



The Art of the Gazettal

(Or three interesting things about Section 207B.)

That's section 207B of the old *Local Government Act 1989* – the LG Act that keeps on keeping on, even after being superseded by the new *Local Government Act 2020*. Yes, parts of the old Act still survive – at least those parts relating to roads and drainage.

Interesting thing #1. Section 207B saves Councils a heap of money. By judicious use of 207B, the dollar value of the land in a discontinued government road can be credited to the Council, not to Department of Treasury and Finance.

Interesting thing #2. Under 207B, freehold land is created from Crown land, without any Crown grant. When the squatters seized Crown land through Pre-emptive Rights (PRs), and when the churches commandeer Crown land through Act 391, they still get a Crown grant, signed by the Governor-in-Council. But not for sec 207B freeholdings. The LG Act deems the alienation to occur on the date when a gazettal notice is published – not by the Governor, but by the local Council.

Interesting thing #3. The artwork! If the notice in the Government Gazette is so important then yes, it needs to be clear, well-expressed, and 100% accurate. Such notices are works of art – composed by legal wordsmiths and licenced surveyors. If they are going to provide the foundation for some freehold subdivision or development, they must be capable of withstanding scrutiny.

To Discontinue or to Deviate?

Section 207B can be used to *deviate* a government road, rather than merely discontinue it. There must be some other road reserve being created. That's what all the hatching and cross-hatching is about, in the artworks to the left.

So what constitutes a deviation? It's not necessarily like-for-like. The LG Act makes no mention whatsoever of the configuration, trafficability, area, or valuation of the various roads concerned, nor of the sequencing of the old road closure and the new road opening. We know of one case in which the creation of the new freehold road and the abolition of the old government road were separated by 30 years. For the Council concerned, the artwork in the gazette was worth well over a million dollars.

In our Roads Governance courses, we are thinking of setting up studio lighting, easels, canvasses, and artists' models. ■

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Short Training Courses
July to September 2021

What's happening to Sec 223 of the *Local Govt Act 1989*?

Question asked by several council property officers

Right now, Victoria has two Local Government Acts in operation simultaneously. The [LG Act 2020](#) is up and running, but has not totally replaced the [LG Act 1989](#). In fact, the provisions of the 1989 Act relating to roads remain untouched – although rumour has it that, in due course, they will be incorporated into the *Road Management Act 2004*.

Under the new LG Act, we are seeing Community Engagement Strategies, which set out how a council intends to inform and consult with its community. Section 114 of the new Act requires land sales to be advertised and community consultation – but the old Act still presents us with section 223, which ordains an old-fashioned and prescriptive process whereby the public may have their views heard.

Section 223 is still alive and well, and is invoked by half a dozen continuing provisions of the old LG Act. These include (for instance) sections 199 and 200 which relate to drainage, and section 207A which authorises various road-related decisions, such as road discontinuation and deviations.

So councils have to design a process which satisfies both the old and the new Acts. We guess we'll still be seeing section 223 notices and section 223 hearings for some time yet. ■

What's happening to Sec 110(3) of the *Land Act 1958*?

Question asked by absolutely nobody

That's right. Absolutely nobody is asking this question. Wonder why not?

Sec 110(3) of the *Land Act 1958* specifies what happens if a lessee of reclaimed swamp land goes mad. We are not joking.

If this provision was ever put to use, we do not know when, where or why. The only purpose the provision now serves is to allow us to bemoan the archaic body of Crown land legislation, and to advocate for its reform.

And guess what! Section 110(3) is about to be relegated to the legislative trash bin, where it belongs. The *Parks and Crown Land Amendment Act 2020* comes into effect on 1 September 2021. At that date section 110(3) disappears, together with a whole obsolete slab of the *Land Act 1958* relating to reclaimed swamp lands. Nobody is taking any notice.



As Minister D'Ambrosio explained "Some of this legislation dates back to the nineteenth and early twentieth centuries. This Bill assists in this task (modernisation) by repealing many redundant or spent provisions..."

What's our point here? The government has been committed to reform of Crown land law 'in principle' for at least 5 years, but we have yet to see any meaningful detail. The DELWP consultation paper of April 2021 is to be followed by an 'Engagement Report' in which we may finally see some detail.

Sure, the reform of Crown Land legislation will not be easy. As Basil Faulty said when about to release Sibyl from the cupboard "Now for the difficult bit."

Well, we at least know that section 110(3) is going. No more straitjackets in the Crown's swampland. ■

Readers of *Terra Publica* should not act on the basis of its contents which are not legal advice, are of a general nature, capable of misinterpretation and not applicable in inappropriate cases.

If required, The Public Land Consultancy can obtain legal advice from one of its associated law firms.

WATERWAYS

A Cadastral Taxonomy

Geographers, ecologists and hydrologists may classify rivers in terms of their geomorphology, biological characteristics, or flow regimes. For legal purposes, however, waterways often need to be described in terms of their relation to the cadastre.*

The Murray

In this taxonomy the Murray stands apart. It defines the state border, which lies at the top of the bank on the southern side of the river. A strip of dry land on the southern side, between the water's edge and the top of bank, is thus in New South Wales.

In places where there is more than one channel, the relevant channel is the one which carried the greater flow in 1850, being the year in which Victoria was separated from New South Wales.

The three-chain Crown reserve established along the southern frontage was created in 1881, when the state border was believed to be the water's edge at ordinary winter flow. As a result, the present width of the reserve is three chains, minus the width of the strip between water's edge and top-of-bank**.

Headwaters

The headwaters of many major rivers lie entirely within Crown land – often State Forest or National Park. In the former case the riparian land may have dual status, being simultaneously State Forest and Crown Reserve; in the latter, the Crown Reserve will have been revoked by the legislation creating the National Park. In both cases, the riparian land is regarded and managed as part of the Forest or Park of which it forms a part.

Waterways as Property Separators

Many of the State's major waterways are cadastral separators. Here we find a strip of Crown land, containing the watercourse and its frontages, separating the freehold land on either side**. It is this class of waterway where Crown water frontage grazing licences are most likely to be found.

'1905' Boundary Waterways

Certain waterways form freehold property boundaries. On title the boundary is defined as the centreline of the watercourse, apparently leaving no Crown land. These titles must, however, be read in conjunction with the *Water Act 1905*, which decreed that the bed and banks

of such waterways did not pass with the grant of freehold, but remained as Crown land. In these cases the waterway itself is now Crown land, but there is no Crown frontage.

Waterways within Properties

A further class of waterway includes those streams, often relatively minor or non-perennial, which lie entirely within freehold property boundaries. These were unaffected by the 1905 expropriation.

Designated Waterways

The *Water Act 1989* refers to both 'waterways' and 'designated waterways.' Under section 188 a Waterway Authority (other than Melbourne Water) may declare a waterway to be a designated waterway. Under section 188A all waterways in Melbourne Water's waterway management district are designated waterways (without needing to be so declared), other than waterways within the Port of Melbourne and the lower reaches of certain rivers near the Port.

The '1881' Rivers

Much riparian Crown land is reserved, and although this may occur at any time, the most notable reservation was that of 1881, when land forming the bed, banks and frontages to some 280 rivers and lakes was reserved. The reservation applied only to land which was still Crown land at the time, so the reserve is interrupted by parcels of freehold land which had been sold off before that date.

Named Rivers

The *Aboriginal Heritage Regulations 2018* employ a novel method of identifying all streams other than the most minor – by reference to streams with a registered name.

In these regulations **waterway** means (a) a river, creek, stream or watercourse the name of which is registered under the *Geographic Place Names Act 1998*; or (b) a natural channel the name of which is so registered in which water regularly flows, whether or not the flow is continuous, or (c) a lake, lagoon, swam or marsh...

Navigable Rivers

In the past, navigability was an important taxonomic characteristic. Navigable rivers were granted special recognition in early land law, and are still regarded as 'public highways' by the common law. The lower Yarra, Maribyrnong, Patterson River etc are also given special status under ports-related legislation.

Heritage Rivers

The *Heritage Rivers Act 1992* designates 18 specified rivers, or parts of them, as Heritage Rivers. For each river, a schedule specifies a bandwidth (typically 100, 200, or 300 metres wide) of riparian land to which the provisions of the Act applies. For public land within these zones, restrictions apply to uses and works such as water diversions and timber harvesting. ■

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.

* The *cadastre*: the body of data defining the parcelation, legal status and ownership of land.

** Warning: further complications if the river has moved

Intensive Training Courses
July to September 2021

*Each presentation runs
across three sessions, each
of 2 hours duration*



Restrictions on Title

*Presenter:
Simon Libbis*

Thurs 15 July, 12pm to 2pm
Thurs 29 July, 12pm to 2pm
Thurs 5 Aug, 12pm to 2pm



Native Title and
Aboriginal Heritage

*Presenter:
Anoushka Lenffer*

*(This presentation is two sessions each
of 3 hours duration)*

Wed 4 Aug, 10am to 1pm
Wed 11 Aug, 10am to 1pm



Land Law and
Subdivisions

*Presenter
HWL Ebsworth*

Thurs 12 Aug, 12pm to 2pm
Thurs 19 Aug, 12pm to 2pm
Thurs 2 Sept, 12pm to 2pm



Land Law for Rivers
and Riparian Land

*Presenter:
Johanna Slijkerman*

Mon 16 Aug, 10.30am to 12.30pm
Tues 17 Aug, 10.30am to 12.30pm
Fri 20 Aug, 10.30am to 12.30pm



Roads Governance

*Presenter:
David Gabriel-Jones*

Tues 24 Aug, 10am to 12pm
Wed 25 Aug, 10am to 12pm
Thurs 26 Aug, 10am to 12pm



Coastal Land
Management

*Presenter:
Richard O'Byrne*

Tues 7 Sept, 10am to 12pm
Wed 8 Sept, 10am to 12pm
Thurs 9 Sept, 10am to 12pm



Crown Land
Governance

*Presenter:
David Gabriel-Jones*

Tues 14 Sept, 10am to 12pm
Wed 15 Sept, 10am to 12pm
Thurs 16 Sept, 10am to 12pm



Working with Owners
Corporations

Presenter: Tim Graham

Thurs 7 Oct, 12pm to 2pm
Thurs 14 Oct, 12pm to 2pm
Thurs 28 Oct, 12pm to 2pm

Cost: \$440 per three-session course, including GST, course notes and certificate of attendance

Accreditation:
These courses are eligible for CPD points for lawyers and FPET points for surveyors

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