

Towards a New Public Land Act

The State Government is committed to a major reform of Crown land law.

Legislation dating back to the 19th Century has been judged 'not fit for purpose', and 'overdue for repeal'. We may finally see the end of the *Land Act 1958*, the *Crown Land (Reserves) Act 1978*, and the *Forests Act 1958*. In this edition we look at some past articles on the need for this overdue reform.

A Zombie of an Act

Way back in June 2003 we were invited to address a DSE seminar...

Three times in living memory the **Land Act 1958** has been proclaimed dead, and yet it walks. A standing insult to Aboriginal people; the yet-to-be laid ghost of *Terra Nullius*; the mummified corpse of 19th century colonial systems and values. Let's drive a stake through its heart.

The Act is a legislative bastion of the discredited doctrine of *terra nullius*, and is therefore a standing insult to aboriginal Australians.

It's a decade since the High Court's Mabo decision and the Commonwealth Native Title Act overturned *terra nullius*.

The Land Act still keeps alive on the statute book the apparatus under which the Koorie people were dispossessed, and vast tracts of their land were granted to white settlers by representatives of a foreign Crown.

The Land Act '1958' is actually rooted in the early 1800s, the age of the cornucopia. It is designed primarily to support and facilitate the business of wiping out Crown land through its conversion to freehold.

We can't undo history, but surely we can wipe this anachronistic relic of colonialism from the statute book. ■



Patches on Patches

In August 2009 we bemoaned the mess that has been made of the Crown Land (Reserves) Act 1978. Since then, it's got worse.

In collaboration with
Russell Kennedy lawyers

Towards a New Public Land Act

Tuesday 25 March 2025

9:00 am – 1:00 pm

REGISTER HERE

Attend on-line or in-person

No Charge

In this seminar our expert panel will welcome the prospect of a new Public Land Act, and touch on some of the many issues that it needs to address.

- Kathy Mitchell AM Chair
- Mark Bartley
Senior Counsel, Russell Kennedy
- David Gabriel-Jones
Principal, The Public Land Consultancy
- John Stevens
Manager Legal, Parks Victoria

More details – Page 3

Amendments:
challenging.

Wholesale reform:
*even more
challenging.*

*In August 2016 we welcomed the
VEAC critique of Crown land legislation*

The Victorian Environment Assessment Council (VEAC) has released its draft proposals paper on the subject of public land in Victoria.

VEAC's 19 draft recommendations include two which are, on the surface, contradictory. We like them both.

The proposals respond to a government request for a re-evaluation of Victoria's system of public land categories, the current reservation status for public land, and an inventory of the types of values found on public land.

Recommendation R3 is that the *Crown Land (Reserves) Act 1978* be fixed up.

Recommendation R10 is that the CL(R) Act be totally rewritten – together with its mother-Act, the *Land Act 1958*.

A contradiction? Perhaps not, when you factor in the processes of legislative change involved.

To make the amendments which VEAC proposes would take 12 months (that's optimistic), but to rebuild the foundation of the State's Crown land law would take 5 years (very optimistic*). But that's what VEAC is suggesting, and we can only applaud.

Let's get on with the job! ■

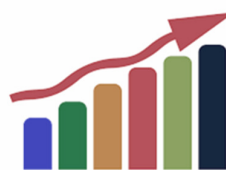
* *Optimistic? That's what we said in 2016!*

Strategic Incrementalism

*In October 2019 we proposed an
overall strategy for legislative reform*

The public land governance regime is subject to on-going legislative change. Such changes can take three forms.

Firstly, there's the Great Leap Forward. Secondly, we have *ad hoc* tweaking. In between, there's what we call Strategic Incrementalism.



Let's look at each of them. The Great Leap Forward does indeed happen, from time to time. Think of Minister Bill Borthwick and his 1970 Little Desert intervention. Or the Cain Government's renaissance of Southbank. Think of the High Court's 1992 decision on Mabo.

The *ad hoc* amendment may well be positive, and useful, but at worst, it might be mere political window dressing. Many examples!

Then there's strategic incrementalism. Making changes bit by bit, one by one, but in some deliberate overall direction.

Imagine: ● *A Public Land Accountability Act.* ● *A Crown Tenures Act.* ● *A Reserve Purposes Rationalisation Act.* ● *A Riparian Land Reform Act.* ● *A Fix Up Topographic Boundaries Act...*

We are now heading into a new round of public land legislative reform – courtesy of the 2017 VEAC recommendations. We may hope for the Great Leap Forward (that's what's really required), but we'll settle for strategic incrementalism.

So long as we don't see yet more rounds of *ad hoc* window dressing. Time will tell. ■



No entry for persons reputed to be balancers, welschers, ticktackers, urchers, touts, pickpockets or prostitutes.

In July 2019 we had a laugh at...

Reserve Regulations

It is a principle that's been well-accepted since the 1980s: regulations should (a) be made through a transparent process and (b) sunset at the age of 10 years.

Same with a council's local laws. If they are to continue after sunset they must be re-justified, go through public exhibition, and re-evaluation in the light of submissions.

But what about public land regulations? Sorry, regulations made under the *Crown Land (Reserves) Act 1978* are made by a totally opaque process, and do not sunset.

As a result, we stumble across regulations made in the 1920s or even the 1890s, reflecting long-vanished attitudes and standards.

Entrance fee two shillings; no sport on the Sabbath; no lying on the grass; no singing obscene ballads. And no entry for balancers, welschers, etc...

If it goes to court, an absurdly obsolete CL(R) Regulation takes precedence over a reasonable, modern, local law.

The cause of this problem? Crown land reserve regulations do not fall within the definition of 'statutory rules' for the *Subordinate Legislation Act 1994*.

The solution to the problem? In the re-write of the legislation, just fix it! ■

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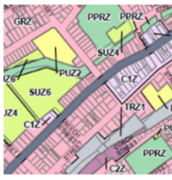








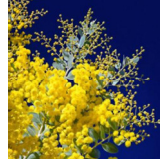
Venue:
Russell Kennedy
lawyers
18th floor, 500 Bourke St.

- The 2017 recommendations from VEAC, which are the starting point
- Tenures – the legal framework for the use and occupation of Crown land
- Appeal and Review – those public land matters which should go to VCAT
- Roads on Public Land – the complex law governing roads and lanes
- Control and Accountability – the chain of accountability for public land.

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Professional Development, March - June 2025

NOTE: some presentations are 3 sessions, each of 2 hours duration;
others are 2 sessions, each of 3 hours duration

	Referral Authority and the Victorian Planning System <i>Presenter: Mark Bartley</i> Wed 26 Mar & Thurs 27 Mar 10am to 1pm		Crown Land Governance <i>Presenter: David Gabriel-Jones</i> Tues 1 Apr, Wed 2 Apr & Thurs 3 Apr, 10am to 12 noon
	Native Title and Aboriginal Heritage <i>Presenter: Henry Dow</i> Tues 1 Apr & Wed 2 Apr, 10am to 1 pm		Land Law and Subdivision <i>Presenter: Mark Bartley</i> Tues 29 Apr & Wed 30 Apr, 10am to 1pm
	Roads Governance <i>Presenter: David Gabriel-Jones</i> Tues 29 Apr, Thurs 1 May & Fri 2 May, 10am to 12 noon		The Law relating to Works on Roads <i>Presenter: David Gabriel-Jones</i> Tues 6 May, Wed 7 May & Thurs 8 May, 10am to 12 noon
	Coastal Land Management <i>Presenter: Richard O'Byrne</i> Tues 20 May, Wed 21 May & Thurs 22 May 10am to 12 noon		Leases and Licences of Public Land <i>Presenter: Richard O'Byrne</i> Tue 17 June, Wed 18 June & Thurs 19 June, 10 am to 12 noon
	Rivers and Riparian Land <i>Presenter Jo Slijkerman</i> Tues 27, Thurs 29 & Fri 30 May 10.30am – 12.30pm		Coming soon: The Law relating to Vegetation

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:
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