



A Storm in a Beach Bucket

By Richard O'Byrne

We wrote in January 2025 about The Cabana Drama on the Victorian coast – people putting up their beach cabanas in the early morning, leaving them vacant, and only returning later in the afternoon to claim their spot in the shade.



We concluded back then that the story was a storm in a beach bucket. But it's back again this year. Why?

Well, we Australians feel very connected to the coast. Maybe because many of us arrived in Australia by boat? Also because we are lucky enough to have great beaches, and a pretty good climate for water activities in summer. And that's a great thing.

Here's the bigger issue. Our beaches are under a lot of pressure, but it's not from cabanas. They might be contentious for a few days in summer, then they're gone.

Our population is growing, and people are seeking the beach even more these days. With a warming climate, and the ever-present risk of wildfire on other public land away from the coast, people increasingly find their cool-down recreation places close to the sea.

Car parking already chews up a lot of coastal Crown land, and the traffic problems spill over into nearby streets and neighbourhoods.

There are many structures on the coast – boating clubs, life-saving clubs, bathing

boxes, restaurants, campgrounds, toilets and so on – all providing varying degrees of public benefit, but also taking away more public space than a handful of temporary cabanas

We also have flooding and coastal erosion, storm damage and sea level rise, all nibbling away at the precious public land still accessible to all.

The landforms change, populations change, coastal uses change. So how do we coastal managers keep control of tenures, activities and competing uses?

We know that our systems of public land administration are ancient and clunky, to say the least. *The Land Act 1958* is 68 years old this year, the *Crown Land (Reserves) Act 1978* in comparison is a sprightly youngster at 48 years old.

The state government promised in 2017 that it would deliver a new Public Land Act within five years. We have it on good authority that the Minister intends to introduce legislation sometime in 2026. What else do we know? Not much more, the rest is still shrouded in mystery.

With a state election due to be held on 28 November 2026, we imagine that the legislation would reveal itself early this year. However, we also know that at least five previous attempts to reform public land legislation have struck political rocks, and sunk in deep water without trace.

Hopefully the Minister and our hard-working friends in DEECA will successfully bring the new Public Land Act into safe waters later this year. ■

*Need some fresh insights on coastal issues?
We're running our popular Coastal Governance course 14, 15, 16 April 2026.*

Page 2 Q and A Can public land encroach onto private land?

Page 3 Statues: should they stand or fall?

Page 4 Our Training Course Calendar for Feb-April 2026

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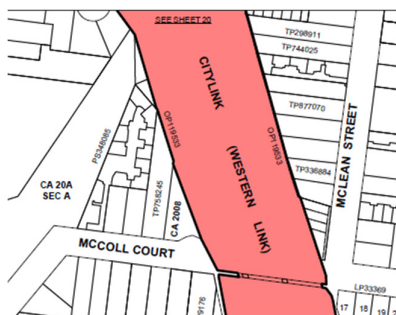
Q
&
A

Can public land encroach onto private freehold?

Question arising in a discussion of adverse possession.

Many fences are not precisely where they should be. A surveyor will find that they are off the title boundary by a few millimetres, or centimetres, or even metres. There has been an encroachment in one direction or the other.

Such encroachments may be recent or long-standing, accidental or deliberate. Perhaps the parties concerned just don't care, maybe they agree to reposition the fence, or maybe they embark on litigation: 'a prodigious and prodigal waste of public and private time and money' as the Supreme Court said in *Malter v Procopets*.



Weird. The abutting freehold has become smaller, but the Citylink toll road has not become any wider.

Encroachments onto roads and reserves will seldom result in a change of land ownership, because most public land is protected from adverse possession. But what if it's the opposite: the public land encroaches onto some abutting private land? That brings us to *Bottos v Citylink*.

The fence in that case was an 8m high concrete noise wall – but that's immaterial. It had been built a mere few centimetres inside abutting freehold belonging to the Bottos brothers. They challenged CityLink.

The Supreme Court of Victoria and then the Court of Appeal found in favour of Citylink. The brothers had missed the 15-year window in which they could have reclaimed possession. Their private land had contracted. But had the public land expanded?

A sliver of freehold land was now owned by Citylink, which the court described as being a 'tenant' of the Crown as 'landlord.' So had the sliver become Crown land? It certainly had not become part of the Citylink tollway, because that is defined in detail on certain Surveyor-General's plans – and those plans had not changed.

But our principal difficulties with the Bottos case are not relate to cadastral legalities, but to public land policy. With due respect to the legal profession, we are of the view that such matters should be determined not by the courts, but by policymakers.

Here and there around the State we find roads built off-alignment. In topographically difficult country the physical roadway may be totally outside the legal road reserve. The land it occupies might be Crown land (State Forest, perhaps) or freehold land belonging to some unfortunate farmer.

Up until *Bottos*, such troubles would be resolved by negotiation. Should we rebuild the physical roadway, or reconfigure the cadastral boundaries? Who should pay what amount to whom? Difficult, but not open to claims of adverse possession.

What we are waiting for now is some municipality to claim ownership of private land through 15 years' possession, citing *Bottos*. Tempting? We have seen cases where the land value would be in the millions.

So what's the conclusion? No, not more court cases, please! The Attorney General should embark on another review of the law relating to adverse possession. Let's have some civilised policy development.

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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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Statues Stand, Statues Topple

In Melbourne's parks and gardens we find them in granite and bronze: James Cook, Redmond Barry, Matthew Flinders, Robert O'Hara Burke and William Wills.

All male, all white, and all occupying public land. Statues elsewhere topple: a slave trader in Bristol, England; a slave-owning Confederate General in Richmond, Virginia. Should Melbourne's statues remain standing?

Perhaps it's time to re-examine the values being commemorated in our parkland monuments.

Why does Captain Cook overlook St Kilda Beach? The closest he came to Melbourne was Point Hicks in East Gippsland. As for Flinders, he cruised into Port Phillip, climbed the You Yangs, and cruised out again. They each had confrontations with Indigenous people, but should they be grouped with slave traders and slave owners?



Burke and Wills commenced their trans-continental trek from Royal Park, but their various memorials belittle or ignore Gray (who also perished) and King (who survived, thanks to the Yuntruwunta people). It's a class thing: Burke and Wills were officers, Gray and King were mere foot-sloggers.

Then there's Sir Redmond Barry. He laid the foundations of the State Library and Melbourne University, from which he was adamantly determined to exclude women.

As a lawyer, Barry unsuccessfully defended two Tasmanian Aborigines accused of murder, challenging British authority over Indigenous peoples. As a judge, he condemned Ned Kelly, but acquitted the Eureka Stockade rebels.



We must travel to Optus Oval in Perth to see a statue commemorating an Indigenous Australian – Nicky Winmar lifting his footy jumper to confront the racists. Perhaps it belongs in Victoria Park Collingwood, the scene of the event which it commemorates.

The statues with which we are most familiar are, of course, war memorials. Every country town has its bronze digger with his slouch hat and 303; his granite plinth engraved with a disturbing list of local lads who never came home.

We find a different type of war memorial at Lakes Entrance. The material is not bronze, but timber, hewn from the trunks of Cypress trees planted in the aftermath of WW1. Yes, trees become senescent; memories fade, and we rethink what it is we wish to celebrate. The most haunting amongst the Lakes Entrance sculptures is that of a digger's family, waiting, waiting.

While we're in Gippsland let's check out the roadside memorials to 'Angus MacMillan, Discoverer of Gippsland.' As the Gunai-Kurmai people will tell you, Gippsland wasn't lost and didn't need to be discovered. And, as is very well documented, MacMillan was a Mass-murderer, responsible for the deaths of hundreds of men, women and children.



Finally, back in Melbourne, let's visit the statue of Nurse Edith Cavell in King's Domain. The plinth records her last words as she faced the firing squad: "*Patriotism is not enough. I must have no hatred or bitterness to anyone.*"

So, should statues stand or fall? One thing's for sure: managers of public parks, gardens and roadsides must address bigger issues than mowing the grass. ■

Professional Development February – April 2026

*NOTE: some presentations are 2 sessions, each of 3 hours.
Others are 3 sessions, each of 2 hours duration*



	<p>Property Law & Planning 24 and 25 Feb 10 am to 1 pm Lydia Eastwood (Redmond Lynch Lawyers)</p>		<p>Native Title and Aboriginal Heritage 3 and 4 March 10 am to 1 pm Henry Dow (Marawah Law)</p>
	<p>The Law relating to Vegetation 3, 4, 5 March, 10 am to 12 pm Matt Looby (Biosis)</p>		<p>Roads Governance 10, 11, 12 March 10 am to 12 pm David Gabriel-Jones</p>
	<p>Crown Land Governance 16, 17, 18 March 10 am to 12 pm David Gabriel-Jones</p>		<p>Land Law for Managers of Rivers and Riparian Land 17, 19 & 20 March 10.30 am to 12.30 pm Johanna Slijkerman (Water Technology)</p>
	<p>Land Law for Service Utilities 24 and 25 March 10 am to 1 pm Nick Sissons (Russell Kennedy)</p>		<p>Coastal Land Management 14, 15, 16 April 10 am to 12 pm Richard O'Byrne</p>
	<p>Referral Authorities and the Victorian Planning System 21 and 22 April 10 am to 1 pm Mark Bartley (Russell Kennedy)</p>		<p>Leases and Licences of Public Land 21, 22, 23 April 10 am to 12 pm Richard O'Byrne</p>
	<p>The Law relating to Vegetation 19, 20, 21 May 10 am to 12 pm Matt Looby (Biosis)</p>	<p>How our retainers work... Your authorised staff call us whenever they need our advice. We keep a log of time committed and send you a quarterly invoice against your purchase order.</p>	

Cost:

\$550 including GST, course notes and certificate of attendance

Accreditation:

These courses are eligible for CPD points for lawyers, planners, valuers, and FPET for surveyors.

Registrations:

Fiona Sellars
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ALSO: 'In-house' presentations – we can come to you