

## Amendments: challenging. Wholesale reform: even more challenging.

The Victorian Environment Assessment Council (VEAC) has released its [Draft Proposals Paper](#) on the subject of public land in Victoria.

**VEAC's nineteen draft recommendations include two which are, on the surface, contradictory. We like them both.**

VEAC's proposals respond to a government request for a re-evaluation of Victoria's system of public land categories, an assessment of the current reservation status for public land, and an inventory of the types of values found on public land.

**Recommendation R3** is that the *Crown Land (Reserves) Act 1978* (the CLR Act) be amended.

**Recommendation R10** is that the CLR Act be totally rewritten – together with its mother-Act, the *Land Act 1958*. A contradiction? Perhaps not, when you factor in the processes of legislative change involved.

**Amendments: challenging. Wholesale reform: even more challenging.**

To make the amendments which VEAC proposes would take 12 months (that's optimistic), but to rebuild the foundation of the State's Crown land law would take 5 years (very optimistic). But that's what VEAC is suggesting, and we can only applaud. Let's do one, then the other.

### The need for reform

What's wrong with these two Acts? Over the years [Terra Publica](#) has had a bit to say on that subject. In August 2009 we described the 'patches on patches' syndrome which has seen the *Crown Land (Reserves) Act 1978* expand from 32 to 94 sections.



In December 2004 we lamented the survival of archaic CLR regulations. In July 2008 we looked at the Act's dysfunctional system for incorporation of Committees of Management.

In July 2015 we asked why a reserve Committee is unable to manage the adjacent unused road reserve. In June 2012 we bemoaned the arbitrary distinction between permanent and temporary reserves.

As for the *Land Act 1958!* A zombie of an Act. Three times in living memory it's been proclaimed dead, and yet it walks. A standing insult to Aboriginal people; the yet-to-be laid ghost of *Terra Nullius*; the mummified corpse of 19<sup>th</sup> century colonial systems and values. Let's drive a stake through its heart.

### The process of reform

If we were discussing regulations rather than Acts, our benchmark would be the 10-year sunsets which have been the cornerstone of good policy since 1994 (for most regulations, that is, not those under the CLR Act). But there's no 10-year sunset for Acts.

**So what inspires our parliamentarians to write or rewrite legislation? The answers would make a good PhD thesis.**

The Cain government was a glutton for punishment, producing a total rewrite of the *Planning and Environment Act* in 1987, the *Water Act* in May 1989, and the *Local Government Act* in November 1989.

Some Acts are responses to external events. The Commonwealth *Native Title Act 1993* was, of course, a response to the Mabo decision in the High Court. The Road Management Act 2004 was kick-started by the same court's *Brodie* decision, which overturned our understanding of a road authority's duty of care.

As for amendments to Acts, some are well-considered. The 2016 amendments to the *Aboriginal Heritage Act 2006* were made because the authors of the original Act wisely foresaw the merits of a ten-year review.

Amendments may also be reactive: a 1993 tweak to the CLR Act nullified the 'Richmond Abattoir' decision of the Supreme Court; the 2004 amendment to the *Limitation of Actions Act 1958* responded to a couple of specific cases of public land theft in the cities of Monash and Banyule.

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*Half-day Seminar – Wed 14 Sept*  
**Reconfiguring Coastal Governance**

*The proposed Coastal and Marine Act*

*Full-Day Masterclass – Wed 9 Nov*  
**The Road Less Travelled**  
*Navigating the contested landscape of lanes, easements and rights-of-way*

## The VEAC Recommendations

For the full report go to [www.veac.vic.gov.au](http://www.veac.vic.gov.au)

### R3

*The Crown Land (Reserves) Act be amended as follows:*

- a. *amend the purposes in section 4(1) to align with the revised and simplified system of public land categories*
- b. *align the 1300 or so historical reservation purposes to the purposes of revised public land categories through a schedule that replaces them with the purposes of the relevant revised category*
- c. *remove the distinction between temporary and permanent reservation, retaining a parliamentary role for revocations of land in revised categories of nature reserves, natural features reserves, recreation parks and coastal land in any category*
- d. *where land is reserved in accordance with a government-accepted LCC/ECC/VEAC recommendation, provide for the creation of the reserve to have the effect of removing the underlying land status including permanent reservations, government roads and reserved forest*
- e. *reduce the complexity and improve consistency and transparency associated with leasing and licensing by aligning Ministerial approval processes and parliamentary scrutiny to appropriate revised land categories*
- f. *ensure that legislation can provide for the issue of short-term licences and permits for up to 3 years directly by committees of management for uses that are not inconsistent with the purpose of the reserve or not to the detriment of the reserve*
- g. *provide for staged transition of trusts managing restricted Crown grants to a modern legal and governance framework such as a committee of management*
- h. *remove the three year limit to appointment terms for committees of management incorporated under section 14A of the Act.*

### R10

*Within five years, new land legislation be developed to replace the current Land Act and Crown Land (Reserves) Act.*

*The Public Land Consultancy has been providing professional development services across Victoria for 15 years. Our clients include every municipality on the State, and most of the major statutory authorities and government departments*

### Amendments – Continued

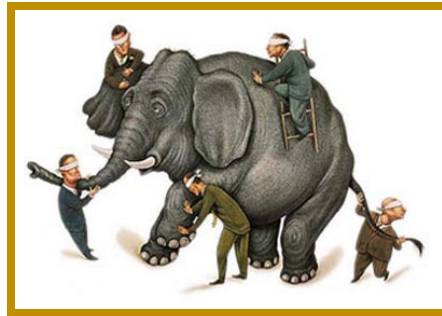
On the other hand, many of the accumulated 110 amendments to the *CLR Act 1978*, and the 125 amendments to the *Land Act 1958* can only be described as *ad hoc* patches on patches.

### The drivers of reform

Acts of Parliament are not ends in themselves. Acts get reformed when they fail to deliver some desirable outcome, or when they perversely deliver some undesirable outcome. But first, the deficiencies have to come to someone's attention.

The most attention-getting probe is the Royal Commission, or the judicial inquiry, but we're not in that territory.

Parliament boasts a Scrutiny of Acts Committee, which doesn't serve the purpose we have in mind – although it recently discovered a double comma in the *Conservation Forests and Lands Act 1987*, and replaced it with a single comma.



Then there are specific purpose inquiries, looking at some issue from a limited perspective, but never really getting to understand the whole elephant.

- In May 2016 the Auditor General examined the State's burden of red tape, without noticing that red tape in the form of Crown Land regulations escape the Subordinate Legislation Act and therefore do not sunset.
- In July the Ministerial Working Group on 'Protecting the Yarra' produced a glossy picture-book, but failed to note the distortion of the CLR Act which allows the River's sub-tributaries to be sold off as freehold.
- In August the bi-partisan Working Group on Caulfield Racecourse considered its archaic, parochial system of Trustees – without addressing the continuation of 'all-members-deceased' trustee arrangements elsewhere.

So – back to the VEAC recommendation **R10**. Yes, let's rewrite the Crown Land Acts! But first, let's commission a systematic, multi-faceted inquiry into *everything* that's wrong with those Acts. Meanwhile, let's just do some **R3**.

*Readers of Terra Publica should not act on the basis of its contents which are not legal advice, are of a general nature, capable of misinterpretation and not applicable in inappropriate cases*

*A Half-day Seminar from  
The Public Land Consultancy*



## Reconfiguring Coastal Governance

**Wednesday 14 September 2016**

1:00 p.m. – 4:30 p.m.

The State Government is planning a new  
*Marine and Coastal Act*,  
to replace the  
*Coastal Management Act 1995*.  
What will it mean for you?

### SPEAKERS

Associate Professor **Geoff Wescott** – President of the Australian Coastal Society; Chair of the Expert Panel advising government on the proposed new Act

*Why do we need a new Marine and Coastal Act?  
Insights into the Government's vision for coastal governance*

**Belinda Ainley** – Director, Ainley Coast and Environment; Member of the Victorian Coastal Council

*Managing coastal projects: negotiating the complexities of coastal approvals*

**Graeme Davis** – District Manager Port Phillip and Western Port, Parks Victoria

*Parks Victoria's multiple roles; balancing the pressures of conservation and recreation; the future of 'Local Ports'*

**John Macey** – Licensed Surveyor; previously District Surveyor with DELWP

*The coastal cadastre – what happens when coastlines move*

**Richard O'Byrne** – Associate, The Public Land Consultancy; previously Manager Bays and Marine, Parks Victoria

*The view from The Public Land Consultancy: how we imagine coastal governance could be working better...*

## Full-Day Masterclass The Road Less Travelled

**Wednesday 9 November 2016**

Victoria's established urban fabric is facing restructure. As densities increase and private properties are reconfigured, Councils are called on to deal with an increasingly contested network of lanes, easements and rights-of-way, often dating from the era of the horse and cart.

This masterclass will deliver cross-disciplinary learning for the professionals who need to negotiate this territory. Whether you're an engineer, a planner, a council governance officer, or a lawyer working in the field, this masterclass will assist you and your team to deliver better urban outcomes.

### Presenters

**David Gabriel-Jones**

*MPP (hons)(Melb), Dip Civ Eng (RMIT)*

**Astrid Di Carlo**

*LLB (Deakin), LLM (Emory), BA (LaTrobe), etc*

### Morning Session

- The contested landscape: unreliable titles, disputing neighbours, poorly understood rights and responsibilities ...
- The vocabulary: the inconsistent terminology of statutory law; the mismatch between legal-speak and day-to-day English
- The common law: easement of long user, adverse possession, implied dedication...
- The statutory tool kit: the Local Government Act, the Subdivision Act, the Road Management Act, the Planning and Environment Act...

### Afternoon Session

- The case-law: *King v Bass Coast*, *Calabro v Bayside*, *Alesios Fishing v Geelong*, *Anderson v Stonnington*...
- Real examples from a dozen metropolitan and regional municipalities: Moonee Valley, Bayside, Warrnambool, Mornington Peninsula, Latrobe, Dandenong, Shepparton...
- Workshop – shared experiences from around the room\*...

\* Please contact us to plan the contribution you want to make...

**Venue:** Law Institute of Victoria, 470 Bourke Street Melbourne.

**Enquiries:** [jacqui@publicland.com.au](mailto:jacqui@publicland.com.au)

## Half-day Training Courses

Cost: \$330 including GST, course notes and morning coffee

	<p><b>Encroachments and Utilities in Road Reserves</b> Astrid Di Carlo Tues 6 September (a.m.) Warragul Thurs 15 Sept - Melbourne</p>		<p><b>Protection of Roads under the RM Act 2004</b> Astrid Di Carlo Tues 6 September (p.m.) Warragul</p>
	<p><b>Rivers and Lakes Governance</b> David Gabriel-Jones Fri 9 September - Melbourne</p>		<p><b>Subdivisions – a Property Law Perspective</b> Grant Arnold Wed 12 October - Melbourne</p>
	<p><b>Crown Land Governance</b> David Gabriel-Jones Tues 8 November (a.m.) Melbourne</p>		<p><b>Roads Governance</b> David Gabriel-Jones Tues 8 November (p.m.) Melbourne</p>
	<p><b>Discontinuation, Closure and Deviation of Roads</b> David Gabriel-Jones Wed 16 November (a.m.) Melbourne</p>		<p><b>Unused and Little-Used Roads</b> David Gabriel-Jones Wed 16 November (p.m.) Melbourne</p>
	<p><b>The 2016 Amendments to the Aboriginal Heritage Act</b> David Yarrow Horsham – Date to be fixed Shepparton – Date to be fixed</p>		<p><b>Restrictions on Title</b> Astrid Di Carlo Date to be fixed – Melbourne</p>

## Full-day Training Courses

Cost: \$550 including GST, course notes and working lunch.

	<p><b>Land Law for Managers of Roads, Streets and Lanes</b> David Gabriel-Jones Thurs 1 December – Melbourne</p>		<p><b>Leases and Licences of Public Land</b> David Gabriel-Jones / Karen Hayes Wed 7 September – Benalla Fri 11 November - Melbourne</p>
	<p><b>Land Information and its Interpretation</b> Scott Jukes, LS Thurs 27 October, Melbourne</p>		<p><b>Native Title and Aboriginal Heritage</b> David Yarrow Tues 15 November, Melbourne</p>

**Enrolments and Enquiries** – Jacqui Talbot – jacqui@publicland.com.au

Unless otherwise noted, all courses are at **Law Institute of Victoria**, 470 Bourke Street Melbourne

## CERTIFICATE IN PUBLIC LAND GOVERNANCE

*Don't forget that by attending a selection of our one-day and half-day courses, and completing a research paper, you can qualify for a Professional Certificate in Public Land Governance*