

We are pleased to have engaged the services of Dr Geoff Parr-Smith to present a new professional development course...

“Land Law for Managers of Parks, Gardens and Reserves”



Geoff Parr-Smith at work *in situ*

A botanist by training, Dr Parr-Smith has over 30 years experience in the planning, management and administration of public land, including 14 years with the Victorian National Parks Service.

As a consultant he has been engaged by various state and municipal agencies to prepare management plans and environmental analyses, and to advise on statutory, legislative and regulatory issues relating to parks and reserves.

He has lectured on park management for Victoria's Deakin and RMIT Universities, and the Charles Sturt University in NSW.

Page 3

Details of the course Dr Parr-Smith will be delivering

Page 4

Our full Professional Development Program for Winter-Spring 2005



MURDER

on the Left Bank

One day in 1979 Alfred Joseph Reed was fishing from the southern bank of the River Murray when he had the misfortune to be shot dead by Edward Donald Ward.

The ensuing case went to the High Court – not on the question of whether Ward had murdered Reed, but on the question of whether the offence had been committed in Victoria or in New South Wales.

All parties agreed that the border is not at the centreline of the River, because the *Separation Act* 1850 defines Victoria as the land ‘south of the Murray.’ Counsel for the State of Victoria argued that the boundary was at the southern edge of the water, wherever that may be from time to time – in other words, the state boundary moves back and forth as the river rises and falls.



Photo: ifirmagebank.unimelb.edu.au

Where exactly is the state border? The developers of land abutting the Murray engaged The Public Land Consultancy to answer that question

The High Court rejected this proposition, and came to the conclusion that the boundary between the two states was the top of the bank on the southern side. Consequently, if water levels are normal, there is a strip of dry land on the southern side of the Murray which is actually in New South Wales. The murder had been in NSW, and Ward was sent from Melbourne for retrial in Sydney.

But that's not the end of the story. Way back in 1881, when Victoria permanently reserved those river frontages which hadn't already been sold off, we didn't have the benefit of the High Court decision. The ‘three chain’ reserve along the Murray wasn't measured from the top of the bank, but from ‘*ordinary water level of the river as confined by the said left bank.*’ There are thus stretches of the river where the reserve is significantly narrower than three chains. In fact, when you factor in the effects of erosion there may, in places, be no reserve at all.

All this would be pretty academic if it weren't for the current inquiry by the Victorian Environment Assessment Council (VEAC) into the redgum country along the river. VEAC can only recommend on land within Victoria, not over the border in NSW, but the river's hydrology and ecology don't recognise imaginary lines drawn on maps – even when they're drawn by the High Court – and neither do the aspirations of the Yorta Yorta people.

The two states have already come to agreements for Lakes Mulwala and Hume – so people boating and fishing there aren't governed by invisible serpentine lines on the surface of the water. Now we look forward to seeing what approach VEAC proposes for cross-border management of the redgum forests. ■

17A, 17B, 17C, 17D...

Q & A

Are sections 17A and 17C of the *Crown Land (Reserves) Act 1978* ever used? Should we believe the headings on sections 17B and 17D ?

Questions asked by a Property Officer in a Government Department

Until 1984 Victorian law contained no generic provisions for leases and licences of reserved Crown land – but there were plenty of quasi-leases and licences out there on the ground. The Crown Land (Reserves) Act perpetuated the old myth that Crown reserves should remain unsullied by the blight of private or commercial occupations.

The old Lands Department, well aware that the real world was different, simply turned a blind eye to the hundreds of clubs, utilities, kiosks and so forth sitting on reserves all round the state. When it became an issue, the Department would put a site-specific Act through the parliament.

In 1984 the government decided to bring the law into line with reality, and enacted the four sections 17A to 17D. Realising that the purpose of a tenure was often different from the formal gazetted purpose of the reserve, the criterion for a tenure would not be that it conformed to the purpose of the reserve, but that it be 'not detrimental' to that purpose. In response to concerns that the floodgates would open and Crown reserves would be all be concreted over, a string of safeguards were inserted which continue to bewilder later interpreters of the Act.

More latitude was allowed for pre-existing quasi-tenants. Sections 17A and 17C provided for licences and leases respectively for 'habitual' uses and occupations – i.e. those already in place in November 1984. Here it was recognised that if the bar was set too high, users would simply continue in occupation without any formal tenure – so the Minister was given power to legalise a use or occupation, regardless of whether it was detrimental to the gazetted reserve purpose.

To prevent future tenants from claiming the benefit of this latitude, Committees of Management were given twelve months in which to furnish certified details of their habitual users and occupants, who

only then would then be eligible for 17A or 17B tenures.

We would be surprised if any pre-1984 tenants had not already been given a licence or lease, but this does not render 17A and 17C superfluous. They will still be required for the periodic renewal of those licences and leases held by pre-1984 tenants which would not pass the more stringent tests set by sections 17B and 17D.

Sections 17B and 17D deal with licences and leases of reserves respectively, and may be used regardless of whether the use or occupation pre-dates the 1984 amendment. The criterion for acceptability is that the purpose of the tenure must be 'not detrimental' to the purpose of the reserve – but that's not what the headings on the two sections say. 17B is headed "*Licences for purposes other than those for which the land is reserved,*" and the heading on 17D says "*Leases for purposes other than etc etc.*" If you believed these headings, a side-show operator could not hold a licence to set up on a showgrounds reserve, and a tennis club could not hold a lease to occupy part of a recreation reserve. The Parliamentary Draftsman who wrote the headings simply got them wrong.

Fortunately, there's an Act of Parliament which tells us how to read other Acts of Parliament. It's called the *Interpretation of Legislation Act 1984*, and it tells us that section headings inserted into an Act before 1st January 2001 are not to be read as part of the Act. ■



Readers of Terra Publica should not act on the basis of its contents which are of a general nature, capable of misinterpretation and not applicable in inappropriate cases. They do not, nor are they intended to, constitute legal or specific advice. The Public Land Consultancy is available to provide advice on public land matters and will, on request, arrange legal advice for clients from its associate Maddocks, of 140 William Street, Melbourne.

NEW COURSE

Land Law for Managers of Parks, Gardens and Reserves

A One-day Professional Development Course

Course Content

Land Status in Victoria

Crown land, freehold land, National Parks, Crown reserves, reserves on freehold land, road reserves, an introduction to Native Title

Legislation governing Parks, Gardens and Reserves

A closer look at the National Parks Act, the Crown Land (Reserves) Act, the Subdivision Act and the Road Management Act

Control and Management of Parks, Gardens and Reserves

Commonwealth and State 'National Parks', the various roles of municipalities, Parks Victoria and DSE, the various avenues for community involvement, risk management

Commercial and Private use of Parks, Gardens and Reserves

Leases and Licences, Permits and Agreements, Contracts and Management Agreements

Controls over the Use and Development of Parks, Gardens and Reserves

Planning Schemes, the Coastal Management Act, Management Plans, Native Title and Heritage controls

Regulating Behaviour and Activities

Local Laws, Regulations under various Acts, legal controls over car parking, dogs, camping, litter etc



Whether you manage a National Park, the Municipal Gardens, or the Plantations in the middle of Main Street, you probably need to know more than they taught you when you studied Environmental Science or Horticulture. This course will provide you with a sound understanding of those areas of land and property law that impinge onto your territory.

For dates and locations of this course – see Page 4

NEW CLIENTS

This month The Public Land Consultancy is pleased to welcome the following bodies to our list of clients

Bayside City Council

The Shire of Moyne

Hobsons Bay City Council

Sport and Recreation Victoria

a division of the Department for
Victorian Communities

Major Projects Victoria

a division of the Department of Infrastructure

The Western Bulldogs

Professional Development Courses WINTER-SPRING 2005

Tues 19 July 9:00 am – 4:30 pm	Public Land and Activity Centres	Preston <i>Darebin Arts and Entertainment Centre</i>
Thurs 21 July 9:00 am – 4:30 pm	Crown Land Law, Policy and Practice	Camperdown <i>Colac-Otway Shire Offices</i>
Tues 26 July 9:00 am – 4:30 pm	Land Law for Managers of Roads, Streets & Lanes	Ballarat <i>VicRoads Regional Office</i>
Thurs 28 July 9:00 am – 4:30 pm	Land Law for Managers of Parks, Gardens & Reserves	Preston <i>Darebin Arts and Entertainment Centre</i>
Thurs 4 August 9:00 am – 4:30 pm	Land Law for Managers of Parks, Gardens & Reserves	Frankston <i>Chisholm Institute of TAFE</i>
Tues 9 August 9:00 am – 4:30 pm	Land Law for Managers of Rivers, Lakes & Catchments	Benalla <i>Benalla Rural City Council Offices</i>
Thurs 11 August 9:00 am – 4:30 pm	Land Law for Coastal Authorities	St Kilda <i>The Novotel</i>
Tues 16 August 9:00 am – 4:30 pm	Land Law for Managers of Roads, Streets & Lanes	Benalla <i>VicRoads Regional Office</i>
Thurs 18 August 9:00 am – 4:30 pm	Crown Land Law, Policy and Practice	Lakes Entrance <i>Shire of East Gippsland Offices</i>
Tues 23 August 9:00 am – 4:30 pm	Land Law for Coastal Authorities	Sale <i>South-East Aust Training Services</i>
Tues 25 August 9:00 am – 4:30 pm	Public Land and Activity Centres	Preston <i>Darebin Arts and Entertainment Centre</i>
Tues 30 August 9:00 am – 4:30 pm	Land Law for Managers of Parks, Gardens & Reserves	Bendigo <i>TAFE College, Mitchell St</i>
Thurs 1 September 9:00 am – 4:30 pm	Land Law and Service Utilities	Preston <i>Darebin Arts and Entertainment Centre</i>
Tues 6 September 9:00 am – 4:30 pm	Land Law for Managers of Parks, Gardens & Reserves	Sale <i>South-East Aust Training Services</i>
Tues 13 September 9:00 am – 4:30 pm	Land Law for Managers of Rivers, Lakes & Catchments	Ballarat <i>'BEST' Centre, 28 Victoria Street</i>
Thurs 6 October 9:00 am – 4:30 pm	Land Law for Coastal Authorities	Geelong <i>State Govt Offices</i>
Tues 11 October 9:00 am – 4:30 pm	Crown Land Law, Policy and Practice	Bendigo <i>TAFE College, Mitchell St</i>

Course Format Options

- You may enrol staff in one of the scheduled courses listed above
- We can run the course for your staff, in your own offices or off-site
- You may prefer to 'host' the course and invite staff from other agencies

Maximum Class size: 10 students

BOOKINGS

Dorothy Jenkins

Training Course Co-ordinator

dorothy@publicland.com.au

9579 2635

Cost \$440 per person

including GST, course notes and working lunch

Over three years, our courses have benefited more than a thousand students