

LEX LOCI'S TRAVELS

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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*