TERRA PUBLICA
VOL 25 NO7 AUGUST 2025

Degrees of Dissent

Public land can be the cause of dissent, but what forms might it take? One form we don't want, thank you, is 'Sovereign Citizen' lunacy.

The most common form of dissent is reluctant acceptance. I don't like the way they are managing the park/road/beach but they must have their reasons. No point complaining.

Then comes the voiced objection. I find a way to let my dissent be heard. I phone in to the breakfast radio shock-jock, or post my grievance on Facebook. Perhaps nobody will take any notice, but perhaps they will. Either way, I feel a bit better.

Sometimes objections find a formal outlet. Section 223 of the old (1989) Local Government Act required Council to listen to objectors, but then what? In one case we saw, the result was: thank you for telling us how the road closure will render your property inaccessible, but we will do it anyway. A whole slab of the new (2020) Act relates to community engagement in decision making, and it seems to be working better – although Council staff complain about it impeding their delivery of outcomes.

So that brings us to active campaigning. Exerting influence on Councillors through persuasion: allow the street festival and you can get heaps of publicity, but sell off the reserve and we will vote you out at the next election. Guess that's democracy at work.

Then we come to the Victorian Civil and Administrative Tribunal. VCAT can deal only with matters specified in some enabling Act. Under the *Domestic Animals Act 1994* I can appeal against Council's decision that my dog is dangerous. Under the *Racing Act 1958* I can appeal against Racing Victoria's refusal to licence me as a jockey. Under the *Cemeteries and Crematoria Act 2003* I can appeal against a Cemetery Trust which declines to bury me. But, as Crown land law stands, there's virtually no role for VCAT.

If DEECA issues a water frontage licence to my neighbour rather than to me, I can't go to VCAT. If the Yacht Club sublets the

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Independent professional advice and support for managers and users of public land

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foreshore restaurant without going to tender; if I'm charged more rent for use of the Crown reserve than some other user is charged, I can phone into breakfast radio, but I can't go to VCAT.

There are, of course, avenues of litigation beyond VCAT. In our experience public land disputes really should be sorted out before they get into the courts – but it happens. The aggrieved party may have a business motivation – Mr Calabro was a respectable small-scale property developer. The motivation could be racism – like the objectors who opposed the Yorta Yorta Native Title claim. Motivation might be some form of obsession – the Andersons recorded 248 cases of drunks pissing on their fence. And, in the High Court case which redefined Victoria's northern boundary, the motivation was a reduced jail sentence for the murderer Edward Ward.

But most public land cases which end up in the courts are brought there not by the by the aggrieved individuals, but by their respective insurance companies. Case litigant v defendant is really one insurer v another insurer. Over the years we have seen a few: the land manager should have removed rope swings from trees overhanging a river; the coastal Committee of Management should have provided a better path down the embankment; the rural city Council should have fixed the trip-hazard pit cover… For the injured or aggrieved parties these cases must have been distressing, but for we observers they were enlightening, helping clarify or confirm some area of public land law.

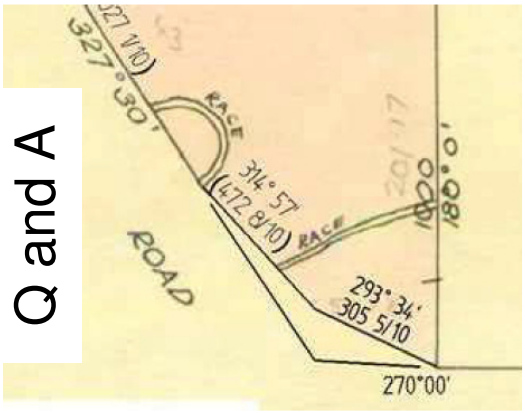
But now we come to the dissenters who operate outside the law altogether. A precursor of the Sovereign Citizen was one George Barnes, whose gripe related to Gippsland's Thompson River. Sure, he was a bit of a nutcase, but relatively benign. And, we must say, his grievance did indeed have substance.

Today's nutcases are far from benign. Several Councils have had to expel violent disruptors from their meetings.

Perhaps we'll come back to Sovereign Citizens in another edition, but for the moment let's just say that public land loomed large in Dezi Freeman's quagmire of complaints.

We await the Royal Commission. ■

Q and A



What are the strange encumbrances on this title document…?

Question from Australian Institute of Conveyancers

Strange indeed! But they are not *encumbrances* on title, because they are not even part of the title. They are separate parcels in their own right. Crown land, omitted from the 1883 Crown grant which created the surrounding Crown allotment. This is gold mining country, and the mines were serviced by a water race, now obliterated by time.

Does it matter? It has troubled nobody for 140 years. The cattle grazing there couldn't care less. But if the landowners want to develop or subdivide, they may have to purchase it from the Crown. One DEECA officer tells us this could take 5 years. And what about Native title? That's another question. ■

Q & A

We need Governor-in-Council approval to vary our lease. Where do we write to her?

Question asked on behalf of a tenant holding a statutory lease

As we all know, the Governor is her Excellency Professor Margaret Gardner, of Government House Drive, King's Domain – but what is the Governor-in-Council?

Well, it's the Governor acting on the advice of the Executive Council – which is, in practical terms, the thing better known as State Cabinet. A quorum of two ministers and the Governor is sufficient for the EC to meet, which it does about once a week at the Old Treasury Building, Spring Street, Melbourne.

The Governor-in-Council (or GinC) is empowered to do many things under no fewer than 250 Acts of the Victorian Parliament. These are mainly land-related Acts ranging from the *Jeparit Land Act* 1922, under which the GinC may charge £1 per annum rental for the site of the Jeparit Fire Station, to the *Local Government (Moira Shire Council) Act 2023* under which she may instal administrators into the Cobram Town Hall.

So how do we get our proposed lease variation into the Old Treasury Building? Via the Clerk of the Executive Council, who works out of the Department of Premier and Cabinet, 1 Treasury Place, East Melbourne – but she compiles the Executive Council agenda only from items submitted by Ministers. Items relating to administration of the *Crown Land (Reserves) Act* 1978 must come to the Executive Council via the Minister for Environment; matters relating to the *Local Government Act 2020* must come via the Minister for Local Government, and so forth.

So, questioner – to vary your lease, you will need to go through the Department or Statutory Authority which administers it. That body can make recommendations to its Minister, who can put items up to the Clerk of the Executive Council, who can get them into the Old Treasury Building where, in accordance with constitutional convention, they will be duly signed off by her Excellency, Professor Gardner. Good luck. ■

The Dissenter of Rainbow Creek

In 1979, a bunch of Gippsland farmers led by one George Barnes declared their independence from Victoria, and from Australia. The Independent State of Rainbow Creek would remain loyal to the British Empire, and its anthem would be 'God Save the Queen.'

Barnes' real grievance was with the State Rivers and Water Supply Commission. And with a branch of the Thomson River.

It seems the SRWSC had either caused the Thomson to change course, or had failed to prevent it from changing course. Either way, Rainbow Creek now traversed the Gippsland landscape where there had been no Rainbow Creek before.

Those affected had to pay rates to the local council for land which was now underwater. They had to pay a second levy to the SRWSC for using creek waters for irrigation purposes, and a third levy to the Thomson River Improvement Trust which was failing to prevent further erosion by the creek.

The Thomson continued to flow down its previous channel, albeit with a reduced torrent. This just served to further aggrieve the dissidents: they had lost land to one branch of the watercourse, but gained nothing in exchange. And they needed to build bridges to get to their own bottom paddocks – bridges which required consents from the SRWSC !

All around the State rivers continue to change course. Forty-six years on, we still don't have a system for reconfiguring the riparian cadastre.

Along many alluvial waterways the Crown/freehold carve up is basically meaningless. Even 'God Save the Queen' won't fix it. ■

The Public Land Consultancy acknowledges that our core work relates to the lands of Victoria's Traditional Owners. We promote recognition of Indigenous rights through study, policy and the law.

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	Native Title and Aboriginal Heritage 7 & 8 October		Land Law and Subdivisions 7 & 8 October
	Leases and Licences of Public Land 20, 21 & 22 October		Referral Authorities and the Victorian Planning System 21 & 22 October
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	Property Law and Planning 11 & 12 November		The Law relating to Vegetation 15 October 2025 This one is on-site at Quality Inn **Traralgon**

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