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Articles

[Proprietary estoppel by acquiescence — Does it survive in Australia?](#)

— *Susan Barkehall Thomas*

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Proprietary estoppel in Australia is traditionally divided into two categories: estoppel by encouragement, and estoppel by acquiescence. Under the traditional view, estoppel by acquiescence is more limited in scope than estoppel by encouragement, as it does not apply to the future acquisition of property rights. This article first considers whether that traditional distinction still exists in Australia, and demonstrates the uncertainty in recent case law as to the limitations on acquiescence. It then considers whether the distinction should be maintained. It considers arguments raised by English academic Professor Ben McFarlane that there should be a strong demarcation between estoppel generated by acquiescence and estoppel generated by promises. This article will argue that the traditional difference no longer applies in Australia, despite recent attempts to resurrect the distinction. It will be argued that where the other elements of the action are satisfied, acquiescence can operate as an inducement for an assumption in relation to the future acquisition of property rights. The basis for a proprietary estoppel in Australia is the formation of an assumption, and that assumption can be generated by acquiescence, by explicit promises or by conduct.

[Housing the ‘missing middle’ — The Limited Equity Housing Co-operative as an intermediate tenure solution for Australia’s growing renter class](#)

— *Ann Apps*

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The growing number of people who are in the ‘missing middle’ between social housing and home ownership are disadvantaged by a lack of intermediate tenure options in Australia. Renting is expensive and precarious. The Limited Equity Housing Co-operative is an intermediate tenure that has some advantages over private rental for those that cannot afford home ownership. This article explores the model and some reasons why it has not gained traction in Australia to date. Its categorisation as ‘governance’ property helps to explain the Limited Equity Housing Co-operatives potential as an alternative to strata title as a suitable tenure for apartment ownership. The article hopes to draw the attention of property lawyers and policy makers to the Limited Equity Housing Co-operative as a model that addresses some of the economic and social issues faced by those who find themselves in the ‘missing middle’.

The residential tenancy agreement as an exception to the indefeasibility of title

— *Matthew Anibal Fuentes-Jiménez and Paul Babie*

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This article argues that Australian residential tenancies legislation creates a sui generis form of property — the residential tenancy agreement — unknown to the common law. In turn, a residential tenancy agreement constitutes an overriding legislation exception to the indefeasibility of Torrens title.

The ‘*Pallant v Morgan* equity’ in Australia: Substantive or superfluous?

— *Ying Khai Liew and Cristina Poon*

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The ‘*Pallant v Morgan* equity’ is a relatively new but well-entrenched constructive trust doctrine in English law. However, its precise status in Australia is uncertain. This article asks whether the *Pallant v Morgan* equity is a superfluous or substantive doctrine in Australia. It explores four different equitable doctrines which judges have at one point or other suggested can account for that doctrine, and comes to the conclusion that it is not simply a manifestation of those established doctrines and therefore superfluous in Australian law, but a substantive doctrine with a distinct sphere of application. The article then discusses the justificatory rationale of the *Pallant v Morgan* equity, and observes how that justification provides a normative ground for understanding the equity as a distinct doctrine.

The New Zealand Experiment: KiwiBuild for first-homebuyers

— *Elizabeth Toomey, Toni Collins and Kate Jenkins*

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Governments worldwide continue to grapple with the problem of affordable housing for their citizens. In New Zealand, the Labour Government, in its election promise in 2017, promised an ambitious venture for a subset of its population — first-homebuyers. The KiwiBuild project was designed to deliver to this sector 100,000 affordable homes over a 10-year period. The flagship policy has failed. This article explores the initiative and possible reasons for its lack of success. KiwiBuild is no longer a discrete entity but now sits alongside community housing, state housing and market housing under the new Crown agency to transform housing and urban development in New Zealand — Kāinga Ora — Homes and Communities. To date, 1,356 KiwiBuild homes have been sold and 331 are available to buy. The article offers a comprehensive analysis of similar schemes in Hong Kong, Singapore and the United Kingdom, from which it extracts three broad themes that demonstrate how comparable schemes can be highly successful.