

LEX LOCI'S TRAVELS

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An ad-hoc one-pager from The Public Land Consultancy

Lex cheers them on at Whitten Oval

"You can't beat the boys of the Bulldog breed..."

As women footballers put the boot to the Sherrin, the Footscray theme song will surely have to be rewritten.

Lex is confident the West will rise to this challenge, as it has risen to many challenges over the years.

For instance, Whitten Oval (known as 'the kennel') once had its very own Act of Parliament, the *Footscray (Recreation Grounds) Lands Act 1968*, which suffered from a serious drafting error.



photo Ballarat Courier

The 1968 Act appointed Footscray (now Maribyrnong) City Council as the ground's Committee of Management. But the Act omitted three vital words: 'deemed to be.'

Parliament's intention was to invest Council with the same standing, powers, functions and duties as would have been the case if it had been appointed under the provision we now know as section 14 of the *Crown Land (Reserves) Act 1978*. But it didn't.

The Act simply proclaimed Council to be 'hereby appointed as Committee of Management of the said lands,' without any elaboration. How was anyone to know what accountabilities, restrictions, powers and obligations went with the appointment?

Worse still – the appointment was locked in. In 2009, along came the government with a bucket of money, and Victoria University with plans for a sports faculty. New governance arrangements were called for, but the missing words meant that Council could not resign and could not be removed by the Minister.

To move forward required another Act of Parliament.

'Deemed to be'

Here we are dealing with 'legal fictions' – the validation of a legal interpretation which otherwise would be in error. Some such fictions are curious indeed: the *New Zealand Poultry Act* deems a three-day old chicken to be a one day-old chicken.

Lex is certainly not suggesting that in the song 'boys' be *deemed* to include 'girls.' He's confident that out at the kennel they can do better than that.

Anyway, our Parliamentary draftspersons have recently moved away from 'deemed to be' to 'taken to be.'

It seems that these days 'taken to be' can be deemed to be (or taken to be) 'deemed to be.' And vice versa.

See you there! Lex Loci