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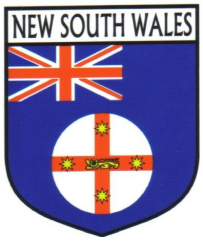
North of the Border

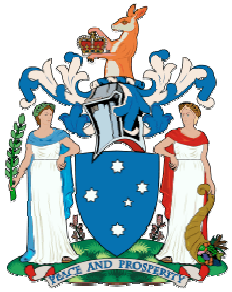
In New South Wales they have public land, too. Lots of it, including types of land we Victorians don't know about, like 'Western Lands' and 'Travelling Stock Routes.'

In Australia, land law is the business of individual States. So NSW land law, although parallel to Victorian land law, is often quite different.

One similarity, however, is the need for reform. Both sets of statutes arise from the murky depths of past centuries, and have often failed to adapt.

NSW is in the throes of reform. A Crown Lands Management Review in 2014 led to a White Paper which proposes a series of legislative revisions. The corresponding Bill has yet to be introduced, but the message from across the Murray is loud and clear: Victoria is lagging behind.





Amongst the most profound changes is the amazing idea that Crown land of state significance should be controlled by the State, but land of local significance should be controlled by Local Government.

Not just *managed* by local government, but transferred to them in freehold to be controlled in the same way as a Council's own freehold properties. That's right: Crown land controlled, planned, managed, used, developed and even *sold off* – under precisely the same set of laws as apply to a Council's freehold property portfolio.

The Victorian Auditor General addressed problems associated with 'gifted' assets in his Feb 2014 report *Asset Management and Maintenance by Councils*:-

"Some councils indicated they would prefer not to have the responsibility for managing ('gifted') assets, which commonly include buildings and parks and recreational facilities, because they are unable to dispose of them but are obliged to maintain them at a substantial cost."

It seems that NSW now has the solution: don't give municipalities mere custody of local assets, give them actual ownership.

Just imagine – councils able to decide how to match their public halls, tennis courts, ornamental gardens and corner playgrounds to the needs of their own communities – without the fear of inadvertently subsidising State Treasury.

The NSW Management Review lists what it sees as the benefits of rationalisation:

- councils will manage all local land in accordance with local government legislation, resulting in reduced administrative costs and simplified administrative processes,
- facilities occupying mixed Crown land and freehold land sites can be treated as one entity,
- removal of the need for Minister's consent for activities such as granting leases and licences
- Councils will have flexibility to consider options for alternative use or disposal of local land, and re-investment, as part of their broader asset portfolios.

Applying this thinking to the Victorian situation, we could add a couple more benefits:

continued P2

Guess we can't take credit for the NSW reforms – but they do mirror a lot of views we've been expressing in Terra Publica for quite a few years – views strongly supported by many participants in our courses and workshops …

Incorporation

NSW is rationalising the structure of reserve 'trusts.' When incorporation was introduced in Vic, it was intended only for the most significant Crown land Committees, like Olympic Park. A lot of water has flowed down the Yarra since then, but the CL(R) Act remains stuck in the 1980s…

Page 3: Can an Incorporated Committee be disbanded?

Too much red tape

NSW has discovered that they have a dozen statutory heads of power for leases and licences of Crown land – and is looking to rationalise them.

In Victoria, the CL(R) Act alone contains 16 separate generic provisions – plus a heap of site-specific provisions. In our opinion no more than 2 are actually needed.

Page 3: What are sections 17A and 17C all about?

Q… Where exactly is the State border?

Answer: not where you might think it is.

A strip of dry land on the South side of the Murray is in fact in NSW. No, we're not suggesting the border should be shifted, but there should be an interstate agreement allowing Victorian agencies to manage all the land on 'our' side of the water.

Read more. ■

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***North of the Border** – continued*

- Removal of the dysfunctional duplication between Crown land regulations and Local Laws
- Community committees would be answerable to their local Town Hall, not to a public service whose proper focus is on state issues.

The NSW Review also proposes possible criteria for determining whether land is of local as against state significance. We're not at all sure they've got it right, but it's a start.

Problems? Sure… How would freeholding of local significance Crown land affect Native Title? We Victorians are a step ahead of NSW on this one: our *Traditional Owner Settlement Act 2010* provides mechanisms for 'settlement agreements.'

But the biggest problem will be political fear. Councils will accuse the State of surreptitious cost shifting; State Treasury will shudder at the prospect of councils picking up windfall gains. Will it all be too hard? We await the details from across the Murray. ■

Through our Tenure Audit Service we can provide you with an independent and authoritative health check of your public land tenancies.

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Enquiries
David Gabriel-Jones
(03) 9534 5128

Our Half-day Workshops – June & July 2015

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Walkability:
the Governance Toolkit
*Fri 29 May * Melbourne*
*Wed 28 July * Wangaratta*
*Thurs 6 August * Bendigo*

Capturing the Value of Discontinued Roads
*Fri 26 June * Melbourne*

Un-used, Little-used and Discontinued Roads
*Wed 29 July * Wangaratta*

Cost $330 per person
including GST, course notes and morning coffee
Enrolments and Enquiries – Jacqui Talbot – jacqui@publicland.com.au

* **Melbourne**: Law Institute of Victoria, 470 Bourke St
* **Wangaratta**: Rural City of Wangaratta, 62-68 Ovens St
* **Bendigo**: Greater City of Bendigo, 15 Hopetoun St

Can an Incorporated Committee be disbanded?

Question prompted by the NSW proposal to restructure delegated managers of Crown land.

These days virtually all Committees of Management under the *Crown Land (Reserves) Act 1978* are incorporated bodies.

Many were incorporated under other legislation prior to being appointed as CoMs – like Parks Victoria and Municipal Councils, which are bodies corporate set up under the *Parks Victoria Act 1998* and the *Local Government Act 1989* respectively.

If and when bodies such as these are abolished, we can be sure that they will have clearly identified successors in law who pick up liability for the defunct body's assets, liabilities and obligations. In cases such as these, persons who had dealings with the defunct body still have clear avenues to pursue their grievances or wind up their contracts.

This orderly process does not apply, however, to those committees which are incorporated under the CL(R) Act itself. This is the way the Act works now:-

1. Crown land is reserved
2. An unincorporated Committee of three or more persons is appointed to manage the land
3. The Committee is then incorporated
4. The Incorporated Committee acquires assets, liabilities and obligations
5. Members come and go from the Incorporated Committee
6. Eventually, the Incorporated Committee is dissolved
7. An unincorporated Committee is resurrected
8. The unfortunate individuals who happen to be members of the Incorporated Committee at the time of its dissolution become members of the now-unincorporated committee
9. They are jointly and severally liable for the Committee's remaining assets, liabilities and obligations and are pursued accordingly by its creditors.

This is how it should work (in fact, this is more-or-less how it already works for Cemetery Trusts appointed under the *Cemeteries and Crematoria Act* 2003):-

1. A body corporate is established
2. Members are appointed to it
3. It is given responsibility for one or more Crown Reserves - AND maybe freehold reserves? AND maybe Roadsides? Not possible under the current Act!
4. It acquires and disposes of assets, liabilities and obligations
5. Individual members come and go
6. On dissolution, all remaining assets, liabilities and obligations are transferred to some other entity – possibly another Incorporated Committee
7. If it is intended to permanently dissolve the entity, then its residual interests are transferred to the Secretary for DELWP (itself a body corporate)
8. Anyone owed a debt by the Committee or with a grievance against it now pursues their case against the successor Committee or against the Secretary for DELWP
9. The erstwhile members of the defunct Committee walk away and get on with their lives. ■

What are sections 17A and 17C all about?

Question prompted by the NSW observation that they have too many Crown land leasing provisions

Until 1984 Victorian law contained no generic provisions for leases and licences of reserved Crown land – but there were plenty of quasi-leases and licences out there on the ground.

The old Lands Department simply turned a blind eye to the hundreds of clubs, utilities, kiosks and so forth sitting on reserves all around the state.

In 1984 the government decided to bring the law into line with reality, and enacted the four sections 17A to 17D. Realising that the purpose of a tenure was often different from the formal gazetted purpose of the reserve, the criterion for a tenure would not be that it conformed to the purpose of the reserve, but that it be 'not detrimental' to that purpose.

In response to concerns that the floodgates would open and Crown reserves would be all be concreted over, a string of safeguards were inserted which continue to bewilder later interpreters of the Act.

More latitude was allowed for pre-existing quasi-tenants. Sections 17A and 17C provided for licences and leases for 'habitual' uses and occupations – *i.e.* those already in place in November 1984.

If the bar was set too high, users would simply continue in occupation without any formal tenure – so the Minister was given power to legalise a use or occupation, regardless of whether it was detrimental to the gazetted reserve purpose.

To prevent future tenants from claiming the benefit of this latitude, Committees of Management were given twelve months in which to furnish certified details of their habitual users and occupants, who only then would then be eligible for 17A or 17B tenures.

17A and 17C may now be superfluous. We just don't know how many pre-1984 tenancies continue to roll over under these provisions. ■

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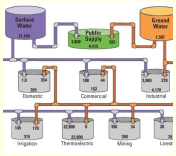

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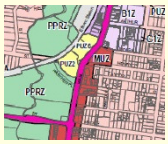
Thurs 27 August

Crown Land
Law, Policy and Practice
Wed 2 September

Leases and Licences
of Public Land
Tues 15 September

Land Law and
Coastal Adaptation
Wed 16 September



Referral Authorities
and the Victorian Planning System
Thurs 17 September

Offences and Enforcement
on Public Land
Tues 13 October

The Law and
Subdivisions
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Easements
and Restrictive Covenants
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