

From: [Andrew Trosic](#)
To: [Public Administration Committee](#)
Cc: [Belinda Struwig](#)
Subject: submission on Public Administration Committee - Inquiry into Private Property Rights
Date: Wednesday, 31 July 2019 11:17:25 PM
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Dear Sir / Madam,

Please find following the submission on behalf of the Shire of Serpentine Jarrahdale, in respect of the above inquiry. These are framed as key issues that may be useful to help expand broader community discussion.

(a) recognises the fundamental proprietary right of private property ownership that underpins the social and economic security of the community;

- Social and economic security? Often social security issues are expressed in broader public interest issues, and may be in tension with private interests. For example private interests vs public interests vs public participation often shaping how land can be used
- Social licences to operate also form a broader consideration beyond private interests (mining, proposals impacting at risk communities, public health issues)
- For local government and community = land often significant for the way it is used / developed
- For landowners (and traditionally under common law) = the right to use land has depended upon title, thus ownership seen to be significant
- Particularly planning controls often regarded as impinging on 'property' rights
- Ownership? right to the exclusive enjoyment of a thing
- Ownership? absolute or restricted
- Absolute ownership , right of free, as well as exclusive enjoyment of indeterminate duration
- Restricted implies limitation to some extent
- Land always restricted, being ultimately held by the Crown (eminent domain) and often limited to some extent (easements, caveats, mortgages, joint tenancy)

arrangements)

(b) recognises the threat to the probity of the Torrens title system, which guarantees disclosure, and re-establishes the necessity for registration of all encumbrances that affect land including environmentally sensitive areas, bushfire-prone areas and implied easements for Western Power that currently sit behind the certificate of title;

- Torrens system = system of public registration of land titles introduced in Australia in mid-19C
- Fully public register of land ownership
- All transactions relating to through public registration system
- Statement “all encumbrances that affect land...sitting behind the certificate of title” suggest bringing to sit beside (not behind) title and register all encumbrances...
- This appears to be practically difficult to achieve

(c) recognises the property rights of government-issued licenses and authorities including commercial fishing;

- Who really owns natural resources? Classical economic argument
- Eg. Commercial fishing licences...ways to regulate short term gains with regard to longer term consequences
- While diminishable not excludable thus very hard to see as ‘property rights’
- Also implies a desire to make such tradeable – thus returning to the question of who really owns our natural resources

(d) asserts that fair and reasonable compensation must be paid to the owner of private property if the value of the property is diminished by a government encumbrance or resumption in order to derive a public benefit; and

- What are planning controls, building controls, heritage controls, access controls
- Land administration act deals with taking of land for a public purpose, including calculating value of land (and injurious affection)

- Often land compensation made up of three components (severance, injury and market value)
- However land may be perceived as impacted but no land take and thus not legally entitled to compensation. Road changes especially often trigger this debate

The Shire looks forward to further public discussion on this issue.

Regards,

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