Ch.29 v.18)

INFORMATION PAPER

MATTER PENDING - TO BE DETERMINED BY THE HIGH COURT OF AUSTRALIA - CATHERINE ELIZABETH BURNS:-

Mrs Burns, is 73 years of age and a widow. She has been refused to be allowed to selectively clear her private registered land for sale. This land is situated opposite the Hinchinbrook Resort in Cardwell. Mrs Burns purchased this 26 acres in 1968 at public auction, paid for the land and received a Deed of Grant in fee simple. The requirement was that the land had to be cleared prior to the land being registered under the provisions of the *Real Property Act 1861*.this was done in 1970.

As time passed, the situation changed, and though Mr and Mrs Burns had planned to build a small tourism venture on the land so they would not be a burden on the Government, Mr Burns, a Police Officer in the Queensland Police Service, passed away prior to reaching retirement age. Mrs Burns has never remarried.

Mrs Burns, due to the financial difficulty of finding the money to pay the rates which are now almost $2,500,00 per annum when she only receives an aged pension, decided to selectively clear the land to sell. Where the property is situated, the block adjacent to the Burns property which is the same size as hers, has been subdivided into 13 lots and the majority of the land in the immediate area has also been subdivided into small rural residential lots and have homes built on them.

The Decision Notice placed over her land by a public official, Luke Croton of Department of Natural Resources and Mines, Townsville, and upheld by the courts of Queensland, including the Supreme Court of Appeal citing *Bone v Mothershaw,* has effectively reduced the value of Mrs Burns' land to the same status of Mr Bone 'he(she) continues to enjoy the privilege of paying the rates that the Council levies on his (her) land' and she is allowed to walk on it.

This matter has been ongoing in the Courts of Queensland since 2003 and has now been placed before the High Court of Australia in an application for special leave to appeal.

The decision notice issued by Luke Croton under section 3.5.15 of the *Integrated Planning Act 1997*(Qld) was not in relation to clearing native vegetation on private land, but was under the Decision Stage, section 3.5.1 which is a referral to a building agency (of the State) for an application if required and the decision stage for the application starts on the day after all other stages applying to the application have ended. The decision notice itself is, in fact and law, void. Mrs Burns only requires an application under the *Integrated Planning Act 1997*(Qld) for the reconfiguration of a lot or a material change of use. The clearing of the native vegetation is a component part of a development. She clearly did not require any permit.

There are still several matters requiring resolution by the High Court of Australia. All of these matters have been dismissed from the Courts of Queensland based on the matter of *Bone v Mothershaw* in that, as stated in the Courts of Queensland - Queensland is an independent sovereign State.

Mrs Burns' matter will clearly show you the problems which have occurred in this State with regard to the rights to your private freehold land.

The Decision of the High Court of Australia for Keith Glasgow and Gregory Wilson has removed the ownership of land and property as we knew it in this county and has not upheld our rights as sovereign people under the *Commonwealth of Australia Constitution Act*.

The Second Reading Speech of the former Premier the Honourable Peter Beattie when he created the new Government of Queensland, placed inside the Parliament himself as Premier (President), the Ministers, the Governor as a parliamentary secretary, the judges and justices of the Supreme and District Courts, the Supreme and District Court, the Local Government Councils. The public officials are not public officials of "the Crown" but public officials of "the State" of Queensland. As all real property has now been taken back by the State and held under the State corporation the Brigalow Corporation, the public officials are in fact now working for the owners of the land, the State Government of Queensland. When the State of Queensland removed the land and placed it under the ownership of the State, they did so without compensation or without a referendum.

The matter of *Bone v Mothershaw* was upheld by the Queensland Supreme Court of Appeal , consisting of three justices, and as stated in that decision by Judge McPherson JJA:-

> "He (Mr Bone) retains unimpaired, for what it is worth, his estate in fee simple absolute in the land. He has been stripped of virtually all the powers which make ownership of land of any practical utility or value"

KEITH RONALD GLASGOW & GREGORY WILSON - BOTH THESE MATTERS WERE SENT TO THE HIGH COURT OF AUSTRALIA ON APPLICATION FOR SPECIAL LEAVE TO APPEAL. BOTH APPLICATIONS WERE DISMISSED.

DECISION OF THE HIGH COURT OF AUSTRALIA 3RD OCTOBER 2007

The High Court of Australia stated in their decisions that they saw no reason to doubt the correctness of the decisions upheld by the Court of Appeal. Part of those decisions were to use *Bone v Mothershaw* [2002] QCA 120.

Judge McPherson JJA of the Queensland Court of Appeal in *Bone v Mothershaw* [2002] QCA120 stated:-

> "For this severe limitation on his rights as owner, he has received and will receive no compensation, although he continues to enjoy the privilege of paying the rates that the Council levies on his land. The action taken by the Council was no doubt undertaken in the public interest, as it claims, of the citizens of Brisbane; but it is not they who will bear the financial disadvantages of the action taken in their interest.
>
> [24] The question is whether our legal system permits such prohibitory action to be taken.
>
> The Council has not taken any interest of Mr Bone's, so as to attract the operation of the *Acquisition of Land Act 1967* or otherwise. He retains unimpaired, for what it is worth, his estate in fee simple absolute in the land. He has been stripped of virtually all the powers which make ownership of land of any practical utility or value. There is, as is attested by an affidavit from the valuer provided at the hearing, no doubt that the value of the land has been greatly reduced. But the law provides no remedy for this action or its consequences when it is the result of legislation validly passed under law-making authority that by its terms or nature authorises or permits such an outcome.

Therefore what the High Court of Australia upheld was that the Queensland Government can now make any laws they like over any property, that is private registered land, native title land, and personal property. This means that neither Mr Glasgow, Mr Wilson, nor any other person in Queensland have any protection under the *Commonwealth of Australia Constitution Act*. As explained in my letter to the Governor General of Australia, we have no property right in Queensland and we have no rights as individual citizens, regardless of race, colour or creed. Our property is now the property of the Queensland Government corporation and protected by the Queensland Government corporation - you are now, as defined in the *Acts Interpretation Act 1954* - a 'person' is an individual and a corporation.

This situation will remain unless the majority of people in Australia are willing or interested enough to make it clear to all people and groups including those people that created this situation and allowed it to continue that it was not in consultation with or accordance with the wishes of the sovereign people of Australia. Those who should be made aware of this situation include the financial institutions, community groups and the politicians, both Federal, State and local government and of all political parties. We at no time voted for this situation in a referendum of the people and we certainly did not vote to lose the estate of inheritance at common law in fee simple on our land.

All contracts are common law contracts. The common law contracts of Mr Glasgow and Mr Wilson have been breached by the decision of the courts of Queensland and the High Court of Australia. As stated in the Court of Appeal decision *Bone v Mothershaw*

"He has been stripped of virtually all the powers which make ownership of land of any practical utility or value". This has come about by the land being removed into the Brigalow Corporation of the State Government of Queensland and public officials being given 'stewardship' over our land.

This therefore, must give people who own their own home to live in, those people in the primary industries who make their living from the land, or even people planning to purchase real property, serious cause for concern if they have, as stated by Judge McPherson in *Bone v Mothershaw* "been stripped of virtually all the powers which make ownership of land of any practical utility or value".

The High Court went on to say that the Applicant's reliance on international 'instruments' is misconceived. Therefore all international agreements signed by Australia, eg. Civil and Political Rights, the Convention on Biological Diversity, etc. etc. appear to have no relevance in Queensland.

Keith Glasgow appealed to the Court of Appeal, Queensland to dismiss the decision of the District Court Judge Nace, to uphold the Appeal coming from the Magistrates Court.

Judge Nace upheld the penalty coming from the *Integrated Planning Act 1997* for the starting of an assessable development without a development permit.

Gregory Wilson appealed to the Court of Appeal, Queensland to dismiss the decision of the District Court Judge Brabazon, which upheld the Appeal from the Magistrates Court decision.

In both dismissals of the Appeals in the Queensland Court of Appeal - no extension of time was granted and *Bone v Mothershaw* was cited in both decisions of the Court of Appeal.

The charges - criminal - related to the clearing of native vegetation on Keith Glasgow's land. The Court of Appeal (Queensland) - the highest court in Queensland, rejected the applicant's argument that the Act did not apply to land held in fee simple and that land was not comprehended by the term 'freehold land' in the Act.

Mr Keith Glasgow was prosecuted by an officer of the State for cutting native vegetation to feed his starving livestock in this time of severe drought. It is of interest to note that the Warrant to Enter executed by the public officials of this State was not for Mr Glasgow's property 'Bayfield' but was for a property approximately 17 kilometres away known as 'Valentine Plains'. This fact was presented to all the Courts to which this matter was taken and ignored. In the District Court the Judge stated that Mr and Mrs Glasgow had purchased 'Valentine Plains' in the 1980's. The Glasgow's do not own that property.

Mr Gregory Wilson was prosecuted by an officer of the State for repairing severe erosion on a watercourse on his property by filling the degraded areas in with dead and dying black wattle and other vegetation and weeds which were of no value to the livestock as a food source. Mr Wilson then covered the vegetation with soil and replanted the areas with pasture grass. The Warrant executed over Mr Wilson was also void as it was sworn out under the *Land Act 1994*.
Tree clearing under that Act pertains to State owned land only.

For Mr Glasgow and Mr Wilson to be prosecuted for these actions, which to any farmer is regarded as part of responsible farm management and that prosecution upheld throughout every court in the land, defies logic.

The Commonwealth Act, the *Natural Heritage Trust of Australia Act 1997* is part of the implementation requirements of the international treaty - the Convention on Biological Diversity signed in Rio de Janeiro in June 1992. Funds of $1.35 billion from the partial sale of Telstra were the main source of funding for the Natural Heritage Trust of Australia Account.

The main object of this 'Account is to conserve, repair and replenish Australia's natural capital infrastructure'. In the Preamble of this Act it shows that 'government leadership be demonstrated, and that the Australian community be involved'…It goes on to say that 'Australia's rural community should have a key role in the ecologically sustainable management of Australia's natural resources.

s8 Purposes of the Account

The purposes of the Account are as follows:
(a) the National Vegetation Initiative;
(b) the Murray-Darling 2001 project;
(c) the National Land and Water Resources Audit;
(d) the National Reserve System;
(e) ……..
(f) ……..
(g) supporting sustainable agriculture;(as defined by s16)
(h) natural resources management (as defined by s 17);
……

The Act goes on to define the following:-

s10 Primary objective of the *National Vegetation Initiative*

For the purposes of this Act, the primary objective of the National Vegetation Initiative is to reverse the long-term decline in the extent and quality of Australia's native vegetation cover by:
(a) conserving remnant native vegetation; and
(b) conserving Australia's biodiversity; and
(c) restoring, by means of revegetation, the environmental values and productive capacity of Australia's degraded land and water.

s16 Meaning of *sustainable agriculture*

(1) For the purposes of this Act, "sustainable agriculture means the use of agricultural practices and systems that maintain or improve the following:-
(a) the economic viability of agricultural production;
(b) the social viability and well-being of rural communities;
(c) ……..

s17 Meaning of *natural resources management*

For the purposes of this Act, ***natural resources management*** means:

(a) any activity relating to the management of the use, development or conservation of one or more of the following natural resources:
(i) soil;
(ii) water;
(iii) vegetation; or

s20 Grant of financial assistance to a person, or a body, other than a State

(1) This section applies if an amount is to be debited from the Account for the purpose of making a grant of financial assistance to a person, or a body, other than a State.

s21 Principles of ecologically sustainable development

(3) For the purposes of this section, the principles of ***ecologically sustainable development*** consist of:
(a) the following core objectives:
(i) to enhance individual and community well-being and welfare by following a path of economic development that safeguards the welfare of future generations;
(b) the following guiding principles:
(i) decision-making processes should effectively integrate both long-term and short- term economic, environmental, social and equity considerations;
(ii) ……
(iv) the need to develop a strong, growing and diversified economy that can enhance the capacity for environmental protection should be recognized;
(vi) cost-effective and flexible measures should be adopted;
(vii) decisions and actions should provide for broad community involvement on issues which affect the community.

If, as stated in the Preamble to this Commonwealth Act, the rural community of Australia should play a key role, and the definitions in the Act appear to support the actions of Mr Glasgow in using vegetation to feed his starving stock, (which incidentally Mr Glasgow replaced immediately), and the actions of Mr Wilson in repairing severe erosion, use of vegetation and soil for the conservation of soil and water it is difficult to understand how they could be prosecuted, fined and had costs imposed on them, all of which was supported by all Australian Courts.

No sensible person would support the destruction of vegetation or any environmental damage. Farmers clear parts of their land to increase the productivity of their land and improve it to feed this nation and support the economy - (refer NHTAA s16 - sustainable agriculture).

The *Natural Heritage Trust of Australia Act 1997*(C'wth) and all agreement stemming from that Act were to be administered with consultation and community participation.

Any person who wantonly damages our environment for their own personal gain would not be supported by the majority of people in this country.

Unfortunately it appears that these matters must now be taken to England or wherever we have to go including the Hague, to have the common law and our property rights returned to us if nothing we do as a people will cause our governments to reconsider their actions in creating this situation for whatever reason.

If there is no resolution from any of these quarters, then we have lost all equity or value in our land and our common law rights to the ownership of our land.

The majority of persons who take up a parcel of land with a long-term view of making their living off the land and providing food for the people of Australia and overseas and supporting the economy by their toil, do so with the view that they will protect and manage the land productively and viably. Many farmers are on land which has been in their family for generations.

It is a given, and I can only speak for Australia, that people on the land suffer severe hardship and work in creating a sustainable property. Originally farmers in this country had to face and contend with, the unrelenting pressures of nature - drought, fire, flood and wildlife damaging their crops and stock.

Then came the conservationists - with many extremely valuable plans and ideas for protecting the land, native wildlife and vegetation and some plans and ideas based on very 'creative' scientific fact but they, having the backing of the governments - nervous of the next election, created further difficulties for the farmers.

Next came the governments and their public officials with ever more regulations, often to promote the plans and ideas of the conservationists but also with the ever-increasing stream of paperwork to be completed by the farmer, usually at the end of a very long and hard day on the land.

Now, with the administration of the laws and the regulatory approach favoured by most governments, the idea that the bureaucracy has that 'stewardship' of the land is the best way to go, the rural community primarily, but the urban dweller also, have now to face prosecution by public officials and no support from the Courts when prosecuted but face conviction, fines and costs. The definition of 'stewardship' is 'administering the property, house, finances, owned by another'.

People, who have now 'been stripped of virtually all the powers which make ownership of land of any practical utility or value', and the loss of the common law, supported by the recent decision of the High Court of Australia in the applications for special leave to appeal of Mr Glasgow and Mr Wilson, now have another more frightening and very real problem to contend with.

No one has voted in a referendum of the sovereign people in Australia to lose our common law rights to the use and ownership of our land. If the ownership of land now has no 'practical utility or value' should the rural community continue try to make a living off the land or to constantly work to increase its productivity and viability?

Those urban dwellers who own a home and land and often have a large mortgage on that real property have the same dilemma. What will be the reaction of the financial institutions to this situation?

Do the governments of this Commonwealth of Australia still want the farming sector or the ownership of land anywhere in Australia?

Does the Australian economy still rely on primary production as part of its economy?

If the answers to the above two questions is 'no' then surely there should have been at least some consultation with the community and the sovereign people. Ignorance is definitely not bliss in this instance.

ATTENTION - people living in New South Wales.

The matter of *Bone v Mothershaw* and *Burns v the State of Queensland and Croton* have already been used by a court of New South Wales in a matter between the State of New South Wales and Peter Spencer to prevent him from using his freehold land in fee simple to its full potential and it appears that the Governor of New South Wales was removed in 1987, therefore New South Wales is in the same situation as Queensland and for the same reasons.

It is believed these actions were carried out without consultation with the people or a referendum. Surely it would be time to have these matters clarified to the people by our Governments prior to the next Federal Election.

In 1999 the majority vote in Australia was not to have a republic but to retain the system of the Crown, the legislature and the Courts.

Grounds of Appeal to High Court of Australia.

These were part of the grounds of appeal presented to the Court of Appeal Queensland and also forwarded to the High Court of Australia.

I request that the Court of Appeal allow natural justice to prevail for me in this matter as there is no offence for the clearing of native vegetation on private "freehold land" in either the *Vegetation Management Act 1999* or *Integrated Planning Act 1997*.

(i) I, Keith Ronald Glasgow, the Applicant committed no offence against any law of the Commonwealth, State, Local Government, or at common law. The vegetation clearing offence for which I have been prosecuted, was commenced by the Respondent, Peter Thomas Hall employed as an authorised officer under the *Vegetation Management Act 1999* by the Department of Natural Resources.

(ii) The *Integrated Planning Act 1997*, section 4.3.18(3) shows:- 'However, proceedings may only be brought **by the assessing authority for an offence under** (a) **section 4.3.1**, 4.3.2 or 4.3.3 **about the Standard Building Regulation**; '

(iii) The offence for which I have been charged and convicted and to which I pleaded not guilty could only have been brought before a Magistrates Court by the assessing authority about a Standard Building Regulation.

I have been fined and had costs awarded against me to the total value of$27,559.25 and I request of the Court of Appeal that all convictions, fines and costs be quashed.

I have recently received a notice from SPER regarding the outstanding fines and costs awarded against me. That Department has advised that I am required to pay the full fines and costs to the total of $27,559.25 or carry out community service as ordered until that amount has been recovered through my labour to the Crown.

i) Community service, is in fact, a deprivation of my liberty by the order of the Court. Therefore the hours that I will be required to serve will be in actual fact, imprisonment for the benefit of the State.

ii) My drivers licence will be suspended and a Warrant issued to take possession of our private property to the value of $27,559.25.

iii) I have been advised by the Clerk of the Court at Biloela that a Warrant has already been issued to the value of that property to cover the fines and costs imposed by the Court in this criminal proceedings.

I, Keith Ronald Glasgow, the Applicant, apply for leave to appeal from the whole of the judgment of the Queensland Court of Appeal on Appeal No. 273 of 2006, date of judgment 2nd February 2007. It is submitted that the Court of Appeal erred at law for not granting the extension of time for leave to appeal by misapplying the principles of law in the case of *Bone v Mothershaw* [2002]QCA 120.

The Charge was that I made an assessable development without a permit on Freehold land contrary to Section 4.3.1 (1) of the *Integrated Planning Act 1997*. No development took place at any time except the standard property management practice of utilising native vegetation in a drought to feed starving stock. Section 16.2 of the *National Heritage Trust of Australia Act 1997* establishes that actions of property management are sustainable property management for the purposes of the Act and do not fall under Queensland vegetation management laws.

The Commonwealth of Australia and the State of Queensland have not passed any laws to prevent us from the use of our freehold land for the purposes of sustainable agriculture or to remove the common law right to allow us to continue in our business of sustainable agriculture.

The evidence collected and presented to the Court below as a result of a Warrant sworn before Magistrate T.G.Bradshaw in Rockhampton on 13th January 2003 executed over our property on 15th January 2003 by the Respondent Peter Thomas Hall in the company of Peter Webley is tainted because the Warrant is void *ab initio*. Evidence given before the Court by the Respondent was as result of satellite information that a ‘clearing offence’ had occurred.

This information was taken from SLATS imagery for a property approximately 17 kilometres distant from our property, known as 'Valentine Plains" which showed the possibility of a clearing offence. Misidentification of the property was carried through onto the Warrant which was issued for the property named as ‘Valentine Plains’. Our property is known as 'Bayfield' and is not the property named in the Warrant. The said Warrant taking its information from the satellite imagery identifies 'a rural property with buildings thereon'. We have no buildings on the property over which the warrant was executed. The persons executing the Warrant could not have failed to notice the difference!

The Respondent and Peter Webley both trespassed on our private property by the alleged execution of the Warrant of Entry under section 33 of the *Vegetation Management Act 1999*.

Addresses on warrants are matters of strict liability and there is no capacity to transfer Warrants from one named property to another. All evidence obtained from the execution of the Warrant of Entry is tainted and cannot be used in any prosecution against us for our use of the land and natural resources found on that land in our occupation as farmers and graziers. Our lawful use of our land is supported in the *Natural Heritage Trust of Australia Act 1997*, sections 16; 17; 21 and 54.

Reference is made to *George v Rockett* [1990] HCA 26; (1990) 170 CLR 104 F.C. 90/026 (20 June 1990).

The Summons does not show the address of the property where the offence occurred. It states that "between 19 September 2000 and 7 August 2001 at Biloela in the Magistrates Court District of Biloela in the said State one KEITH RONALD GLASGOW did start an assessable development namely clearing of remnant vegetation on freehold land without a permit for the development". - *Integrated Planning Act 1997* section 4.3.1(1). The land has never been identified as being covered with ‘remnant vegetation’. This is an invention of the Respondent. In fact the alleged offence occurred between September, 2000 and September, 2001 but the Summons was not issued until 26 August, 2003 which was outside the statutory time limit set at 1 year as laid down in section 68 of the Vegetation Management Act

Under Section 3.12.(1) all development is exempt from Development Permits except matters dealt with under Schedules 8 & 9 of the Integrated Planning act. Therefore, I did not require a development application or Permit. The Section under which the charge was laid relates to a clearing provision under operational work which is part of a clearing component of a development.

Reference Queensland Court of Appeal Form 29 - Application for extension of time to appeal page 11 paragraph 41, numbers 10 - 20, included in Outline of Argument dated 24th January 2007 prepared by David J. Walter.

Officers appointed under the *Integrated Planning Act 1997* and officers appointed under the *Vegetation Management Act 1999* are appointed by 2 different Ministers and their appointments are not interchangeable under the law. The Respondent is not an officer appointed under the Integrated Planning Act 1997 and has no delegated power under the said Act. Reference is made to the cases of : Minister of State for Immigration and Ethnic Affairs v. Ah Hin Teoh F.C. No. 95/013 [1995] HCA 20; (1995) 128 ALR 353, (1995) 69 ALJR 423, (1995) EOC 92-696 (extract), (1995) 183 CLR 273

International Law - Immigration (7 April 1995) Refer to Outline of Argument prepared by David J. Walter on 24th January 2007 and presented to the Court of Appeal, Queensland.

My wife, Lesley Kay Glasgow and I are tenants in common of the registered land. The land is held in an estate in fee simple under the provisions of section 47 of the *Land Title Act 1994*(Qld).

Reference:- Particulars of the property:	Current Title Search:
Estate and Land	Lot 52 Registered Plan 912769
Estate in Fee Simple	County of Pelham Parish of Kroombit
	Local Government: Banana Shire

The Deed of Grant was sold under the *Land Act 1962*(Qld) No. 42 of 62.
Section 5 shows: "Indigenous timber and all other materials, the natural produce of the said land shall be and are hereby discharged of such reservations".

Despite the statements of the Respondent in court and at other times the lawful rights to the use of my land for sustainable agricultural purposes are upheld under the *Land Act 1994* section 508; the *Land Title Act 1994* section 200 and 201 and the *Property Law Act 1974* sections 19; 20; 21,29, section 57A and under Schedule 6, Dictionary definition of "State land". The actions of the Respondent were in knowing disregard of the State's property laws and attempted to extinguish my rights by Executive Direction.

The Parliament of the State of Queensland in passing legislation, has ensured that the rights to the use of my freehold land, held in a Deed of Grant under the provisions of the *Land Title Act 1994* section 47, have been upheld under the relevant Acts as described.

Refer to Outline of Argument prepared by David J. Walter on 24th January 2007 and presented to the Court of Appeal, Queensland.

The Court of Appeal failed to take consideration of the bilateral agreements, strategies and the multilateral treaty which are the basis of the environmental laws in Australia today and which are set out in chronological order below.

The Intergovernmental Agreement on the Environment was a prelude to the Commonwealth of Australia entering into the multilateral treaty known as the Convention on Biological Diversity signed in Rio de Janeiro.

The Intergovernmental Agreement on the Environment was signed in May 1992 between the Commonwealth, the States, the Chief Ministers of all Territories and the Local Government Association of Australia.

As required under the provisions of the Agreement, the Commonwealth and the State of Queensland (and other States and Territories) framed legislation to implement this Agreement. For Queensland that Act is the *National Environment Protection Council (Queensland) Act 1994* and for the Commonwealth the *National Environment Protection Council Act 1994* (C'wth).

Reference: Intergovernmental Agreement on the Environment
SCHEDULE 2 - RESOURCE ASSESSMENT, LAND USE DECISIONS AND APPROVAL PROCESSES

5. 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**.

The Intergovernmental Agreement on the Environment is included in the above Acts of the Commonwealth and the State of Queensland. Section 5 of schedule 2 is, under the Acts, a statutory law that ensures that the land and the natural resources are a matter for the owners of the land.

The international Treaty known as the Convention on Biological Diversity which includes Agenda 21, was signed by the Commonwealth Government on behalf of all people of Australia in Rio De Janeiro in June 1992. This is shown in the Australian Treaty Series number 32 of 1993. This Treaty was ratified by Australia on 18th June 1993.

Reference:-
Article 10 - Sustainable use of components of biological diversity
(e) Encourage cooperation between its governmental authorities and its private sector in development methods for sustainable use of biological resources.

At the signing of this multilateral treaty, the Commonwealth of Australia along with leaders of many other nations of the world, ensured that the private sector would not lose their land or the natural resources on that land. The Treaty is to be upheld and encouragement and cooperation should exist between Government authorities, industry and the private sector which includes landowners and leaseholders of land with consultation and partnership. This partnership should not be implemented by immediate prosecution and a removal of my rights as has happened in the criminal proceedings against myself by the Respondent, Peter Thomas Hall, a public official, defined under the *Criminal Code Act 1995*(C'wth) Chapter 7 - The proper administration of government section 130.1 refers to the definition of property which includes my property as a person in accordance with paragraph 22(1)(a) of the *Acts Interpretation Act 1901*(C'wth). the Respondent Peter Thomas Hall is a Commonwealth 'public official' as described in the Schedule, Criminal Code, Dictionary. His actions are in direct contradiction of the spirit of the treaty signed by the Commonwealth of Australia and members of the United Nations.

One of the most important parts of this Treaty is known as 'Agenda 21: a program for future action'. One of the actions to deal with is "efficient resource use (sustainable use of renewable resources, water, energy, biological diversity, minerals forests and agriculture).

AGENDA 21

Objectives

10.5 The broad objective is to facilitate allocation of land to the uses that provide the greatest sustainable benefits and to promote the transition to a sustainable and integrated management of land resources. In doing so, environmental, social and economic issues should be taken into consideration. Protected areas, private property rights, the rights of indigenous

> people and their communities and other local communities and the economic role of women in agriculture and rural development, among other issues, should be taken into account.

The 'Australian Implementation Requirements' of the Convention on Biological Diversity were three Acts. One of these was the *Natural Heritage Trust of Australia Act 1997* (No. 76 of 1997); *Wildlife Protection (Regulation of Exports and Imports) Amendment Act 1995* (No 121 of 1995) and the *Environment Protection and Biodiversity Conservation Act 1999* (No. 91 of 1999).

The Court of Appeal Queensland failed to uphold the multilateral Treaty and the legislation enacting the Treaty into Australian law passed by the Commonwealth of Australia on behalf of the people of Australia.

Cited: Outline of Argument presented to Court of Appeal 24th January 2007 by D.J. Walter.

In December 1992 the National Strategy for Ecologically Sustainable Development was signed and adopted by the three levels of Government in Australia - Commonwealth, State and Local, at a Heads of Government meeting in December 1992.

At that meeting the Council "noted that the document is intended to play a critical role in setting the scene for the broad changes in direction and approach that governments will take to try to ensure that Australia's future development is ecologically sustainable. The Council agreed that the future development of all relevant policies and programs, particularly those which are national in character, should take place within the framework of the National Strategy for Ecologically Sustainable Development and the Intergovernmental Agreement on the Environment which came into effect in May 1992.

The *Integrated Planning Act* 1997(Qld) was made subject to the following:-

> In the second reading of the Integrated Planning Bill on 30th October 1997 the Hon D.E.McCauley (Callide - Minister for Local Government and Planning stated:
>
> > "The coalition Government has developed the policy setting for the Integrated Planning Bill, taking into account the Intergovernmental Agreement on the Environment and the National Strategy for Ecologically Sustainable Development."......

In the Consolidation of explanatory notes for the *Integrated Planning Act 1997* taken from the Office of the Parliamentary Council Legislation web site it shows at page 82 -

> The owner of a resource must give their consent before development can proceed. This will include the consent of the land owner and may include State approval to use resources over which it has rights under legislation.

The Intergovernmental Agreement on the Environment had been placed as a Schedule to:-
i) *National Environment Protection Council Act 1994 (C'wth)*

ii) *National Environment Protection Council (Queensland) Act 1994.*

The State, as shown on my Deed of Grant, has reservations over my land for minerals and petroleum only. The Land Titles Act has not been amended to repeal or curtail any of the rights assigned to land owners under the legislation. No other Queensland legislation repeals or implies repeal of the above rights.

The *Natural Heritage Trust of Australia Act 1997* (C'wth) binds the State of Queensland and its servants such as the Respondent to the Convention on Biological Diversity (and Agenda 21). Sections 16; 17; 21 and 54 of that Act protect the rights to the use of agricultural land. Section 21 of the Act has a notation that:

> 'The principles of ecologically sustainable development that are set out in this subsection are based on the core objectives and guiding principles that were endorsed by the Council of Australian Governments in December 1992.'

These core objectives and guiding principles are those that were set out in the Intergovernmental Agreement on the Environment and the National Strategy on Ecologically Sustainable Development. The 'core objectives and guiding principles' in both the agreement and the strategy are incorporated into law in the State of Queensland, in this matter the *Vegetation Management Act 1999* and the *Integrated Planning Act 1997*. The Respondent has no legal rights to unilaterally dispose of the Commonwealth legislation and the intergovernmental agreement.

The Australian Government and Queensland signed in November 1997 the Natural Heritage Trust Partnership Agreement. This was the implementation of the *Natural Heritage Trust of Australia Act 1997*(C'th) and the setting up of the Natural Heritage Trust Account. The Commonwealth placed the sum of $1.35 billion dollars in that Account from the partial sale of Telstra to assist in the protection of the environment for the future. The Respondent has no authority to override Section 16 (2) of the above Act.

The Queensland parliament officially accepted the limitations on interference with sustainable farming practice inherent in the Rio Treaty and its associated legislation. In the Second Reading Speech by the Minister the Hon Rod Welford for the Vegetation Management Bill the Minister mentioned the Natural Heritage Trust Partnership Agreement signed in 1997. This Partnership Agreement is binding on the State and the Commonwealth and is subject to the *Natural Heritage Trust of Australia Act 1997*(C'wth) which in turn is subject to the International Treaty. The Strategy as described in section 4.3. of the Partnership Agreement is for the 'broadscale tree clearing policy and local tree clearing guidelines for leasehold and Crown land'.

The *Vegetation Management Act 1999* was framed taking into account the Natural Heritage Trust Partnership Agreement and as a consequence the *Natural Heritage Trust of Australia Act 1997*(C'th) which is bound to the International treaty and therefore our rights under law are protected.

I have applied to the Registrar of the Court of Appeal, Brisbane Queensland for a written judgment from their Honours and they have advised that there

is no written judgment in this proceedings.

Orders sought:-

1: I, the Appellant, Keith Ronald Glasgow, seek the following order from This Honourable Court.

2: That my conviction under *Integrated Planning Act 1997* section 4.3.1(1) for starting an assessable development without a permit be set aside and quashed.

3: The fine imposed against me of $10,000.00 be quashed.

4: The all Costs of Court, Miscellaneous Costs, Professional Costs and further costs imposed at Appeal being in total against me be quashed. That all costs be paid by the Respondent

5: This Honourable Court Set Aside the Warrant of Distress held by the Clerk of the Magistrates Court, at Biloela for the sum of $27,559.25 to seize property to that value from myself, the Applicant, Keith Ronald Glasgow for the fines and costs as set out above.

6: The cost incurred by me in this Appeal be paid to be on an indemnity basis.

7: Any other Order that this Honourable Court may deem fit.

Matter pending in the High Court of Australia - for Catherine Elizabeth Burns.

The facts of the matter of Catherine Elizabeth Burns placed before the High Court of Australia in an application for special leave to appeal for resolution. The law has not been included in this document, nor have the questions asked of the High Court.

a) I, Catherine Elizabeth Burns made the application under duress with a threat of being prosecuted and fined if I did not apply to clear native vegetation from my private registered land under IDAS Chapter 3 of the *Integrated Planning Act 1997*(Qld). I completed, as required, Part A and J of Form 1 Development Application under the IDAS for assessment under the *Vegetation Management Act 1999* on 4th July 2002.

b) I paid the sum of $266 for the application fee to the Department of Natural Resources, Atherton Branch. Receipt Number 2693768 refers.

c) As a result of that application, on 27th August 2002 Mr Luke Croton, A/Manager, Vegetation Management and Use, North Region, Department of Natural Resources issued a Decision Notice refusing my application.

d) The Decision Notice was issued under section 3.5.15 of the *Integrated Planning Act 1997*.

Decision Notice:-

2. Reasons for Refusal

The clearing proposal described by the application does not comply with the State Policy for Vegetation Management on Freehold Land 2000 for the following reasons:-

The application does not meet performance requirement 2 of the code -
Viable networks for wildlife habitat are maintained

1. The Lot is known habitat for the endangered mahogany gliders as well as known general habitat for the endangered cassowary. The Mahogany Glider Recovery Plan 2000 - 2004 has indicated that the greatest threat to this species is lost of habitat."

2. Consideration has also been given to the State Policy for Vegetation Management on Freehold Land (page 9) *Performance requirements and acceptable solutions,* states "In determining whether a performance requirement will be met, the precautionary principle will be applied".

e) The decision notice issued by Luke Croton under section 3.5.15 of the *Integrated Planning Act 1997*(Qld) was not in relation to clearing native vegetation on private land, but was under the Decision Stage, section 3.5.1 which is a referral to a building agency (of the State) for an application if required and the decision stage for the application starts on the day after all other stages applying to the application have ended. The decision notice itself is in fact and law, void. I only require an application under the *Integrated Planning Act 1997*(Qld) for the reconfiguration of a lot or a material change of use. The clearing of the native vegetation is a component part of a development. I clearly did not require any permit.

f) The Decision Notice placed over my private registered land, refusing me the right to clear my land for resale has been upheld by the following Courts of Queensland.

i) Planning and Environment Court Cairns P & E Court No 62 of 2004
ii) Supreme Court Cairns - *Burns v State of Queensland & Croton* QSC 434
iii) Appeal Court Brisbane - *Burns v State of Queensland & Croton* QCA 235

3. The common law has been repealed from the *Supreme Court Act 1995* (Qld), Reprint No 2, reprinted as in force 2nd March 2001, © State of Queensland 2001, by the omission of:-Part 9 - Div Hdg 4—*Common law and jurisdiction*; Div Hdg 5—*Equitable jurisdiction*; Div Hdg 6—*Criminal jurisdiction*; s199—*Laws of England to be applied in the administration of justice*; s200—*Common law and general jurisdiction of the court-jurisdiction at common law*; s201—*Equitable jurisdiction*; s202—*Criminal jurisdiction*.

4. The *Constitution of Queensland 2001*(Qld) Chapter 4 - Courts - section 58 - *Supreme Court's superior jurisdiction*. The Supreme Courts superior jurisdiction is now of the State.

5. It is quite clear that before it was demanded that I make application for a development approval under the IDAS and pay the fee of $266.00, that the constitutional changes had been made in

Queensland, without referendum and that people would only have those changes broadly explained to them. I now no longer have the protection of Her Majesty Queen Elizabeth II, the Sovereign of Australia and Her common law contract in land and equity is now worthless, and the only equity in the land is held by the State corporation.

6. Reference *Queensland Government (Land Holding) Act 1992* © The State of Queensland 1992; *Lands Legislation Amendment Act 1992* -Act 64 of 1992 © The State of Queensland 1992 - reference Schedule 1 - *Aboriginal Land Act 1991; Land Act 1962; Real Property Act 1861; Real Property Act 1877; Real Property Act Amendment Act 1952; Real Property Acts Amendment Act 1956, Torres Strait Islander Land Act 1991*

7. My private land, Torres Strait Islander land and native title land is held in the Brigalow Corporation and held under the *Land Title Act 1994* © State of Queensland 1994 with a statutory title. To allow the State owned corporation to form, my Deed of Grant was interfered with under the *Reprints Act 1992* on the 28th January 1998 with the deletion of the 2nd paragraph of section 40 (1) from the *Constitution Act 1867* in reprint No 2.

8. I refer to the *Acts Interpretation Act 1954*(Qld) © State of Queensland 2006 Reprint No. 14, Reprinted as in force 28th August 2006.

> s 36 - Meaning of commonly used words and expressions -
> In an Act -
>
> ***'property'*** means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action.
>
> ***'land'*** includes messuages, tenements and hereditaments, corporeal or incorporeal, of any tenure or description, and whatever may be the interest in the land
> ***'Aborigine'*** means a person of the Aboriginal race of Australia
>
> ***'individual'*** means a natural person
>
> ***'person'*** includes an individual and a corporation
>
> ***'GOC* (or *government owned corporation)'*** has the same meaning as in the *Government Owned Corporations Act 1993.*
>
> ***'Commonwealth Constitution'*** means the Constitution of the Commonwealth

9. I refer to the definition of the word 'Aborigine' in section 36 of the *Acts Interpretation Act 1954*(Qld). Aboriginal people hold their land under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* as a traditional group of Aboriginal people holding the native title and Torres Strait Islander land. By the changing of the definition from Aboriginal people to 'a person of the Aboriginal race' that means that a group of traditional owners or a group of aboriginal people no longer hold the title under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*

as they are now defined, as I am, as a 'person' and in the abovementioned definition a person includes an individual and a corporation.

10. The Commonwealth Constitution is the Constitution commencing at section 9 of the *Commonwealth of Australia Constitution Act* - it shows that it is the Constitution only, not the Act.

11. Under the *Lands Legislation Amendment Act* No. 64 of 1992 © The State of Queensland and further now in the corporation of the State known as the Brigalow Corporation and further by amendment of the *Constitution Act 1867* Reprint 2A which clearly defines that any estate or interest in the land to be acquired from any other person, the definition of land clearly does not include any estate, therefore the only land held has been transferred from the Real Property Acts of 1861; 1877; 1952 and 1956 into the *Land Title Act 1994*(Qld) Reprint 7 ©State of Queensland 2003 and we hold our land in a statutory title only, without any further element of tenure of the Crown and the Courts are inside the Government and subject to the rules of the Court as found in the *Statutory Instruments Act 1992*© The State of Queensland.

12. I refer to the decision of Chief Justice de Jersey on 19th November 2004 - page 2 paragraph 5 *"these contentions are plainly untenable, Mrs Burns certainly has an indefeasible interest as a registered proprietor of an estate in fee simple".* His judgment erred in fact and law by clearly separating the ownership of private land from the Deed of Grant or title through the unrepresentative use of the word *"Proprietor"* and the lack of legal comprehension of the difference between an *Unregistered Executory Interest* as defined at *s6 of the Land Acquisition Act 1989 (C'wth)* in the manner and form of *Statutory Instruments* and a *Registered Interest* as defined in the *Real Property Act 1900 (NSW)* or as the case may be, the *Land Title Act 1994 (Qld).*

13. My private land that I hold, by definition under the *Acts Interpretation Act 1954*(Qld) is an undefined interest in the land only as the common law estate in fee simple which I purchased from the Crown, which is an estate of inheritance at common law and which is now the property of the State and if I may say, I myself am a mere chattel of the State because we, as persons, are included in the State's corporations.

14. Further, Chief Justice de Jersey stated that, *"the burden is on me, not on my land".*

15. The Supreme Court of Appeal declined to forward this matter to the High Court of Australia as I requested. The Government of Queensland has created, without a referendum an independent sovereign State under the *Constitution of Queensland 2001* and the Supreme and District Courts are inside and indefeasible of the Government. There is now no Crown or common law in this State and we, as citizens, no longer have the protection of the Crown or the common law under s80 and s77M of the *Judiciary Act 1903*(C'wth). An estate of inheritance in land or equity can not and must not, be subject to Statute Law that in effect extinguishes or regulates that same inheritance, completely ignoring s52 of the *Commonwealth of Australia Constitution Act,* for to do so, anarchy and ruin will prevail. For as soon as the financial institutions withdraw because of lack of tenure in the land held of common law, poverty will soon follow.

16. I personally have not voted in any referendum to remove the entrenched provisions as described in the *Constitution Act 1867*, section 53 - Certain measures to be supported by referendum, described in Reprint 2, reprinted 27th January 1998, section 53(1), section 1, 2, 2A, 11A, 11B, 14; and, section 53(1).

17. The State of Queensland has acquired my land without just compensation. I still pay rates on my entire acreage. I have taken this proceeding before the abovementioned three Courts of "the State" of Queensland and had my appeals dismissed on all three occasions by virtue of *Bone v Mothershaw*[2002] QCA 120 - a decision of the Court of Appeal of Queensland. In this decision, the Bench stated that Queensland had 'a plenary power as an independent sovereign State' to make laws regulating my use of my land which effectively has cost me a viable resale value of the land and the loss of approximately twenty four and a half acres of land which is to be left for mahogany glider habitat for, one assumes, the public benefit. The Minister of the Department of Natural Resources and Mines the Honourable Stephen Robertson did advise Mr. Walter in writing, that the State is not required to pay compensation or, for the payment of compulsory acquisition of my private land.

18. The Courts of the State of Queensland upheld the decision of *Bone v Mothershaw* [2002] QCA120 which states that Queensland is an independent sovereign State and that State is subject to the *Constitution of Queensland 2001* assented to on 3rd December 2001. The assent by the Governor was defective as the Governor is inside of Government as a parliamentary secretary and now forms part of the corporate Government of Queensland along with the Supreme and District Courts of the State, and the Planning & Environment Court and the District court are subject to the Uniform Civil Procedure Rules. As the courts are inside the Government it follows that they must protect the assets of the corporation of the State. As my land is now an asset of the State of Queensland and by the definition of 'person' s36 - Meaning of commonly used words and expressions in the *Acts Interpretation Act 1954* I am an 'individual and a corporation'.

19. My Deed of Grant in fee simple is now a statutory title only, and that title is upheld by the civil laws of the Supreme and District Courts of the corporate Government of Queensland and the Judges of the Supreme and District Courts who are inside the Government. My common law estate in fee simple is now held by the corporate Government of the Sovereign State of Queensland.

20. Under the definitions in the *Acts Interpretation 1954*(Qld), section 36, the definition of 'property' and 'land', the State of Queensland now owns all my property, which includes money, real and personal property from the past and any future property which includes my will. I refer to the definition of 'land' under section 22 - Meaning of certain words (aa) 'individual' and (c) 'land' of the *Acts Interpretation Act 1901*(C'wth) and the definition of 'property' in section 130.1 of the *Criminal Code Act 1995*(C'wth) The *Acts Interpretation Act 1954*(Qld) is *ultra vires* to the *Commonwealth of Australia Constitution Act, Criminal Code Act 1995*(C'wth), Chapter 7 - The proper administration of Government; the *Acts Interpretation Act 1901*(C'wth).

21. My land is now held by the Government of Queensland in the Brigalow Corporation with no compensation paid to me for that acquisition. For *"Even though the King may not enter" (Plenty v. Dillon* [1991] HCA 5; 171 CLR 635 F.C. 91/004 (7 March 1991) the Queensland Government and the delegated authorities thereof can, without fine.

22. I, the Applicant, Catherine Elizabeth Burns, hold registered land in an estate in fee simple, situated at Lot 6 CP10416, Stony Creek Road, Cardwell Shire.

i) The title reference is 20818084, date created 7th December 1970.

ii) The land, in an estate of fee simple, was purchased at public auction on 22nd August 1968 for the sum of $525.00. The property, held at Lot 6 CP10416, Stony Creek Road, Cardwell Shire was alienated from the Crown lands in the State of Queensland by Her Majesty Queen Elizabeth II, Sovereign of Australia and the Chief Executive of the Commonwealth of Australia as cited under section 61 of the Constitution of Australia - Executive Power.

iii) The land was alienated from the Crown land in the State of Queensland in accordance with the laws and regulations of the *Land Act 1962 - 1968*.

iv) My Deed of Grant has been signed by the representative of the Sovereign of Australia in the State of Queensland, Sir Alan James Mansfield, the Governor 'in and over Our State of Queensland and its Dependencies in the Commonwealth of Australia, at Government House, Brisbane in Queensland'. My Deed of Grant has been sealed with the Seal of the Sovereign of Australia.

v) Her majesty, in accordance with the laws and regulations in the *Land Act 1962,* section 6(3), reserved the right in the gold, minerals, helium and petroleum, to the Crown.

vi) As required under the *Constitution Act 1867*(Qld) section 34 the sum of $525.00 was paid into the Treasury of the Crown, thus completing the contract with the Crown.

23. I have in my possession and I will, if required, have Mr David Walter produce my original signed and sealed Deed of Grant to the Court. I hold the Deed of Grant in an estate of inheritance which is a common law contract with Her Majesty Queen Elizabeth II, the Sovereign of Australia.

24. The Deed of Grant in fee simple is a contract at common law, under the hand of the Sovereign, Her Majesty Queen Elizabeth II, passing to me a common law estate of inheritance in fee simple. The common law contract has now been broken as a result of my being required to make an application to clear the native vegetation on my land by members of the Department of Natural Resources Mines and Water who advised that the laws pertaining to land ownership had changed in Queensland. All land and equity, my inheritable estate, now have been repossessed by the State of Queensland and I am not entitled to compensation under *section 51(xxxi) of the Commonwealth of Australia Constitution Act* or pursuant to the *Lands Acquisition Act 1989 (C'wth).*

25. On 6th September 2003 Mr David John Walter, who is my intervener in this matter and who also holds my full power of attorney in these proceedings wrote on my behalf to the Honourable Peter Beattie, Premier and Minister for Trade at PO Box 185, Brisbane Albert Street, Queensland 4002. I now refer to paragraph 3 of that correspondence.

"Mrs Burns' property rights on her freehold land have now been removed by the State refusing to allow her to clear the regrowth on her property under the *Vegetation Management Act 1999* without offering her

compensation. Section 109 of the Australian Constitution shows that if there is inconsistency of laws between the States and the Commonwealth, the laws of the Commonwealth shall prevail and the inconsistency by the State will be invalid. The Commonwealth *Acts Interpretation Act 1901* refers. Section 51 (xxxi) of the Constitution shows that with the acquisition of property on just terms from a person, compensation must be paid and this is also shown in the Queensland *Legislative Standards Act 1992."*

26. The Premier never replied to Mr Walter but on 15th October 2003 the Minister for Natural Resources and Minister for Mines the Honourable Stephen Robertson MP wrote to Mr Walter in reply to his correspondence of 6th September 2003 to the Honourable Peter Beattie.

27. I refer to paragraph 5 and 6 of that correspondence.

> "Under the current law, no compensation is payable where an application to clear native vegetation is refused. Applicants may appeal the Decision Notice to refuse an application under the *Integrated Planning Act 1997* within the prescribed time.
>
> Information about appeal rights was supplied to the Applicant at the time the decision notice was issued.
>
> Under the State/Commonwealth proposal to phase out broadscale landclearing, a package of financial measures is being negotiated to assist farm businesses affected by the new vegetation management arrangements. Criteria for assistance under the new package are yet to be determined and will focus on assisting landholders disadvantaged by any new measures."

28. (a) I am not a landholder as described under the State Policy for Vegetation Management on Freehold Land or as defined in the Natural Heritage Trust Partnership Agreement which refers to tree clearing on leasehold and Crown land. I am the holder of a common law estate in fee simple and my land is registered under the *Real Property Act 1861*. In November 1997 the Natural Heritage Trust Partnership Agreement was signed between the Commonwealth and the State of Queensland. This allowed the State of Queensland and all other signatories ie. other States and Territories of the Commonwealth, to have access to funds from the Natural Heritage Trust Account and those funds were the funds of the sovereign people of Australia from the partial sale of Telstra, the sum of $1.35 billion dollars.

> Natural Heritage Trust Partnership Agreement
> (ii) *Roles of Queensland*
>
> 6.3 Queensland will:
> (f) activity on private land will be funded taking into account the amount of public benefit received relative to the private benefit derived from the activity
>
> (iv) BUSHCARE: The National Vegetation Initiative
> 1. National Goal
> To reverse the long-term decline in the quality and extent of Australia's native vegetation cover.
>
> 4.3 Strategies:
> (a) Finalise and implement the Broadscale Tree Clearing Policy and Local Tree Clearing Guidelines for Leasehold and Crown land .....

(b) The Mahogany Glider Recovery Plan 2000 - 2004 between the Queensland Parks and Wildlife Service and the Natural Heritage Trust of Australia - helping communities - helping Australia. Approximately $11 million had been paid from the Natural Heritage Trust Funds to landowners in the Hinchinbrook and Cardwell Shires to purchase their properties to secure their land under the Natural Heritage Trust for the protection of the mahogany glider under the Mahogany Glider Recovery Plan. I received no such request to purchase my land under that plan and that plan has been upheld by the Courts of Queensland under the Decision Notice issued by Luke Croton.

The animals (Mahogany Glider) are not found on a protected area – refer *Nature Conservation Act 1992*(Qld) Reprint 3B © State of Queensland 2003 – to be read in conjunction with Part 4 – protected areas, Part 10 Evidentiary provisions– section 160 – definitions section 7 – animals. The Mahogany Glider Recovery Plan 2000 - 2004, upheld in the Decision Notice, for private land, is subject to the Natural Heritage Trust for compensation for the loss of the use of the land for the environmental public benefit

29. On the 3rd December 2001 the Governor of Queensland with the authority of the entrenched provisions contained in the *Constitution Act 1867* (Reprint No.1) and the *Commonwealth of Australia Constitution Act* which in their manner and form hold the entrenched provision of , "The Governor of Queensland", and exercising the delegated authority of 'The Crown' did unilaterally 'Assent' to the 'Constitution of Queensland Parliament of Queensland Bill' without the consent of the Peoples' of Queensland through the ultimate and absolute authority gained through a vote of 'Referenda'. In so doing the *Constitution of Queensland 2001*, as assented, including the manner and form interpreted therein is now and for the time being, as the case may be, the 'Fundamental Law of Queensland'.

30. With respect to the people of Australia and Queensland, the advice received by the Queensland Governor, in council with the Executive Government of Queensland between the dates of 9th November 2001 and 3rd December 2001 was constitutionally ‘defective’. It therefore follows that the ‘assent’ by the Governor of Queensland was also ‘defective’ and is therefore invalid.

31. Reference to the Application to the Court of Appeal, Supreme Court Queensland C of A 526 of 2006 refers dated 19th January 2006 and the Supreme Court of Appeal Queensland 515 of 2004 and further as placed on the High Court File B44 of 2007.
I refer to page 2, line 55 and page 3 line 3.

32. I refer to the following. I purchased my land in good faith from the Sovereign at public auction and that good faith has not been upheld by the public officers of "the State" corporate Government of Queensland. It therefore must bring every common law contract, signed in good faith in the Commonwealth of Australia since Federation, under legal scrutiny as it appears those common law contracts are able to be breached and broken at will, with no lawful authority or compensation and upheld by all Courts of law in the Commonwealth of Australia.

33. I refer to the definition of the word "Parliament" as cited in the Second Reading Speech given by the Premier the Honourable Peter Beattie on 9th November 2001 for the Constitution of Queensland 2001 Bill.

"The entities it provides for include this Parliament, the Supreme and District Courts of this State and the system of local government that we know in Queensland. The office holders under this Act include the Governor of Queensland, the Ministers of the Crown and the judges of the Supreme and District Courts. This law is of supreme importance. "
"Our identity as a Sovereign State, the democratic ideals on which our State is built, rest on our Constitution.

34. The Second Reading Speech was read into Hansard on 9th November 2001 for the Constitution of Queensland 2001 Bill and the *Constitution of Queensland 2001*was assented to by the Governor on 3rd December 2001. That assent is defective as the Governor is quite clearly an entity of the Government along with the Supreme and District Courts. The Governor, the Supreme and District Courts and the local Government are part of the corporate government of Queensland and all people and any property is the property of the corporation of the State of Queensland.

35. The common law has been abolished in the State of Queensland and by the upholding of the decision of the Queensland Court of Appeal *Bone v Mothershaw*[2002] QCA120 by the High Court of Australia when dismissing the applications for special leave to appeal of *Wilson v Raddatz B14/2007* and *Glasgow v Hall B13/2007* on 3rd October 2007 that dismissal effectively fractured the Common Law in Australia and rendered void any and all contracts at *Common Law* in the Commonwealth of Australia. The Court of Appeal Queensland decisions *Gregory Wilson v Warren Neil Raddatz* CA 276 of 2006 and *Keith Ronald Glasgow v Peter Thomas Hall* CA 273 of 2006 were also subject to *Bone v Mothershaw*. By the upholding of these decisions by the Courts within the Commonwealth, that Queensland is an independent Sovereign State, it is quite clear that Queensland is not a part of the Federation of the Commonwealth as clearly described in the Second Reading Speech of the Premier of Queensland for the Constitution of Queensland 2001 Bill. This leads to a number of problems within the Commonwealth:-

i) The people within Queensland have lost their sovereignty as a person as described in the Preamble of the *Commonwealth of Australia Constitution Act* and all rights at common law.

ii) A Federal election is about to be called. When the Governor General issues the writs for the sovereign people to vote, as I am no longer recognized as a person with a common law right to the use of my property, that can be taken by the independent sovereign State without compensation against all principles of the *Commonwealth of Australia Constitution Act* s 128 and common law. How therefore can Queensland be included on that writ for people with no sovereignty to elect members of the Parliament of the Commonwealth when the loss of the common law rights of the people of Queensland and the removal of the Crown in Queensland has been upheld by the highest Court of common law in Australia.

iii) Therefore, any writ issued under the hand of the Governor for people to be elected either into the House of Representatives or the Senate of Australia, cannot involve Queensland as the Government of Queensland has not recognized the Crown in Queensland since 29th January 1999 and under the *Constitution of Queensland 2001* the Governor seals all documents under the name of the Sovereign with the Public Seal of the State.

I refer to the comments of Judge White of the Planning and Environment Court in Cairns on 18/3/2004 - Appeal No. 3 of 2003 when I represented Mrs Burns for the first time.

"(State Government Counsel) Mmm. I suppose they could. Well, the Parliament can really, with respect, do anything. It's a-----

HIS HONOUR: I just find this astounding. **Soviet Russia would be proud of these laws."**

I have correlated these matters in this documents as I believe that the majority of people in this country would be unaware of the actual serious ramifications of these matters. Hopefully the information in this document, based on facts which have been presented to all courts - from the Magistrates and Planning & Environment Courts to the Court of Appeal Queensland of Queensland and on to the High Court of Australia, will make people who read this, more aware and be prepared to act.

This work cannot be done by only a few. It is imperative that the people of Australia who own private land and rural property, in fact any property in this great nation of ours will, quite simply, have to take a stand. If this situation continues there will be little of value left for us to pass to our children and grandchildren. We are becoming completely over regulated by the public officials of this Commonwealth of Australia - please read again Judge White's comment above. That is becoming more applicable every day in this country. Surely it must cease.
If I and others who are assisting me get no support we shall all pay a very great price in the near future.

(David J. Walter) EnviroWild Pty Ltd 13th October 2007

ADDENDUM: Although the High Court had allowed the QLD Supreme Court of Appeals results to stand in the cases of Mr Wilson and Mr Glasgow, the cases were dropped by the Qld Judiciary one week after this information package was disseminated to every Government Minister & Senator in Australia and to members of the Public.

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