

PROPERTY LAW REVIEW

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ARTICLES

Asset Protection and NSW Stamp Duty: A Symbiosis – *Rebecca Barbour*

Stamp duty is fundamental to an effective and enforceable asset protection scheme. The symbiotic relationship between stamp duty and asset protection is evident in the following five contexts: cost as a barrier to asset protection; the duty implications arising from different structures; enforceability of the structure being contingent on payment of duty; desirability of financial privacy being overridden by disclosure obligations aimed at transparency; and the important role of advisers in understanding and applying these two overlapping regimes. 158

Overriding Statutes and Torrens – Developing a Response to Torrens’s “Greatest Legal Enemy” – *Lynden Griggs*

Overriding legislation has been described as the “greatest legal enemy” to the proper functioning of the Torrens system. Case law is replete with illustrations where local council legislation will impose a condition on a subdivision application. For reasons that are never particularly clear, that condition is not complied with. Who should prevail – the person relying on title, and thus indefeasibility, or the person who suggests the later enacted legislation will override this critical Torrens precept. The result of this confusion is incoherency in the development of the law, and intractable problems of statutory interpretation. This article recommends that the solution to this problem is multi-faceted, and should encompass such things as broader access to the assurance fund and greater utilisation of title insurance. It also encourages the idea that web portals be established, so that conditions associated with land, can be more easily located. 175

Improving Housing Security through Tenancy Law Reform: Alternatives to Long Fixed Term Agreements – *Chris Martin*

The greater use of long fixed term residential tenancy agreements is often put forward as a means for improving the housing security of tenants. On the contrary, this article argues that long fixed terms are not a promising way of addressing housing insecurity. Considering the structure of the Australian rental housing sector, tenants’ subjective experiences of security and mobility, and international experience, long fixed terms as currently conceived of by the laws of New South Wales, Queensland and Victoria are not useful for either landlord or tenants. Furthermore, recent law reform proposals to facilitate their greater use do not make them much more useful and may be to the disadvantage of vulnerable tenants. The better approach is for law reform to remove “without grounds” terminations by landlords and provide only for “just grounds”. Some variations on this approach are considered. 184

Public Nuisance Claims in Climate Change Litigation: How Useful Are They? – *Jana Norman*

Litigation is playing an increasing and increasingly varied role in efforts to mitigate and adapt to the effects of anthropogenic climate change. Climate change case law is found in

every juridical level from local courts through to international tribunals. The legal theories being deployed are equally wide-ranging and the pool of plaintiffs and defendants is becoming crowded and diverse. Much of this case law intersects with property, particularly in Australia in terms of environmental assessment and permission for land development as it relates to climate change adaptation, and interferences related to land use or enjoyment from mitigation projects such as wind farms (noise impact, landscape values, etc). These cases are generally resolved at the level of civil and administrative tribunals. Two recently decided cases at the federal district court level in the United States with implications for property, *City of Oakland v BP* and *City of New York v BP plc*, feature major coastal cities bringing nuisance claims against top players in the fossil fuel production industry for damages related to the effects of global warming to the property and persons of their municipalities. This article examines the functioning of the US interpretation of public nuisance vis-à-vis climate change litigation, investigating how the claims are presented by the litigants and received by the courts and their effectiveness as a strategy for dealing with issues related to climate change. 195

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