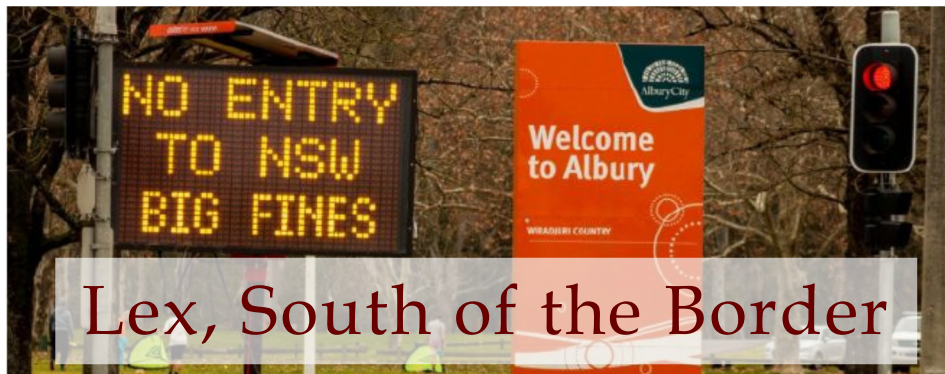


LEX LOCI'S TRAVELS

19 AUGUST 2020

An occasional one-pager from The Public Land Consultancy



As a law abiding citizen, Lex wouldn't defy the NSW border shutdown. But he still wants to go swimming in the River Murray. Or fishing, or boating, or just sitting on the bank. Is this possible?

Swimming and boating require getting into the water, and (as most people know) the river itself is in NSW. The boundary is not down the middle of the stream. So that leaves fishing and sitting, which can be done from the south bank. Or so most people believe.

But our Lex has read the 1980 High Court case *Ward v the Queen*. This rather gruesome case involved the [murder of an angler](#). The High Court ruled that the border was not at the water's edge, but at the 'top of the high bank.' That's right, a strip of dry land on the Victorian side of the river is in fact part of NSW. The court, having delivered itself of that judgement, conceded that it could cause difficulties for land managers. And for our Lex. So where can he get access to the river?

He heads firstly to Lake Hume. He knows that artificial inundation does not of itself change land boundaries and land status. In other places [boundaries move around](#) as water levels fluctuate, but not here. The town of Old Tallangatta still survives, on

title plans at least. So the NSW border is a serpentine line on the surface, vertically above the submerged top of the high bank. However, an interstate agreement deems the waters of the Lake to be Victorian, well north of that border - for boating purposes at least. So maybe Lex can cross over it (in a boat) and maybe he can't.

Further downstream, Lex knows about Pental Island, where the River Murray bifurcates. In 1871 the Island was claimed by NSW on the basis that both arms were navigable. The Privy Council, however, deemed the Murray to be the northern arm, which carried the greater flow. So the Island is in Victoria, and Lex can safely paddle in the southern arm, which became known as the Little Murray.

Then he comes to Mildura, where the original top of bank has been inundated by a weir, so the [whole waterfront](#) is in Victoria. Lex can paddle here, at least for a few metres into the water, without defying the border ban.

Now he's at McCabe's Corner, where NSW Victoria, and South Australia converge. The [weird zig-zag in the SA border](#) means that a few kilometres of the Murray are immune from the *Ward* decision: Lex can paddle out to the centerline, without entering either NSW or SA. Whew!

See you there! Lex Loci

The whole length of the Murray is Indigenous Country