

## DEAR INCOMING GOVERNMENT

Hey, Mr Premier! We'd hardly got used to DEPI and DTPLI. Suddenly our vocabularies must absorb DELWaP (that's Department of Environment, Land, Water and Planning) and DEDJTaR (that's Department of Economic Development, Jobs, Transport and Resources).

Our sympathies to the poor public servants who face yet another year of incoherent reshuffles.

Having done the restructure, Mr Premier, we hope you turn to the real job of reforming the governance of the State. If you want somewhere to start, may we suggest **public land** ...

### Top of our list – Drag public land legislation out of the 19<sup>th</sup> Century

That's right – not the 20<sup>th</sup> century, the 19<sup>th</sup>. It's time to frame a new *Public Land Act* to replace the *Land Act 1958*, the *Crown Land (Reserves) Act 1978* and we might as well throw in the *Forests Act 1958*. Despite the date-suffixes on their titles, these Acts' DNA clearly identifies their nineteenth century origins.



Lisa Neville  
Minister for  
Environment,  
Climate Change  
and Water

Under this genetic burden, public land falls into at least four different legislative regimes, each with quite different objectives – often totally remote from the values of the land as we see them in 2015:-

- Unreserved Crown land (like the bed of Port Phillip Bay) which is controlled under the *Land Act 1958* – whose basic purpose remains as is was in the early 1800s: the alienation of *terra nullius*;
- Reserved Crown land (everything from major parks and foreshores to civic infrastructure and utility sites). Here the objective under the *Crown Land (Reserves) Act 1978* (dating from 1862) is tied to some gazetted purpose which is all-too-often archaic, vague or inappropriate;

**Benalla  
NERDS**

That's the North-East Regional  
Development Scheme  
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- Freehold reserves controlled by the *Transfer of Land Act 1958*, which treats land as a commodity to be bought and sold;
- National and other Parks, which are the only category of public land with clearly stated objectives (written into the *National Parks Act 1975*) related to conservation and sustainability.

Our new Act would commence with a salutation to the land's traditional owners and an acknowledgement of Native Title. It would enshrine the principles of sustainability, net gain and subsidiarity. It would raise public land law from the colonial philosophies of the nineteenth century, leap-frog right over the failed twentieth century attempts to paste over and patch up that legacy, and provide a sound basis on which public land can serve future generations.

Amongst other things, our new *Public Land Act* would sort out the meaningless distinction between permanent and temporary reserves, which failed to protect Royal Park from the East West Link, and yet demands parliamentary approval of trivial variations to insignificant roadsides.

### Next – Do the same with the State's systems of public land control and management

Let's find the right management entities for public land, and give those entities a sound corporate structure.

Victoria's Crown land law dates back to a time before municipalities even existed. Groups of upstanding citizens with fine hats and whiskers took on responsibility for their local tennis courts or ornamental gardens.



Natalie  
Hutchins  
Minister for  
Local  
Government  
Minister for  
Aboriginal  
Affairs

The world has changed, but apart from patches being applied to patches, the *Crown Land (Reserves) Act* hasn't. Amongst the reforms necessary here:-

- Transfer Crown land of local significance to local government – both the land itself and the management entity – and reward (not punish) the municipalities for taking it on;
- Reform Committee of Management corporate structures along the lines already found in the *Cemeteries and Crematoria Act 2003*;

*continued...*

*Dear Incoming Government (continued)*

- Facilitate land manager amalgamations, along the lines already established by the Mint Inc, the Great Ocean Road Coastal Committee, and the Phillip Island Nature Park.

**Thirdly: Drag a bunch of land-law relics out of the legal skeleton-closet ...**

Then we come to half a dozen issues which have long demanded attention, but which end up in the too-hard basket. They are difficult issues, but we reckon they're worth serious attention:-

- Adverse Possession and Easement by Prescription, ancient common law concepts long overdue for transferral into statutory law

- The Doctrine of Accretion, under which Lindsay Fox claimed all that Crown land at Portsea
- 'Centreline of the River' title boundaries, a relic of a visionary policy decision taken in 1905, but which now needs to be refined and re-interpreted
- Ownership of pre-1988 freehold roads, an anomaly which continues to cause no end of confusion and ill-will all around the State
- Revoking roads: we are long overdue for a total review and re-write of the half-dozen different, inconsistent and contradictory statutes dealing with road closures – or are they discontinuations? (We can't even decide what to call them !)



In some recent consultancy work for DTPLI we looked at three apparently contradictory propositions, and came to the conclusion that there's some truth in all three...

The matter under investigation was the governance of recreational boating facilities – but we suspect our findings will apply equally to many other areas of public land.

**Proposition 1** *There's little or nothing wrong with current arrangements – they just need to be clarified or better understood.*

**Response:-** May be true in some cases... Many perceived problems related to boating facility governance can be resolved through analysis, explanation and professional development.

*Findings:-*

- *The governance arrangements for many facilities are often difficult to ascertain and understand.*

- *Management staff may be well-qualified in their own professional disciplines, but often need structured training in the interpretation of land status and the management of land governance regimes.*

**Proposition 2** *There may be problems with governance arrangements for individual sites, but there's nothing basically wrong with the underlying administrative apparatus. What's needed is more skill and resources to better apply what's already available in the 'tool-kit.'*

**Response:-** Basically true. Most specific issues can be addressed within existing legislation...

Many complexities related to facility governance are better described as anomalies or even dangers; they  
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North-East Regional Development Scheme

## Benalla Courses

- Land Law and Roads      Tues 24 Feb
- Crown Land Law          Thurs 12 March
- Environmental Law        Tues 21 April
- Managing Volunteers      Tues 28 April

Enquiries and Registrations: Catherine Crawford,  
Training Officer, Rural City of Wangaratta

[c.crawford@wangaratta.vic.gov.au](mailto:c.crawford@wangaratta.vic.gov.au)

Coming soon! New one-day course

## Offences and Enforcement on Public Land

Presenter: Astrid Di Carlo

*Bachelor of Laws (Deakin), Master of Laws (Emory [USA]),  
Bachelor of Arts (LaTrobe), Dip Policy and Law (LaTrobe)*

Enquiries and advance bookings

[Jacqui@publicland.com.au](mailto:Jacqui@publicland.com.au)

*Three Propositions (continued)*

reflect deficiencies in the application of available governance systems, but once identified are capable of remediation.

*Finding:-*

- *The multiple land status associated with many boating facilities can unnecessarily increase the administrative burden associated with the management of the facility.*

In parallel with the fragmented land status found at many facilities, there may also be fragmented management responsibilities. Again, if such multiple management regimes result in confused, ineffective or inefficient management they may be rationalised by use of role assignment mechanisms already available on the Victorian statute books.

**Proposition 3** *There are fundamental flaws in the underlying apparatus of governance. The tool-kit itself is not up to the job. We need some legislative amendment or systemic reform or major policy revision.*

**Response:- True, looking at the bigger picture, and the longer term...**

Some complexities reflect fundamental deficiencies in policy, legislation, or the apparatus of government – some failure of existing systems to respond to evolving needs or standards.

*Findings:-*

- *The Crown Land (Reserves) Act 1978 continues a much-amended but essentially archaic apparatus for determining land status, making regulations, appointing managers, and issuing tenures. Its reform could deliver better outcomes for many Crown land facilities, not just boating-related facilities.*
- *The Victorian Planning Provisions result in anomalous treatments of public land. Major developments proposed by prescribed public land managers may avoid exhibition, consideration by referral authorities, and objections to VCAT if they are governed only by the public land zones.*
- *Boating facilities, whether on the coast or inland, are subject to overlapping sets of subordinate legislation made under various Acts. These may include By-laws made under the Water Act 1989, Regulations made under the Crown Land (Reserves) Act 1978, Local Laws under Local Government Act 1989 - and quite a few others*
- *Some (but not all) of these regulations are subject to periodic (or longitudinal) review, but there is no clear system for reviewing the collective (or lateral) efficacy and utility of the entire regulatory regime.*

There are many thousands of recreational boating facilities across the State. Our recommendation to DTPLI: invite all their managers to reflect on our three propositions – perhaps while trailing a fishing line in the water, up some delightful inlet of some Victorian waterway, with the feet up on the Esky. ■

Richard's column

### Succession planning for volunteer community groups

Succession planning is a big issue, particularly with ageing volunteer community groups. I'm not aware of many times it has been done well. It would be interesting to discuss the question with successful volunteer groups to see if there are common themes.

1. The "what's-in-it-for-me" question - why would people get involved in the particular area of volunteering? If the volunteering is around (for example) tourism, then people involved with and benefitting from tourism-related businesses are the main recruiting ground. Volunteers are sometimes looking for experience that helps them gain paid employment in the future.
2. Among the small number of examples of strongly self-sustaining groups, the issue of leadership is a huge one. People tend to be attracted to dynamic organisations that keep developing and growing.
3. A leader with a constant focus on recruiting new members is a very powerful force for renewal in a volunteer organisation.
4. Volunteer organisations with several 'off-shoot' organisations tend to recruit a diversity of people who sometimes move around the off-shoots as needs change. So for example, a conservation-oriented Friends Group might start a plant nursery, which attracts slightly different people to those involved in weed control, or fauna surveys...but they all work under the same structure.
5. Sometimes groups have a natural decline - and there may be nothing you can do about it. Maybe the original purpose is not as compelling as it used to be, even though the group and its supporters may still be fervent believers.

None of this is new, nor is it easy! Anyway, perhaps that's a conversation-starter. ■

### Managing conflicts of interest in S.86 Committees

In relation to pecuniary interest and S86 Committees – as we point out in our 'Volunteers' course, a S86 Committee is not separate from, but is part of Council. Therefore it makes sense that similar conflict-of-interest provisions should apply to co-opted "external" members as apply to Councillors or Council officers. It needn't be too complicated, but Council could review the Councillor conflict-of-interest provisions to make sure they're appropriate, then require all S86 Committee members to have the same (or similar) standard. We can advise further if you wish. ■

**Richard O'Byrne**

Associate, The Public Land Consultancy

## One-Day Training Courses – January to April 2015

*Cost: \$495 including GST, course notes and working lunch.*

<b>Crown Land Law, Policy and Practice</b> <i>David Gabriel-Jones, Principal</i>	Thursday 26 February Thursday 12 March Monday 23 March	Melbourne Benalla Traralgon
<b>Land Law for Managers of Parks and Gardens</b> <i>Richard O'Byrne, Associate</i>	Wednesday 11 February	Melbourne
<b>Land Law for Managers of Roads, Streets and Lanes</b> <i>David Gabriel-Jones, Principal</i>	Monday 16 February Tuesday 24 February	Melbourne Benalla
<b>Land Law and Coastal Adaptation</b> <i>Richard O'Byrne, Associate</i>	Wednesday 18 February	Melbourne
<b>The Law and Subdivisions</b> <i>Grant Arnold, Associate</i>	Thursday 19 February	Melbourne
<b>Easements and Restrictive Covenants</b> <i>Astrid Di Carlo, Associate</i>	Tuesday 24 February	Melbourne
<b>Referral Authorities – Doing it better</b> <i>Grant Arnold, Associate</i>	Wednesday 25 February	Melbourne
<b>Environmental Law for Councils as Land Managers</b> <i>Grant Arnold, Associate</i>	Tuesday 3 March Wednesday 18 March Tuesday 21 April	Bendigo Melbourne Benalla
<b>Land Law for Managers of Rivers and Lakes</b> <i>David Gabriel-Jones, Principal</i>	Thursday 5 March Thursday 19 March	Echuca Melbourne
<b>Re-Imagining Urban Public Land</b> <i>David Gabriel-Jones, Principal</i>	Tuesday 17 March	Melbourne
<b>Land Law for Service Utilities</b> <i>Astrid Di Carlo</i>	Tuesday 24 March	Melbourne
<b>Planning Law – A strategic overview</b> <i>Grant Arnold, Associate</i>	Wednesday 25 March	Melbourne
<b>Native Title and Aboriginal Heritage</b> <i>David Yarrow</i>	Thursday 29 January Thursday 26 March	DEPI Melbourne
<b>Managing Volunteers and Grants Programs</b> <i>Richard O'Byrne, Associate</i>	Tuesday 28 April	Benalla
<b>Leases and Licences of Public Land</b> <i>Karen Hayes</i> <b>Risk Management Law</b> <i>Michael Beasley</i> <b>Land Information and its Interpretation</b> <i>Scott Jukes, LS</i>	<i>Dates to be fixed</i>	Melbourne

## Our Program of Half-Day Workshops

*Cost: \$330 including GST, course notes and morning coffee.*

<b>Crown Reserves: Assets or Burdens?</b> <i>Grant Arnold, Associate</i>	Friday 13 March	Melbourne
<b>Encroachments onto Council-Controlled Land</b> <i>David Gabriel-Jones, Principal</i>	Friday 20 March	Melbourne
<b>Unused, Little-Used and Discontinued Roads</b> <i>David Gabriel-Jones, Principal</i>	Friday 27 March	Melbourne

**Enquiries and Registrations:** Jacqui Talbot – [jacqui@publicland.com.au](mailto:jacqui@publicland.com.au) – phone 9534 5128

*In addition to our scheduled presentations, you can engage us to present our training courses in-house at your own offices. Discounts for course hosts.*