



# The Cabana Drama

By Richard O'Byrne

Yes, there's always going to be a media drama at the beach during summer. This year, it's the Cabana Drama.

The beach is sacrosanct in Australia. Here in Victoria, we're fortunate that over 95% of our mainly sandy coastline is in public ownership.

Apparently, some people have been turning up to the beach early in the morning, erecting their cabanas to stake out some prime beach real estate, leaving for a few hours, to return later in the day to their 'reserved' sheltered spot.

Us Aussies don't like that. A media poll (and we know how reliable those are) says that 82% of respondents are opposed to private 'cabana' claims.

The issue is so important, the Prime Minister was not about to be put in the shade:

*"One of the great things about Australia – we are unlike some parts of the world, where you pay to go to the beach. Here, everyone owns the beach. Everyone. And it's a place where every Australian is equal. And it's a breach of that principle, really, to think that you can reserve a little spot as just yours."*

Yes Albo, you're right. There's a presumption that the public at large has a general right to enter Crown land, and do what they like. But there are limits. In Victorian parks and on

our beaches, restrictions to access and use can be applied either through regulations under the *Crown Land (Reserves) Act* or the *National Parks Act*, or through a local law made by a Council under the *Local Government Act*. Further limitations may arise under the *Marine and Coastal Land Act*.

**Some of the more fevered media commentary has suggested that beachgoers should be charged a fee for setting up a cabana, or that a permit should be required. Well perhaps.**

As our population grows and coastlines erode with climate change, beaches will get more crowded. On some smaller and popular beaches, rationing and sharing of space may indeed be required.

So, is it possible to require a permit or charge fees through regulations and local laws? Yes, of course it is. But do we want to go down that track? Will we need a local Cabana Commander to collect the fees and check the installation of each cabana? And might we make the problem worse by creating an unintentional supply-and-demand market?

Maybe it's all a storm in a beach bucket. ■

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# Therefore, it's Mine.

*It's public land; therefore it's anybody's land;  
therefore it's my land.*

Believe it or not, that's an argument we have heard, more than once. Especially on foreshores.

There we find an on-going battle between private interests and the public good. We consultants are beachcombers, examining the washed-up debris. Let's examine a few bits of detritus we've observed on Victoria's contested shoreline.

## **Auntie's Last Will and Testament**

A few years back, a somewhat distressed gent came into Parliament House to see the Minister responsible for Crown land. He had a complaint about a coastal Committee of Management.

"It's my caravan, and so is the site it stands on. It's not theirs to dispose of!" He pulled a document from his brief-case. "The site was left to me by my Auntie. See, here's her Will."

Sure enough, there it was in black and white:

*"And I leave my caravan and its site at xxx caravan park to my dear nephew. May he enjoy it for many summers to come."*

It came as a surprise to him to learn that the site was not his Auntie's to dispose of. The Committee, acting in what it saw to be the public good, had politely taken back what he erroneously believed to be his private property.

## **The Culture of Entitlement**

The culture of entitlement goes back to the squatters – and continues to thrive. It is nowhere more blatant than at Cambells Cove, Werribee South. Here are some 150 heaps of rubbish, variously described as boatsheds and bathing boxes. Bought and sold via estate agents as if they have titles. They don't.



What about maintenance responsibility, insurance, public liability? What about erosion? But the biggest issue is surely privatisation: they effectively deny foreshore access to the rapidly expanding population of Wyndham. But it gets worse. The so-called owners are seeking heritage listing!

So we may be about to witness another battle – between coastal policy and heritage policy.

Coastal and Marine policy has always opposed the privatisation of foreshores, often ineffectively. Heritage policy seems to be heading in some very strange directions: we now have heritage listing for the Eastern Freeway!

## **Fight them on the Beaches**

It may take years, but environmental concerns can eventually trigger (no pun intended) a positive shift in the private-public balance.



At Limeburner's Point on Corio Bay, a Geelong gun club was not merely rendering a stretch of coastline inaccessible, but according to the EPA was polluting the shallows with lead shot and hydrocarbon-laced clay targets. When told their lease would not be renewed, they refused to move until the State found them an alternative home. It took eight years, but in the end, they vacated.

## **The Neil Mitchell Pub-Test**

On the *3AW Drive* program, the redoubtable Neil Mitchell feigned horror. A coastal Crown land Committee of Management has decided to 'award a tender to itself.' Mitchell declared it to be a decision which 'won't pass the pub test.'

In this case the Committee was the Great Ocean Road Coastal Committee (GORCC); the land which it was not leasing is the Anglesea Caravan Park; and we don't know which pub Mitchell frequented.

The story was nothing but a beat-up. The outgoing caravan park operator, imbued with the culture of entitlement, campaigned against the non-renewal of his lease as if it were an eviction – and Mitchell seemed not to understand the difference.

The bigger issue here, we think, is the proclivity of journalists to invent stories to fill the mid-summer news hiatus. ■

Q  
&  
A

## What is an 'ambulatory' boundary?

*For a more authoritative answer, ask a cadastral surveyor.*

Properties abutting the Chelsea foreshore, between Mordialloc Creek and Patterson River, must be worth a few dollars. 'Absolute beach frontage' read the Estate Agents' blurbs. You walk out of your gate straight onto the beach. But is your boundary geometrically defined, or *ambulatory*?



In the 1970s these property values took a plunge. The owners couldn't get mortgages. To understand why, we need to look at the coastal cadastre.

In 1865 the seaward boundary of the Crown reserve was defined to be High Water Mark; the landward boundary of the reserve (and hence the boundary of the freehold) was defined as being '100 feet from HWM'.

Over the decades, High Water Mark had moved seaward. Surveyors subdividing the freehold had assumed that the landward boundary was 'ambulatory' and had also moved seaward.

In 1970 the Surveyor General determined that it hadn't. The landward boundary of the reserve was still exactly where it had been a hundred years earlier. 'Freehold' properties were therefore encroaching into the permanent Crown reserve. Shonky titles; no mortgages.

State Parliament came to the rescue, with the *Chelsea Lands Act 1981*. The landward boundary was now deemed to be where the owners thought it should be. But Parliament didn't address the seaward boundary, which may still be where HWM was in 1865, or may have ambled back and forth in accordance with the doctrine of accretion. Just ask a cadastral surveyor. ■

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- You are familiar with the functioning of Councils, utilities, or other land managers
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hear from you !

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## Professional Development, Feb-Apr 2025

NOTE: some presentations are 3 sessions, each of 2 hours duration;  
others are 2 sessions, each of 3 hours duration

	<b>Property Law and Planning Law</b> <i>Presenter: Nick Sissons</i>	<b>Wed 26 Feb &amp; Thurs 27 Feb,</b> 10am to 1 pm
	<b>Working with Owners Corporations</b> <i>Presenter: Anthony Wilkinson</i>	<b>Tues 4 March &amp; Wed 5 March,</b> 10 am to 1pm
	<b>Leases and Licences of Public Land</b> <i>Presenter: Richard O'Byrne</i>	<b>Tue 11 March, Wed 12 March &amp; Thurs 13 March,</b> 10 am to 12 noon
	<b>Restrictions on Title</b> <i>Presenter: Nick Sissons</i>	<b>Wed 19 March &amp; Thurs 20 March,</b> 10am to 1pm
	<b>Coastal Land Management</b> <i>Presenter: Richard O'Byrne</i>	<b>Tues 25 March, Wed 26 March &amp; Thurs 27 March</b> 10am to 12 noon
	<b>Referral Authorities and the Victorian Planning System</b> <i>Presenter: Mark Bartley</i>	<b>Wed 26 March and Thurs 27 March</b> 10am to 1 pm
	<b>Crown Land Governance</b> <i>Presenter: David Gabriel-Jones</i>	<b>Tues 1 Apr, Wed 2 Apr &amp; Thurs 3 Apr,</b> 10am to 12 noon

**Cost:** \$550 (from 1 July 2024) including GST, course notes and certificate of attendance

**Accreditation:**  
These courses are eligible for CPD points for lawyers, planners, valuers, and FPET for surveyors.

**Registrations:**  
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*The Public Land Consultancy acknowledges that our core work relates to the lands of Victoria's Traditional Owners. We promote recognition of Indigenous rights through study, policy and the law.*

