

# PROPERTY LAW REVIEW

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## ARTICLES

### **The doctrine of extinguishment: And then there was Congo – MA Stephenson**

Extinguishment has been a key issue in native title cases following the 1992 High Court decision in *Mabo v Queensland (No 2)*. In 2015, the High Court in *Queensland v Congo* was equally divided in determining whether extinguishment of native title had occurred. *Congo* involved an appeal from the Full Federal Court which had held that certain military orders made during the Second World War did not extinguish native title. Accordingly, the Full Federal Court decision appealed from was affirmed. This article reviews the developing doctrine of common law extinguishment of native title law prior to the High Court's decision in *Congo*. The article then critically examines the High Court's reasoning in *Congo* regarding the interpretation of the common law doctrine of extinguishment and also considers the interpretation of common law extinguishment rules post-*Congo*. Given the divergence of opinion in *Congo*, it is possible that these extinguishment principles will again be revisited in future cases concerning extinguishment. ....

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### **Section 51(xxxi): A “constitutional guarantee” to disappoint property owners – Paulina Fishman**

In Australia, federal laws with respect to the compulsory acquisition of property must provide just terms. Yet this is not tantamount to a prohibition against the taking of private property without fair compensation – as found in the Fifth Amendment to the *United States Constitution*. Though there have been some valiant attempts by the judiciary to expand its scope, the jurisprudence on s 51(xxxi) of the *Australian Constitution* reveals at least 12 weaknesses in the provision's ability to safeguard the interests of Australian property owners. Though it shares certain characteristics with the Fifth Amendment, calling it a “constitutional guarantee” is likely to invite error. ....

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### **The Crown and possessory title of Torrens land in South Australia – Paul Babie**

This article recounts the events surrounding the Carey Gulley Squatter in the Adelaide Hills of South Australia and, using those events as a factual matrix: (i) explores the operation of escheat/bona vacantia in relation to South Australian Torrens land; (ii) considers possessory title to South Australian Torrens land, with a particular focus on the nature of that right, both before adverse possession might become available (what this article will call “inchoate possessory title”), and after (“possessory title”); and (iii) examines the caveatability of either form of title, whether in respect of a registered proprietor or of the Crown. ....

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### **Environmental protection and the public trust: Upper Mooki Landcare Inc v Shenhua Watermark Coal Pty Ltd – Jennifer Stuckey-Clarke**

In *Upper Mooki Landcare Inc v Shenhua Watermark Coal Pty Ltd*, the New South Wales Land and Environment Court (NSWLEC) considered submissions based upon the doctrine of the public trust where the subject matter of the trust was not public land, but protected

fauna, namely koala, in an application to overturn a development consent for an open-cut mine. This article canvasses the historical genesis and recent development of the public trust doctrine in the United States and in Australia before considering the NSWLEC decision. ....	59
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## SINGAPORE

### **Recent developments: Islamic charitable trusts, implied easements, compulsory acquisition, and laches as a defence to an action for an account – *Kelvin Low***

This update on Singapore law addresses four developments, two of which are related to Torrens indefeasibility. First, a decision appears to suggest that the statutory vesting of title of properties subject to Islamic charitable trusts, or wakafs, trumps Torrens indefeasibility. Second, a case clarifies the scope of statutory implied easements under Singapore’s Torrens legislation. Third, a case discusses the suitability of comparing awards of compensation between land that is subject to a sale and leaseback arrangement and land that is owner-occupied. Finally, a case considers the applicability of the defence of laches to a beneficiary’s action seeking an account from his trustee. ....	66
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## QUEENSLAND

### **Taking reasonable steps to verify identity – When are further inquiries necessary to meet the standard? – *Sharon Christensen***

The Queensland Land Registry recently expanded the circumstances in which lawyers are required to take reasonable steps to formally verify the identity of their client prior to the execution of a land registry instrument. Reasonable steps may vary in each case, but the Registrar has promulgated a VOI Standard which provides a “safe harbour” if followed. This article explains the application of the VOI Standard within the Queensland context and seeks to demonstrate the connection between verification of identity, the right to deal and the circumstances in which further steps may be required to meet the “safe harbour” requirements. ....	72
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### **Changes to the Retail Shop Leases Act 1994 (Qld) – *Bill Dixon***

The passing of the <i>Retail Shop Leases Amendment Act 2016</i> (Qld) heralds significant changes to the operation of the <i>Retail Shop Leases Act 1994</i> (Qld). This article examines the background to, and operation of, these imminent changes. ....	78
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