



## Taking it to Appeal

As DELWP heads into a re-write of Crown land legislation, there's a principle which we hope they keep in mind: public sector administrators must be accountable.

Their decisions should be open to review and appeal – but by whom? Public servants are answerable to Ministers, who are answerable to the electorate – but that's small consolation if you're a disgruntled member of the public. You want to have your day in VCAT.

**But VCAT (that's the Victorian Civil and Administrative Tribunal) 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 DELWP issues the unused road licence to the landowner to the West, rather than the landowner to the East; if they decide to close (or not to close) the government road; if the Committee of Management decides that the public hall can (or can't) be used by some particular family, or club, or church; if the Yacht Club sublets the foreshore restaurant to my competitor; if Council as Committee of Management charges me more rent than it charges some other user of the Crown reserve... then I want to go to VCAT, but as the law stands, I can't.

While we're at it, there are a few provisions of the *Local Government Act 1989* that could also be linked through to VCAT. Sure, section 223 of that Act allows me to make submissions to my council on various matters – but somehow I'm not altogether persuaded that my council will give me a fair hearing. Indeed I may suspect that some 223 hearings are a bit of a sham – Council has already made the decision and is only going through the motions.

**The Andrews Government has [accepted](#) recommendations from the Victorian Environmental Assessment Council (VEAC – not to be confused with VCAT): public land law should be brought into the twenty-first century. Brought from where? Some from the twentieth century, but in no small part from the nineteenth.**

VEAC itself epitomises the inevitable, but as yet incomplete, evolution of public land governance systems. That body, in the guise of the Land Conservation Council (LCC), changed land status determinations from *ad-hoc* Ministerial decrees to systematic, rule-based and transparent processes. That was in the 1970s: it's now time for another leap forward.

***We see a dozen matters – over and above those highlighted by VEAC – that are overdue for review. One of them is appeals to VCAT.***

The current rewrite of Crown land legislation is the opportunity. Let's hope it's not wasted. ■

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Professional Development courses for September-December 2019

## Some Recent Consultancy Work

Thanks to all our clients for these fascinating engagements!



**Our Client** City of Greater Geelong

**The Land**

Many hundreds of Council-controlled community facilities on both Crown land and Council's freehold land

**We advised on** Options for systems and policies relating to facility administration, allocation and pricing



**Our Client**

**Working Heritage**

(a Committee of Management under the CL(R) Act)

**The Land**

Fifteen historic Crown land properties around the State

**We advised on** Conversion of the client body into a Statutory Trust, as proposed by the Government



**Our Client** Victorian Environmental Assessment Council

**The Land**

Coastal reserves on the ocean and bay foreshores

**We advised on** The technicalities of the coastal cadastre, including the 'doctrine of accretion' under which some parcel boundaries may move



**Our Client** ib vogt GmbH (a Berlin-based engineering company)

**The Land**

300 ha of mainly freehold land outside Carisbrook – the site for a \$100 million solar farm

**We advised on** incorporation of unused Government roads into the development site

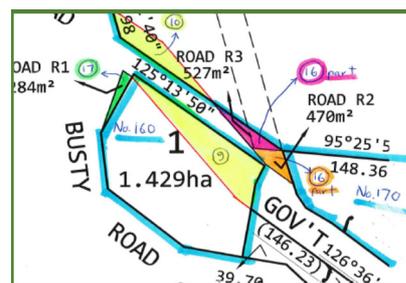


**Our Client** The Knob Reserve C'tee of Management

**The Land**

Reserves and Parks in Gippsland

**We advised on** The success of joint Gunaikurnai / Parks Victoria / DELWP management, and strategies for placing other Gippsland reserves under similar joint management arrangements



**Our Client** Colac Otway Shire Council

**The Land**

Busty Road, Apollo Bay

**We advised on** procedures for undertaking a complex road realignment (in collaboration with Lyssna consulting)

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 formal legal advice from one of its legal associates.

## Questions and Answers

### Q1: Is a CoM subject to the Privacy and Data Protection Act?

*Question from a Council Governance Manager*

The *Privacy and Data Protection Act 2014* governs the collection and handling of personal information in the Victorian public sector.

Part 4 of the Act requires public sector agencies to develop and adhere to plans which address compliance with relevant data security standards. Councils are exempt – but how about Councils acting as Committees of Management?

The Information Commissioner has advised that ‘*While a Council is carrying out its functions under the Local Government Act is not subject to Part 4 of the PDP Act, a Council appointed as a CoM is a public entity in respect of its activities carried out as a CoM under the CL(R) Act.*’

So a Council which is CoM for, say, 20 Crown reserves has to prepare 20 security risk profiles, 20 protective data security plans, and review them every second year.

**Is such a Council a single entity or 21 separate entities? Legislators faced the same problem back in 1981, when sec 15(8A) was slotted into the Crown Land (Reserves) Act 1978. Until then, our Council was required to submit 21 annual financial reports, and therefore keep 21 sets of books... nightmare.**

Maybe all this will change in the forthcoming rewrite of Crown land legislation – which will (we hope) overflow into the patching up of other ancillary Acts.

### Q2: Does an Incorporated Committee report to DELWP or to Consumer Affairs Victoria?

*Question raised at one of our ‘Crown Land Governance’ courses*

All Committees of Management (CoMs) are appointed under the *Crown Land (Reserves) Act 1978* (the CL(R) Act) – but some may have been incorporated entities already, prior to their appointment.

So it is with Councils (incorporated under the *Local Government Act 1989*), Parks Victoria (incorporated under its own Act) and so forth. If an unincorporated group of citizens is appointed as a CoM, it may incorporate under the CL(R) Act itself.

The CL(R) Act allows ‘bodies established by or under any Act for any public purpose’ to be appointed as CoMs. Clubs and societies normally incorporate under the *Associations Incorporations Reform Act 2012* (the AIR Act). Are they ‘bodies

established for a public purpose’? Sorry – most of them are not. Public spirited though they may be, they are established for the purpose of serving their own members. They may occupy Crown reserves as tenants, but DELWP should not allow their appointment as delegated managers.

So to whom do these various bodies report? All CoMs must report to DELWP, other than those exempted by Sec 15(8A) of the CL(R) Act – Councils, Parks Victoria, and our here-before-mentioned bodies established for a public purpose.

**Bodies established under the AIR Act must report to their own membership, not to Consumer Affairs Victoria (CSV). Their annual reports are merely lodged at CSV, which has no interest whatsoever in how well or poorly the body is managing its Crown land reserve.**

Sorry to say, DELWP has misinterpreted this provision. They have invented ‘category 4’ CoMs which are not required to report. By including AIR Act bodies in category 4, they are setting up a class of essentially autonomous Crown land managers. Goodbye to accountability, goodbye to proper landlord-tenant relationships.

As The Victorian Auditor General’s Office (VAGO) has found ([click here](#)), this arrangement “*has removed all probity checks and DELWP oversight of these CoMs and the reserves they manage, which is inappropriate.*”

### Q3: Can a road reserve be created over a Crown reserve?

*Question from a Council Property Manager*

Normally, such land would be *either* a Crown reserve *or* a Government road. You would not expect it to be both simultaneously. If a reserve was to become a road, it would be neater to revoke the reserve and then proclaim the road. Relatively easy if it’s a ‘temporary’ reserve; more difficult if it’s ‘permanent’ – because to change a permanent reserve normally needs an Act of Parliament.

Rather than head towards Parliament (2 years delay?) there may be a short cut. The purpose of a permanent reserve may be narrowed (not widened) by administrative action. So, if our Crown land is reserved for wide open public purposes, a road may be proclaimed over it. If in due course the road is discontinued, the permanent reserve re-emerges.

There are a few cases where this has happened along the Upper Yarra, and South side of the Murray River, which is permanently reserved for public purposes.

Maybe all this will change when the temporary / permanent system is thrown out in the forthcoming rewrite of Crown land legislation. ■

**“Best training course I’ve attended in years”**

Senior Technical Officer, Goulburn Murray Water

**“Should be mandatory for all project related Urban Development staff”**

Project Manager, DPCD

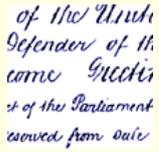
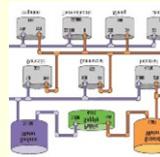
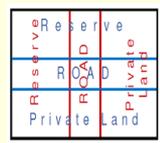
**“This course should be compulsory for all VicRoads technical staff”**

Senior VicRoads Engineer

**“The most relevant training ever completed by myself at GHD”**

Water Engineer, GHD

## One-day Training Courses – August to December 2019

	<p><b>Restrictions on Title</b> Mon 2 September – Melbourne (Venue: Russell Kennedy)</p>		<p><b>Native Title and Aboriginal Heritage</b> Tues 20 August – Warrnambool Thurs 28 November - Melbourne</p>
	<p><b>Road Closures and Discontinuations</b> Fri 23 August – Wangaratta Fri 30 August – Geelong Fri 13 September – Melbourne Friday 18 October – Bendigo</p>		<p><b>Roads Governance</b> Wed 4 September – Melbourne Thurs 31 October – Benalla Tues 19 November – Werribee Thurs 10 October – Mildura* * In-House Course</p>
	<p><b>Coastal Land Management</b> Wed 13 November – Frankston</p>		<p><b>Land Law for Service Utilities</b> Mon 16 September – Melbourne TBC November - Barwon Water* * In-House Course</p>
	<p><b>Leases and Licences of Public Land</b> Thurs 10 October – Melbourne</p>		<p><b>Crown Land Law, Policy and Practice</b> Tues 24 October – Traralgon Tues 12 November – Frankston</p>
	<p><b>Referral Authorities and the Victorian Planning System</b> Thurs 3 October – Melbourne</p>		<p><b>Offences and Enforcement on Roads</b> Mon 14 October – Melbourne (Venue: Russell Kennedy)</p>
	<p><b>The Law relating to Subdivisions</b> Tuesday 8 October – Melbourne</p>		<p><b>Public Land Reconfiguration</b> Tues 26 November – Melbourne</p>
	<p><b>Planning Law for Water Authorities</b> Tues 17 Sept – Gippsland Water* * In-House Course</p>		<p><b>The Law relating to Works on Roads</b> Date TBC – Melbourne</p>

**Cost \$550 per person**  
including GST, Course notes and working lunch.  
Discounts for host organisations

**Enrolments and Enquiries** – Jacqui Talbot –  
[jacqui@publicland.com.au](mailto:jacqui@publicland.com.au)

All courses are of one-day duration;  
starting time 9:00 am, finish 4:30 pm

For details of all these courses go to  
[www.publicland.com.au/professional-development](http://www.publicland.com.au/professional-development)