

LEX LOCI'S TRAVELS

9 JANUARY 2018

An irregular one-pager from The Public Land Consultancy

Lex tests the Waters of Kananook Creek, Frankston

Lex is paddling his tinnie down Kananook Creek, in Frankston. If he goes much further, he will emerge into Port Phillip.

Everybody around him is enjoying the summer weather, but Lex is wondering (as he does) about place-law: what rules and regulations must he be observing? To this end he wants to know where the Creek ends and where the Bay begins.

So he reaches for his handy copy of the *Government Gazette* dated 26 June 1997. Here's a vice-regal decree, defining things called 'local ports.' The local port of Port Phillip includes various navigable rivers, one of which is Kananook Creek. So even though he's still in the Creek he's already in Port Phillip, and is therefore subject to the *Port Management Act 1995*.

But is this part of the Creek coastal? Any normal person asking that question might test the water's salinity, or check water levels for tidal fluctuations. Not our Lex.

What else does he find in his Esky? Why, it's the *Government Gazette* of 30 October 2003. Here's another vice-regal decree to the effect that the boundary of 'coastal Crown land' is the downstream face of the Wells Street bridge – which he has just passed under. So he's now subject to the *Coastal Management Act 1995*.

From the bank, he's being watched by one of the City of Frankston's local laws enforcement officers. Into the Esky again! Scrabbling through his collection of gazettes he finds nothing on the subject of the municipal boundary – from which he concludes that it must be at Low Water Mark (LWM), as per section 3(3) of the *Local Government Act 1989*.

Now our intrepid mariner heads under the pedestrian bridge at the mouth of the Creek; through the channel cut across the beach, and out to sea...



Members of the Kananook Creek Association celebrate their on-going efforts to transform the Creek from a foul drain into a wildlife haven

Lex's tinnie isn't exactly a speedboat, so he has little difficulty complying with the 5 knot speed limit imposed by rule 1.2.7 of the *Vessel Operating and Zoning Rules*, gazetted (as he soon discovers) on 5 June 2015 under the *Marine Safety Act 2010*. Still, as a law-abiding citizen, he notes that this speed limit applies to the whole of the Creek and 200 metres out to sea.

Now he's crossed LWM, so he's out the bylaws officer's territory – or is he? Checking his handy copy of the Frankston Planning Scheme he sees that the Public Conservation and Resource Zone (PCRZ) still applies for a further 600 metres.

Will he reach the three mile limit? What law applies on the high seas? Don't even think about it Lex. Not in that tinnie, anyway.

See you there! Lex Loci

LEX LOCI'S TRAVELS

23 JANUARY 2018

An irregular one-pager from The Public Land Consultancy

Lex Jumps the Fence alongside Gardiners Creek, Hawthorn

Lex is sauntering along the Gardiners Creek Trail. He has a few problems. One: getting mown down by cyclists. Two: the incessant noise from the Monash freeway. Three: what's troubling our Lex just now is a fence.

Consulting his handy copy of all the title boundaries along the trail, Lex sees a fence that he reckons shouldn't be there. Seems an abutting owner has decided to fence in land owned by VicRoads.

It's not a road, so how come VicRoads owns it? Lex figures that it must be the remnant of some larger block acquired in the 1960s for the freeway.

He feels a bit ambiguous about the freeway. He wasn't too happy when it was built, and poor old Gardiners Creek was overwhelmed by concrete, but at the same time he does like to zoom along it from time to time on his trips to Gippsland.

He wasn't too happy when VicRoads went into compulsory purchase mode and bought up swathes of residential suburbia, but at the same time he doesn't want such land, now publicly owned, to fall back into private hands.

While Lex deliberates over these contradictions, he sits and reads some court judgements. Aha! Here is *Roads Corporation (that's VicRoads to you and me) v Pearse*, heard by Supreme Court of Victoria in 2012.

Seems our fence has been there since 1993, and the abutting owner was claiming the enclosed land through adverse possession. Perhaps he had been following another notorious Supreme Court case – *Monash City Council v Melville*.

The Court concluded that VicRoads is 'the Crown' – at least for the purposes of the *Limitation of Actions Act* 1958. So the land is protected from adverse possession. VicRoads remains its owner, and will, in due course, remove the fence. Lex is pleased.

Sources: [Victorian Government Solicitors Office Stonnington Leader, 22 July 2014](#)



Michael Donnelly,
Springtime in Burwood,
detail

See you
there!
Lex Loci

LEX LOCI'S TRAVELS

1 MARCH 2018

An irregular one-pager from The Public Land Consultancy

Lex sings Country Music in the Heart Morass

Heart Morass. To Lex it sounds like something to be sung by Dolly Parton. Or Slim Dusty, if he were still with us.

*"I lost my Love
In the Heart Morass..."*

Lex is working on it.

In truth it's a wetland at the confluence of the Thomson and Latrobe rivers in Gippsland.



Lex's old mate, Slim Dusty

The Heart Morass was named after a pastoral run which had in turn taken the name from an 1840 report by Land Commissioner Tyers describing the area as 'the heart of Gippsland'.

Some parts are Crown land, but most is freehold, owned by Field & Game Australia through its subsidiary, the Wetlands Environmental Trust (WET). They have worked with the local CMA to restore the environmental water regime, plant 50,000 trees and remove 20 tonnes of carp. Impressive.

But Lex has mixed feelings about all this. Can shooters be conservationists?

He's uncomfortable with the pics on the Field & Game website of gun-totin' dudes in camouflage gear, looking like something out of the NRA.

They'll be there, at Heart Morass, on 17th March, the start of this year's duck season.

Lex's old mate Laurie Levy will be there too. No friend of Field & Game, he'll be protesting. According to Laurie the ducks will be inedible anyway, because of pollution from the Sale RAAF base, just upstream.

But then Lex recalls what another old mate, Tim Flannery, had to say on the subject of Field & Game Australia:

*"There wasn't a national parks system until 1966 in Victoria. There was no land reserved for wildlife. It was the duck shooters who imposed a levy on themselves that really preserved the first land in Victoria for wildlife" **

So Lex is a bit befuddled. Perhaps he'll stick to song-writing.

*I lost my Love
In the Heart Morass*

*Gave me the Shove
In the Heart Morass*

*Alas, alas!
The Heart Morass...*

Next stop, Tamworth.

See you there! Lex Loci

Sources: [West Gippsland CMA](#), [Field & Game Australia](#)

** Tim Flannery seems to have forgotten Tower Hill?*

LEX LOCI'S TRAVELS

29 MARCH 2018

An irregular one-pager from The Public Land Consultancy

Lex avoids Bushrangers on the St Kilda Road



William Strutt – *Bushrangers on the St Kilda Road, 1852*

On Saturday night information was given at the Police Station, that four mounted and armed bushrangers were committing the most daring depredations on the St. Kilda and Brighton road.

About five o'clock in the evening, Mr. and Mrs. Bawtree were stopped, bailed up, and robbed, and upwards of fifteen other persons were also stopped that evening by the same gang.

The Argus, 18 October 1852

Lex prefers to be in interesting places elsewhere in the State, but from time to time he finds it necessary to come back to home base. That's St Kilda Road.

There, he passes the time by checking the title documents to his little *pied-à-terre*. Not just the current title, but its parent documents and grandparent documents.

His title's great-grandparent is an 1865 Crown grant, signed by Governor Sir Charles Henry Darling KCB on behalf of Her Majesty Queen Victoria.

Oh dear, what's this!

As Lex admires the fine copperplate handwriting (by some anonymous clerk, not by Sir Charles), he gets down to a passage which reads...

"... the said land hereby granted shall be at all times hereafter maintained and used only as and for a site for one Villa Residence and its offices to be built of stone or brick..."

What! Lex feels as if he's been done over by bushrangers.

His place is certainly not a single Villa Residence, but a block of apartments. It's not built of stone or brick, but of concrete and glass. So is it legal?

Checking through the legislation on the Victorian statute book (as he does from time to time) Lex comes across the *Crown Grants (Removal of Conditions) Act, 1972*. Here he reads...

Any condition provision declaration or restriction (in the form of such-and-such words) contained in any Crown grant issued in respect of (any land in such-and-such places) shall be null and void.

Whew! Null and Void! So Lex only has to abide by a few dozen other Acts, schemes and regulations introduced since Governor Darling's day...

He'll still be on the watch for St Kilda Road bushrangers. Plenty out there.

See you there! Lex Loci

LEX LOCI'S TRAVELS

26 APRIL 2018

An irregular one-pager from The Public Land Consultancy

Lex Parks his 4WD on the Beach at Ocean Grove

Lex is a law-abiding citizen. Well, up to a point. But if all the carparks are full, then he has to park somewhere, doesn't he?

Besides, what's the point of having a 4WD (fully optioned) if you can't drive it onto Ocean Grove beach?

Lex knows that if he parks on the road in contravention of some parking sign, he will cop a ticket on the windscreen. And if he doesn't pay the penalty, he'll end up in the Magistrates' Court. But what about parking on the beach?

The beach isn't a road so, by and large, the Road Rules don't apply. But other laws certainly do. Lex knows about two such laws: the *Local Government Act 1989*, (the LG Act) under which a council may have made Local Laws, and the lesser-known *Land Conservation (Vehicle Control) Act 1971* (the LC(VC)Act).

So Lex addresses his attention firstly to the LC(VC)Act and the regulations made under it. Here he finds that persons permitting motor vehicles onto public land are guilty of an offence attracting 5 penalty units.

Ah, but what is the meaning of *public land*? Turns out to be (for the purposes of the LC(VC)Act) various types of Crown land, and public authority land. A quick title check confirms that Ocean Grove foreshore is Crown land so the LC(VC)Act does indeed apply. Oh dear.

Next, Lex turns his attention to local laws. He discovers that clause 77 of Geelong Council's *Neighborhood Amenity Local Law* makes it an offence to park a vehicle in any *municipal reserve* without authority. He checks the definition of

municipal reserve and figures it includes Ocean Grove beach. Oh dear.

Then Lex recalls a little phrase that arose last time he tried to get off a parking fine: 'operator onus.'

This is the legal nicety which allows the prosecution to bypass the 'innocent until proven guilty' precept. The offender is deemed to be the owner (rather than the driver) of the vehicle, and is therefore identifiable from its registration plates.



But here's the good news for Lex: this *operator onus* device arises from Part 6AA of the *Road Safety Act 1986* (the RS Act), which applies not only to the RS Act itself, but also to any other Act – *if that other Act "expressly states that the offence is an operator onus offence..."*

The LG Act has no such provision. Nor does the LC(VC) Act. Whew!

End result: the parking inspector can indeed book him, but only on summons, and with some other proof that Lex himself was the driver who committed the offence. Very difficult.

Hey! A kerbside parking space has just come available. Lex can continue to be the good law-abiding citizen...

See you there! Lex Loci

LEX LOCI'S TRAVELS

21 MAY 2018

An irregular one-pager from The Public Land Consultancy

Lex saves Ten Shillings at Lake Buloke

Lex is nothing if not thrifty. Just north of Donald in the Wimmera, he sees his big chance.

Lake Buloke is a rather bleak place. The Richardson 'river' flows in, but nothing flows out. The landscape testifies to a series of ancient shorelines, but the waterfowl haven't had a decent swim there since 1998.

What little water remains is described either as 'eutrophic' (mineral-rich, and unpotable) or 'in environmental decline' due to excessive salinity.



Back to the ten shillings! Like so much of the State, Lake Buloke is carved up into neat rectangular Crown Allotments visible only to Lex's friends, the cadastral surveyors. But unlike CAs elsewhere, these blocks were never sold off. Instead, they were *leased*.

No doubt the Crown's tenant-farmers worked hard to transform this terrain into a land of plenty, as depicted symbolically by the coat of arms of the Shire of Donald. It was a forlorn task.

Amongst the burdens they faced was a condition of their Crown leases: they must 'improve' the land. And the said improvements had to be valued at ten shillings, per acre, per annum.



The said tenants somehow exerted political pressure, and obtained an amendment to the *Land Act 1901*. Their leases still required them to expend the ten shillings, but the Minister of the day was given the power to waive that obligation.

The provision remains on the statute books to this day*. If Lex obtains a Crown lease of Lake Buloke, he can apply to the Minister to be relieved of the burden of expending ten shillings per acre per annum.

You might imagine that such a condition would get reviewed from time to time. Well, this condition was indeed reviewed – in 1974. The ten shillings per acre was changed to \$2.50 per hectare. Does this hold out the prospect of even greater savings? Lex is working through the arithmetic.

See you there! *Lex Loci*

** Section 115(2), Land Act 1958*

Lake Buloke is in Barengi Gadjin country

LEX LOCI'S TRAVELS

25 JUNE 2018

An irregular one-pager from The Public Land Consultancy

Lex talks to the River Yarra but does it talk back?

Lex is standing on Princes Bridge, loudly offering his opinions to the water below. No, he is not suffering from Tourette's syndrome and no, he's not talking on some hidden mobile. He thinks the Yarra is a person.

This is not as crazy as it might sound. Various rivers elsewhere in the world have been granted the status of legal persons. They include the Whanganui River in New Zealand, and the Ganga and Yamuna Rivers in India.

The basic idea is not new. For centuries we've recognised legal persons other than normal human beings – companies and incorporated associations, for example. But what about a river?

In New Zealand, this personification has been put in place by legislation; in India by a court decision.

Lex wants to know what it all means. The Ganges can now complain about being polluted – but only through a designated officer of the relevant State Government. The Whanganui River (or *Te Awa Tupua*) can apparently exercise the legal rights of a natural person, acting through a 17-member board.

Can these rivers buy and sell, sue and be sued, enter into contracts? Open a bank account? Sorry, we don't know.

Anyway, back to the Yarra. Perhaps we should we say Birrarung. Since 2017 it's had its [own Act of Parliament](#), and is on the way to having an advisory Council – but that Council's principal function is to advise the Water Minister, not to act on behalf of the river as a legal person.

So Lex can yell and bellow all he likes: he'll get no response. Except perhaps from that passing police officer.



Waters personified: *The Spirit of the Liffey*, Dublin

If you find yourself talking to a river, speak to it in its own language. It's a matter of courtesy.

The river we call the Ganges is, in Urdu and Hindi, the *Ganga*

The Whanganui River is, in the Maori language, *Te Awa Tupua*

Dublin's Liffey is, in Irish Gaelic, *An Life*

And the Yarra, in the local Woiwurrung language, is (as we all know) *Birrarung*.

See you there! *Lex Loci*

LEX LOCI'S TRAVELS

13 JULY 2018

An irregular one-pager from The Public Land Consultancy

Lex Stumbles in the Gutter

Lex had planned to head this edition 'Lex Leaps Across the Gutter' but it didn't work out that way. *Oops!*

He is in the main street of some historic Victorian town. It could be Ballarat, or Beechworth or Malmsbury.



*Camp Street, Beechworth.
(photo Liz and Pete Marsh, bloggers)*

Here's his dilemma: should he admire the stone gutter as part of the heritage streetscape, or denounce it as a safety hazard? It's a dilemma for civic administrators too – caught between the Heritage Overlay (HO) in their planning scheme, the body of law relating to 'duty of care,' and the basic need to carry away rainwater.

A score of [trip-hazard cases](#) have come before the Supreme Court of Victoria in as many years.

Back in 1996, Mrs Anna Perovic (not a young woman) tripped while crossing a deep bluestone gutter in Ballarat. She was simply trying to get from her parked car to the parking meter.

Sturt Street, Ballarat is not unique. Since the Perovic case the courts have seen trip-

hazard litigation involving Central Goldfields, Campaspe, Boroondara, Wellington, Moyne, Whittlesea – and most recently, Shepparton.

A problem for these councils' lawyers is mounting a defence against Lex when he brings legal action. A problem for their infrastructure engineers is how to prevent Lex from tripping over in the first place.

In relation to the first problem (for the lawyers), one line of thinking is to wheel out sections 40 and 107 of the *Road Management Act 2004*, but that defence relies on whether council is a 'road authority' as against an 'infrastructure manager' and whether the gutter is or isn't 'road infrastructure.'

A second line of thinking is to wheel out Part XII of the *Wrongs Act 1958*, which offers the 'limited budgets' defence. It was a defence which failed City of Bayside when a cyclist hit a crash barrier.

So what about the second problem (the one for the engineers)? What they need to design is some sort of cross-over culvert thing.

It would have to satisfy the heritage people, who are waving around documents like [the Burra Charter](#). And it would have to not impede the rainwater. And it would have to not be a hazard in its own right.

Right now, Lex doesn't care about lawyers and engineers. He's just nursing his bruised shins.

**See you there!
Lex Loci**

LEX LOCI'S TRAVELS

3 SEPTEMBER 2018

An irregular one-pager from The Public Land Consultancy

Lex Watches Boundaries Move at Lake Bullen Merri

When Lex goes fishing in Lake Bullen Merri he catches absolutely nothing. He just can't relax with a line in the water and a beer in the hand. He's too busy watching the title boundaries move around.



Lake Bullen Merri is 60 metres deep, but (over time) it rises and falls. Up on the banks of its volcanic crater is visible evidence of earlier, higher shorelines. And 20m below the surface tree stumps testify to lower, submerged shorelines.

It's not unusual for bodies of water to rise and fall – maybe on a daily basis, maybe over geological eras. In some cases cadastral boundaries move in response; in other cases they don't. It's called the [doctrine of accretion and diluvion](#). But does it matter?

Lake B-M itself is Crown land. Lex can paddle his tinnie on it, or wade around its edges. But two-thirds of the land adjoining the lake is freehold. If Lex sets foot on it, he's trespassing. **And each year, as the water level drops, an annulus of wet land becomes dry land. That's right: a narrow strip of Crown land becomes freehold land.**

The abutting owners are well aware of this phenomenon. At intervals they

head off to Land Victoria and get their title documents amended to reflect their expanded domains.

At the same time, recreational anglers head off to the Minister responsible for fisheries, wanting to get access to the water along these private foreshores. **It's a contradiction: while the Victorian Fisheries Authority stocks the Lake with salmon, abutting owners put up 'no trespassing' signs.** They have valid concerns about insurance, stock management, and idiot control.

Lex re-checks the *Fisheries Act 1995* and confirms that one of its objectives (sec. 3(d)) is 'to facilitate access to fisheries resources for commercial, recreational, traditional and non-consumptive uses.'



And then he checks the *Conservation Forests and Lands Act 1987* and finds provisions (sec. 69) for agreements with landowners to facilitate the operation of a 'relevant law' – such as the *Fisheries Act 1995*. Agreements which could address insurance, stock management and idiot control. Seems someone just isn't joining up the dots.

Lex gives up. He throws a line into the water and, with his other hand, grasps a cold can of beer.

See you there! Lex Loci

LEX LOCI'S TRAVELS

25 SEPTEMBER 2018

An irregular one-pager from The Public Land Consultancy

Lex goes Radioactive at the Lyonville Mineral Springs

Lex knows that a *curie* is a measure of radiation, but he's not sure whether it's big or small. Still, a micro-curie must be small, and a milli-micro-curie even smaller. So he's reassured when he drinks Daylesford mineral water.

The springs around Daylesford contain traces of all sorts of minerals, carried up from deep subterranean aquifers. One of them is radon gas – a byproduct of uranium. According to one study, the highest concentration occurs at the Lyonville No 2 spring, where the Geiger counter ticks over at 180 milli-micro-curies per litre.

Mineral waters have long been regarded as therapeutic, and one of their supposed medicinal attributes was radioactivity.

In Victoria, the attraction has waxed and waned. In 1868 Crown land at Hepburn was set aside for a mineral springs reserve in 1895, the bath-house was built

but fell into grubby disrepair; and then was rebuilt in 1985.

What interests Lex, as he downs another litre or two, is the legislation. In 1980 Parliament decided we needed a *Groundwater (Mineral Water) Act*, and a *Crown Land (Mineral Springs) Act*. Under the former, a levy of 1 cent per litre was deposited to a fund for the benefit of mineral water-related tourism; under the latter the bathhouse got a long-term lease.

Some things change, others don't. The levy has gone; the lease provision remains, despite having been made redundant by subsequent reforms to the *Crown Land (Reserves) Act*.

And no one these days (as far as we know) actually wants to become radioactive. So our Lex has turned off the light – just to check that he's not glowing in the dark.



See you there! Lex Loci

LEX LOCI'S TRAVELS

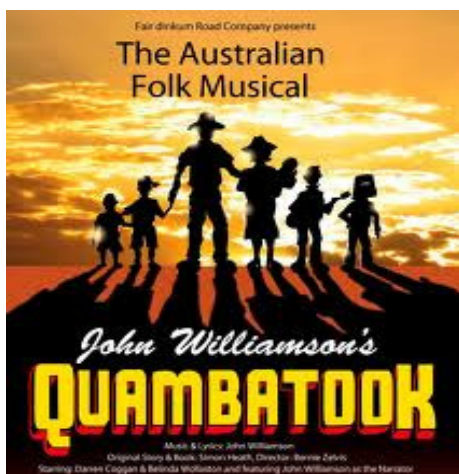
15 OCTOBER 2018

An irregular one-pager from The Public Land Consultancy

Lex contemplates the Religious and Successory at Quambatook

Lex is hanging out at Quambatook, waiting for the Monster Tractor Pull. He plans to get a front row position.

While he waits, he checks out the town's public lands, which afford him varying degrees of interest.



He's only marginally interested in the Memorial Hall, the Tennis Courts and Bowling Club, and the frontage to the Avoca River – managed by three different Crown land Committees of Management. Would they be better off merged into one? Answerable to the local council rather than DELWP? He'll think about that another time!

And as for the police station, which occupies Crown land reserved for police purposes, it can also wait for another time, when Lex feels the urge to contemplate 'implied management.'

Today, what really interests our roving correspondent is a big slab of parkland containing the town's caravan park, golf course, football ground, and netball courts.

It certainly looks like public land, but is it? It turns out to be freehold land, of a very strange type. Lex needs to pull out his copy of the *Religious and Successory Trusts Act 1958* – a statute dating back to 1878. It's a good read while you're waiting for a Monster Tractor Pull.

This legislation, administered by the State's Attorney General, says nothing about the purposes of reserves, the term of trustee appointments, leases and licences, accountability, or regulations.

Seems that back in 1924 an arrangement was entered into between a landowner, the Shire, and certain persons who were to become trustees. Over the decades, trustees have come, gone, resigned or died – new trustees being appointed by the survivors. And it seems that it has worked reasonably well – the footy, golf and netball clubs have no complaints.

But Lex wonders. Here's land which has virtually no statutory governance regime, and yet Crown land reserves need a 70-section Act running to 137 pages. Something is amiss somewhere!

At last. Lex can forget all that! Here come a couple of Monster Tractors...

See you there! Lex Loci

For previous Lex Loci's Travels, [click here](#)

LEX LOCI'S TRAVELS

13 DECEMBER 2018

An irregular one-pager from The Public Land Consultancy

Lex seeks the Bunyip in various lakes and swamps

Lex is contemplating the uncertain boundary between myth and reality. In Europe they have griffins and unicorns; in China, fire-spewing dragons. And out at sea, the monstrous kraken.

In Australia we have an equivalent beast, but not one celebrated on flags or coats of arms. Somehow, the bunyip just doesn't have that heraldic quality.

Lex would dearly like to see a bunyip, but only at a safe distance. So he's cautiously checking out various swamps and rivers around Victoria.

He makes his way to West Gippsland, to the town of Bunyip on the river of the same name, and to the town of Tooradin (the Boonwurrung word for bunyip) by the Westernport mangrove swamps. If any still inhabit these waters, they're not emerging to greet our Lex.



One theory is that the bunyip is a collective memory of the extinct diprotodon

Across to Geelong, to Lake Modewarre, which the Wadawurrung people called Moodiwiri. It was here, as the escaped convict William Buckley recorded, that people and dogs had disappeared. There

was no mystery: they had been taken by the bunyip. The same had happened at the Jeringot wetlands on the Barwon.

So Lex approaches these waters with trepidation. A little farther west, he revisits [Lake Bullen Merri](#) to see the channel between it and Lake Gnotuk. According to Djargurdwuring tradition, it was carved out by a bulldozer-sized bunyip.

On to Fiery Creek near Ararat. Here was, once, the most tangible evidence of the bunyip. For many years the Djab Wurrung people gathered annually to re-carve into the hillside the outline of a giant beast their ancestors had dragged from a waterhole. The outline was visible until the 1860s, and fenced off by the white pastoralists, but has since been obliterated.

So it is across the Victorian landscape. We lose knowledge of the meanings of place-names, and the people who lived in those places, and their traditions. Perhaps this evolution is inevitable – although we reject the ideologically driven distortions of the [‘history wars.’](#)

These bunyip-creatures and their stories are, in a sense ‘intangible heritage’ – even though they don't enjoy protection under the *Aboriginal Heritage Act 2006*.

The bunyip may not be emblazoned on our national coat of arms, but it will certainly continue to enrich the wider Australian culture.

See you there! Lex Loci



*We offer our respects to the Indigenous peoples who are custodians of these traditions.
Various sources, notably [a presentation](#) by Prof Ian Clark to the La Trobe Society, August 2017.*

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