Trust Handbook

A handbook for trusts managing Crown land reserves and commons, and trustees of schools of arts
Every effort has been made to include in this handbook reference to the requirements of the legislation which applies to the operations of Crown reserves, commons and bodies administered under the *Trustees of Schools of Arts Enabling Act 1902* in general. Legislation which applies to specific reserves or classes of reserves, e.g. cemeteries, has not been included.

This handbook will be updated from time to time as changes to the law or Crown Land’s policies occur. While substantial effort is made to ensure the information in the handbook is up to date and accurate, the law is complex and constantly changing. Before undertaking any significant steps or entering into significant contracts or obligations, users should obtain legal advice to confirm the applicable legal requirements and, if appropriate, should contact Crown Lands to confirm current Department policy.
Foreword by the Deputy Director General

We are fortunate in New South Wales to have around 35,000 Crown reserves that provide a wide range of experiences and activities as well as many other significant environmental and cultural benefits, for the entire community.

As evidence of the value the community places on the reserve system, many of the Crown reserves are managed by reserve trust boards on a voluntary basis. In addition, there are over 200 commons and schools of arts on Crown land.

This handbook has been prepared to give guidance and assistance to reserve trust managers and other volunteers in performing the duties they have accepted.

It is intended that this is a ‘living’ document, regularly updated in response to legislation and policy change, and to comments received from reserve trusts managers.

I would like to express my appreciation to the large community volunteer work force who give their time so willingly especially when, from time to time, they are required to manage quite challenging issues. Trust management of Crown reserves and commons is based on a partnership between government and the community, and this handbook is part of the support for that partnership.

Your comments on the handbook will help us to ensure that it provides the on-going guidance trust managers need. Please send any comments you wish to make to your local Crown Lands office.

I encourage all reserve trust managers to embrace the principles outlined in this handbook so that, in continuing your valuable service to the community, the management of Crown reserves and commons will be the best that can be delivered.

Renata Brooks
Deputy Director General
Catchments and Lands
About this Handbook

The Crown reserve system is the oldest and most diverse system of land management in New South Wales. It promotes the co-operative care, control, and management of Crown reserves by the community, with assistance from government and reserve users.

The aim of this handbook is to assist management, staff and board members of reserve trusts and commons trusts and trustees of schools of arts to manage these reserves. The handbook also covers the roles and responsibilities of corporate reserve trust managers (local councils and others) and administrators of reserve trusts.

The handbook contains general information and guidelines as well as regulatory requirements on how to manage your reserve. At a minimum, relevant regulatory requirements must be complied with. The handbook also indicates requirements that are mandatory as a matter of policy. Other information represents good practice that will help ensure an effective system of reserve management is maintained. The handbook should be your first point of reference to answer questions that you may have about your trust.

How the handbook is organised:

There are five parts to help you find information as quickly as possible.

**Part A** – The Crown reserve trust system deals with the legal principles of reserve trust management. In these chapters you will find information on how the trust system works and your roles and responsibilities as a trust manager.

**Part B** – Managing Crown reserves deals with the day-to-day requirements of managing a reserve, including how to develop a plan of management, insurance and liability, workplace health and safety issues, and leases and licences.

**Part C** – Administration explains how to ensure your trust is properly managed. This section covers general administration, accounting and freedom of information.

**Part D** – Specific guidance for commons and schools of arts contains information specific to commons or schools of arts, and should be consulted in place of the corresponding chapters in Parts A, B and C. Apart from those corresponding chapters, all other information in the handbook is relevant to commons and schools of arts as well as to reserves.

**Appendices**– contain a risk management checklist and a range of forms, templates and other information to assist in managing your reserve.
**Content of each chapter**

Each chapter begins with an overview of the topic. Where relevant, regulatory requirements and guidance on where to find further information is listed at the end of each chapter. Readers should recognise that not all regulatory requirements or other source material have been listed.

**Terminology**

All legislation referred to is New South Wales legislation, unless indicated otherwise. For example, Commonwealth legislation is indicated by (C’th) at the end of the title. We have indicated whether activities are mandatory or non-mandatory in the following way:

- the wording “must comply with” identifies that it is a legal requirement; a legal requirement might also be expressed as “the Act requires that”
- requirements of Crown Lands, Department of Primary Industries are expressed as “Crown Lands requires that...” or in sections of the handbook that have not yet been updated as “the Department of Lands requires that...” or “the Department requires that...”
- “should” denotes good practice that is strongly recommended.

The administration of Crown lands within New South Wales falls under the Catchments and Lands Division of the Department of Primary Industries reporting to the Deputy Premier. The Department of Primary Industries is an agency under the larger NSW Department of Trade and Investment, Regional Infrastructure and Services (also known as Trade and Investment NSW).

“Crown Lands” in this handbook (or in sections of the handbook that have not yet been updated, “Land and Property Management Authority” or “LPMA”) refers to the Crown Lands section in the Catchments and Lands Division of the Department of Primary Industries.

“Crown Lands office” in this handbook (or in sections of the handbook that have not yet been updated, “Land and Property Management Authority office” or “LPMA office”) refers to the local office of the Department of Primary Industries with Crown Lands staff.

“reserve trust” in this handbook refer to a Crown reserve trust set up under the Crown Lands Act 1989.

“reserve trust manager” in this handbook refers to a manager appointed under the Crown Lands Act 1989 to manage a reserve trust.

“trust board” in this handbook refers to one of the types of reserve trust manager that can be appointed under the Crown Lands Act 1989 to manager a reserve trust. This is distinguished from a “commons trust board” which refers to one of the types of commons trust manager that can be appointed to manage a commons trust under the Commons Management Act 1989.

**Comments and queries**

If you have questions about the content of this handbook, your first contact should always be the Crown Lands Reserves Team. A list of contact details is provided in Appendix A.
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The Executive Summary provides a brief introduction to the topics covered in the Trust Handbook. Each section of the Executive Summary corresponds to a chapter in the Handbook, where the issues are covered in greater detail. For this reason it is recommended that trust board members refer to the relevant chapter in the Handbook when dealing with reserve management issues.

Chapter 1 - Crown reserves
Where Crown land is set aside for a public purpose, it can be either ‘reserved’ or ‘dedicated’, which makes it available only for a use that will deliver some public benefit or good, and unavailable for private uses. Reservations and dedications are generally all grouped under the name ‘Crown reserves’.

Crown land that has been dedicated as a Crown reserve is a more enduring form of reserve. Dedication can only be revoked with the agreement of both Houses of the NSW Parliament. On the other hand, where Crown land has been reserved, the Minister can decide to revoke that reservation without the matter being considered by Parliament. Parts of these reserves may be changed without affecting the remaining parts of the reserve.

Generally, the use of a reserve can only be consistent with or support the purposes stated in the reservation or dedication, however the Crown Lands Regulation lists various additional purposes for which reserves can be used where a temporary licence is issued (see Chapter 14 of the handbook). The Minister may also grant a lease or other tenure for such additional purposes as the Minister thinks fit (refer section 34A of the Crown Lands Act). Where possible, multiple uses of reserves are encouraged, where those uses are consistent with the purpose of the reserve.

For example, a reserve for public recreation could be used by various different sporting groups and also by the general public for recreation.

Chapter 1 of the handbook discusses how a reserve purpose may be changed.

Chapter 2 - How the trust system works
Members of the public and local councils play an important role in the care and use of Crown reserves. The reserve trust system provides a framework for them to participate in the management of reserves in their locality.

A reserve trust is the legal body holding ownership of reserved or dedicated Crown land on a temporary basis (being for the life of that reserve trust), for the purposes of facilitating the management of the land on behalf of the public.

A trust can only make decisions and take actions concerning the reserve if those decisions and actions are in the interests of the reserve and the public, and are consistent with the range of powers and responsibilities set out in the Crown Lands Act 1989.

The reserve trust is set up under the Crown Lands Act 1989 (the Act) to have responsibility for the care, control and management of a Crown reserve. While a reserve trust is a legal entity in its own right, it cannot operate without having someone appointed to manage its affairs. A reserve trust can be managed by:

- the Minister a trust board
  - an incorporated body, usually a local council, but it could also be an association incorporated under the Associations Incorporation Act 1984 or a charity which is a limited liability company, or the Lands Administration Ministerial Corporation
  - an administrator.
A reserve trust can also be managed by more than one manager, with the different management responsibilities being determined on either a geographical or functional basis.

A trust board member must not receive any personal benefit from fulfilling their role or through their dealings with the trust property.

Generally the members of a reserve trust board are, in the course of managing the affairs of a reserve trust under the Act, protected against most legal claims which arise in the course of the use and management of the reserve, provided they have acted in good faith and in accordance with the Act. However board members can be personally liable for criminal breaches of legislation covering work health and safety, environmental protection and pollution, antidiscrimination, public access to information etc. More information is provided in section 2.11 of the handbook.

There are certain activities that require the consent of the Minister, for example the granting of a lease over a reserve or part of it. In such circumstances the reserve trust board should contact the Crown Lands Reserve Team.

Chapter 3 - Role and responsibilities of the trust board

Members of the community who are appointed to reserve trust boards undertake a valuable role in the management of these community facilities and Crown reserves. Trust board members are empowered to make decisions regarding the use and management of the land and are responsible for the implementation of those decisions.

Trust board members may be the main users of the reserve, and may have become members of the trust board because of that interest. It is important that there be a clear separation of the two roles (manager and user), both financially and in terms of decision-making. It should always be kept in mind that the reserve is to be managed on behalf of the people of NSW as a whole and not for a particular group or interest or local community.

The role and responsibilities of the board should be clearly understood, both by its members and by potential future members. Chapter 3 of the handbook explains the responsibilities of trust board members and how those roles and expectations can be met.

Chapter 4 - Communicating with the Department and other agencies

As part of the day-to-day management of a reserve, trust boards may need to contact or consult external sources for information or guidance. Chapter 4 of the handbook provides information and contacts relevant to trust board management.

Trust boards can always contact the Crown Lands Reserve Team for advice and support. Refer to Section 4.1 for relevant details.

Chapter 5 - Plans of management

Plans of management consolidate information about the reserve and its users and clearly state what, why, how and by whom the values of a reserve are being managed. They are therefore a good way of setting directions and providing a framework for the strategic and operational use and management of a reserve.

It is important to keep plans of management as simple as possible. It is a good idea to have workshop sessions with the community so that their views and expectations can inform the management plan. The preparation of a plan of management does not need to be an expensive or complicated process, and the Crown Lands Reserves Team is always available to assist.

Not every reserve will require a formal plan of management to be developed and adopted by the Minister. Where a formal plan is not required, the principles discussed in chapter 5 of the handbook should be used to develop a management strategy and business plan for the reserve.
Chapter 5 of the handbook has detailed information on preparing a plan of management.

Chapter 6 - Visitors to the reserves
The principles of Crown land management include:

• that environmental protection principles be observed in relation to the management and administration of Crown land; and

• that public use and enjoyment of appropriate Crown land be encouraged.

These principles need to be complied with in a way that encourages public use while ensuring the safety of visitors and without degrading the natural landscape.

Reserve trusts are empowered to enforce by-laws and regulations within the reserve. Members of trust boards can be trained and accredited to issue penalty notices where by-laws or regulations have been breached. Establishing and maintaining working relationships local police or council rangers is also recommended.

Chapter 6 of the Trust Handbook provides you with guidance on managing public use of your reserve in accordance with the above principles.

Chapter 7 - Managing risk
Managing risk and liability does not just mean thinking about insurable risks; it encompasses all risk areas that may affect the trust. This is a key responsibility for all reserve trusts and trust board members. Risk types may include work health and safety, environment and land management, liability, emergency management, staff, contractors and volunteers, financial and asset management, and other administration risks.

The key risk areas of a reserve trust relate directly to the purpose of the reserve being managed by that trust. For example, a showground would have different risks from a cemetery, and a metropolitan trust might have different issues from one located in a rural area. It is therefore important for each reserve trust to identify the key risk areas that would impact on it specifically.

Crown Lands requires that trust board members adopt good risk management practices to ensure that risks are being proactively managed and that responsible action is planned. This also assists in reducing both claims and premiums for the trust and for the authority.

Chapter 7 of the handbook explains your responsibilities in this regard and provides guidance on types of risk and how to manage them, including the use of a risk management checklist. A link to a sample risk management checklist is provided in the handbook.

Chapter 8 - Insurance and liability
Despite the most comprehensive and effective risk management procedures, accidents will happen from time to time, and the reserve trust will generally require financial help in dealing with them.

To assist volunteer reserve trust boards and their members in providing management of the many crown reserves, Crown Lands arranges Property, Legal liability (including Public liability) and Volunteers insurance coverage for trust boards via the Treasury Managed Fund (TMF). This coverage is dependent on sound management of the assets and activities of the trust, the reserve and its users, to ensure compliance with the Crown Lands Act 1989. There are also further requirements described in chapters 7 and 8 of the handbook.

Trusts managed by corporations, associations (e.g. scouts or girl guides) or local government are not covered by Crown Lands insurance and must obtain their own necessary insurance. All trusts must also consider their employees, volunteers and assets and obtain appropriate insurance cover for those areas not covered by the Crown Lands insurances.
**Chapter 9 - Emergency management**

Reserve trusts are responsible for preparing to respond effectively to emergencies. An emergency management plan should be developed for each trust. Having an emergency management plan could reduce the impact of any emergency and will help to ensure that all trust members, employees, contractors and volunteers are aware of their responsibilities during an emergency.

Examples of emergency situations that could occur within a reserve could include floods, bushfires, chemical spills, gas leaks, medical emergencies, motor vehicle accidents and people being violent or threatening.

Disaster assistance and funding may be available to reserve trusts following some emergencies. Sources of assistance are outlined in Chapter 9 of the Handbook. Chapter 9 also explains in detail the different types of emergency that are relevant to trusts, and sets out guidelines, responsibilities and obligations with regard to preparing for and managing those emergencies.

**Chapter 10 - Work health and safety**

Work health and safety or WHS (formerly legislation aims to reduce the personal, social and economic impact of work-related accidents and incidents. Effective management of workplace risks also makes good business sense. It can help improve workplace morale, enhance the reserve trust's reputation and avoid costs associated with workplace injury, illness and disruption to the workplace.

Crown Lands is committed to promoting legislative compliance and good WHS practice within reserve trusts. In addition, trusts are required by legislation to ensure the health, safety and welfare at work of all workers engaged by the reserve trust and others who come onto the reserve, such as the public and volunteers.

Employers can be protected from accusations of negligence if they can prove that they have used due diligence to prevent their employees sustaining injury or illness. One way of achieving this is by developing and establishing a Work Health & Safety Management System (WHSMS) which is then monitored and periodically evaluated. A WHSMS should be tailored to the specific circumstances of reserve trust, for example whether the reserve trust is classified as a small, medium or large trust and whether they are classified as a ‘Person Conducting a Business or Undertaking’ (PCBU) or a volunteer association.

Chapter 10 of the handbook provides guidance on a reserve trust’s WHS obligations and how to meet them, as well as advice on setting up a WHSMS, establishing a WHS training program, and managing hazard, incident and injury reporting processes.

**Chapter 11 - Environmental responsibilities and land management**

Reserve trusts are responsible for the environmental management of the land making up their reserves. This is a legal responsibility, reflecting the importance of protecting and enhancing the environmental values of natural areas.

The protection and enhancement of environmental values is set out in state and federal legislation, policy and management systems.

Chapter 11 of the handbook explains reserve trust obligations and responsibilities with regard to the environmental management of reserve land and in particular looks at the issues of:

- noxious weeds
- plants and animals
- water management
- bushfire management
- heritage
Trust Handbook

- pesticides
- contaminated land
- dividing fences
- pollution.

Reserve trusts should consider whether it is appropriate to develop an environmental management system (EMS). An EMS takes into account the environmental values of the reserve and can assist with decision making and planning for the management of the reserve in the future. Guidance for developing an EMS is contained in Chapter 11.

Chapter 12 - Native title and claims under the (NSW) Aboriginal Lands Right Act 1983

Native title might exist on a reserve. Where it does, the basis on which the reserve was established remains valid. The use of the reserve for the purpose specified at the time of its reservation takes precedence over any native title rights made on the land after its reservation.

Care must be taken to ensure that, where native title may still exist, procedures for addressing native title as set out in the Commonwealth Native Title Act 1993 (NTA) are followed.

Section 36 of the New South Wales Aboriginal Land Rights Act 1983 permits Aboriginal Land Councils to claim the freehold of Crown land (including reserves) that is not lawfully used or occupied, or needed or likely to be needed for an essential public purpose.

Unlike native title, a successful Aboriginal Land claim will result in the freehold of the reserve being transferred to the relevant Land Council and the revocation of the whole or part of the reserve affected by the successful claim.

Chapter 12 of the handbook explains a reserve trust’s obligations in regards to Native title as well as the implications of the NSW system of Aboriginal land claims.

Chapter 13 - Managing buildings, assets and infrastructure

Crown land is a valuable public asset. The land must be managed prudently to ensure that the greatest environmental, social and economic benefits to the state and the public are achieved, while minimising safety or risk issues. The efficient management of buildings, assets and infrastructure assists in achieving these benefits.

Keeping buildings and structures in good condition is also important to extending the life of the facility, without the need for costly and time-consuming rebuilding. Crown Lands requires that reserve trusts keep a register of structures, facilities, and other assets, including the land itself, recording the value and condition of all the assets.

If a trust proposes to undertake development on a reserve, it must comply with the development control and approval processes specified in the Environmental Planning and Assessment Act 1979.

Chapter 13 of the handbook provides guidance to help trusts manage their assets effectively.

Chapter 14 - Leases, licences & land management agreements

In many cases, the major activities that occur on reserves are not carried out by the reserve trust itself. Reserves are used by a wide range of bodies, including sporting clubs, show and agricultural societies, commercial organisations and individuals providing services for the community.

In these cases, as the trust is not conducting the activity, it should not take responsibility for the risks involved and should enter into a suitable agreement that passes the responsibilities to the reserve user. A lease or licence is the method used to do this.
Reserve trusts can enter into leases and licences with individuals, groups and organisations, schools, companies or even the local council, who may want to use all or part of the reserve on a temporary or ongoing basis. The lease or licence will document the terms and conditions on which the party may use the reserve. Unless it is for a short-term, low-impact use (involving a temporary licence), the Minister’s consent to enter the agreement must be obtained.

Chapter 14 of the handbook explains the conditions and requirements for leasing or licensing Crown reserves.

There are also a range of land management agreements that reserve trusts can apply for in exchange for payment or tradeable credits (e.g. carbon credits or biodiversity credits). The conditions and requirements for entering into these agreements on Crown land are explained in section 14.8 of the chapter.

**Chapter 15 - Employment: paid staff, volunteers, contractors**

When the reserve trust employs staff or contractors, care needs to be taken to make sure that it is done legally and the employee or contractor is properly engaged with all the required benefits or insurances in place. The recruitment process should be fair and equitable. It is not appropriate to give a job to a friend or to someone who has been doing the job in a voluntary capacity for many years, unless they are selected as part of a formal recruitment process.

Regardless of whether the person doing a job is being paid, they should have the appropriate skills and training. Training or certification can help avoid accidents occurring in the workplace. Employees are entitled to all the rights available to them under the *Work Health and Safety Act 2011*. The value of volunteers should be recognised, and volunteers should be rewarded for their efforts where possible through public acknowledgement, social events, or opportunities to develop their skills.

Chapter 15 of the handbook sets out the rights and obligations of both employees and trust board members with regard to employment conditions, benefits and responsibilities.

**Chapter 16 - Anti-discrimination**

Every person has the right to be treated equally, and similarly, every person should respect the rights of others. In Australia, it is unlawful to discriminate against people, not only in the areas of employment and management of staff, but also in the provision of services.

Crown Lands supports a policy of equal opportunity reflecting the intent of state and federal legislation. Crown Lands actively discourages any practices that involve bias due to race, gender, nationality, sexual preference, age, disability, marital status, religious or political beliefs or pregnancy, as outlined in the Crown Lands’ *Equal Employment Opportunity and Harassment in the Workplace* policies.

An employee’s ability to perform their workplace responsibilities should be the only factor considered during selection for employment or whilst a person is employed in a reserve trust.

Anti-discrimination legislation prohibits discrimination in allowing entry to any public place or to any service intended for use by the public, including parks, cafes and restaurants. It is therefore important that when providing trust services or allowing access to trust properties, reserve trusts ensure that the environment is free from discrimination.

Chapter 16 of the handbook sets out information about what constitutes discrimination, reserve trusts’ responsibilities in maintaining an environment free of discrimination, and dealing with discrimination related complaints.

**Chapter 17 - General administration**

A reserve trust is responsible for the care of public land in the interests of the community. Everything the reserve trust does should therefore take place and be recorded in an open and accountable manner. This will ensure public confidence in reserve trust operations is maintained.
Reserve trusts are required to keep records for financial management, assets and asset management, leases and licences, meeting minutes, and activities for which fees are collected.

Meetings must be conducted according to the requirements of the *Crown Lands (General Reserves) By-law 2006*, for example that trust Boards should meet a minimum of 4 times per year, including holding an annual general meeting; and that trusts must have a ‘common seal’ to be used on certain documents such as leases or licence agreements.

Chapter 17 of the handbook further explains the administration requirements for trusts and reserves, including:

- making business decisions
- trust board meetings
- subcommittees
- common seal
- investigations by the NSW Independent Commission Against Corruption (ICAC).

**Chapter 18 - Promotion and publicity**

Reserve trusts are required to make the best use of the reserve and any income received, within the constraints of the public purpose of the reserve and the reserve’s plan of management.

Promoting a reserve has two advantages. Firstly, it increases public awareness of the facilities that are available, increasing the number of people using the reserve. Secondly, as members of the community become aware of the reserve, there should be more interest in supporting its endeavours. This could be through involvement as a board member, by becoming a volunteer or by providing financial support.

Options for publicity include media releases, a website, signage or sponsorships. Chapter 18 of the handbook provides guidance on how to promote reserves to the best effect.

**Chapter 19 - Sources of income**

The best way to guarantee ongoing income for the trust is to encourage suitable economic activities within the reserve while ensuring compatibility with the reserve’s purpose. Fundraising, grants and loans are other options for generating income.

Crown Lands administers a Public Reserves Management Fund (PRMF) which provides grants and/or loans for the improvement, development, maintenance and protection of Crown reserves.

Information on applying for PRMF and other options for generating income can be found in Chapter 19 of the handbook.

**Chapter 20 - Using trust funds**

A reserve trust manager must be diligent in monitoring the use of trust funds and ensuring that all transactions are made in accordance with the relevant legal requirements.

Reserve trust managers must be able to demonstrate that all expenditure and the use of reserve trust funds is reasonable, acceptable, has been necessary and is incurred for the general purposes of the reserve trust. Inappropriate use or misuse of reserve trust funds could result in action against the reserve trust manager and/or individuals, including removal from office or legal action.

Chapter 20 of the handbook contains information on the investments that reserve trusts can make, and their responsibilities in ensuring that reserve trust funds are used to maximise benefit to the reserve. Information is also provided on procurement activities, issuing tenders and contracts, leasing equipment and sponsorship.
Chapter 21 - Selling, mortgaging and acquiring reserve trust land
Reserve trusts manage Crown land for the benefit of the community. To assist the reserve trust in undertaking this management responsibility, the Act provides that the reserve trust effectively holds ownership of the land making up the reserve. However, in many dealings in respect to reserve land, the reserve trust cannot act independently without reference back to the Minister. This means that, provided the Minister’s consent is obtained, the reserve trust can lease, license or enter into other formal agreements concerning the use of the land as if it were the owner. Parts of the reserve can also be sold or mortgaged, or added to through purchase or lease, but only in very limited circumstances. In all cases, a trust proposing to sell or mortgage a reserve, or to purchase or lease additional land must approach Crown Lands to obtain the Minister’s consent.

Chapter 22 Accounting and financial management
The responsibility for the care, control and management of a reserve and its improvements rests with the reserve trust board members. Therefore, it is essential that trust board members exercise good financial management and control. However, trust board members are not expected to become accountants or professional bookkeepers. If the trust board has access to a community spirited accountant, this person would be ideal to assist with maintaining accounting records.

Reserve trusts are responsible for ensuring records are created in accordance with the State Records Act 1998. Helpful advice can be found on the NSW Government State Records website.

The information in chapter 22 of the handbook is designed to give reserve trusts a better understanding of the record types that must be maintained. In addition, the Crown Lands Reserves Team is available to give advice on keeping financial records.

Chapter 23 Annual report and financial statements
Annual reports and financial statements are important items that assist the reserve trust board and other interested parties review the financial position of the reserve trust. They also enable Crown Lands to review the trust’s operations and to identify trusts that may require assistance. In addition, the financial report assists the reserve trust board and Crown Lands to determine whether a trust’s financial resources are being controlled and managed appropriately.

All reserve trusts are required to submit an annual report to the Minister administering the Act within three months of the close of the trust’s financial year. The financial year for most reserve trusts is the year commencing 1 July, meaning annual reports need to be lodged by 31 October.

Annual reports can be submitted electronically using the Crown Reserve Reporting System (CRRS). To access the online reporting system, please contact the CRRS help desk at crrs@lands.nsw.gov.au

Crown Lands requires reserve trust boards with an annual income over $50,000 to be audited annually by a registered company auditor. All showground trusts must also be audited annually by a registered company auditor, regardless of income. Reserve trust boards with an annual income of less than $50,000 must also be audited however the audit may be performed by any responsible local citizen.

The Minister responsible for the Act may also require reserve trust boards to report on their performance in managing reserves and on such other matters as the Minister considers appropriate.

Chapter 23 of the handbook details outlines further information about financial reporting, including what is expected in the annual report and financial statements of the trust.

Chapter 24 Protecting privacy
Privacy obligations govern how you:
• collect and handle personal information relating to individuals
In the context of a reserve trust, you will be mostly concerned with the personal information of individuals and its collection, storage, access, use and disclosure.

Chapter 24 of the handbook explains reserve trust’s responsibilities and obligations under the Privacy & Personal Information Protection Act 1998 (PPIP Act) including:

- Information Protection Principles
- review rights and complaints
- regulatory requirements

Chapter 25 Public Access to Government Information

All documents and records held by reserve trusts are considered to be public information and are subject to the requirements of the Government Information (Public Access) Act 2009 (GIPA Act). Reserve trusts are therefore required to provide public access to information in accordance with the requirements of the Act.

Chapter 25 of the handbook explains reserve trust’s GIPA responsibilities and obligations. The NSW Trade and Investment Access to Information Unit can provide assistance to reserves:

PO Box K220, Haymarket. NSW 1240
Telephone: 02 8289 3962
Email: gipa@trade.nsw.gov.au
Website: http://www.trade.nsw.gov.au/about/access-to-information

Chapter 26 Handling complaints

Even in the best run organisation there will be occasions when a member of the public has a complaint. It is good practice to view complaints as a means of guidance for providing better services to the public and to improve how the reserve trust operates.

Chapter 26 of the handbook outlines how to establish a procedure for managing complaints. The objective is to provide a fair, efficient and accessible means of handling complaints and learning from them.

Chapter 27 Commons

Commons are parcels of land set aside to provide land on which eligible residents of the Land District within which the common is located can pasture their livestock. Many commons were established in the 19th and 20th centuries. These commons still exist, though the legislation which governs them has changed— the most recent major change being the passing of the Commons Management Act 1989.

Chapter 27 includes further information on commons including the requirements the Commons Management Act 1989 and the Commons Management Regulation 2006.

Chapter 28 How the commons system works

A commons trust is the legal body created to enable the temporary ownership of the common so that it can be managed by the commons trust on behalf of the members of the common.

The members of a common are known as ‘commoners’. The names of the commoners are recorded on a commoners’ roll kept by the commons trust. A trust can only make decisions and take actions concerning the common in the interests of the common itself and the members of the common.

Chapter 28 includes further information about membership of commons trusts, annual reviews of commons trust members, and how commons trusts interact with Crown Lands.

Chapter 29 Roles and responsibilities of the commons trust board
The main role of the commons trust board is to manage the affairs of the common. This responsibility belongs to the members of the commons trust board and cannot be delegated entirely to others. However, a commons trust board can appoint or employ others to assist it in the management of the common.

Chapter 29 outlines the various responsibilities of commons trust boards, including the need to prepare and adopt a code of conduct, and to submit annual reports.

**Chapter 30 Management plans for commons**
A management plan is a formal document which provides a framework for the strategic and/or operational (day-to-day) management of a common.
Chapter 30 of the handbook explains what is required for a management plan specifically in relation to commons trusts.

**Chapter 31 Leases and licences for commons**
Commons are generally set aside for the specific needs of the landholders of the local district. However, leases or licences of parts of the common can be granted with the prior authorisation of the Minister administering the Commons Management Act.
Generally, a lease or licence of a common can only permit the lessee/licensee to use the common in a way that is consistent with the purposes stated when the common was set aside and/or with the common’s management plan.

Further information about issuing leases and licences, including temporary licences, on commons land is contained in Chapter 31 of the handbook.

**Chapter 32 General administration for commons**
Everything the commons trust does should take place, and be recorded, in an open and accountable manner to ensure confidence in its operation is maintained.
Chapter 32 explains the administrative obligations of the commons trust and the common, including recordkeeping, fees, trust board meetings, insurance and auditing.

**Chapter 33 Selling, mortgaging and acquiring commons trust land, and investments**
Commons land can only be sold or mortgaged, or added to through purchase or lease, in limited circumstances. A commons trust proposing to sell or mortgage a common, or to purchase or lease additional land, must approach Crown Lands to obtain the Minister’s consent.
Before entering into any transaction, commons trust boards should consult the Crown Lands Reserves Team. Further information on this topic is contained in Chapter 33 of the handbook.
Chapter 34 Trustees of schools of arts

Many halls or meeting rooms across New South Wales are governed by the *Trustees of Schools of Arts Enabling Act 1902* because the land is either:

- Crown land reserved, dedicated or granted for the purpose of a school of arts, literary institute or mechanics’ institute (public trusts), or
- private land purchased, given or granted in trust for the purpose of a school of arts, literary institute or mechanics’ institute (private trusts).

The Trustees of Schools of Arts Enabling Act was passed at a time when there were no provisions for trustees to become an incorporated association. Trustees did not have the legal status of a company and could not hold property or enter into contracts easily. The *Trustees of Schools of Arts Enabling Act 1902* provides that trustees can, with the Minister’s permission, take out a mortgage to build the required facility, enter into a lease, or to sell land if required. Chapter 34 of the handbook includes more information on the Act, the appointment of trustees, and managing the institutions’ affairs.

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**Revisions to this chapter**

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As a part of the orderly settlement of New South Wales, substantial areas of land have been retained in Crown (State) ownership for the ongoing benefit of the local and broader community.

Many areas of environmental, cultural or social significance are on Crown land.

The system of Crown reserves enables the NSW Government, local councils and members of the community to control and care for these significant parts of the State for the benefit of everyone.

This chapter explains the different types and purposes of Crown reserves.

1.1 What are Crown reserves?

When New South Wales was first settled, all land in the colony was presumed to be owned by the Crown (see note below regarding native title). As the colony developed and demand for private landholding grew, land was made available for sale or lease to the public. The system of reserving Crown land developed at that time to ensure that land was also retained for public and future uses. New land can also be added to the Crown land estate via acquisition or other means.

The Crown Lands Act 1989 and associated Crown Lands Regulation 2006 is the principal legislation protecting and governing how these lands may be used and managed for the public benefit. A key provision is that Crown land must be managed in accordance with the “principles of Crown land management”.

Crown land can be “reserved” or “dedicated” for a multitude of purposes, including public recreation, showgrounds, cemeteries, environmental protection, public halls, racecourses and preservation of scenery. Reserved and dedicated Crown land is generally grouped under the name “Crown reserves”.

A further critical piece of legislation relating to Crown reserves is the Crown Lands (General Reserves) By-law 2006. This Bylaw regulates, within reserves to which it applies:

- the use generally of the reserve
- the management of any cemeteries or crematoriums
- the conduct of trust boards, and associated general administration matters.

Members of trust boards should therefore check whether the By-law applies to their reserve, and if so become familiar with its requirements. More information on the By-law is contained in Chapter 3.

Note: the presumption that all land was owned by the Crown is now subject to High Court rulings in respect to native title. Reserve trusts should be aware that native title may exist over the land they manage. Refer to Chapter 12 for more details.

The principles of Crown land management

The principles of Crown land management are set out in section 11 of the Act and are:

(a) that environmental protection principles be observed in relation to the management and administration of Crown land,
(b) that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible,

(c) that public use and enjoyment of appropriate Crown land be encouraged,

(d) that, where appropriate, multiple use of Crown land be encouraged,

(e) that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, and

(f) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

**Reservation and dedication**

Where Crown land is set aside for a public purpose, it can be either ‘reserved’ or ‘dedicated’, which makes it available only for a use that will deliver some public benefit or good, and unavailable for private uses.

Crown land that has been **dedicated** is a more enduring form of Crown reserve. Dedication can only be revoked with the agreement of both Houses of the New South Wales Parliament.

On the other hand, where Crown land has been **reserved**, the Minister can decide to revoke that reservation without the matter being considered by Parliament. Parts of these reserves may be changed without affecting the remaining parts of the reserve.

**1.2 What purposes can a reserve be used for?**

The government order or notification (published in the Government Gazette) of reservation or dedication of a reserve sets out the purposes for which that reserve may be used.

Generally, the use of a reserve can only be consistent with or support the purposes stated in the reservation or dedication. However:

- the Crown Lands Regulation lists various additional purposes for which reserves can be used where a temporary licence is issued (see Chapter 14)
- the Minister may grant a lease or other tenure for such additional purposes as the Minister thinks fit (refer section 34A of the Crown Lands Act).

Where possible, multiple uses of reserves are encouraged, where those uses are consistent with the purpose of the reserve.

**1.3 Changing the purpose of a reserve**

Changes in circumstances or in a community's needs may require a change in the way in which a reserve is used.

If a proposed new use is not consistent with the purposes stated in the original dedication or reservation, the reserve trust manager should hold discussions with Crown Lands regarding a possible change in the stated purpose of the reserve, or other appropriate action. A change in the reserve purpose may require the existing reservation or dedication to be replaced with a new reservation or dedication. This process will usually require consultation with the local community and may require the proposal to undergo a land assessment under Part 3 of the Crown Lands Act. Discussions with Crown Lands should cover the appropriate means and scale of public consultation and whether land assessment will be needed.

A reserve may be authorised to be used for a purpose **additional** to the purpose for which the land was reserved or dedicated if the new purpose is generally compatible with the existing...
purpose, is consistent with the principles of Crown land management and is in the public interest.

Such additional uses can be authorised either by a plan of management or by order of the Minister. In both cases, the Minister will consult with the reserve trust managing the reserve and with any other Minister who has an interest in the reserve.

**Regulatory requirements**

- Additional purpose: *Crown Lands Act 1989* – sections 112A to 114, section 121A, and section 34A.

**Further guidance**

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the *Crown Lands Act 1989*, can be found at:


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2 How the trust system works

Members of the public and local councils play an important role in the care and use of Crown reserves. The reserve trust system provides a framework to participate in the stewardship of reserves in your locality.

2.1 What is a reserve trust?

A reserve trust is the legal body holding ownership of reserved or dedicated Crown land on a temporary basis (being for the life of that reserve trust). The purpose of establishing this legal interest in the land itself is to facilitate the management of that land by the reserve trust on behalf of the public. That said, a reserve trust can only make decisions and take actions concerning the reserve where those decisions and actions are in the interests of the reserve itself and the public, and are consistent with the range of powers and responsibilities set out in Part 5 of the Crown Lands Act 1989.

2.2 How are reserve trusts managed?

The reserve trust is set up under the Crown Lands Act to have responsibility for the care, control and management of a Crown reserve. However, while a reserve trust is a legal entity in its own right, it cannot operate without having someone appointed to manage its affairs. A reserve trust can be managed by:

- the Minister (generally as delegated through Crown Lands staff of the Catchment and Lands Division of the Department of Primary Industries)
- a trust board (see Section 2.5, below and Chapter 3)
- an incorporated body (see Section 2.6, below), usually a local council, but it could also be an association incorporated under the Associations Incorporation Act 2009 or a charity which is a limited liability company, or the Lands Administration Ministerial Corporation.
- an administrator.

A reserve trust can be managed by more than one manager, with the different management responsibilities being determined on either a geographical or functional basis. This can provide increased flexibility in establishing the most appropriate management structure for reserves, particularly where a number of different uses are located on the reserve.

A reserve trust manager must not receive any personal benefit from fulfilling their role as manager or through their dealings with the trust property.

When a council or a corporation is appointed as manager, decisions regarding the operation of the reserve must be made in accordance with the rules which govern the council’s operations or the corporation’s own constitution, as applicable, as well as the Crown Lands Act.

Some Chapters of this Handbook will not apply to these corporations (for example, Chapter 3 which deals with the appointment of members to a trust board). However, the rest of this Handbook explains the legal requirements to be observed, any Crown Lands requirements, and best practice suggestions that will help councillors or directors when managing the operation of the reserve trust.
2.3 What is the legal status of a reserve trust?

A reserve trust holds the (temporary) legal ownership of the land making up the reserve, and is responsible for it in almost every respect. However, it can only use or deal with that land in ways that are permitted by the Crown Lands Act and which are consistent with the purposes for which that reserve was reserved or dedicated.

When a reserve trust is established, it is given a corporate name which usually includes an identifying reserve number, for example Brownsville Oval (R123456) Reserve Trust.

When action is taken by a reserve trust (for example, if it enters into contracts or grants leases or licenses), this is done using its corporate name. If the affairs of a reserve trust are managed by a company or a council, the name of the company or council must not be used in any reserve trust dealings.

Every reserve trust is constituted as a corporation (refer s. 92(2) of the Crown Lands Act).

2.4 What is the role of a reserve trust manager?

The reserve trust manager (whether a trust board, corporate manager or administrator) manages the affairs of the reserve trust to which it has been appointed. Such management is to be for the benefit of the people of NSW and consistent with the purpose of the reserve, the requirements of the Crown Lands Act 1989, the Crown Lands Regulation 2006, and where applicable the Crown Lands (General Reserves) By-law 2006.

2.5 What is a trust board?

One of the types of reserve trust manager is a trust board. A trust board is made up of individuals (between three and seven), often a mix of community volunteers and may also include additional ex-officio representatives of government and community organisations.

It works in a similar way to the board of directors of a company (see Chapter 3 for more information).

2.6 What is a corporate trust?

Reserve trust managers can also be corporations. Corporations can include local government councils and incorporated community-based organisations. Many reserve trusts are managed by a corporation rather than a trust board. Local government councils manage many of the Crown reserves in the State.

2.7 Rules specific to corporate trusts

All of the provisions of the Crown Lands Act with respect to reserve trust management apply to corporate reserve trust managers apart from provisions specific to other types of reserve trust managers, e.g. trust boards.

Corporate trusts are also bound by corporations’ law and other legislation when relevant e.g. the Local Government Act 1993.

In most circumstances, local government corporations have more staff and financial resources to undertake reserve trust management than trust boards and are well aware of the additional obligations that they have under other legislation.

Set term for corporate trusts

Until 2005, corporate trusts (including where a local government council) were appointed for an indefinite period. Since 2005, and in line with other reserve trust managers, corporate trusts can now be appointed for a set term, as considered appropriate by the Minister. The term of corporate trust can be extended at any time by a notice in the Gazette.
Corporations can be removed from office simply by the appointment not being renewed at the end of the set term. No compensation is payable if the corporation is removed from office or if the appointment is not continued.

2.8 Councils as corporate trusts

Additional powers under the *Local Government Act 1993*

As reserve trust manager, a council has all the functions of a council under the Local Government Act in relation to public reserves.

However the council has no power to classify the Crown reserve under the Local Government Act (i.e. as “community” or “operational”).

**Council power to grant leases over reserves**

Local councils (and other reserve trust managers) can be authorised by the Minister to grant leases, licences and related easements over the Crown reserves they manage in certain circumstances without the need to obtain the Minister’s consent. When using this power the council must notify the Minister of the terms of the grant within 14 days of that grant.

When deciding to grant this power, the Minister can take into account the council’s performance in managing public land, and may request information on this performance from the Minister administering the Local Government Act.

This authority does not apply to mortgages or sales of Crown reserves, or agreements longer than 21 years – all of which will still require Ministerial consent.

This provision enables councils, where granted this power, to have similar levels of autonomy and accountability over Crown land as they have under the “community land” provisions of the Local Government Act.

The Minister’s authorisation may

(a) relate to a specified reserve or group of reserves,
(b) specify the circumstance in which a lease may be granted without the Minister’s consent,
(c) apply generally to the reserve trust or be limited to a specific circumstance,
(d) be subject to appropriate conditions (e.g. the duration and purpose of the tenure, public consultation, tender or other processes required),
(e) specify the purposes, terms and conditions of the lease or licence,
(f) limit the term,
(g) specify procedures to be followed e.g. for public notice and consultation; tendering; dealing with objections,
(h) require information to be provided before or after any lease, licence or easement is granted,
(i) require a proposal be submitted to the Minister before it is granted,
(j) require the reserve trust to indemnify the Crown against liability i.e. where a reserve trust authorises leases and licences, they may also be required to accept the associated risks.
The Minister can revoke this authorisation at any time.

2.9 Where management of Crown reserves devolves to council

Certain Crown reserves are automatically managed by the local council even if a reserve trust has not been established. These reserves are generally those with the reserve purpose of ‘public recreation’ or ‘public cemetery’ and not managed by another body or person (refer s. 48 of the Local Government Act).

The Minister may however declare at any time by a notice in the Gazette that a reserve that would normally devolve to management by council is for the time being under the care, control and management of the Minister. This declaration may also be revoked.

2.10 Appointing an administrator

The Minister can appoint an administrator to manage a reserve trust. Situations where an administrator may be brought in include:

- when the number of trust board members falls below the statutory minimum of three, and no other managers are available
- when management of the reserve requires specialist skills
- when a reserve trust manager is not performing its duties adequately.

The term of the administrator will be determined by the Minister.

2.11 What are reserve trust liabilities?

A reserve trust is a legal entity, with the ability to enter into contracts, sue for debts and other liabilities owing to it, and be sued for its own debts and liabilities.

**Limited Liability under the Crown Lands Act for trust board members and administrators**

Generally, where a reserve trust is managed by a trust board or an administrator, the reserve trust as a legal entity, members of the reserve trust board or the administrator, and persons acting under the direction of the trust board or administrator are, in the course of managing the affairs of a reserve trust under the Crown Lands Act, protected against most legal claims which arise if they have acted in good faith and in accordance with the Crown Lands Act (refer section 121 of the Crown Lands Act).

However, board members and others can be personally liable for breaches of other legislation covering, for example, workplace health and safety, environmental protection and pollution, anti-discrimination and public access to information. For further guidance, refer to the separate chapters in this Handbook dealing with these topics.

The immunity given by section 121(1) of the Crown Lands Act is limited in two ways:

- A trust member or administrator will be protected only if the relevant conduct was done in the course of managing the affairs of a reserve trust and was “done in good faith for the purposes of executing” the Crown Lands Act or any other Act. The latter phrase
means conduct done as an honest and real attempt to perform a statutory function, and under certain circumstances even extends to negligent or careless conduct.

- Persons are only granted immunity from ‘action, liability, claim or demand’ i.e. liability arising from civil suit. The immunity does not apply to criminal law offences. (Criminal law is concerned with punishing offenders; civil law is concerned with compensating injured parties).

**Limited Liability does not extend to reserve trusts managed by corporations**

If the reserve trust is managed by a corporation, the corporation cannot take the benefit of s.121(1). In other words it cannot rely on the special indemnity afforded to the personal members of a trust board. In addition, a corporation appointed to manage a reserve trust is jointly and severally liable with the reserve trust itself for any liability of the reserve trust. For example, if the reserve trust under its own name takes out a loan from a bank, then the bank will be able to sue the corporation appointed as reserve trust manager in the event the reserve trust fails to repay. If the corporation is jointly managing the reserve trust with another body or person, the corporation is liable only to the extent of its functions as the manager of the reserve trust.

**Liability under other Acts- all reserve trusts**

Every reserve trust is constituted as a corporation (refer s. 92(2) of the Crown Lands Act) – to clarify the status and facilitate the operations of reserve trusts generally.

Several Acts such as the Work Health and Safety Act 2011, the Protection of the Environment Operations Act 1997 and the Native Vegetation Act 2003 impose joint liability on directors of corporations for offences committed by the corporation.

For example, under the Work Health and Safety Act 2011 and the Native Vegetation Act 2003 persons concerned with the management of the corporation may incur liability unless they can satisfy a Court that they were not in a position to influence the conduct of the corporation in relation to the contravention, or that they used all diligence to prevent the contravention. Accordingly secretaries, other holders of official positions on trust boards and other reserve trust members if they are concerned with management of the corporation, assume corporate director status having ability to control and manage the corporation’s conduct - and as such will incur the same joint liability under the Work Health and Safety Act 2011 and the Native Vegetation Act 2003 and some other legislation as any other corporate director or manager.

Under the Protection of the Environment Operations Act 1997 persons committing an offence under that Act and/or owners of waste may incur liability for some offences. If trust board members fall within these categories it is possible that they may attract liability.

Under the Contaminated Land Management Act 1997 responsibility for contamination applies to both the person causing the land contamination and the owner or occupier of the land, if the person knew or ought reasonably to have known that contamination of the land would occur and the person failed to take reasonable steps to prevent the contamination.

**2.12 How does a reserve trust work with Crown Lands?**

The appointment of a reserve trust manager is intended to ensure that the reserve is managed by the local community, rather than by Crown Lands or some other body.

The principal point of contact for the reserve trust is the Crown Lands Reserves Team. Crown Lands officers can assist with matters which arise concerning the operation of the reserve trust or the use and management of the reserve.
There are certain activities which require the consent of the Minister, for example, the granting of a lease over a reserve or part of it. In such circumstances the reserve trust should contact the Crowns Lands Reserves Team.

**Regulatory requirements**

- Creation of reserve trusts and their status: *Crown Lands Act 1989* – Part 5, Division 4
- Delegation of functions: *Crown Lands Act 1989* – section 97A
- Appointment of administrator: *Crown Lands Act 1989* – section 117
- Liability of members: *Crown Lands Act 1989* – section 121
- Use of reserve trust proceeds: *Crown Lands Act 1989* – section 106
- *Crown Lands (General Reserves) By-law 2006*:
  - List of reserves covered: Schedule 1
  - Operation of trust boards: Part 2
  - General regulation of the use of reserves: Part 3, Division 1
  - Regulation of cemeteries and crematoriums: Part 3, Division 2

**Further guidance**

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the *Crown Lands Act 1989*, can be found at: [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

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**Revisions to this chapter**

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3 Additional roles and responsibilities of trust boards (where appointed)

Chapter 2 outlined the various ways a reserve trust can be managed. This Chapter gives specific further guidance to reserve trusts managed by trust boards.

Members of the community and ex-officio representatives who are appointed to trust boards undertake a valuable role in the management of community facilities and Crown reserves. Trust board members are empowered to make decisions regarding the use and management of the land and are responsible for the implementation of those decisions.

Trust board members may also be the main users of the reserve, and may have become members of the trust board because of that interest. However, it is important that there be a clear separation of the two groups (management and users), both financially and in terms of decision making, because the two roles are legally quite distinct. It should always be kept in mind that the reserve is to be managed on behalf of the people of New South Wales as a whole and not for a particular group, interest or local community.

By participating in the activities of a local reserve trust, members of the community can play an important part in the management and operation of Crown reserves.

Trust boards frequently rely on the assistance of volunteers in fulfilling their responsibilities. Volunteers with a regular association with a reserve may form a useful pool of future members of the trust board.

The responsibilities of the trust board need to be clearly understood, both by its members and by potential future members.

This Chapter explains the responsibilities of trust board members, and provides detailed assistance as to how those roles and expectations can be met.

3.1 A typical trust board

A trust board must have at least three members and can have up to seven members. These are appointed by the Minister.

At its annual general meeting, a trust board must elect a chairperson. The trust board can also elect a secretary and treasurer from among its members.

Reserves which are listed in Schedule 1 of the Crown Lands (General Reserves) By-law 2006 must also elect a deputy chairperson, and are able to employ and pay elected trust board members to act as secretary and treasurer. However such employment and payment must be approved by the Minister.

The people elected at an annual general meeting hold their positions until the next annual general meeting, unless they resign or otherwise cease to be a member of the reserve trust.

Ex-officio members

In addition to the appointed members, the Minister can nominate ‘ex officio’ members. An ex officio member is often a person holding some other position that has an interest in the management of the reserve, for example, a councillor or mayor of a local council, or a position within Crown Lands. It is the ‘position’ that is appointed as the ex officio member, not a named person.
Ex officio members are not included in the required minimum of three or maximum of seven members on the trust board. The Minister may appoint any number of ex officio members.

An ex officio member can appoint a nominee to attend meetings in his or her place. The Minister must approve the appointment of a nominee prior to the meeting.

Ex officio members have all the rights and responsibilities of other members. They can speak and vote at meetings of the trust board and can be elected to executive positions (e.g. chairperson, secretary, etc).

**Encouraging diversity on boards**

The NSW Government encourages the provision of greater opportunities for the community to participate in its decision making process and is interested in increasing the diversity of representation on its boards and committees. This includes the encouragement of women, representatives of the local Aboriginal community, and people of diverse cultural backgrounds to participate in trust boards.

Diversity of representation allows views and opinions that may otherwise be overlooked to be put forward. This can assist in balancing the interests of members with different perspectives gained from their different experiences. Increasing the diversity of a trust board increases its ability to meet its responsibilities to provide for the needs of the community at large, expands the networks available to the trust, helps it reach its audience, and can boost its profile. It can also be important to ensure that representatives of particular communities or groups are involved with those communities or groups rather than simply being from that community or group.

A brochure encouraging women to apply for board positions is available here:


A brochure encouraging cultural diversity is available here:


### 3.2 The role of the trust board

The main role of a trust board is to manage the affairs of the reserve trust and the reserve itself. This responsibility for managing the affairs of the trust belongs to the members of the trust board and cannot be delegated entirely to others. However, a trust board can:

- appoint or employ others to assist it in managing the reserve, and
- delegate (with the consent of the Minister) its functions as reserve trust manager to a management committee, organisation, group or individual, as outlined in Chapter 17. For example, a management committee could assist with the day-to-day operations of a reserve by undertaking such activities as bush regeneration, painting or collection of fees.

Trust board members should attend all meetings of the trust board or send an apology and provide a reason for their inability to attend.

While a trust board may employ people to assist it in the management of the reserve (e.g. rangers, caretakers, maintenance staff), the members of the board should also ensure that they regularly visit and inspect the reserve to identify and rectify hazards and to see that maintenance and other matters authorised by the trust board have been carried out.

The trust board can make decisions about regulating such things as:

- the way in which the reserve is used
• the driving and parking of vehicles (or the mooring of vessels) on the reserve
• hours of entry
• fees to be charged for entry
• permitted or prohibited activities.

3.3 By-laws

Section 128 of the Crown Lands Act 1989 enables by-laws to be made covering a wide range of topics. The making and review of by-laws is covered by the Subordinate Legislation Act 1989.

The Crown Lands (General Reserves) By-law 2006 has been made to regulate, within the reserves to which it applies:

• the use generally of a reserve
• the management of any cemeteries or crematoriums
• the conduct of trust boards, and associated general administration matters.

Application of the By-law varies:

• Clause 18 (relating to fees and charges) applies to all reserves.
• Division 2 of part 3 applies to cemeteries and crematoriums
• other provisions apply only to those reserves listed in Part 1 of Schedule 1 of the By-law (reserves generally) and to reserves managed by the Ministerial Corporation.

The By-law can be viewed at:


Reserve trust managers should familiarise themselves with the By-law because it contains detailed rules about how reserves and cemeteries can be used, provides ways of regulating their use and controlling the conduct of people on the reserve, and sets out rules for the conduct of the trust board itself. In certain circumstances, legal proceedings can be brought to enforce the laws, regulations and by-laws which apply to the reserve. You should consult your local office of Crown Lands if you believe there has been a breach of the By-law.

3.4 Appointing or replacing trust board members

Members of a trust board are appointed by the Minister. Their term of appointment can be up to five years. The length of the term is specified in the notification of their appointment.

At the end of their term, members can be re-appointed (that is, they are not prevented from serving successive terms). However, they are not necessarily guaranteed re-appointment.

The Minister can also appoint acting members to attend in the place of members who are absent or ill.

A person ceases to be a member of a trust board if they:

• submit a written resignation to the Minister
• complete their term and are not re-appointed
• become bankrupt or seek the protection of bankruptcy laws
• are mentally ill and become a patient dealt with under the relevant mental health legislation
• become a protected person under the Protected Estates Act 1983
• are convicted anywhere in Australia or overseas of an offence that is punishable in New South Wales by at least 12 months imprisonment
• are convicted of an offence under Schedule 4 of the Crown Lands Act (pecuniary interests) in relation to any reserve trust, unless the convicting court orders that they should not cease to be a member
• die while in office.

Casual vacancies
A casual vacancy on the trust board will occur when someone ceases to be a member of the trust board (see the preceding section). The Minister can appoint people to fill casual vacancies on the trust board.

A casual vacancy among the elected officers of the trust board will occur if someone who was elected to office at the annual general meeting resigns, dies or otherwise ceases to be a member of the trust board. That casual vacancy should be filled by one of the board members by an election held at the next meeting of the board. If the General Reserves By-law applies to the reserve, the vacancy must be filled at that meeting.

Ex officio members
Ex officio members of reserve trusts are usually appointed because they hold some other position (e.g. elected membership of a local council, or officer of Crown Lands). It is the ‘position’ that is appointed as the ex officio member rather than a named person. When a person ceases to hold the other position, that person also ceases to be a member of the reserve trust (and the new incumbent of that position becomes a member of the reserve trust).

In the case of elected councillors or a mayor, they continue to be a member of the trust board until either one month has passed since they lost their local government position, or their local government position is filled, whichever happens first.

The person who succeeds them in that role then takes up the ex officio position on the trust board. If the ex officio member is not the holder of an identified office in the other body (for example, if the ex officio member is simply a councillor of the local council rather than the mayor), the other body should nominate a replacement ex officio appointee to the reserve trust as soon as possible after the vacancy occurs.

3.5 Can trust board members be paid?
Trust board members are not paid for the time spent inspecting, operating or maintaining the reserve, attending meetings of the trust board, or otherwise running the affairs of the reserve trust. They can, however, be reimbursed for out-of-pocket expenses if the trust board approves, as detailed below.

Normally the treasurer and secretary elected at the annual general meeting are treated as volunteer members of the board and are not paid for the time they devote to that office.

However, if the Crown Lands (General Reserves) By-law 2006 applies to the reserve:

• a member of the trust board can be employed as the secretary or the treasurer and can be paid for the work they carry out in that capacity if approval is given by the Minister
• if a member is to be employed and paid for carrying out such duties, the board resolution that authorises that appointment should clearly set out:
  o the duties they are to perform
the length of time for which they are appointed (a fixed term should be stated, e.g. until the trust’s next annual general meeting, so that the appointment can be reviewed at the end of that term)

- the amount they are to be paid
- how that amount is calculated
- the Minister’s approval date and any conditions.

Trust funds are by their very nature, public funds held “on trust” and reserve trust managers must be able to demonstrate that expenditure and the use of trust funds is reasonable, acceptable, has been necessary and is incurred only for the general purposes of the reserve trust. Reserve trust managers are wholly accountable for the reserve trust’s funds under their control and a high standard of accountability, transparency and good governance surrounding the use of these funds and expenditure is necessary to support this.

Trust board members should be required to provide a receipt before any reimbursement of out-of-pocket expenses and expenses should be assessed as reasonable, acceptable and necessary, has been incurred for the general purposes of the reserve trust, and as consistent with the reserve trust’s adopted policies on out-of-pocket expenses.

See also Chapter 15 about the appointment of volunteers, employed staff and contractors and Chapter 20 about the use of trust funds, including for out-of-pocket expenses.

3.6 The trust board’s first meeting

At the first annual general meeting following the appointment of the full trust board, a chairperson and other office-bearers will be elected.

New board members need to gain an understanding of their role and responsibilities as soon as possible after appointment. Unless appointed to fill a casual vacancy, a trust board member’s first meeting is likely to be the annual general meeting.

At the first meeting, the trust board should review the plan of management for the reserve, if it has one, so that members can familiarise themselves with the way the reserve is intended to be used and managed. The trust board should also review the reserve trust’s risk management checklist at this meeting.

As members can be re-appointed, it is likely that some members will have already served on previous boards. Their experience in managing the reserve and in conducting meetings will provide significant guidance to new members.

3.7 Code of conduct

Trust board members and trust employees have responsibility for the proper management of important public assets. As such they need to operate with a high standard of ethical behaviour. To assist, Crown Lands requires that reserve trust managers prepare and adopt a written code of conduct that clearly outlines expectations for trust board members and trust employees, and sets out requirements and guidelines for key matters such as out-of-pocket expenses. Crown Lands requires that the code of conduct be reviewed regularly, and that new members and employees of the trust be given a copy of the code and be made aware of its importance.

Conduct of trust board members and trust employees should be in accordance with the NSW Government Boards and Committees Guidelines (July 2013) published by the NSW Department of Premier and Cabinet. The guidelines can be accessed at:
To assist in preparing a written code of conduct, the Department of Premier and Cabinet has also prepared a further document: Guidelines for Developing and Implementing a Code of Conduct (part of a broader Memorandum: Model Code of Conduct for NSW Public Agencies (M1997-10), available at:


In addition, reserve trust managers carry out work for the NSW Department of Trade and Investment, Regional Infrastructure and Services (DTIRIS) as a result of having been appointed to their position (given Crown Lands is an agency of DTIRIS). As such, reserve trust managers are also required to comply with relevant parts of Schedule 1 of the general code of conduct adopted by DTIRIS. Schedule 1 is titled Code of Conduct for members of advisory committees / boards, contractors and consultants to the NSW Department of Trade and Investment, Regional Infrastructure and Services and can be found at:


This code of conduct could also be used as a guide in developing the trust’s own code of conduct.

Where a corporation is appointed as a reserve trust manager, that corporation may have its own corporation code of conduct that can be applied to the management of the Crown reserve and Crown reserve trust. In some cases the code of conduct may require modification to ensure it adequately covers the corporation’s role as reserve trust manager.

When developing your code of conduct it will be useful to refer to other relevant chapters in this Handbook that detail reserve trust responsibilities in such areas as managing risk, insurance and liability, employment, and the use of trust funds.

3.8 Managing conflicts of interest

A ‘conflict of interest’ has been defined as:

… a conflict between the public duty and private interests of a public official, in which the public official has private ... interests which could improperly influence the performance of their official duties and responsibilities.1

Conflicts of interest can arise from seeking to avoid personal losses as well as from seeking to gain personal advantage, whether financial or otherwise. Conflicts of interest can also be actual, perceived or potential. These are defined by the NSW Independent Commission Against Corruption (ICAC):

- **An actual conflict of interest** involves a direct conflict between a public official’s current duties and responsibilities and existing private interests.

- **A perceived or apparent conflict of interest** can exist where it could be perceived, or appears, that a public official’s private interests could improperly influence the performance of their duties – whether or not this is in fact the case.

- **A potential conflict of interest** arises where a public official has private interests that could conflict with their official duties in the future. 2

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Trust board members need to be aware that there are a number of circumstances in which a potential conflict of interest may arise in the management of a reserve.

Sometimes a reserve is principally used by one organisation. For example, a sporting club may be the main user of a playing field which is a recreation reserve or an agricultural society may be the major user of a showground reserve. One or more members of that sporting club or agricultural society may be members of the trust board. In other cases a corporation such as a council or community group may be appointed as reserve trust manager due to their exclusive role in managing the reserve on behalf of the community.

It must always be kept in mind that the reserve is “temporarily” owned by the reserve trust on behalf of the NSW Government. It is not owned by the users of the reserve or the corporation. The reserve and its funds must be used and managed in the best interests of the reserve and the people of New South Wales, not solely in the interests of the major reserve users, organisations represented on the trust board or corporate trust manager. All reserve trust funds must be used for purposes related to the reserve(s) managed by that trust only. Chapter 20 provides further information on the use of trust funds.

Where a corporation is appointed as reserve trust manager, the decisions, records and funds of the reserve trust should be kept separate from the other activities, records and funds of that corporation.

A trust board will from time to time need to consider matters which may particularly benefit a major user or organisation represented on the trust board, or the activities of the corporate manager. Decisions on such matters should only be made when the trust board or corporation has had the opportunity to consider all aspects for and against the proposal in detail. The reasons for adopting or not adopting the proposal should be recorded in the minutes of that decision and held in the reserve trust records. If a proposal is particularly contentious, the reserve trust manager should consult its local Crown Lands office before making a decision. The reserve trust manager should also consider whether broader consultation with the wider community, the local council or other interested parties is appropriate before coming to a decision.

If the reserve has a plan of management, it may be appropriate for the plan of management to deal with such conflicts of interest in detail.

It should always be borne in mind that the proper maintenance and use of the reserve is the most important matter for the reserve trust manager.

This is particularly relevant when dealing with actual or potential conflicts between users of the reserve, and with issues between members of the trust board, workers and/or volunteers. Reserve trust managers should always focus on the maintenance and use of the reserve itself rather than involvement in disputes centred on personalities or sectional interests. When conflicts arise, reserve trust managers and their employees should always have regard to the principles contained in their code of conduct.

A conflict of interest may also arise in relation to the employment or use of family members or of a trust board member acting in a different capacity (e.g. as a proprietor of a business providing services to the reserve trust) particularly where positions are remunerated. Such situations could confer a financial advantage and can result in a potential or actual conflict of interest.

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requirements outlined in this Handbook relating to codes of conduct, declaration of financial and non-financial interests, the keeping of a conflict of interest register (Chapter 3), the appointment of paid staff, volunteers and contractors (Chapter 15), and competitive tendering (Chapter 20) must be adhered to in order to minimise the risk of conflicts of interests.

3.9 Declaration of financial and non-financial interests

Disclosure of financial interests

If a trust board member has any financial interest in a matter being considered by the trust board, he or she must disclose that interest to the board. If the trust board has delegated any of its functions to a management committee or any other persons or bodies, Crown Lands requires that those persons also disclose any interests they may have.

A financial interest could be, for example:

- being owner, part owner or employee of a business proposing to enter into a contract with the reserve trust
- being an office-holder or employee of a sporting club or other body which uses the reserve
- having an interest in land adjoining the reserve where it is proposed to carry out some work or other activity that may affect that land in some way
- where one of the preceding examples involves a relative or friend rather than the board member.

It is an offence for a trust board member not to disclose a financial interest before the trust board considers the matter in which that member may be interested. If you are a trust board member and you are in any doubt about whether you hold a financial interest, you must disclose the matter to the board for it to consider.

Once a matter has been disclosed for consideration by the trust board, the relevant trust board member must not be present during any discussion regarding the matter, nor take part in any vote on it, unless the trust board decides to allow the member to take part in discussions or vote on the matter. The question of the interested member’s involvement must be considered and decided in their absence.

Register of financial interests

Each reserve trust must keep a book in which disclosures of financial interests are recorded.

The book must be made available to the public for inspection at reasonable hours. The reserve trust can charge a fee for this inspection (for the current fee, see Schedule 1 of the Crown Lands Regulation 2006).

Details of disclosures of financial interests must be included in the reserve trust’s annual report (see Chapter 23).

Non-financial interests

Members of a trust board must carry out their duties in the best interests of the reserve regardless of their association with any other organisation, including any which also happens to be the main user of the reserve.

It might be obvious to trust board members that another member (or a close friend or relative of another member) is, for example, associated with a local sporting club which is a major user of the reserve. Notwithstanding this (obvious) knowledge, when the trust board is considering
something where that club’s use of the reserve may be relevant (for example the refurbishment of player facilities or a grandstand), a declaration of this fact should be recorded in the minutes.

**Interests in tenders for contracts**

Specific procedures must be followed when trust board members believe that a member has an interest in a business which proposes to enter into a contract with the reserve trust, for example to supply goods, do work or provide a service.

In this case, the trust board must invite tenders for the contract. The invitation to tender must:

- be published in a local newspaper
- set out the nature of the work or services required or the goods to be supplied
- allow at least 21 days for tenders to be submitted.

The reserve trust must not enter into a contract with the business associated with the interested trust board member unless the board is satisfied that none of the other proposals received is more advantageous and the code of conduct requirements have been fully complied with. Crown Lands also requires that in these circumstances the relevant Area Manager of Crown Lands approves the reserve trust entering into the contract.

Relevant factors to consider are the price, nature or quality of the work or services to be performed or goods to be supplied, the time in which works can be carried out, and whether the tenderer has provided satisfactory services in the past.

Where services or goods are needed in an emergency, these requirements need not be met.

**3.10 Community participation**

The active involvement of the community is a key part of the success of the reserve trust system.

Wherever appropriate, reserve trust managers should look for opportunities to involve members of their local community in the operation of the reserve trust and in the use and maintenance of the reserve.

One form of community participation can be through the use of volunteers in the work of the reserve trust (see Chapter 15). Another can be through the delegation (with the Minister’s consent) of certain functions to a management committee, organisation, group or individual, as outlined in Chapter 17.

**3.11 Preparing and reviewing plans of management**

A reserve trust may, with the consent of the Minister, prepare a plan of management for the reserve. Plans of management also require formal adoption by the Minister. Draft plans should be forwarded to Crown Lands for referral to the Minister. Once a plan of management is in place it should be subject to regular review.

The Minister can also request a reserve trust manager to prepare a plan of management, or have one prepared by Crown Lands that would then be given to a reserve trust manager for comment.

Chapter 5 sets out the requirements for plans of management.

Some reserves may not need a plan of management as the reserve land may be easy to manage and its operations relatively straightforward. However the adoption of less formal
management strategies may still assist in the operation of these reserves and should be prepared and implemented where appropriate.

3.12 Keeping up to date

Crown Lands requires that reserve trust managers take reasonable steps to keep themselves up to date with legal and other requirements which affect the running of the reserve trust and the management of the reserve.

This Handbook will be updated by Crown Lands from time to time as changes are made to laws, regulations and government policies. However before undertaking any significant steps or entering into significant contracts or obligations, reserve trust managers should obtain legal advice to confirm the applicable legal requirements and, if appropriate, should contact Crown Lands to confirm current policy.

3.13 Reporting and disclosure

Each reserve trust must provide an annual report to the Minister within three months after the end of the reserve trust’s financial year. The Crown Lands Act provides that the financial year of a reserve trust commences on 1 July (unless otherwise specified by the Minister). The Crown Lands Regulation sets out the matters which are to be included in this report.

In addition, the Minister administering the Crown Lands Act can require reserve trusts to make other reports or to submit records or documents about the affairs of the reserve trust at any other time.

Annual reports are now able to be submitted electronically using the Crown Reserve Reporting System (CRRS). CRRS simplifies the reporting requirements set out in the Crown Lands Regulation into a streamlined online form. CRRS also allows reserve trust managers to retrieve previous reports (where submitted online), making it easier for reserve trust managers to provide information. To access CRRS, contact the CRRS help desk at: CRRS@lands.nsw.gov.au.

CRRS can be accessed on the Crown Lands website: http://www.lhma.nsw.gov.au/trusts/crown_reserves_reporting_system_crrs or to request a hardcopy version, please contact the Crown Lands Reserves Team on 1300 886 235 (Option 4, then Option 1).

Further details on the annual reporting requirements of reserve trusts are set out in Chapter 23.

Regulatory requirements

- Pecuniary interests of trust board members: Crown Lands Act 1989 – Schedule 4
- Fees for inspection of financial interests disclosure records: Crown Lands Regulation 2006 - Schedule 1,
Further guidance

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the Crown Lands Act 1989, can be found at: www.legislation.nsw.gov.au

- NSW Independent Commission Against Corruption (ICAC):

- The NSW Department of Premier and Cabinet maintains a dedicated website about, and to assist, advisory boards and committees: www.boards.dpc.nsw.gov.au/

Revisions to this chapter

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<td>References top Appendix C removed and replaced with Appendix C. Crown Lands Reserve Contact details for CRRS also included</td>
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4 Communicating with Crown Lands and other agencies

As part of the day-to-day management of a reserve, reserve trusts will generally need to contact or consult external sources for information or guidance. This chapter provides information to enable you to do that as effectively as possible.

This Handbook should be your first point of reference for any questions you may have about managing your reserve. However, given the broad range of reserves that exist within New South Wales, it is possible that you will have questions that are specific to your reserve, or which relate to uncommon issues.

4.1 Do you need further help?

If you have consulted both this Handbook and other members of your reserve trust about an issue and are still unable to resolve it, you might need to seek advice from an external source.

In these circumstances you can contact the Crown Lands Reserves Team for assistance. Refer to Appendix A for the Crown Lands Reserves Team contact details.

Alternatively, you may wish to access external sources of information such as the Internet for guidance on an issue. Guidance on available resources has been provided where applicable at the end of each chapter of the Handbook.

4.2 Communicating with Crown Lands

The role of Crown Lands

Crown Lands provides operational support, guidance, and advice on managing reserve trusts. Crown Lands should be able to provide you with advice either directly, through contact with the Reserves Team or indirectly, through its website and other information sources such as this Handbook.

Crown Lands Reserves Team

The Crown Lands Reserves Team is available to assist with many trust management issues and can be contacted directly via phone and email. Refer to Appendix A for the Crown Lands Reserves Team contact details.

You should always contact the Reserves Team first if you require assistance. If the Reserves Team thinks it is appropriate, they may refer the issue to a local or district office.

Contact with other government agencies

If you wish to discuss a specific issue with another government department, you should contact that department directly. However, if you are unsure who to contact, speak to the Crown Lands Reserves Team first.

Contacting the Minister

All contact should be made with the Crown Lands Reserves Team who will contact the Minister if required.
Regulatory requirements
Not applicable

Further guidance

Crown Lands website:
- The Crown Lands website can be found at:
  www.crownland.nsw.gov.au
- Some basic information on reserve trusts can be found at:
- Crown Lands contact details can be found at:
  www.lpma.nsw.gov.au/about_crown_land/contact_us

Other useful government websites
- The New South Wales Government website provides links to all State Government departments and legislation, and other useful non-government organisations:
  www.nsw.gov.au
- The NSW Department of Premier and Cabinet includes a business section that assists boards and committees established to assist government. It publishes a number of guidelines:
- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the Crown Lands Act 1989, can be found at:
  www.legislation.nsw.gov.au
- The Australian Government website provides links to all Commonwealth Government departments and legislation, and other useful non-government organisations:
  www.australia.gov.au

Useful websites focussed on assisting community organisations
- Community Builders NSW:
  www.communitybuilders.nsw.gov.au
- Community Builders Australia:
  www.communitybuilders.com.au
- Our Community:
  www.ourcommunity.com.au

Other useful links
- NSW Rural Fire Service:
  www.rfs.nsw.gov.au
- The WorkCover Authority of NSW:
  www.workcover.nsw.gov.au
- NSW Office of Environment and Heritage:
  www.environment.nsw.gov.au
### Revisions to this chapter

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5 Plans of management

Plans of management consolidate information about the reserve and its users, and clearly state what, why, how and by whom the values of a reserve are being managed.

Each reserve may not require a formal plan of management to be adopted. However, the principles discussed in this chapter should be used to develop a comprehensive management strategy and business plan.

Plans of management do not need to be lengthy documents. In some cases they might be a short written statement about how the reserve is to be managed in line with its purpose. In other cases a more detailed document may be required to resolve differing opinions as to how the reserve should be managed.

5.1 What is a plan of management?

A plan of management is the document which defines the value, use, management practices and intent for the broad public purpose for which the land has been reserved or dedicated. The plan of management should be consistent with the public purpose for the reserve and the principles of Crown land management, as well as other guidelines, policies, and legal requirements which may apply to the reserve such as the provisions of environmental planning instruments (for example a local environmental plan) and development control plans (DCPs) made under the Environmental Planning and Assessment Act 1979 and threatened species or native vegetation controls.

Plans of management are to be prepared in accordance with the Crown Lands Act and adopted by the Minister.

A single plan can be prepared for a number of reserves or commons, if they are managed by one trust and are of the same type or within the same geographical area.

Simple plans of management will tend to include the same content as more complex plans of management, but in varying levels of detail. Content will generally include:

- the values of the reserve i.e. what does the community see as important or valuable about the reserve
- a map of the reserve - showing cadastral (boundaries) and other information
- location map
- description of the reserve and its current purpose and uses
- any legislative restrictions on the reserve such as local zoning requirements
- the presence of native vegetation, or important or threatened natural features or species
- whether the land is subject to specific controls on clearing relating to erosion protection (see Chapter 11)
- any particular risk matters such as flooding, bushfire or hazardous terrain
- proposed additional uses if appropriate (see section 5.6, below)
- locational context, i.e. surrounding land uses
- acceptable uses (if a use additional to the existing purpose is proposed, a clear statement is required as to why the additional purpose is appropriate)
• strategies
• an action plan.

5.2 Why prepare a plan of management

A plan of management may fulfil many purposes. A reserve trust may use a plan of management to, for example:

• set out strategic directions
• outline operational and day-to-day use and management
• act as a conservation tool
• contain directions for development and provision of infrastructure
• specify how broader legal and policy requirements are to be applied to the particular reserve
• create a concept design for future developments
• provide a landscape master plan
• collate information in a single document for ease of reference
• identify and minimise any risks, including any potential emergencies
• develop a budgeted program for maintenance and development work
• ensure the environment is appropriately managed
• define and resolve tenure matters
• provide for an additional purpose for a reserve (see section 5.6, below).

Plans of management are therefore a good way of setting directions and providing a framework for the strategic and operational use and management of a reserve.

Note: Under the Local Government Act 1993 it is mandatory to prepare a plan of management for land defined as “community land” under that Act. Community lands are owned directly by a Council. As such, Crown land is not part of a local council’s holding of “community land” and is therefore not captured by this Local Government Act requirement.

5.3 Requirements of the Crown Lands Act 1989

The Crown Lands Act does not specify when a plan of management is to be prepared. A reserve trust may, with the consent of the Minister, prepare a plan of management when it deems a plan to be appropriate. However, the Minister may also require a reserve trust to prepare one.

If a plan of management is prepared, it must be done in accordance with the legal requirements of the Crown Lands Act. These requirements are summarised below and in Figure 5.1.

• A draft plan of management may be prepared by the reserve trust (with the prior consent of the Minister) or by the Minister.

• The Minister may prescribe the content of the plan and a time limit for its completion. Alternatively, the Minister can prepare a draft, but must refer a copy to the reserve trust for its consideration. The Minister rarely uses this power.
5.4 How to prepare a plan of management

Before preparing a plan of management you should liaise with your local Crown Lands office. The reserve trust MUST seek prior consent from the Minister to prepare a plan of management. Appendix A sets out various sources of information that may be helpful in preparing the plan.

The following steps should be followed:

**Preparation**
1. Determine the aim of your plan of management.
2. Determine the resources required to draft the plan (both people and money).
3. Identify and collect together the information available on the reserve.
4. Identify any sources of funding available to prepare a plan of management. Funding may be available through, for example, the Public Reserves Management Fund (see Chapter 19).

**People resources and community consultation**
5. Identify who will manage the plan of management process. Will it be the reserve trust as a whole, a subcommittee, an employee, or a steering committee with representatives from the community (which may include a Crown Lands representative). On-site staff should always be involved, as they hold valuable local knowledge of the reserve.
6. Prepare a project brief to guide those responsible for drafting the plan. The project brief should describe the scope of the proposed plan of management, including the major issues...
which should be addressed, and should include provision for a community involvement program. A draft outline brief is found in Appendix A.

7. The reserve trust should forward the draft project brief to the local office of Crown Lands for review and keep Crown Lands informed of the progress of the work and the content and proposals in the plan.

8. Select the person(s) responsible for preparing the plan of management. An external consultant may be selected to undertake research, write the document and conduct community consultation.

Community consultation

9. The general community should be involved in the preparation of the plan so that visitors’ expectations can be identified and considered (see Chapter 6). Community involvement may include identifying the values of the reserve. It is important to consult the community at the time the draft plan is prepared; not at the end of the process.

Development

10. The plan is drafted to include:
   • the reserve purpose and values
   • desired outcomes
   • strategies based on identified values and issues
   • appropriate actions to be undertaken, clearly indicating by whom, within what timeframes, indicative cost and priority.

Exhibition, consideration of submissions, and Adoption

11. The draft plan of management is made available for comment by the public through exhibition, notice of which must be given by:
   • publishing a Notice in the Government Gazette and
   • advertising in the local newspapers.

12. The reserve trust should consider all comments received and decide whether the draft plan should be altered in order to address any identified issues.

13. The reserve trust submits the plan, plus any comments received from the public exhibition, for Ministerial approval.

Implementation and monitoring

14. Once a plan of management has been approved and adopted by the Minister, the reserve trust must ensure (as required by the Crown Lands Act) that it is implemented.

   Trust boards should regularly monitor and evaluate the progress of the implementation and review the action plan, for example annually. This may involve staff supervision to check that actions are undertaken, regular site inspections, the collection of data, and a review of the reserve trust’s financial statements. The results of this monitoring can then be measured against the intended outcomes of the plan of management, in order to assess the overall success of the implementation.

   If the proposals set out in the plan are not being met, the reserve trust should consider either devoting more resources to its implementation or, where this is not feasible, proposing certain amendments to the plan with the permission of the Minister.
**Updating of plans of management**

15. The desired outcomes of the plan of management should be relevant for five (5) to ten (10) years. At regular intervals, as per the timeframe of the plan, the management strategies should be reviewed and updated if required. The fact that a plan of management has Ministerial approval does not mean that the management direction cannot change in the future. Ministerial approval can be given to amend a plan provided the proposed changes have firstly been exhibited for public comment.

**5.5 Content of the plan of management**

Following are some guidelines as to content of a plan of management:

**Introduction**

The introduction should cover:

- the legal status of the land i.e. whether it is reserved or dedicated, and what the reserve purpose is
- a description of the land that the plan covers (this could be as simple as the lot and deposited plan number)
- a map of the land and a location map
- the principles of Crown land management
- the process of developing the plan and community consultation undertaken
- the main legislative and policy requirements which apply to the reserve e.g. the Crown Lands Act.

**Aim or desired outcomes**

Generally the aim of the plan of management should be to clearly articulate (in one place) how the reserve is to be managed.

There may be other outcomes that the reserve trust desires such as to provide the framework for developing the land, to deal with specific issues, to improve the financial position of the reserve and so on. (Refer to section 5.2 ‘Why prepare a plan of management’.)

**Reserve purpose and value**

The first thing to clarify when developing a plan of management is the purpose of the reserve. The purpose for which the land is reserved will point to the value of the reserve and provide the basis for relevant management activities. There is no nexus, for example, in establishing a child care facility at a reserve where the purpose is environmental conservation.

In addition, the plan of management should clarify the values of the reserve. For example, is the reserve’s value primarily because of its natural resources e.g. vegetation; or its cultural values e.g. historic houses; or social values e.g. a showground. Other values include education, recreation, visual, scientific, or as a resource for future generations etc.

The plan of management must be based on the purpose of the reserve and its values. There are always management issues associated with a reserve, and while it is important that a plan of management clarifies how these issues will be resolved, the plan should not be based on these issues per se.

**Timeframe**

A plan of management should have a timeframe (usually of 5 or 10 years) and this should be clearly specified. The priorities for reserve management often change over time, and this is why the timeframe of the plan should not be too long.
Experience has shown that preparation of the first plan of management for a reserve may take up to two years to finalise. However, once the reserve trust has completed its first plan of management, review and update of this plan should not be a difficult or time consuming process because a large part of the contents will not change.

Nevertheless, it may also be that while, for example, the purpose of the reserve will stay the same, the values and expectations the community puts on the reserve may change over time. The process of reviewing plans of management helps to articulate such changes in value and may lead to a proposal to change the purpose of the reserve.

**Visitor management and facilities**

Public use and enjoyment of the reserve is consistent with the purpose of most reserves managed by reserve trusts. The plan of management should outline

- what activities are and are not allowed on the reserve
- what facilities are required now and within the timeframe of the plan of management to provide for those activities.

Disabled access requirements and other special services (if required) should be addressed.

Where activities are additional to the purpose for which the land was set aside, it needs to be clear that the plan of management is authorising an additional purpose or purposes to permit those activities (see 5.6).

**Environmental Management**

The plan of management should indicate the environmental values that need to be protected and how this will be achieved.

Common issues to address include management of bushfire risk, weeds, feral animals, threatened species, heritage structures, Aboriginal cultural heritage. Further issues are outlined in Chapter 11.

The plan of management should also address sustainable use of resources, for example recycling programs and water conservation.

**Commercial management**

Income-producing avenues for the reserve should be explored in the plan of management. Funding is an issue for many reserves and therefore income-producing opportunities need to be maximised. Any commercial use of a reserve must be consistent with the reserve purpose unless an additional purpose is authorised in a plan of management, a lease granted by the Minister, or by other separate authorisation by the Minister.

It may be that areas of the reserve can be leased or licensed. Details of any existing or proposed new leases or licences should be incorporated in the plan. The plan should also include a statement that the granting of any commercial lease or licence opportunities will be dealt with by way of public competition.

Reserve trusts should indicate whether a percentage of the income from the reserve trust is being diverted to the Public Reserves Management Fund.

(See also Chapter 14 – *Leases and Licences*, and the following section “Leasing and Licensing Issues”).

**Leasing and licensing issues**

Where plans of management are to make provision for the leasing and licensing of facilities to commercial operators or special interest groups, they need to address:

- the sustainable use and management of the reserve;
the size and scale of the proposed area or facility in relation to the size of the reserve;
the relationship of the proposal to development on adjoining land or on other land in the locality;
landscaping provisions, including the preservation of trees and other vegetation and enhancement of the visual experience and amenity values of the reserve;
provision of adequate infrastructure, water, electricity and sewerage;
provision for adequate protection and management of environmental features and/or hazards such as landform stability, coastal erosion, erosion control, drainage & flooding, bushfire, buffer zones, vegetation and landscaping, waste control and noise and lighting;
the social and economic effect of the proposal on the reserve and the locality;
the character, siting, scale, shape, size, height, design and external appearance of the proposal;
provisions for the protection and maintenance of any heritage buildings, archaeological values or sites, indigenous values or sites, or threatened species critical habitat;
criteria for the erection of signs for the proposed use. Preferably the aim should be for minimal signage, and for product advertising and sponsorship signage to have minimal impact on the landscape or amenity of the reserve and surrounding locality; and
the amount of traffic, parking, loading unloading and manoeuvring likely to be generated by the proposal and how it can be provided without compromising other uses and users of the reserve.

Refer to Chapter 14 for further information on matters relating to leases and licences.

Financial Management
There have been examples where proposed plans of management have little chance of being implemented because funds are not available to carry out the intentions and/or the plan does not address how such funds will be sourced.

A plan of management should indicate the level of current income and expenditure available to the reserve trust, the likely source of other available funds (both current and proposed), and how these might be used to implement the plan of management.

Risk Management
The plan of management should outline how risks are and will be managed. For example, if a risk assessment has not been completed, this could be a high priority action in the plan of management. Alternatively (and preferably) the risk assessment should be undertaken at the same time as the plan of management and actions for addressing identified risks included in the Action Plan.

A risk management checklist can assist in identifying risks and appropriate response strategies. Risk management should include how the reserve will be maintained in a safe manner and include bushfire management (if appropriate) – see chapters 9 and 11.

Action Plan
The areas of management mentioned above provide the strategic framework for the management of the reserve. An Action Plan is also required to set out how the strategies will be achieved. The Action Plan should identify for each of the above strategies (and any other strategies included in the plan of management):

• actions required
5.6 Plans of management that provide for an additional reserve purpose

A plan of management may authorise a purpose additional to the public purpose for which the land was dedicated or reserved.

The Crown Lands Act sets out the consultation and other processes that must be followed in the preparation of a plan of management that authorises an additional purpose. The community will have a say in the proposal through the community consultation and public exhibition components in the preparation of the plan of management.

If the reserve trust is seeking to prepare a plan of management that proposes an additional purpose, the reserve trust must advise the Minister of the proposal when seeking the Minister’s prior approval to prepare the plan of management.

The Minister may also direct a trust to prepare a plan of management that considers an additional purpose. The Minister can specify the matters that must be addressed within the draft plan of management and can also impose conditions.

The Minister may require the reserve trust to consult on the draft plan with any persons or bodies, and to exhibit the draft plan in accordance with the notice. The Minister may alter or amend the plan at any stage prior to adoption, and may stop the preparation of a plan of management that authorises additional uses or not adopt the plan.

In deciding whether to adopt a plan of management that authorises an additional purpose, the Minister must have regard to the declared purpose of the reserve, the compatibility of the additional purpose with the declared purpose, the principles of Crown land management, impacts on Native Title and the public interest. See Chapter 124 for information on Native Title.

5.7 Helpful hints and common pitfalls

It is important to keep plans of management as simple as possible. While it is important to collect and keep detailed information about the reserve, this is probably best placed in an appendix to the plan of management or a resource document on the reserve.

It is a good idea to have workshop sessions with the community (perhaps facilitated by an independent consultant) so that the community’s views and expectations can be used to help determine the future directions of the reserve and its management.

The preparation of a plan of management does not need to be an expensive or complicated process. Some reserve trusts might find it easier to first work through the items covered by this handbook and determine how they relate to the management of the reserve. The outcome could then provide a draft of a management plan which could then be finessed through public consultation to an adopted plan of management.

Most importantly, remember to consult with the Crown Lands Reserves Team should you require any assistance.
Trust Handbook

Regulatory requirements

- *Crown Lands Act 1989* – Part 5, Division 6 (sections 112 – 116)
- *Crown Lands Regulation 2006* – clause 34

Further guidance

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the *Crown Lands Act 1989*, can be found at:
  
  www.legislation.nsw.gov.au

- There are many sources of information, including other plans, guidelines and policies, that you might find helpful when preparing a plan of management. These are listed in Appendix A.

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6 Visitors to the reserves

The principles of Crown land management (in section 11 of the Crown Lands Act 1989) include:

- that environmental protection principles be observed in relation to the management and administration of Crown land, and
- that public use and enjoyment of appropriate Crown land be encouraged.

This chapter provides you with guidance on how to encourage public use of your reserve while ensuring the safety of visitors and without degrading the natural landscape in accordance with the above principles.

6.1 Who visits Crown reserves?

Crown reserves have been established for a broad range of purposes. This means there is an equally broad range of visitor profiles. Visitors might include:

- clubs (pony, pigeon, rugby league, cricket, etc) – members and supporters
- shows – exhibitors, competitors and visitors
- caravan parks – residents and visitors
- public halls – function organisers, attendees, club members
- recreational facilities – general users of sportsgrounds, tennis and netball courts and other similar facilities
- cemeteries – visitors, families of the deceased
- conservation areas – walkers, riders, runners, flora and fauna carers.

These visitors have different expectations based on their needs and frequency of use. Generally, these expectations can be summarised as follows:

- safe, clean, well maintained facilities – roads, paths, fences, grounds, grandstands
- access (where access is otherwise restricted) by particular visitors or groups of visitors where agreement has been reached with the reserve trust
- no conflicts over access with other users
- reasonable fees for access and services – where appropriate
- prompt and polite responses to questions and concerns
- no interruptions to basic services such as electricity, water and sewerage
- maintenance of the reserve to achieve its primary purpose.

Visitor expectations are an important consideration in developing your plan of management or other plans (see Chapter 5 for more information on plans of management). As users of the reserve and its facilities, visitors have a role in planning for its future. Including community members in the development of your plan of management or other plans will ensure that visitor expectations are addressed.
6.2 Visitor relationships

Word of mouth is a powerful way of getting a message to the local community that a reserve is being managed well and is worth visiting. Visitors can therefore generate good publicity if they have a positive experience visiting the reserve.

Visitors will provide positive feedback about their experience if their expectations are met. An important part of this is receiving good service from trust employees, contractors and trust board or corporate trust members. All reserve trust interactions with visitors should therefore be undertaken in a positive manner, focusing on the impression the visitor will take away from the experience.

6.3 Visitor rights and restrictions

Although it is important to remember that visitors represent the wider community and have certain rights of access to reserves, there are also some restrictions that exist to protect both the visitor and the reserve.

Rights and responsibilities

Generally, the public has right of access to many types of reserve, particularly reserves for public recreation. There are exceptions to this rule where a reserve has been set aside for a specific purpose, such as a fire station or hospital, or if access is restricted for health and safety reasons.

Visitors should use reserves in accordance with generally accepted standards of behaviour. Any activities should be safe and socially acceptable and be conducted in a way that does not affect other users of the reserve.

Any activities should also be in line with the notified reserve purpose and should comply with all relevant policies and protocols. For example, a motor rally in an environmentally sensitive area would most likely be unacceptable.

Restrictions

Reserve trusts are empowered to enforce by-laws and regulations within the reserve. Speed limits, noise restrictions, property protection and the like can be enforced on reserve trust property. In addition, commercial operators such as ice cream vendors, commercial tours and surf schools require a licence to enter and use reserves.

To support this role, reserve trusts should ensure there is clear signage or other action regarding restrictions, such as speed limit signs and speed bumps. Visitors are then aware of the restrictions that apply to their use of the reserve. Maintaining good working relationships with the local police and council rangers will also help you when enforcing relevant restrictions.

6.4 Managing visitor access and behaviour

Reserve trusts have the authority to manage behaviour and access in order to protect the reserve. This includes enforcing the laws and by-laws which apply to the reserve.

Section 124 of the Crown Lands Act provides that a member of the trust board or a ranger or other employee authorised by a reserve trust can remove a person from the reserve if they are:

- breaching a by-law that applies to the reserve
- engaging in disorderly conduct which is causing annoyance or inconvenience to other people using the reserve (including affecting their ability to enter or leave the reserve).

Section 124 specifically authorises that a member of the police force may be called in to assist.
Situations that may require management include:

- illegal car races
- bonfires – particularly in environmentally sensitive areas or during fire bans
- damage to reserve trust property
- trail-bike riding
- removal of native flora or fauna
- dumping of rubbish
- building of unauthorised structures
- residing or camping illegally on the reserve
- grazing stock
- removal of warning signs or other signage.

It is also important to educate the local community about what is and what is not allowed within the reserve. Although a certain number of incidents will still occur, there will be fewer breaches due to lack of awareness of acceptable behaviour. This education process could be conducted through advertising in the local media, issuing a media release or increasing the visibility of signage in the reserve.

Appropriate signage, including copies of by-laws if applicable, must be displayed in prominent locations.

**Compliance**

Reserve trust managers and employees should only take a direct role in ensuring compliance where they would be in no personal danger. Where they believe that their safety may be threatened, relevant details should be noted (e.g. licence plate, descriptions of offenders) and the local police contacted for assistance.

**Penalty notices**

Members of a trust board or nominated employees can be trained and accredited to issue penalty notices under the *Crown Lands Regulation 2006* and the *Crown Lands (General Reserves) By-law 2006*. They must also be appointed officers under section 153 of the *Crown Lands Act 1989*. Penalty notices are, in effect, on-the-spot fines, which can be issued for breach of a list of offences specified in the Regulation and the By-law.

If your reserve wishes to be able to issue penalty notices, you should contact the Crown Lands Reserves Team to organise the necessary training and accreditation. More information in regard to becoming an authorised person can also be found at:


**Graffiti**

The *Graffiti Control Act 2008* provides that a local council may, without the agreement of the owner or occupier of any land, carry out graffiti removal work on that land if the graffiti concerned is visible from a public place (the definition of which includes a Crown reserve). The graffiti removal work may only be carried out from a public place. The local council concerned is to bear the cost of graffiti removal work and must, within a reasonable period, give the owner or occupier of the land concerned written notice that the work has occurred. A local council must pay compensation for any damage it may cause in carrying out the graffiti removal.

6.5 **Equal provision of services and access for all visitors**

Reserve trusts should ensure that the services, facilities and general access arrangements it provides are designed as far as possible to cater for all types of visitors, including those who may have an impairment or disability.

The Building Code of Australia provides requirements for access to physical infrastructure such as buildings, walkways, toilets, etc., including for persons with an impairment or disability. Generally these requirements refer to the design standards in the Australian Standards.

Reserve trusts should be aware that any person may take action under the (Commonwealth) *Disability Discrimination Act 1992* if they feel they have been treated less fairly than people without a disability.

For more information on this and other legislation, and on discrimination generally refer to:

- the Australian Human Rights and Equal Opportunities Commission
  
  www.humanrights.gov.au/

- the Anti-Discrimination Board, NSW:
  

Refer also to Chapter 16 regarding action generally to avoid discrimination.

The NSW Public Service Commission has information on workplace adjustments that can be made to cater for people with a disability. This can also be a useful guide to help reserve trust managers meet the needs generally of visitors with a disability. Refer to:

  

### Regulatory requirements

- Crown Lands Act 1989
- Crown Lands Regulation 2006
- Crown Lands (General Reserves) By-law 2006
- (Commonwealth) Disability Discrimination Act 1992

### Further guidance

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the Crown Lands Act 1989, can be found at:
  
  www.legislation.nsw.gov.au

- Crown Lands Policy for Tourist & Associated Facilities on Crown Land (June 2007):
  

- The use of Crown Reserves for Operating Caravan Parks and Camping Grounds (April 2010):
  

- Self-Enforcing Infringement Notice Scheme (SEINS):
  
  SEINS policy and procedures for Reserve Trust and Reserve Trust Employees
• Food and Beverage Outlets on Crown Reserves (December 2004):

• Standards Australia (for access to published Australian Standards):
  www.standards.org.au/

<table>
<thead>
<tr>
<th>No.</th>
<th>Revision</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Update of management and enforcement content</td>
<td>August 2014</td>
</tr>
</tbody>
</table>
Managing risk and liability does not just mean thinking about insurable risks. It encompasses all risk areas that may affect the trust. Management of risk and liability is a key responsibility for all reserve trusts.

This chapter explains your responsibilities in this regard and provides guidance on types of risk and how to manage them.

### 7.1 Your duty of care

Crown Lands requires that reserve trusts adopt good risk management practices to ensure risks are being proactively managed and responsible action is planned. Such action will also assist in reducing both claims and premiums for the trust and for Crown Lands. The key tasks set out in this chapter provide a guide to manage this ‘duty of care’ appropriately.

Trust board members exercising their duties in good faith and in accordance with reserve trust guidelines are protected by the incorporation of the reserve trust and, in some circumstances, by the public liability cover held by Crown Lands (see also Chapter 2 and Chapter 8).

However, trust board members can be personally liable for breaches of legislation dealing with workplace health and safety, environmental protection and pollution, anti-discrimination and public access to government information. Refer to the separate chapters dealing with these topics for further guidance.

Trust board members should note that their incorporation and public liability insurance only covers them as managers of Crown reserves, and not as members of other organisations using the reserve (e.g. pony club, show society). See Chapter 8 for more information on the administrative aspects of insurance and liability, including coverage details.

**Risk management checklist**

Preparation of a checklist is a useful way to identify and guide the primary tasks required to manage the reserve itself and the affairs of the reserve trust in a risk-aware manner on behalf of the community.

A template for a risk management checklist is available from the Crown Lands website as a Microsoft Word document that can be filled in by your trust. Go to:


The checklist is split into sections that relate to particular areas of this Handbook. It should be used in conjunction with this Handbook, as it only highlights key risk areas and is not a complete risk management tool in itself.
7.2 What are ‘risks’ and ‘liabilities’?

What is a risk?

“What... effect of uncertainty on objectives”.

A risk is anything that might possibly happen that will expose the reserve trust as a result of either action or lack of action by the reserve trust. Exposure to risk is measured in terms of both the likelihood of occurrence and the impact if it does occur.

Some examples of action or lack of action that might lead to risks are:

- inadequate training in the use of equipment
- inadequate planning
- inadequate or poor management of licensees
- poorly maintained infrastructure
- failure to meet building standards
- inadequate management of employees, contractors, volunteers
- poor relationships between trust board members.

What is a liability?

“... an obligation, especially of payment, debt or pecuniary obligations. Something disadvantageous...”

Liability as an “obligation” means that an organisation or an individual is responsible for the outcomes of an action or lack of action. Generally, this has a negative connotation and is most often associated with a financial or a legal obligation.

Some examples of situations that may result in a liability are:

- a visitor being injured as a result of falling from an unprotected cliff edge
- an adjoining property being burnt by a bonfire out of control on reserve trust land.

7.3 What is risk management?

“coordinated activities to direct and control an organization with regard to risk.”

Risk management could also be said to be the management of outcomes, both foreseen and unforeseen. This in turn means implementing a process that allows you to:

- identify risks that are likely to have an impact on you
- determine how important those risks and impacts are
- develop actions to manage either the likelihood of the risks occurring or the impact if they do occur.

Part of managing risk is making sure your legal obligations are being managed. This would include such things as ensuring a safe workplace, maintaining reserve trust infrastructure and

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4 Macquarie Dictionary
property, developing procedures for managing reserve trust funds, and ensuring clear signs are in place to warn visitors of potential dangers (deep water, crumbling cliff edges, etc).

The risk management checklist provides you with a guide to these key responsibilities.

**Why risk management is important**

The key thing to remember is that risks are uncertain. For this reason, it is essential to be prepared in the event of a risk occurring.

Risk management provides you with this preparedness. Although it may not always prevent risks occurring, risk management gives you comfort that you have identified many of those things that would have a negative impact on you. It also gives you assurance that you have taken action to reduce any undesired effect if a risk does occur. For example, ensuring that a fully functioning fire extinguisher is available in a kitchen should help reduce the impact of a fire.

### 7.4 Types of risk

**Insurable versus non-insurable risk**

Traditionally, risk management focused on those things that can be insured against, such as fire, theft and motor vehicle accidents. Today, risk management has widened to include more general areas of management.

**Insurable risk** covers such things as:

- workers compensation and some aspects of workplace health and safety
- fire
- theft
- certain types of damage to reserve trust property – for example, motor vehicle accidents
- damage to the property of others (third-party damage).

If a party is found to be negligent in managing the insured risk, the insurance company might not pay.

**Non-insurable risk** relates to more general areas of management where risks might not be coverable by insurance. Managing these risks relies on good management practices. The risk management checklist will help you identify those key risk areas to focus resources on.

Examples of risks that might not be insured for are:

- fraud
- inability to pay financial commitments
- operating machinery incorrectly
- inadequate storage of chemicals and fuel
- some obligations under workplace health and safety legislation.

**Key risk areas for reserve trusts**

The key risk areas of a reserve trust relate directly to the purpose of the reserve being managed by that trust. For example, a showground would have different risks from a cemetery, which in
trust would be different from those of a bushland reserve. In addition, a metropolitan trust might have different issues from one located in a rural area.

It is therefore important for each reserve trust to consider its own circumstances and identify the key risk areas that would impact on it specifically. This can be done by following a risk management process such as that described in Section 7.5 below.

However, there are some risk areas that are consistent across all reserve trusts. These are summarised in Figure 7.1. More detail can be found on these in the risk management checklist.

**Figure 7.1 – Potential risk areas for reserve trusts**

<table>
<thead>
<tr>
<th>Potential risk area</th>
<th>Example risks for consideration</th>
</tr>
</thead>
</table>
| Work place health & safety           | • Safe workplaces – employee, volunteer and contractor safety  
• Safe work practices                                                                                                                                 |
| Environment and land management      | • Chemical and fuel management  
• Managing pests and weeds  
• Water quality  
• Erosion  
• Dangerous trees, including branches and stumps                                                                                                                                 |
| Liability                            | • Public liability  
• Insurance coverage – for the reserve trust and third parties  
• Visitor safety                                                                                                                                 |
| Emergency management                 | • Emergency planning and preparedness  
• Fire, flood, earthquake, tidal surges, storms                                                                                                                                 |
| Staff, contractors and volunteers    | • Compliance with Equal Employment Opportunity requirements  
• Recruitment  
• Managing award conditions  
• Fraud  
• Staff classifications – employee or contractor or volunteer  
• Reporting requirements                                                                                                                                 |
| Financial and asset management       | • Financial stability and liquidity  
• Use of reserve trust funds  
• Income generation  
• Reporting requirements – internal and external  
• Tax management  
• Asset and infrastructure management and maintenance                                                                                                                                 |
| Other administration                 | • Freedom of information  
• Conflict of interest  
• Privacy  
• Roles and responsibilities of trust members  
• Compliance with Crown Lands Act  
• Contract management                                                                                                                                 |
7.5 How to manage risk

Risk management as a process can be broken down into some key steps. The Australian Standard on risk management (AS ISO31000:2009 Risk management – principles and guidelines) prescribes a best practice process implemented by many organisations and is recommended by agencies such as NSW Treasury. Refer to the Australian Standard itself for more detailed information on the processes outlined in this section.

Key components of the risk management process as applicable to reserve trusts are set out in Figure 7.2.

We discuss each of these components below.

Depending on the size of your reserve trust or the complexity of the issues faced, you may wish to customise the suggested process. For example, the risk identification and analysis may be done as part of a trust board meeting rather than as part of a specific forum.

The first step is to identify the risks that will affect your reserve trust. The key risk areas outlined in the risk management checklist can be used as a starting point, but these should be expanded to take into account any issues specific to your reserve trust.

You might wish to bring together a number of people to undertake this identification process. Consider using a reserve trust meeting to ask all trust board members what they think the key risks are for the reserve and for the reserve trust.

You may also choose to engage certain specialists to bring deeper perspectives on certain issues. For example:

- inviting a representative from an insurance company to explain risk management and insurance claims
- requesting a Police Liaison Officer to assist in identifying criminal risks, including fraud
- involving an environmental specialist to identify risks affecting or associated with the reserve’s environment
• involving a representative from the WorkCover Authority of NSW to ensure that workplace risks are covered
• enlisting the support of a local businessperson to identify any risks associated with the administration of the reserve trust.

Another way of identifying more visible risks would be for trust board members and staff to undertake an inspection of the reserve facilities and document any identified risks.

Step 2: Assess

The next step is to assess each risk. This is done from two perspectives:

- What is the chance of the risk occurring? (Likelihood)
- What is the impact if it does occur? (Impact)

A simple way of measuring these is to use a High, Medium or Low scale. It is useful to first define what each of High, Medium and Low means for your reserve trust so that everyone involved in the assessment process has the same understanding. Some definitions that you may wish to consider are set out in Figure 7.3.

Figure 7.2 - Sample definitions of Likelihood and Impact
<table>
<thead>
<tr>
<th>Likelihood</th>
<th>Very unlikely – could happen but probably never will</th>
<th>Unlikely – could happen but very rarely</th>
<th>Likely – could happen sometime</th>
<th>Very likely – Could happen at any time</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Impact</strong></td>
<td>Very minor</td>
<td>Minor</td>
<td>Moderate</td>
<td>Significant</td>
</tr>
<tr>
<td>Personal</td>
<td>No injury</td>
<td>Minor injury – e.g. ankle sprain</td>
<td>Moderate injury – e.g. broken wrist</td>
<td>Death/major injury – e.g. loss of limb</td>
</tr>
<tr>
<td>Financial</td>
<td>Under $500</td>
<td>Between $501 and $1,000</td>
<td>Between $1,001 and $10,000</td>
<td>Over $10,000</td>
</tr>
<tr>
<td>Property</td>
<td>Very minor damage to trust property</td>
<td>Minor damage to trust property</td>
<td>Moderate damage to trust property</td>
<td>Significant damage to trust property and/or reputation</td>
</tr>
</tbody>
</table>

The combination of the Likelihood and Impact scores gives you an assessment of the severity of the risk. This combination can be reflected in a risk assessment matrix that can assist you in measuring your risk. Based on the example definitions above, an assessment table would be as follows:

**Figure 7.3 - Risk assessment matrix example**

<table>
<thead>
<tr>
<th>Likelihood</th>
<th>Very minor</th>
<th>Minor</th>
<th>Moderate</th>
<th>Significant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very likely</td>
<td>Medium</td>
<td>High</td>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>Likely</td>
<td>Medium</td>
<td>High</td>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>Unlikely</td>
<td>Low</td>
<td>Low</td>
<td>Medium</td>
<td>High</td>
</tr>
<tr>
<td>Very unlikely</td>
<td>Low</td>
<td>Low</td>
<td>Medium</td>
<td>Medium</td>
</tr>
</tbody>
</table>

Two examples of using this assessment table are set out in Figure 7.5.

**Figure 7.4 – Examples of risk assessments**

**Risk example 1 – A trust employee misusing trust funds**

<table>
<thead>
<tr>
<th>Likelihood</th>
<th>If measures are in place to monitor the use of reserve trust funds (such as double signatories on cheques and/or approval from the trust required before funds can be spent), the likelihood would be unlikely. However, if these measures are in place, but they are not enforced, the likelihood would then be <strong>Likely</strong>.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impact</td>
<td>This would depend on what how much money was involved, and what the funds were used for (e.g. illegal purposes). If we assume that the amount involved was large, the impact would be <strong>Significant</strong>.</td>
</tr>
</tbody>
</table>
### Risk example 1 – A trust employee misusing trust funds

| Overall assessment | In this case the risk would be rated as **High**. This is largely because of the significant impact if the risk were to occur, coupled with the likelihood being assessed as “likely”. |

### Risk example 2 – An overseas visitor is injured after getting caught in a fast river current

| Likelihood | If appropriate warning signs are in place, in relevant languages based on visitation patterns, the likelihood would be very unlikely. However, we will assume that in this case the warning signs are only written in English. The likelihood would then be **Likely**. |
| Impact | The impact in this instance would be at minimum **Moderate**. This is on the basis that the swimmer had a reasonable level of skill. |
| Overall assessment | In this case, the risk would also be rated as **High**. |

Risks that have been assessed as High should be dealt with first to see what can be done to reduce the likelihood of them occurring, to reduce their impact, or both.

### Step 3: Treat

The action you take to reduce the likelihood of the risk occurring or reduce its impact is referred to as the ‘risk treatment’. A ‘risk treatment’ may not remove the risk entirely, but it establishes the process/ method to reduce the impact.

In Example 1 above, the treatment might be the provision, to reserve trust members and staff, of information about how reserve trust funds can be used and what they should not be used for.

A treatment should be assigned to an individual (a reserve trust member or a staff member) to action with a due date for completion. This will allow you to monitor that it has been completed.

### Step 4: Monitor

Monitoring means two things:

- making sure that treatments happen in the agreed timeframe and that they have the intended result
• maintaining awareness of factors that might change and thereby have an impact on the risks already identified. For example, the resignation of a treasurer might increase the risk that financial statements are not developed on time if there is no succession plan for that role.

Treatment strategies require monitoring to make sure they are completed and to ensure they have the desired impact. Treatments might need to be changed if the desired outcome does not occur. For example, giving information to staff about how reserve trust funds can be used might not impress on them the importance of the proper use of reserve trust funds, and a face-to-face briefing session to reinforce the message would be more effective.

It is also important to remember that risk management is not a one-off. Things change – both inside and outside the reserve trust – and it is necessary to think continuously about what these changes mean for risk. For example, a new trust board might mean that certain ways of managing the reserve trust will change, potentially impacting on identified risks.

**Step 5: Communicate**

It is important to communicate with internal and external stakeholders about risk management. This might mean:

• putting risk management on the agenda of each reserve trust board meeting and formally reporting on trends on a quarterly or half yearly basis.
• including a report on risk management in the annual report or plan of management
• regular advice to staff about their responsibilities regarding risk management and specific treatments
• sharing information about risk with other reserve trusts, for example, through informal networks or at formal networking events.

Communicating about risk management will reinforce its importance and will assist in it becoming part of the everyday.

**7.6 Key features of good risk management**

Good risk management is not a separate process from everyday management – it is part of it. By managing the responsibilities that come with being a reserve trust member or employee, you are, to some extent, managing risk.

In addition to this, the following are some key features of a good risk management process:

• The trust board sends a consistent message that risk management is important. This makes it clear that treatment actions will be completed and that staff, contractors and volunteers are encouraged to identify risks.
• Risk management is the responsibility of everybody. The trust board provides the direction, but all reserve trust members, employees, contractors and volunteers have a role in managing risk.
• All members of staff understand what their responsibilities are regarding risk management. The trust board has provided clear direction about what each person is required to do.

• Risk management is not seen as a separate exercise but is part of everyday work. Trust board members, staff, contractors and volunteers practise risk management as part of getting the job done.

Regulatory requirements

• Civil Liability Act 2002
• Public Finance and Audit Act 1983 – Section 11
• Treasurer’s Directions
• Work Health and Safety Act 2011
• Work Health and Safety Regulation 2011

Further guidance

• State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the Crown Lands Act 1989, can be found at: www.legislation.nsw.gov.au
• AS/NZS ISO 31000:2009 Risk management – Principles and guidelines; 2009
• CPA Australia – Enterprise-wide Risk Management: Better Practice Guide for the Public Sector, 2002
• Activity related risk management checklists for community groups: www.ourcommunity.com.au/insurance/insurance_article.jsp?articleId=1245

Revisions to this chapter

<table>
<thead>
<tr>
<th>No.</th>
<th>Revision</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Revision of current chapter</td>
<td>March 2014</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Despite the most comprehensive and effective risk management procedures, accidents will happen from time to time, and the reserve trust will generally require financial help in dealing with them. It is though still important to manage the reserve trust’s risks adequately to ensure that the cost of any insurance remains affordable.

Each reserve trust must consider its employees, volunteers and assets and obtain appropriate insurance cover for those areas not covered by the Crown Lands insurances.

Crown Lands has arranged for public liability, property and volunteer workers’ insurance through the Treasury Managed Fund (TMF), but only for the circumstances described in this Chapter.

Insurance arrangements for commons are discussed in more detail in Chapter 32 and for schools of arts and other similar institutions in Chapter 34.

If a trust is having difficulty funding insurance, it must notify the Crown Lands Reserves Team immediately.

8.1 When a reserve trust is or is not covered by Crown Lands insurance

The insurance requirements for reserve trusts, trust boards and administrators are summarised in Figure 8.1.

Circumstances where reserves are covered by Crown Lands insurance

Crown Lands has arranged for public liability, property and volunteer workers’ insurance through the Treasury Managed Fund (TMF), These arrangements cover, but only for the circumstances described in this Chapter:

- reserve trusts under the *Crown Lands Act 1989*
- commons trusts under the *Commons Management Act 1989*
- trust board members of reserve trusts and commons trusts
- individual trustees or an association incorporated under the *Associations Incorporation Act 2009* as the sole trustee of an institution (provided that incorporation was only for the purposes of managing the school of arts and not for some other purpose) appointed under the *Trustees of Schools of Arts Enabling Act 1902*
- trust employees and volunteers, including delegates approved under Section 97A of the *Crown Lands Act 1989* (refer Chapters 15 and 17).

Reserves not covered by Crown Lands for any insurance

A reserve trust is not covered by any insurance arranged by Crown Lands if it is managed by a corporation, association (e.g. scouts or girl guides) or local government council.

These reserve trusts must obtain all their own necessary insurance. Insurance cover referred to in the remainder of this Chapter as being provided by Crown Lands specifically excludes these reserve trusts.

Similarly, insurance cover is not provided for all reserve trusts for the exceptions listed in Section 8.2 and summarised in Figure 8.1. Insurance cover referred to in the remainder of this Chapter arranged by Crown Lands specifically excludes these types of activities.
### Figure 8-1 - Insurance ready-reckoner (for further details refer to Section 8.2, below)

<table>
<thead>
<tr>
<th>Risk area</th>
<th>Insurance cover provided by Crown Lands</th>
<th>Trust action</th>
<th>Summary of Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public liability</td>
<td>The Treasury Managed Fund covers:</td>
<td>Trust board members and administrators must act in good faith and should have an operating risk management program to demonstrate efforts to reduce risks.</td>
<td>- All high-risk and/or commercial activities that are not directly related to the maintenance and management of the reserve (see examples listed below).</td>
</tr>
<tr>
<td></td>
<td>- trust boards appointed under the <em>Crown Lands Act 1989</em> and administrators of these reserve trusts (Trust employees and trust volunteers are covered against claims from third parties.)</td>
<td></td>
<td>- Claims by persons in the service of contractors and sub-contractors</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Pollution (other than sudden and accidental pollution)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Claims covered by third party policy under the NSW <em>Motor Accident Act 1998</em></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Illegal operations</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>- Wear, tear and inherent vice</td>
</tr>
</tbody>
</table>

### Figure 8-2 - Insurance ready-reckoner (for further details refer to section 8.2 in the main text of this chapter)

<table>
<thead>
<tr>
<th>Risk area</th>
<th>Insurance cover provided by the Crown Lands</th>
<th>Trust action</th>
<th>Summary of Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public liability</td>
<td>The Treasury Managed Fund covers:</td>
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</tr>
<tr>
<td></td>
<td>- trust boards appointed under the <em>Crown Lands Act 1989</em> and administrators of these reserve trusts (Trust employees and trust volunteers are covered against claims from third parties.)</td>
<td></td>
<td>- Claims by persons in the service of contractors and sub-contractors</td>
</tr>
<tr>
<td></td>
<td>- Loss of, theft of and / or damage to all real and personal property structures owned by, or in the care, custody and control of the trust for which the trust is responsible.</td>
<td></td>
<td>- Pollution (other than sudden and accidental pollution)</td>
</tr>
<tr>
<td></td>
<td>- Coverage provided is subject to payment of the tax invoice.</td>
<td></td>
<td>- Claims covered by third party policy under the NSW <em>Motor Accident Act 1998</em></td>
</tr>
<tr>
<td></td>
<td>- Reserve trusts are required to provide declarations &amp; information on each building or asset to be insured in November</td>
<td></td>
<td>- Illegal operations</td>
</tr>
<tr>
<td></td>
<td>- Trust boards will be charged a nominal premium (subject to change) of $100 plus GST for assets valued up to and including $1 million and $200 plus GST for assets valued at more than $1 million.</td>
<td></td>
<td>- Wear and tear</td>
</tr>
<tr>
<td></td>
<td>- Any property structure primarily used, leased or licensed for high risk and/or commercial activities (see examples listed below).</td>
<td></td>
<td>- Pollution – other than sudden and accidental</td>
</tr>
<tr>
<td>Property</td>
<td>The Treasury Managed Fund covers:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- reserve trusts managed by trust boards (appointed under the <em>Crown Lands Act 1989</em>) and administrators of these reserve trusts for</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Loss of, theft of and / or damage to all real and personal property structures owned by, or in the care, custody and control of the trust for which the trust is responsible.</td>
<td></td>
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</tr>
<tr>
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<td></td>
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<tr>
<td></td>
<td>- Any property structure primarily used, leased or licensed for high risk and/or commercial activities (see examples listed below).</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Consequential loss (e.g., loss of income)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Unexplained inventory shortfall (where the cause cannot be proven)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Claims which result from any illegally based operations</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Wear and tear</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Pollution – other than sudden and accidental</td>
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</tr>
<tr>
<td>Risk area</td>
<td>Insurance cover provided by the Crown Lands</td>
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</tr>
<tr>
<td>--------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------</td>
<td>--------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td></td>
<td>• Trust’s property structures in transit. • Full replacement cost, new for old, without co-insurance consideration (e.g. no contribution by the insured if under insured). • Demolition and clean up costs. • Additional costs of replacement (such as council application fees, necessary architectural fees, etc).</td>
<td>of each year.</td>
<td>pollution.</td>
</tr>
<tr>
<td>Workers compensation</td>
<td>Not provided</td>
<td>If the trust has any employees, insurance must be obtained. Each employee is required by Crown Lands to undergo training in hazard identification and risk management and to have an occupational health and safety induction.</td>
<td></td>
</tr>
<tr>
<td>Volunteers</td>
<td>The Treasury Managed Fund covers reserve trust volunteers for personal injury and public liability against third party claims. Volunteers must be undertaking an authorised trust activity.</td>
<td>Each trust is required by Crown Lands to arrange its own cover for volunteer activities not covered by the Treasury Managed Fund if required e.g. where benefits are for another organisation.</td>
<td>• All high-risk and/or commercial activities that are not directly related to the maintenance and management of the reserve (see examples listed below). • No cover for injury while engaged in professional sports or recreational activity, for intentional self injury or suicide or sexually transmitted disease or for Commonwealth or State employment scheme participants.</td>
</tr>
<tr>
<td>Motor vehicles</td>
<td>Not provided</td>
<td>In addition to compulsory third party insurance (Green Slip), Crown Lands requires reserve trusts to hold at least third party property damage insurance (for damage to other property). Where replacement costs would be substantial Crown Lands requires that comprehensive coverage be taken out.</td>
<td></td>
</tr>
<tr>
<td>Contractors or subcontractors</td>
<td>Not provided</td>
<td>Reserve trusts are required by Crown Lands to ensure (by obtaining a copy of the relevant insurance) that contractors and subcontractors have all necessary insurance, and indemnify the Minister administering the Crown Lands Act, 1989 and the trust for public liability and workers compensation. If the contractor/subcontractor</td>
<td></td>
</tr>
<tr>
<td>Risk area</td>
<td>Insurance cover provided by the Crown Lands</td>
<td>Trust action</td>
<td>Summary of Exceptions</td>
</tr>
<tr>
<td>---------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>Off-reserve activities</td>
<td>The Treasury Managed Fund provides public liability and volunteer's insurance for off-reserve activities that are carried out for the purposes of the reserve in the same terms and subject to the same exceptions as apply to on-reserve activities. (See public liability and volunteer's insurance).</td>
<td>Each trust is required by Crown Lands to obtain insurance cover relevant to any other off-reserve activities. Each trust that enters into an insurance policy should consider whether the risk exists off-site as well as on trust land, and whether insurance is required for that risk. If the risk is insurable, the policy should expressly state that the risk is covered off-site as well as on trust property.</td>
<td>As for on-reserve activities</td>
</tr>
<tr>
<td>High-risk and/or commercial activities (see examples listed below)</td>
<td>Not provided.</td>
<td>Reserve trusts that organise or host high-risk activities are required by Crown Lands to obtain their own public liability insurance for not less than $10,000,000 coverage, at their own cost. Crown Lands also requires that reserve trusts ensure that the organisers of high-risk and/or commercial activities hold their own public liability insurance as a condition of the use of trust land and provide the necessary indemnification.</td>
<td></td>
</tr>
</tbody>
</table>
Examples of high-risk and/or commercial activities

- all professional sporting fixtures
- all equestrian activities such as registered/unregistered horse racing and training, trotting, rodeos, equestrian skill events, gymkhanas and organised cross-country rides
- all greyhound racing and training
- all motor racing and practising
- all amusement rides other than playground equipment provided by the trust
- water slides
- abseiling, rock and mountain climbing, bungy jumping and similar activities
- all aircraft activities (powered or unpowered) including gliding, parachuting and hang gliding
- all organised bicycle racing including mountain bike races and trials
- show days
- boat and watercraft racing and training
- restaurants
- operating cemeteries
- any activities whose objective is to make personal or business profit (except small-scale fundraising activities to benefit reserve trusts that are not of a commercial or business nature).

Any questions or concerns about whether an activity is high risk or requires additional insurance should be directed to the Crown Lands Reserves Team.

Note: In the previous table and in the remainder of this Chapter “reserve trust volunteers” include trust board members (who do not receive financial remuneration), delegates approved under Section 97A of the Crown Lands Act 1989 and those individuals who undertake voluntary work or other voluntary assistance for the reserve trust and do not receive financial remuneration for that work / assistance.

8.2 Treasury Managed Fund (TMF) Insurance

Public Liability Insurance

If a member of the public or other person is injured or has their property damaged due to the act or because of the failure to act, of a trust board member, an administrator of a reserve trust, reserve trust volunteer or a reserve trust employee, any compensation payable to that member of the public or person will be met by the TMF policy along with all legal costs, subject to the exceptions outlined in Figure 8.1 above and subject to the limitations outlined below.

The following incidents or events are not covered:

- claims arising out of the high-risk and/or commercial activities described in Section 8.1 that are not directly related to the maintenance and management of the reserve.
- claims by any person in the service of any contractor or subcontractor to the trust
- claims from any pollution liability to people, property or the environment as a result of the trust’s operation, other than sudden and accidental occurrences or those that are not preventable by reasonable precautionary maintenance
- claims arising out of personal injury or death covered by any third party policy issued under the New South Wales Motor Accidents Act 1998 or similar statutes in other jurisdictions
Trust Handbook

- illegal operations
- wear, tear and inherent vice.

Conditions

The conditions which Crown Lands requires a reserve trust, an administrator of a reserve trust, a reserve trust volunteer or a reserve trust employee to comply with to obtain the benefit of that coverage, are as follows:

- All reasonable steps are to be taken following an accident or loss to protect the person or property from any further injury or damage.

- Keep records of the date, time and place of the alleged incident or report of the incident and a brief record of any conversations with the claimant or witnesses. Photos of the alleged area or item are very useful for TMF in dealing with the claim.

- All losses, incidents or claims must be reported to Crown Lands (refer to Appendix A) as soon as possible, but certainly within 48 hours of becoming aware of the event.

- Correspondence from a claimant must be sent to Crown Lands (refer to Appendix A) where it will be forwarded on to the Principal Officer Risk & Corporate Governance for the matter to be lodged with TMF. A brief letter can be sent by the trust to the claimant informing them of this action (i.e. their correspondence was sent to the Crown Lands Reserves Team and TMF) and that contact will be made with them in due course. **No comment should be made on liability, the potential success of their claim or on how long it will take for their claim to be processed.**

- No trust personnel should provide a statement or interview to any person investigating except at the request of people acting on behalf of TMF.

- Liability must not be admitted either orally or in writing. However, trust personnel are permitted to apologise if any injury or incident occurs. An apology is not an admission of liability at law and cannot be used as evidence of fault or responsibility. The apology should be an expression of sympathy or regret, but no offers of compensation or redress can be made. For advice on the nature and contents of an apology read the New South Wales Ombudsman’s Fact Sheet on apologies at: www.ombo.nsw.gov.au/__data/assets/pdf_file/0018/3681/FS_PSA_01_Apologies.pdf

- Any contract entered into by the trust must require contractors, subcontractors, vendors, associations and other parties to indemnify the New South Wales Government and the trust for all loss and damage in respect of public liability, workers compensation and employer’s liability. If the value of the contract exceeds $10,000,000 that contract must be reported to the Principal Officer Risk & Corporate Governance of Crown Lands, on (02) 9860 5233 as soon as possible, and preferably before the contract is signed.

**Note:** Where a claim is lodged against the reserve trust in relation to high-risk and/or commercial activities, and the trust has required from third parties all requisite insurances and indemnities or in other circumstances where the trust has taken all reasonable steps to ensure that risks are minimised, then Crown Lands’ insurance through the Treasury Managed Fund will cover defence of the claim and any resultant judgments against the trust.
Off-site coverage

The TMF public liability policy covers members of the public or other persons injured by reserve trust activities where carried out for the purposes of the reserve trust even if that injury occurs off-site, subject generally to the limitations and exceptions referred to above. This means, for example, that if a member of the public or other person is injured at a trust fundraising event outside reserve premises (for example by tripping over a display table), the TMF policy may pay or defend the claim made against the trust.

Volunteer’s insurance

Insurance for reserve trust volunteers is arranged by Crown Lands through the TMF and provides benefits equivalent to those payable under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* for death or bodily injury.

As stated previously reserve trust volunteers include trust board members (who do not receive financial remuneration), delegates approved under Section 97A of the *Crown Lands Act 1989* and those individuals who undertake voluntary work or other voluntary assistance for the reserve trust and are not financially remunerated for that work / assistance.

Reserve trust volunteers are covered for personal injury suffered while undertaking reserve trust duties whether on or off site, including attending meetings, and when travelling directly to and from undertaking trust duties (other than for injuries covered by Compulsory Third Party insurance), subject to limitations discussed below.

Risks can be reduced, but rarely eliminated, by proper training and direction from qualified people. Proper training and clear directions should be provided at all times to all reserve trust volunteers. In this regard, reserve trusts should seek agreement from the organiser of such activities that appropriate instruction, equipment etc has been provided.

Reserve trust volunteers are not covered for the following injuries or events:

- any injury suffered while engaged in high-risk and/or commercial activities that are not directly related to the maintenance and management of the reserve. As a guiding principle reserve trust volunteers should not be placed in a position where they are undertaking high-risk or commercial activities.
- any injury suffered while engaged in any professional sports or recreation activity
- intentional self-injury or suicide
- sexually transmitted disease
- those suffered while working under Commonwealth or State Government employment schemes such as Work for the Dole.

To prevent the injured person suffering financial hardship, claim forms and doctor’s certificates confirming the injury should be sent to Crown Lands as soon as possible. This is important as claims cannot be processed until all relevant documents have been received.

Submitting an incident report/claim to the TMF

The person making or receiving a claim for public liability or volunteers insurance cover should follow the steps set out in Figure 8.3.
8-3 Submitting an incident report/claim for TMF public liability insurance

<table>
<thead>
<tr>
<th>Who</th>
<th>Action to be taken</th>
</tr>
</thead>
</table>
| Trust board member / administrator of a reserve trust / reserve trust volunteer / reserve trust employee | • Complete an incident report form.  
• Send the completed form to Crown Lands as soon as possible.  
• Keep a copy of all forms and documents and photographs for the claim.  
• If you are unable to complete any part of the incident report/claim form, ask for help from the Crown Lands Reserves Team.  
• Attach a memo or letter with further written details if necessary to better explain or describe the incident or other relevant matters.  
• Do not make any comments on liability in this form or in any attachments. Merely report the facts as known. |

Property insurance

Insurance for reserve trust property is arranged by Crown Lands through the TMF for a range of reserve trusts. Reserve trusts which are covered by the insurance will be contacted by Crown Lands.

Coverage is for loss, theft or damage to trust board’s property structures (including buildings, contents, equipment, fences and gates) due to events such as fires, storms, floods, lightning, impact, burglary and malicious damage.

Reserve trusts will be charged a nominal premium (subject to change) of $100 plus GST for assets valued up to and including $1 million and $200 plus GST for assets valued at more than $1 million. Coverage provided is subject to payment of the tax invoice. Reserve trusts are required to provide declarations and information on each building or asset to be insured in November of each year.

These premiums are subject to change once information on the replacement value of assets is updated. The premium will also be dependent upon the number and cost of claims received in any financial year.

An excess or deductible applies to each and every claim or event as follows:

• $1000 for reserve trusts with declared property values at or BELOW $1 million.
• $5000 for reserve trusts with declared property values OVER $1 million.

No consequential loss is covered. This means that if assets or property are damaged, the cost of repair or replacement can be claimed but any loss caused as a result of that damage, such as the hire of a replacement or loss of revenue, is not insured.

Any property structure primarily used, leased or licensed for high risk and/or commercial activities, as described in Section 8.1, is also not covered by Crown Lands’ TMF insurance. Crown Lands still requires reserve trusts to ensure that these property structures are covered under a property insurance policy. This means that, say for example a trust leases one of its building to a restaurateur to run a restaurant within the reserve, the trust will have to organise its own insurance for that building while ever it remains under lease for that commercial use.

The policy also does not cover:

• Unexplained inventory shortfall (where the cause cannot be proved).
• Claims which result from any illegally based operations.
• Wear and tear.
Property insurance claims procedures

Immediately when a trust becomes aware of damage or loss caused to its insured property, a trust board member must contact by phone the:

Coordinator Governance, Crown Lands
PH (02) 8236 7069 or Mob 0412 539 990

This will enable the TMF to be advised immediately and to provide TMF with the opportunity to appoint loss adjusters if necessary who will help with the claim and allow replacement processes and negotiations to be commenced as soon as possible.

Reserve trusts will be advised by Coordinator Governance of further procedures to follow and they will monitor the claim and be available to be contacted to provide any further advice if required.

Reserve trusts will be provided with and are required to complete, a TMF claim form and must provide any additional supporting information and assistance as requested, such as photos of the damage, quotes for repair or replacement, invoices etc.

Once the information is submitted to TMF by the Coordinator Governance or by an appointed loss adjuster, this will enable TMF to determine if the claim is accepted and provide advice on how to proceed.

IN EMERGENCIES if the Coordinator Governance is not able to be contacted or if it is after hours, the TMF can be contacted directly on:

TMF After Hours Emergency Number – 1800 882 169

Or

Ph (02) 8121 3667 or Fax (02) 8121 0895 during office hours

After doing so, ensure that as soon as practical, you contact the Coordinator Governance to inform him of your actions.

Also in emergencies it is acceptable to immediately organise or perform temporary repairs to make the property safe and useable. Trust members should use their discretion in this regard because it is up to the Trust to prove their loss, it is suggested that photos of the area and damage be taken and kept for later reference. In these situations emergency repairers or tradespeople should be advised to provide a written quote and when completed, a written invoice made out to:

Crown Lands
Public Reserves Management Fund

All necessary efforts should be made to secure and make safe the item or area after the damage to protect it from further damage. Any salvage or undamaged items should be made secure and available for inspection if required.

Theft, break and entry, malicious damage or vandalism

You must report all theft, break and entry, malicious damage or vandalism to the nearest Police. This is compulsory for all such TMF claims. Obtain a police event or report number and record the name of the officer taking the report.

Follow the same procedures listed above for other property damage claims.
8.3 Workers compensation insurance

Crown Lands requires each trust that has any employees (full time, part time or casual) to:

1. hold current workers compensation insurance for all employees
2. provide training in hazard and risk identification and management
3. have an induction in occupational health and safety, and
4. comply in all respects with relevant legislation.

The obligations and entitlements for the trust as employer and for its employees are contained in the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* and are discussed in more detail in Chapter 10. Following is a brief outline of the obligations and entitlements of the employer and employee:

- The trust, as employer, must provide a safe workplace for all employees. This includes ensuring buildings and access ways are clear of obstructions, services such as electricity and water function properly, and any necessary safety equipment is provided for employees to perform their work.
- The trust, as employer, must assist the rehabilitation of injured workers including, where appropriate, providing restricted hours or duties so as to assist the employees return to work. The rehabilitation program will be commenced and monitored by the workers compensation insurer.
- A trust employee who is injured at work must notify their supervising officer as soon as possible of the nature and location of the injury. In addition, Crown Lands requires that the trust report it to Crown Lands.
- A trust employee who is injured at work is entitled to medical treatment, rehabilitation treatment and compensation for loss of wages. An injured worker may also be entitled to lump sum compensation depending on the nature and severity of the injury.
- A trust employee who is injured at work must participate in a rehabilitation program arranged by the workers compensation insurer.
- The trust must clearly display the procedure for making a claim and make this information available to all employees.
Regulatory requirements

- Workers Compensation Act 1987
- Workplace Injury Management and Workers Compensation Act 1998
- Section 155 of the Workers Compensation Act 1987 states that all employers must hold a policy of insurance for all employees.
- Section 9 of the Workers Compensation Act 1987 requires an employer to pay compensation (through its insurer) to employees who suffer an injury at work, including medical and rehabilitation treatment (Part 3 Division 3), loss of wages (Part 3 Division 2), and other compensation such as bodily impairment and damage to clothing (Part 3).
- Chapter 3 of the Workplace Injury Management and Workers Compensation Act 1998 describes the obligations of an employer and employee concerning the creation and management of a rehabilitation program.

Further guidance

Legislation

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the Crown Lands Act 1989, can be found at: www.legislation.nsw.gov.au

Risk management

- The Treasury Managed Fund provides risk management guidance as part of its insurance policy. In addition, the Fund’s advisers can help you set up and operate risk management procedures, committees and departments. There may be a charge for this service.

High-risk activities

- Any questions or concerns about whether an activity is high risk or requires additional insurance should be directed to Crown Lands.

Property insurance

- Enquiries regarding insurance cover, claims or policy terms should be made to Crown Lands.

Public liability insurance and volunteers’ injury insurance

- All enquiries, claims or information about Crown Lands' liability insurance should be made to Crown Lands.
- An Incident or Claim Report form for claims to the TMF

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Revisions to this chapter

<table>
<thead>
<tr>
<th>No.</th>
<th>Revision</th>
<th>Date</th>
</tr>
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<tbody>
<tr>
<td>1</td>
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</tbody>
</table>
9 Emergency management

Reserve trusts are responsible for preparing to respond effectively to emergencies. An emergency management plan (as simple as needed to suit the types of reserve uses and facilities) will reduce the impact of any emergency and help make sure that all reserve trust members, employees, contractors and volunteers know their responsibilities during an emergency.

This chapter explains the different types of ‘emergency’ that are relevant to reserve trusts, and sets out guidelines, responsibilities and obligations with regard to preparing for and managing those emergencies.

9.1 What is an emergency?

An emergency can be defined as:

“an event, actual or imminent, which endangers or threatens to endanger life, property or the environment, and which requires a significant and co-ordinated response”.

Such events could be any of the following:

- natural disaster – flood, fire, earthquake, tidal surge, storm
- other flood or fire events
- biological hazard
- bomb threat
- chemical spill
- explosion
- certain types of vandalism
- building fire
- gas leak
- lift emergency
- medical emergency
- motor vehicle accident
- power failure
- radiation hazard
- violent/threatening person
- suspicious packages or mail.

Some recent examples of emergency situations occurring in reserves are:

- Sydney and NSW South Coast bushfires – Christmas 2001
- Canberra and Snowy Mountains bushfires – 2003

9.2 Avoiding emergencies

A number of emergency situations can be prevented, or their impact reduced, if the reserve trust fulfils its obligations as set out in this Handbook. For example, fulfilling fire safety obligations reduces the chance of a grandstand being destroyed by fire.

In some cases emergencies cannot be avoided, for example natural events such as earthquakes or floods. However, even in these cases the impact can be reduced if emergency management measures are put in place before the event occurs.

Risk management checklist

A risk management checklist is a useful tool for identifying the key requirements that will assist you to manage the more preventable emergencies.

Emergency risk management

It may also be appropriate to implement an emergency risk management process similar to the risk management process described in Chapter 7 – that is, using an Identify, Assess, Treat and Monitor process. This will allow you to analyse the potential for emergency situations to occur within your reserve and the wider area within which your reserve is located.

The NSW State Emergency Management Committee, through its Mitigation and Risk Management Section, provides assistance to councils and government agencies in conducting these emergency risk studies under the Natural Disaster Mitigation Program.

If you believe your reserve trust would benefit from assistance in this regard, you should contact the Crown Lands Reserves Team.

Plan of management

The reserve trust’s plan of management can be another source of help in dealing with or avoiding emergencies (see Chapter 5 for more information about plans of management). Plans of management should identify relevant stakeholders, issues affecting the trust, its responses to those issues, and the management of emergency situations.

9.3 Developing emergency procedures

Developing and implementing emergency procedures **before** an emergency occurs can minimise harm and disruption and ensure that all reserve trust members, employees, contractors and volunteers are aware of their responsibilities in the event of an emergency situation arising.

Trust board member duties

The primary responsibilities of reserve trusts in an emergency situation relate to the protection of:

- reserve trust members, employees, contractors, volunteers and visitors
- reserve trust property
- other landholdings and property bordering reserve trust property.

An emergency management checklist such as that presented in Figure 9.1 details the key duties in relation to emergencies on the reserve. The objective of such a checklist is to ensure the reserve trust is prepared in times of emergency. This includes forming and implementing an emergency response plan, making everyone aware of their roles and responsibilities,
maintaining up-to-date contact lists, and communicating potential dangers to users of reserve trust property.

Any emergency plan should be updated regularly (e.g. annually), to ensure that it is accurate (e.g. emergency contacts are up to date), reliable (e.g. land and buildings are accurately described) and practical (e.g. clearly defines roles and responsibilities during an emergency).

Signage detailing emergency procedures may be appropriate for erection at the entrance to some reserves. Signs should include the relevant information from the emergency management plan and should be practicable and suitable for the reserve type.

In addition to the emergency management checklist, guidance on how to develop a detailed emergency plan is available from Emergency Management Australia – the Federal Government organisation responsible for assisting the community in responding to emergencies (see Further guidance below).

Who to contact and when

Depending on the scale and type of emergency you are facing, there are a number of individuals and organisations you will need to contact – refer to Figure 9.2.

Dealing with the media

In most cases, the Crown Lands Reserves Team can provide you with assistance in dealing with media enquiries if required. It is recommended that you contact the Reserves Team for guidance if the emergency is significant or sensitive. Crown Lands may be able to assist in developing any press releases.

If a representative of the media seeks comment from you in your role as a reserve trust member, contact the Crown Lands Reserves Team for guidance.
## Figure 9.1 - Emergency management checklist

### EMERGENCY MANAGEMENT CHECKLIST

#### Before an emergency

- Develop an emergency management plan or checklist.
- Agree responsibilities of reserve trust members, employees, contractors and volunteers.
- Maintain emergency equipment so it is fit for use.
- Store important documents off-site or in a fire/waterproof container.
- Locate where and how to turn off electricity, gas and water.
- Maintain contact lists of key local resources – such as reserve trust members, the Rural Fire Service, local police, local council, etc.
- Train all reserve trust members and employees in emergency procedures.
- Provide all contractors and volunteers with information on the reserve trust’s emergency management procedures.

#### During an emergency

- Contact emergency services through 000.
- Contact the chairperson of the reserve trust.
- Liaise with other relevant response agencies – such as the Rural Fire Service, the Department of Community Services, the State Emergency Service (SES) and the Office of Environment & Heritage (OEH)
- Contact other reserve trust members, employees, contractors and volunteers.
- Confirm the location of any visitors on reserve trust property.
- Secure the location of the emergency.
- Implement the emergency management plan or checklist.
- Implement evacuation procedures – where required.

#### After an emergency

- Conduct a debrief – what did we learn/do right/do wrong? etc.
- Implement feedback from the debrief.
Figure 9.2 - Who to contact in an emergency

<table>
<thead>
<tr>
<th>Contact point</th>
<th>Role/responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Triple zero (000) emergency hotline</td>
<td>• For advising police, fire and ambulance.</td>
</tr>
<tr>
<td></td>
<td>• <strong>At all times this should be your first contact point with emergency services support.</strong></td>
</tr>
<tr>
<td>Reserve trust chairperson or general manager (where one exists)</td>
<td>• In all cases, the reserve trust chairperson should be told about the situation.</td>
</tr>
<tr>
<td></td>
<td>• The chairperson/general manager has ultimate responsibility for managing the situation and will need to be prepared to deal with emergency services personnel, the general community, and the media.</td>
</tr>
<tr>
<td>Crown Lands Reserves Team</td>
<td>• For advising that an emergency situation exists on reserve trust property.</td>
</tr>
<tr>
<td></td>
<td>• Crown Lands will assist with identifying any insurance arrangements and media comments required.</td>
</tr>
<tr>
<td>District Emergency Management Office</td>
<td>• In severe emergencies this Office will help co-ordinate the response of multiple emergency service agencies.</td>
</tr>
<tr>
<td></td>
<td>• Your local police are responsible for contacting this Office.</td>
</tr>
<tr>
<td>Office of Environment &amp; Heritage</td>
<td>• OEH may be able to co-ordinate a response where the emergency relates to an environmental matter.</td>
</tr>
</tbody>
</table>

9.4 Disaster assistance and funding

Disaster assistance – both non-financial and financial – is available from a number of sources where a State of Emergency has been declared by the Government.

A State of Emergency can be declared by the Premier of New South Wales for up to 30 days over parts or the whole of NSW. This usually occurs in extreme emergencies such as bushfires and floods.

In other circumstances, reserve trusts and Crown Lands are obliged to meet any costs from their own resources, including through their own insurances.

Your first contact regarding the provision of disaster assistance should be the Crown Lands Reserves Team.

Non-financial assistance

In addition to those direct providers of assistance mentioned in Section 9.3 above, in a State of Emergency reserve trusts can access providers of support such as:
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- Adventist Development and Relief Agency (ADRA) – accommodation assistance to victims of disasters and those working on the front line
- Anglicare – general support
- Australian Red Cross – personal support to victims and their families
- The Salvation Army – food and refreshments for disaster victims, emergency services personnel and volunteers
- St Vincent de Paul Society – provision of basic necessities.

Financial assistance

Crown Lands processes claims from reserve trusts who have limited financial capacity to meet restoration costs from their own resources, provided the facilities are public assets. Your local Crown Lands office can provide you with the necessary information if you are making such a claim.

The lead agency within NSW Government responsible for immediate welfare assistance to victims of disasters is the Department of Family and Community Services. Assistance includes the provision of funds through Commonwealth/State Natural Disaster Relief Arrangements (NDRA) and the Community Disaster Relief Fund.

NDRA funds only apply to cyclones, earthquakes, floods, storms, storm-surge and landslides. These funds are made available through the State Government once a natural disaster has been declared. Funds are available for:

- grants for relief of personal hardship and distress, such as the provision of emergency food, clothing and accommodation, essential housing repairs, or the replacement of essential household goods
- concessional interest rate loans to farmers, small business operators and voluntary non-profit bodies to replace assets that have been significantly damaged in an eligible disaster. Recipients must have no reasonable access to commercial finance
- payments to restore or replace essential public assets.

The Community Disaster Relief Fund consists of government and community donations. The Fund has guidelines that establish the principles and criteria to guide the distribution of funds. For more information, please contact the Department of Family and Community Services.

9.5 Lessons learned – the de-brief

Following an emergency it can be valuable to conduct a de-brief of the situation. This will help to identify what was done well and what could have been done better. Ideally this should take place as soon as possible after the emergency has occurred. The most appropriate person to organise the de-brief is the person responsible for formulating and implementing the emergency management plan, or alternatively, the reserve trust chairperson.

The following principles can be used to guide the de-brief and review process:

- Include internal and external stakeholders – these could be reserve trust members, volunteers, employees, other members of the community who were involved, local council staff, Crown Lands officers, etc.

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• Understand the context – what happened, date and time, general background to the emergency.
• Agree on the objective – recording actions taken, recognising positive actions, learning from the event.
• Describe the situation – in some detail, for example:
  o when was it first noticed there was a problem?
  o who noticed it?
  o who did they alert and when?
  o who was involved in the situation?
  o what was the impact – injuries, damage to/loss of property, cost, etc?
  o how will recovery of any losses take place? Who is responsible?
  o what would be done differently next time?
  o what was done well?
  o what can be done to prevent something similar in the future?
  o what could be done to reduce the impact of something similar?
  o what other emergency situations could arise that we should prepare for?
• Document the results – gather the resulting information and feed it back to the people involved in the process. This documentation should also be used to update the future process for managing such situations.

Regulatory requirements

• State Emergency and Rescue Management Act 1989
• State Emergency Service Act 1989
• Rural Lands Protection Act 1998
• Biological Control Act 1985
• Dams Safety Act 1978
• Fire Brigades Act 1989
• Contaminated Land Management Act 1997
• Environmentally Hazardous Chemicals Act 1985
• Noxious Weeds Act 1993
• Rural Fires Act 1997
• Community Welfare Act 1987

Further guidance

• State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the Crown Lands Act 1989, can be found at: www.legislation.nsw.gov.au
• NSW State Disaster Plan (DISPLAN)
• Supporting plans – such as State Bushfire Plan; State Flood Plan; State Aviation Emergency Sub-plan

• Emergency Management Australia:
  www.ema.gov.au

• State Emergency Management Committee:

• NSW Office of Environment and Heritage:

• NSW Department of Primary Industries (Agriculture):

• NSW Rural Fire Service:
  www.rfs.nsw.gov.au

• NSW Fire Brigades:
  www.fire.nsw.gov.au

• State Emergency Service:
  www.ses.nsw.gov.au

• NSW Police Service:
  www.police.nsw.gov.au

• Adventist Development and Relief Agency (ADRA):
  www.adra.org.au
  http://em-adra-org-au.adventistconnect.org/

• Anglicare:
  www.anglicare.org.au/services/emergency.html

• The Salvation Army:
  www.salvos.org.au/need-help/

• St Vincent de Paul Society:
  www.vinnies.org.au/

• Department of Community Services:

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Revisions to this chapter

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87  NSW Trade & Investment, Reserve Trust Handbook
Work health and safety (WHS – formerly Occupational Health & Safety, or OH&S) legislation aims to reduce the personal, social and economic impact of work-related accidents and incidents. Effective management of workplace risks also makes good business sense. It can help improve workplace morale, enhance the reputation of your reserve trust, avoid costs associated with workplace injury and illness and minimise disruption to the workplace.

Crown Lands is committed to promoting legislative compliance and good WHS practice within reserve trusts.

For the purposes of the Work Health and Safety Act 2011, reserve trusts with employees (including where a reserve trust employs a contractor) comprise a “person conducting a business or undertaking” (PCBU) and are required to ensure the health, safety and welfare at work of all workers engaged or caused to be engaged by the reserve trust, as well as all others who come onto the reserve, such as the public and volunteers.

This situation changes where the reserve trust comprises a volunteer association (as defined under the Work Health and Safety Act 2011) only; that is, it has no employees.

Meeting WHS legislative obligations can present a challenge to reserve trusts. However, reserve trusts should be protected from prosecution for alleged breaches of the legislation where they have taken all reasonably practicable steps to prevent workers sustaining injury or illness. Trusts can do this by ensuring they take active steps to identify and manage foreseeable risks at their workplaces.

One way of achieving this is by developing a Work Health & Safety Management System (WHSMS) (previously generally referred to as an Occupational Health and Safety Management system) which is then monitored and periodically evaluated. A WHSMS can be tailored to the specific circumstances of the workplace and the size of the organisation.

This Chapter provides guidance on the WHS obligations of your reserve trust and how to meet them, and advice on setting up an effective WHSMS. This advice differs depending on whether you are a small, medium or large reserve trust.

**10.1 Your obligations regarding WHS**

Trust board members need to keep in mind that the laws regarding WHS require “officers” of a PCBU (“officers” in this regard includes members of a trust board) to exercise due diligence to ensure the reserve trust meets its WHS obligations.

If a reserve trust employs people as managers or supervisors of others, these managers/supervisors are responsible for being actively engaged in fulfilling the reserve trust’s obligations to manage work health and safety and ensuring trust board members are kept well informed of the reserve trust’s WHS performance.

**Obligations under the Work Health and Safety Act 2011**

The objective of the Work Health and Safety Act is to protect the health, safety and welfare of people at work. The Act recognises that a PCBU will adopt a risk management approach to the prevention of injury and illness. Under the Act, everyone at a place of work has responsibilities to contribute to the safety and wellbeing of persons at the workplace (this includes employers, employees and other “workers”, contractors and other third parties).
Obligations of reserve trusts which have employees (i.e. are a PCBU)

The Work Health and Safety Act places a ‘primary duty of care’ on PCBUs to ensure the health, safety and welfare of all workers and others at the workplace. In this regard:

- a Crown reserve is a workplace – although it has other uses, it is also a place where work is carried out, and
- a PCBU is any person or company conducting a business or undertaking (other than a volunteer association – see below) – and therefore includes a reserve trust where that reserve trust has employees (whether full-time, part-time or contractors).

The duties of PCBUs to their workers extend to, so far as is reasonably practicable:

- providing and maintaining a work environment without risks to health and safety;
- providing and maintaining safe plant and structures;
- providing and maintaining safe systems of work;
- the safe use, handling, and storage of plant, structures and substances;
- providing adequate facilities for the welfare at work of those persons carrying out work for the business or undertaking, including ensuring access to those facilities;
- providing any information, training, instruction or supervision necessary to protect all persons from risks to their health and safety arising from work carried out as part of the business or undertaking; and
- monitoring the health of workers and conditions at the workplace for the purpose of preventing illness or injury to workers arising from the conduct of the business or undertaking.

Under the Work Health and Safety Act workers include employees, contractors, employees of contractors and volunteers.

PCBUs must also ensure that the health and safety of others at the workplace (e.g. visitors) is not put at risk from work carried out as part of the conduct of the business or undertaking.

Obligations of reserve trusts which do not have employees (i.e. are a volunteer association)

Under the Work Health and Safety Act a “volunteer association” means a group of volunteers working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for that volunteer association or receive any form of remuneration.

Trust board members are generally volunteers. Where this is the case, and if the reserve trust does not employ any person to carry out work, then the reserve trust is likely to be a volunteer association.

**Note:** Volunteer associations are not PCBUs. As such, if your reserve trust is a volunteer association, then trust board members will not be an “officer” for the purposes of work safety laws, and you will not be subject to prosecution for failures to carry out appropriate due diligence. You are, as a worker, subject to all relevant safety requirements and associated policies of Crown Lands.

Obligations of “officers”

Trust board members for reserve trusts which have employees (and are therefore a PCBU) are “officers” for the purposes of the Work Health and Safety Act. “Officers” have a responsibility to:
• exercise due diligence to ensure that the PCBU in which they are involved complies with its work health and safety duties and obligations.

**Due diligence** includes taking reasonable steps to:

• acquire and keep up-to-date knowledge of work health and safety matters
• gain an understanding of the nature of the operations of the PCBU and any associated hazards and risks
• ensure the PCBU has available and uses appropriate resources and processes to eliminate or minimise risks
• ensure the PCBU has appropriate processes for receiving, considering and responding to information about incidents, hazards and risks, and
• ensure the PCBU has and implements processes for complying with its duties and obligations. Examples of such processes would be the reporting notifiable incidents, consulting with workers, ensuring compliance with notices issued under the Work Health and Safety Act, the provision of training and instruction to workers, and health and safety representatives receive their entitlements to training.
• verify the provision and use of the above resources and processes.

**Obligations of “workers” (which includes volunteers)**

“Workers” have a responsibility to:

• take reasonable care for their own health and safety.
• take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons.
• comply and cooperate with, so far as they are reasonably able, with any reasonable instruction given by the person conducting the business or undertaking for the purpose of allowing that person to comply with the Work Health and Safety Act.

A volunteer is also a “worker” and as such has the above responsibilities. Reserve trusts need to ensure that their volunteers are aware of these responsibilities.

**Other PCBU obligations**

In addition to the primary duty of care, further specific duties apply to certain PCBUs (e.g. PCBUs with management or control of a workplace, or PCBUs related to the design, manufacture or installation of plant). If your reserve trust is likely to comprise one of these other types of PCBUs, consult Part 2, Division 3 (Further Duties of Persons Conducting a Business or Undertaking) of the Work Health and Safety Act for the detailed requirements.

**Obligations under the Work Health and Safety Regulation 2011**

The Work Health and Safety Act 2011 is accompanied by the Work Health and Safety Regulation 2011. The Regulation provides detail on how to comply with the mandatory provisions of the Work Health and Safety Act. The following topics are covered:

• duties in relation to general workplace management
• risk management process and risk control of particular hazards, processes and types of work
• establishment of employee consultative arrangements
• regulation of construction work and specific duties in relation to construction work, including for principal contractors
notification of accidents and other matters
licensing for certain types of work.

This Chapter addresses key topics only, and reserve trusts must further familiarise themselves with the applicable requirements to ensure they comply with the law.

Other obligations

The Workplace Injury Management and Workers Compensation Act 1998 requires reserve trusts to establish a workplace injury management and workers compensation system to enable early and effective management of workplace injuries and illnesses and the provision of income support for injured workers and their dependants. Reserve trusts need to make themselves familiar with these requirements.

The information sources listed below (in priority order) provide additional guidance across a wide range of topics. They are also briefly covered in the Further Guidance section at the end of this Chapter.

- Safe Work Australia National Codes of Practice
- Australian Standards
- Specific Guidelines
- Material Safety Data Sheets
- Safety Alerts

Most investigations and prosecutions in New South Wales in relation to workplace injury and safety management are undertaken by WorkCover NSW, which also publishes many of the resources listed above.

In addition to NSW work health and safety legislation, other regulators impose requirements regarding the management of related areas not covered by the Work Health and Safety Act, for example:

- Department of Health – infection control
- Local Government – building approvals
- Office of Environment and Heritage – workplace hazardous substance spills which can affect the environment; packaging and transportation of dangerous goods; radiation control
- Transport for NSW – e.g. motor vehicle registration.

For further work health and safety-related information or legislation administered by these agencies, go to the NSW Government Directory website and follow the links to the specific agency, contacts and topic area: www.directory.nsw.gov.au
10.2 Developing a Work Health & Safety Management System (WHSMS)

Employers must ensure the health, safety and wellbeing of all employees. To achieve this, it is essential to have in place a program of activities and procedures to help you establish a WHSMS which takes a risk management approach to injury and illness prevention. An WHSMS also makes good business sense for managing WHS risks and peoples’ safety in an efficient and effective manner. An WHSMS is “the overall management system which includes organisation structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining the WHS policy, and so managing the WHS risks associated with the business of the organisation.”

Although the format suggested in this section for a WHSMS is not mandatory under WHS legislation, it will guide reserve trusts in developing a systematic and planned approach to managing work health and safety risk exposure in accordance with the size and operations of their specific trust. Many of the activities and procedures covered below are specifically required by the Work Health and Safety Regulation 2011.

Developing an WHSMS

Reserve trusts will already have varying levels of work health and safety management in place. For reserve trusts that are in the early stages of setting up management systems, the risk management checklist and other resource material referred to in this Chapter will help you decide what is needed and in what order to do it.

Reserve trusts that are more advanced in this process and want to improve their systems can, in addition to completing the risk management checklist, use the planning and review process in Australian Standard AS 4801: 2001 Occupational Health and Safety Management Systems – Specifications with guidance for use.

Most important to the development and implementation of a WHSMS is the commitment, leadership and continual support of reserve trust management to that process.

It is also essential to involve the workforce in decision-making that may affect their health and safety. This should be done during the planning, implementation and evaluation phases of the WHSMS. An effective WHSMS provides for suitable training of both management and workforce to carry out their roles in accordance with WHS legislative requirements.

The WHSMS must be concerned with both:

- injury prevention, and
- being able to respond in a timely and effective manner should an injury or illness occur

Both of these actions will minimise the costs associated with workplace incidents. Reserve trusts should also aim to continuously improve their WHSMS through a process of monitoring, review and evaluation.

For further guidance on how to set up, implement and evaluate a WHSMS see:


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Situation 1 – a WHSMS structure for small reserve trusts

This approach can be used for reserve trusts with fewer than 20 employees. It consists of six steps:

1. Take responsibility for workplace safety – establish a WHS policy and responsibilities for WHS.
2. Plan to work safely – think about what activities occur in the workplace, and then identify ways which will control risks arising from these activities.
3. Involve your workers – talk to workers about WHS issues and provide opportunities for them to contribute to decisions regarding their health and safety.
4. Develop procedures – identify hazards, assess their risks and put in place appropriate measures to control them, including site-specific safety management plans and safe-work method statements and operating procedures.
5. Inform and train your workers – use the processes developed in steps 3 and 4 to provide employees, contractors and visitors with workplace information, training and supervision.
6. Monitor and review – continually improve the WHSMS.

See the WorkCover NSW Small Business Safety Starter Kit for basic information on how small reserve trusts can meet their WHS legal obligations. The kit includes easy-to-use checklists. Also see its companion guide, Workplace Safety Kit: A Step by Step Guide to Safety for Business 2001.

Situation 2 – a WHSMS structure for medium to large reserve trusts

The approach outlined here is suitable for medium-sized employers (reserve trusts with 20 to 50 employees) and large employers (reserve trusts with more than 50 employees). The WHSMS described here has five components, each of which includes a number of ‘systems’, for example ‘inform and train’.

- WHS Commitment and Policy – establishes a commitment to WHS and formalises a policy to drive improvements.
- Planning – develop a WHS plan and monitor it to evaluate the success of WHS initiatives.
- Implementation – ensure capabilities and support mechanisms are developed to achieve WHS policy objectives and targets. These capabilities will need to address:
  - consultation and communication
  - responsibilities and accountabilities
  - information and training
  - record-keeping and reporting
  - hazard, incident and injury recording and reporting (including mandatory notification of incidents to WorkCover NSW)
  - risk management
  - administrative controls – site-specific safety management plans and safe work method statements and operating procedures.
• Measurement and Evaluation – take preventative and corrective action by measuring, monitoring and evaluating WHS performance.
• Review and Improvement – continuously improve the performance of the WHSMS.


10.3 **Information and training**

Information and training is critical to managing workplace risks. This section lists the key points to consider when establishing your WHSMS system.

Training, learning and competency development processes are necessary to:

- promote awareness of work health and safety
- build commitment
- transfer competence and skills.

**Establishing an effective training program**

Here are the appropriate steps you can take to establish an effective training program for workers, including contractors and volunteers:

- Compile a workplace competency profile which includes a training and information needs assessment of all employees, contractors, labour hire employees, volunteers and visitors. This should be done in conjunction with the WHS risk management process.
- Identify the jobs that require qualification or certification.
- Establish what training the trust can provide and what assistance will be required from another suitably qualified or experienced trainer.
- Establish and implement a training course commensurate with workplace hazards/risks and specific controls.
- Provide management training to ensure managers have the necessary knowledge of their work health and safety legislative responsibilities and are competent to manage work health and safety.
- Provide training at key points in the operational cycle; for example:
  - at induction for new workers on their first day
  - ongoing or refresher training to maintain and up-skill the workforce
  - when new work procedures or new plant or hazardous substances are introduced
  - when assessing competence levels of the workforce prior to commencement of particular tasks.

Reserve trusts should also ensure suitable and effective induction training is available for contractors. This can be the same as or based on the induction training for employees and volunteers.

10.4 **Hazard, incident and injury recording and reporting**

Your reserve trust must establish a process for identifying and recording information about work health and safety incidents to assist in managing risk areas and ensuring legal requirements are complied with.
The reserve trust must also monitor work health and safety incidents to identify management actions required, prevent recurrence and to ensure any relevant authorities have been notified.

A reporting system for work health and safety hazards, incidents, injury and illness can be integrated with other recording systems, such as the register of injuries that is required by workers compensation law.

**Mandatory reporting procedures**

The following reporting procedures should be followed:

- Workers at a workplace that is a PCBU are required to co-operate with that PCBU (i.e. reserve trust) to ensure WHS responsibilities are met. In terms of reporting, this can be achieved by requiring workers report all hazards, incidents and injuries to their supervisor. In the case of principal contractors, this includes reporting incidents involving sub-contractors to the reserve trust.

- Injured workers must complete a register of injuries.

Supervisors must ensure that:

- First Aid is provided (if required) and recorded. First Aid recording can be integrated with other incident and accident recording systems, such as the register of injuries that is required by workers compensation law.

- Hazards, injury, illness and incidents are investigated, remedial action is taken, and recorded.

- A hazard, incident and/or injury report form is completed.

Sample reporting forms are available in the WorkCover NSW publication *Subby Pack: OHS Contractor Management Tool*. Alternatively, reserve trusts can develop their own forms.

A sample incident/injury report can be obtained from Crown Lands.

### 10.5 Notifying incidents to WorkCover NSW

Specific categories of incidents, known as "notifiable incidents" must be notified to WorkCover NSW immediately. The reserve trust’s insurer must also be notified of any workplace injury in respect of which compensation may be payable within 48 hours.

**Notifiable incidents**

The following are "notifiable incidents" and must be notified to WorkCover by calling 13 10 50 immediately the reserve trust becomes aware of an occurrence:

- The death of a person;

- The serious injury or illness of a person. Examples of "serious injury or illness" include:
  - any illness or injury requiring immediate treatment as an in-patient in a hospital;
  - amputation of any part of the body;
  - a serious head or eye injury;
  - serious burns;
  - a spinal injury;
  - the separation from skin from underlying tissue;
  - the loss of a bodily function;
serious lacerations;
- exposure to a substance where medical treatment is required within 48 hours.

- A “dangerous incident”, being an incident that exposes a worker or any other person to a serious risk from an immediate or imminent exposure to:
  - an uncontrolled escape, spillage or leakage of a substance, pressurised substance, gas or steam;
  - an uncontrolled implosion, explosion or fire;
  - electric shock;
  - the fall or release from a height of any plant, substance or thing (including a person falling from a height);
  - the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use;
  - the collapse or partial collapse of any structure;
  - the collapse or failure of an excavation or of any shoring supporting an excavation;
  - the inrush or water, mud or gas in an underground excavation tunnel;
  - the interruption of the main system of ventilation in an underground excavation or tunnel.

Note: Refer to Sections 35 to 37 of the Work Health and Safety Act and Clause 699 of the Work Health and Safety Regulation for a full list "serious illnesses or injuries" and "dangerous incidents".

Duty to preserve incident sites

Where a "notifiable incident" occurs (as defined above and in Sections 35-37 of the Work Health and Safety Act and Clause 699 of the Work Health and Safety Regulation) the person with management or control of the workplace must ensure so far as reasonably practicable that the site where the incident occurred is not disturbed until an inspector arrives at the site or an earlier time as directed by an inspector.

The following action is allowed to be taken at the site of a notifiable incident:
- action to assist an injured person;
- action to remove a deceased person;
- action that is essential to make the site safe or to minimise the risk of a further notifiable incident;
- action that is associated with a police investigation; or
- any action for which an inspector has given permission.

Other incidents

The reporting of environmental incidents will depend on the situation. For example, land contamination and pollution issues are referred to the Environment Protection Authority (www.epa.nsw.gov.au) and matters relating to Aboriginal heritage items to the National Parks and Wildlife Service (within the Office of Environment and Heritage) (www.environment.nsw.gov.au/licences/achregulation.htm).

For further information see Chapter 11.
10.6 Investigating accidents and 'near misses'

Reserve trusts are required to ensure that all injuries and illnesses are investigated. Appropriate action, such as reviewing the risk assessment and any measure previously adopted to control that risk, must be taken to prevent a recurrence. Refer also to the section above in relation to requirements to report matters to WorkCover.

All workers should be required to report ‘near miss’ incidents. This will assist in promoting awareness of injury/illness prevention. It also provides an opportunity for the reserve trust to examine and review its WHSMS – for example, emergency preparedness, training, hazard identification, assessment and effectiveness of controls.

Managers are responsible for ensuring incidents are investigated and suitable controls implemented to prevent recurrence. The people investigating incidents should be suitably trained to ensure they are competent in the procedure.

10.7 Management of injuries and claims

Although risk management focuses on the prevention of injuries and illnesses in the workplace, an injury or illness can still arise. Should this occur, the personal and economic costs of the injury or illness can be minimised by adopting a systematic and planned approach which applies risk management principles.

This is referred to as injury management. The key features of effective injury management are:

- early notification of a claim to the insurer and early intervention
- establishment and implementation of a “return to work” program for injured workers
- provision of suitable duties, where practicable
- nomination and training of a Return to Work Co-ordinator (this is a legal requirement for reserve trusts whose “basic tariff premium” exceeds $50,000. The “basic tariff premium” is a percentage of a reserve trust’s payroll. Further information on premiums can be found in the WorkCover NSW Insurance Premiums Order).

Effective claims management plays a significant role in minimising losses for a reserve trust. The reserve trust’s workers compensation insurer has an important role in the determination of a claim and its progress. It is therefore strongly recommended that, as a matter of good practice, each reserve trust allocate responsibility to one person (i.e. a Claims Officer) for working with the insurer’s case manager to regularly review insurance claims to identify workplace safety matters that should be addressed in the reserve trust’s WHSMS.

In the case of smaller reserve trusts, one person may be made responsible for both injury and claims management.

Injury and claims management are closely linked, and either can have an impact on return-to-work outcomes. As such, the Return to Work Co-ordinator and the Claims Officer should jointly be involved in making decisions which aim to achieve positive outcomes.

Further important information about workers compensation and injury management is available in the many helpful WorkCover NSW publications listed in the Further Guidance section below, and in the Workplace Injury Management and Workers Compensation Act 1998.
**Regulatory requirements**

Key legislation:

- Work Health and Safety Act 2011
- Work Health and Safety Regulation 2011
- Workplace Injury Management and Workers Compensation Act 1998

This legislation can also be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

Summaries of the legislation are available in plain English from WorkCover NSW.

**Further guidance**

**Note:** the list of standards, industry and national codes of practice covered here is not exhaustive; for a complete list, contact the relevant agencies.

**Safe Work Australia**

In 2011, NSW enacted the national model work health and safety law as the *Work Health and Safety Act 2011*. Safe Work Australia, the national policy body responsible for developing new consistent national safety laws, has issued a range of guidance material and fact sheets. You can find their publications at:


**WorkCover NSW**

WorkCover NSW also publishes legislation, guidance and information about safety and workers compensation laws as they apply in NSW.

Most publications can be obtained from the WorkCover website:


Alternatively, publications can be ordered through the WorkCover hotline on 1300 799003. You will need to read publications issued before 2011 to take into account the new *Work Health and Safety Act 2011*.

- Hazpak – Making your workplace safer (Catalogue No. 228) describes the process for hazard identification, risk assessment and control:
  

- Hierarchy of Control (Catalogue No. 205)

- Risk Management at Work Guide 2001 (Catalogue No. 425)

- WorkCover Workplace Safety Kit No 40: A step-by-step guide to safety for business 2001 includes injury and claims management procedure tools and is particularly suited for medium to large businesses.

- Small Business Safety Starter Kit: Guide 2001:
  

- There is also a Small Business Assistance Strategy brochure:
Trust Handbook


- Subby Pack: OHS Contractor Management Tool

- FactSheet: Chemical H in the Workplace

- Guidelines for Employers’ Return to Work Programs, March 2003:

WorkCover Codes of Practice

Approved Codes of Practice carry significant statutory force and may be used in Court proceedings where specific detail has not been provided in the Work Health and Safety Act 2011 and/or the Work Health and Safety Regulation 2011. These should be followed unless there is an alternative course of action which can achieve similar or better standards of workplace health and safety. A complete list can be obtained from WorkCover NSW. Examples include:

WHS Consultation

Code of Practice for Noise Management and Protection of Hearing at Work

Code of Practice for Low Voltage Electrical Work

Safe Work Australia Approved Codes of Practice

- National Codes of Practice are prepared by Safe Work Australia and will also be used in legal proceedings where a PCBU has breached their duty of care obligations. A full list of national codes and other guidance material is available on the Australian Safety and Compensation Council (ASCC) Publications-Codes of Practice directory:
  http://safeworkaustralia.gov.au/AboutSafeWorkAustralia/WhatWeDo/Publications/Pages/Publication.aspx

- National Standard for Manual Tasks

- Hazardous Manual Tasks Code of Practice

- How to Safely Remove Asbestos Code of Practice

- How to Manage and Control Asbestos in the Workplace Code of Practice

- Labelling of Workplace Hazardous Chemicals Code of Practice

- Preparation of Safety Data Sheets for Hazardous Chemicals Codes of Practice

- Confined Spaces Code of Practice

- Managing Noise and Preventing Hearing Loss at Work Code of Practice

- Managing the Work Environment and Facilities Code of Practice

- How to Manage Work Health and Safety Risks Code of Practice

- How to Consult on Work Health and Safety Code of Practice

Australian Standards

- Australian Standards can be purchased from:
- www.saiglobal.com/shop/Script/search.asp

- Australian Standards provide detailed and technical data on a range of products or processes. They are prepared by Standards Australia and when referred to in the WHS Regulation their provisions become mandatory (e.g. AS 1210:1997 Pressure Vessels). While much of the content of Australian Standards referred in this Chapter is covered by legislation, the entire Australian Standards are not included in the legislation which means that their format is used for guidance purposes only, similar to other WorkCover guidance material.

- Australian Standards relating to risk and WHS management systems:
  - AS4804:2001 *Occupational Health and Safety Management Systems – General guidelines on principles, systems and supporting techniques*

**Material Safety Data Sheets**

- Material Safety Data Sheets contain hazardous substance risk and safety information which manufacturers of hazardous substances are required to develop and update and make available to users of their products.

- Material Safety Data Sheets can also be obtained from the supplier of the hazardous substance. Alternatively, for an overview of what Safety Data Sheets are, how to obtain one and what information should be provided, refer to: [www.comcare.gov.au/Forms_and_Publications/publications/services/fact_sheets/fact_sheets/material_safe_data_sheets_for_hazardous_substances_17c](http://www.comcare.gov.au/Forms_and_Publications/publications/services/fact_sheets/fact_sheets/material_safe_data_sheets_for_hazardous_substances_17c)

**Safety Alerts**

- Safety Alerts are produced by WorkCover NSW, usually following an incident, to warn people of the risks associated with a particular workplace activity. They include recommended controls; e.g. Safety Alert No. 4360 issued 7 August 2003: *Dangers of penetrations on construction sites*. Safety alerts can be accessed through WorkCover NSW's Forms and Publications webpage:

**Other guidelines**

- The Australian Government organisation Comcare has safety and prevention information at

- There is also useful WHS guidance on industry websites; for example, IBM has guidelines on PC workstation set-up.

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**Revisions to this chapter**

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11 Environmental responsibilities and land management

Reserve trusts are responsible for the environmental management of the land making up their reserves. This is a legal responsibility, reflecting the importance of protecting and enhancing the environmental values of natural areas.

The protection and enhancement of environmental values is set out in State and Federal legislation, policy documents and management systems.

This chapter explains your obligations and responsibilities with regard to the environmental management of the land in your reserve.

11.1 Overview of your responsibilities

Most environmental law can be described as ‘command and control’ legislation, where the lawmakers set out what activities you must and must not do. In this regard, a reserve trust’s environmental responsibilities can be classified into positive and negative obligations, as follows:

**Positive obligations** are activities that a reserve trust manager *must* ensure take place on a reserve. Examples include:

- weeds and pest animals must be appropriately managed.
- threatened species and their habitats must be protected.
- heritage items must be protected.
- bushfire risks must be managed. Reserve trusts need to work closely with the Crown Lands Reserves Team, the local bushfire management committee and the Rural Fire Service to manage bushfire risks, reduce bushfire hazards and respond to bushfires on the reserve.
- any structures that are constructed in a waterway on the reserve must be maintained.
- any chemicals that are used on the reserve must be stored and handled in an appropriate manner.

Before the reserve trust undertakes any activity on the reserve or permits any activity on the reserve, it must ensure that the activity is in accordance with the principles of ecologically sustainable development.

**Negative obligations** are activities which a reserve trust manager *must ensure do not occur* on a reserve. Examples include:

- the harming of any threatened plant or animal species.
- damage to Aboriginal and other cultural and environmental heritage.
- tampering with or damaging any fire-fighting equipment.
- selling or propagating any noxious weed.
- undertaking any activity which requires a licence or development consent unless the appropriate licence or consent has been granted.
A breach of any positive or negative obligation may result in civil or criminal liability for each trust board member and for the person or people who carried out, or failed to carry out, their duties. Trust board members are not protected by the Crown Lands Act in these circumstances.

In addition to these positive and negative obligations, there are voluntary activities which a reserve trust should implement in the interests of ensuring best practice environmental management.

These obligations and activities are discussed further in the rest of this chapter.

A reserve trust is not required to implement any voluntary measures such as an environmental management system. However, such a system would provide the reserve trust with a framework within which to understand and implement its environmental obligations, and is therefore strongly recommended.

Further, there is an increasing trend by lawmakers and governments to move away from command and control legislation and encourage landholders to become good environmental managers through market-based instruments and incentives such as biodiversity, salinity and carbon credits.

11.2 The basis of environmental management

While the primary objective of environmental law is to protect the natural environment, environmental management involves more than just this. It also involves making decisions that balance the environments in which people live, work and spend their free time:

- the natural environment
- the built or urban environment
- the cultural / heritage environment
- the economic environment
- the social environment
- the health environment
- the work environment.

In achieving the goal of balancing these environments, more than one of the environments described above might be affected. For example, laws which regulate the emission of pollution aim to protect both human health and the natural environment.

Lawmakers and environmental managers must also balance the protection of particular species of flora and fauna and the social and economic cost to society.

Before deciding whether or not to carry out an activity which may have an impact on the environment, reserve trusts must ensure the activity and its impacts are ecologically sustainable. Section 6(2) of the Protection of the Environment Administration Act 1991 provides a definition of ‘ecologically sustainable development’ as used in legislation in NSW (see In other words, when your reserve trust is making decisions about actions that will affect the environment, you need to make sure those decisions are based on the following principles:

- Take precautions to:
  - avoid, wherever practicable, serious or irreversible damage to the environment (and do not use the lack of full scientific evidence as to what that damage might be as an excuse not to act)
  - assess the risks and consequences of various options.
• Keep future generations in mind and ensure that the health, diversity and productivity of the environment are maintained or improved for their benefit.

• Make the conservation of biological diversity and ecological integrity a fundamental basis of any decisions.

Figure 11.1).

In other words, when your reserve trust is making decisions about actions that will affect the environment, you need to make sure those decisions are based on the following principles:

• Take precautions to:
  o avoid, wherever practicable, serious or irreversible damage to the environment (and do not use the lack of full scientific evidence as to what that damage might be as an excuse not to act)
  o assess the risks and consequences of various options.

• Keep future generations in mind and ensure that the health, diversity and productivity of the environment are maintained or improved for their benefit.

• Make the conservation of biological diversity and ecological integrity a fundamental basis of any decisions.

Figure 11.1: Definition of “ecological sustainable development” – Section 6(2), Protection of the Environment Administration Act 1991

... ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

(ii) an assessment of the risk-weighted consequences of various options,

(b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,

(d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:

(i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,

(ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
(iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

11.3 The need for an environmental management system

The information in this chapter relates to the minimum standards a reserve trust is required to meet to comply with its legal requirements. However, compliance with these standards alone does not ensure that the reserve trust is necessarily managing its environmental obligations effectively.

While there is no compulsion for a reserve trust to implement an environmental management system unless it is subject to legislation, reserve trusts should nevertheless consider the need for an environmental management system based on their specific environmental values, obligations and risks. Examples of situations where a trust board might consider establishing an environmental management system are where a reserve has highly sensitive land or a high volume of vehicular and pedestrian traffic.

In determining whether to establish an environmental management system, the reserve trust needs to consider the its plan of management, if any (see Chapter 5), and the environmental risks identified when completing the risk management checklist (see Chapter 7).

Another option is for the reserve trust to consider incorporating relevant requirements of an environmental management system into its plan of management.

Guidance for developing an environmental management system (EMS)

Guidance for developing an environmental management system is given in International Standard 14001 – Environmental Management Systems. Stapleton and Glover, in Environmental Management Systems: An Implementation Guide for Small and Medium-Sized Organizations, examined this Standard and other environmental management systems to distil the following key elements, adapted here for reserve trusts:

- **Environmental policy** – start with a statement of the reserve trust’s commitment to the environment
- **Planning** – identify the values of the reserve and its activities; the applicable laws and regulations; environmental goals; relevant objectives and targets; and a plan to achieve those objectives and targets
- **Implementation** – establish roles and responsibilities of the trust board members and employees; train employees; establish internal and external lines of communications; maintain EMS information; identify, plan and manage the activities of the reserve in accordance with the environmental policy and associated objectives and targets; and identify potential emergencies and responses
- **Checking/corrective actions** – monitor activities and check performance; identify and correct problems; maintain records of performance; and verify that your EMS is working.
- **Management review** – conduct periodic reviews for continual improvement.

A reference – the Landcare best practice manual

The School and Community Co-operative Landcare Projects Best Practice Manual, prepared by the National Landcare Program and the South Australian Department of Primary Industries and Resources can assist. The manual is published in three parts. Part 1 provides information on
how to achieve success with your project by developing an environmental management system similar to the one described above. Part 2 contains case studies and practical guidance for implementing the plan. Part 3 lists funding opportunity and sources of support. A link to this document is provided in Further Guidance at the end of this chapter.

Crown Lands policies

For information about relevant Crown Lands policies, please refer to Appendix D.

11.4 Environmental law and your obligations

There are a number of Acts, Regulations, industry standards and policies that direct how a reserve trust's land is to be managed. The basic rules, described in this section, must be followed by all reserve trusts.

As discussed above, most environmental laws describe prescriptively what a person must do to comply with the law (that is, a positive obligation) and what a person must not do to comply with the law (that is, a negative obligation).

These obligations are subject to any changes in the law. Therefore, reserve trusts should be aware of the environmental laws relevant to their specific operations and should keep up to date with any changes.

The following sections set out your obligations, both positive and negative, and is structured into the topics of:

- Noxious weeds
- Plants and animals
- Water management
- Bushfire management
- Heritage
- Pesticides
- Contaminated land
- Dividing fences
- Pollution
- Reporting of environmental incidents
- Key approvals or licences you are likely to need.

11.5 Noxious weeds

What you must do

Reserve trusts must ensure noxious weeds are managed on reserve trust land in accordance with the Noxious Weeds Act 1993, to the extent necessary to prevent the weeds from spreading to adjoining land. Plants listed as noxious weeds and the control measures required to manage them are declared by a weed control order published in the Government Gazette by the Minister for Primary Industries. A weed control order will also specify the land to which the order applies, the control objectives for the plant and the term of the order.

The NSW Department of Primary Industries publishes a current list of noxious weeds for a particular area. You should look at the noxious weeds identified in your area to determine the appropriate management. If you are unsure whether a weed is noxious or not, a weed control
officer within your local council should be able to help you to identify it, determine whether it is
noxious or a local environmental problem, and the most appropriate method of control.

If your local council does not have a weed control officer, your local officers at NSW Department
of Primary Industries or the Office of Environment and Heritage may be able to assist.
Alternatively, you should consider training staff members in weed identification and the
appropriate control measures.

What you must not do
Reserve trusts must ensure that the following activities are not carried out:

• buying or selling any weed material or anything containing noxious weed material
• removing from reserve trust land anything containing weed material or having such
  material on it
• scattering weed material on land or water
• disposing of, transporting or selling soil or turf where the reserve trust ought to have
  known there was a notifiable weed within that soil or turf.

11.6 Plants and animals

Native vegetation
The Native Vegetation Act 2003 regulates the clearing of native vegetation on all land in NSW
except for land listed in Schedule 1 of that Act. Approval is required from the local Catchment
Management Authority to clear native vegetation unless it is a “permitted clearing” activity (ss. 18-
24 of that Act) or it comprises clearing specifically excluded from the operations of the Act (s. 25
of that Act). In most cases approved or permitted clearing under the Native Vegetation Act 2003
does not also require approval under the Threatened Species Conservation Act 1995. Approval
to clear native vegetation is given by way of development consent, and requires the lodging of a
development application to the local Catchment Management Authority. Land owner’s consent to
the lodging of that development application is also required from Crown Lands.

Routine agricultural management activities (RAMAs) are a type of “permitted clearing” and as
such do not require approval. RAMAs include activities such as the control of pest animals and
noxious weeds. A specific RAMA is also available for clearing associated with certain
management activities on Crown land, as follows:

• the construction, operation and maintenance of telecommunications infrastructure,
• the construction, operation and maintenance of infrastructure, including roads, tracks
  and viewing platforms, and
• the placement of signs and recreational facilities (such as picnic and barbecue
  facilities).

However, this Crown land management RAMA does not authorise the clearing of native
vegetation that comprises threatened species, threatened species habitat or threatened
ecological communities.

Information relating to the Native Vegetation Act 2003 can be obtained from:

• your local Catchment Management Authority

Legislation other than the Native Vegetation Act 2003 may also control the clearing of native
vegetation. For example certain native plants that grow on land or in fresh water are protected
under Part 8 of the National Parks and Wildlife Act 1974. A person must not pick or possess
protected plants on reserve trust land unless it was the result of a duty imposed by another Act, for example maintaining fire trails. Protected species are listed in Schedule 13 of the National Parks and Wildlife Act 1974.

The Fisheries Management Act 1994 protects saltmarsh, seagrasses, mangroves and seaweeds on public water land and foreshores. Harming or removal of marine vegetation is generally only permissible by permit which needs to be obtained from Fisheries NSW.

Controls on the clearing of native vegetation may also apply to reserve trust land through a Council’s local environmental plan and/or tree preservation order. Contact your local council for more information.

**Vegetation on “Vulnerable land” (including “State Protected Land”)**

Land formerly known as State Protected Land (steep or highly erodible land, protected riparian land and special category land) has been renamed Vulnerable land and is protected by specific controls in the Native Vegetation Act 2003. Except for a number of limited circumstances, clearing of any living native vegetation on Vulnerable Land requires approval. Clearing of dead native trees or exotic trees on land previously identified as State Protected Land continues to be regulated by the (otherwise superseded) Native Vegetation Conservation Act 1997. Reserve trusts should determine whether their reserve includes any land classified as “Vulnerable land” or as “State Protected Land”. Maps of these lands, and more information about approvals can be obtained from the local Catchment Management Authority or the Office of Environment and Heritage.

**Native animals (including birds and fish)**

All native birds, reptiles, amphibians and mammals, except the dingo, are protected in New South Wales by the National Parks and Wildlife Act 1974, managed by the Office of Environment and Heritage.

Some native birds are not protected in certain parts of New South Wales because they are either agricultural or pastoral pests.

A number of fish species are also protected from fishing or collecting under the Fisheries Management Act 1994. Approval may be required from Fisheries NSW (within the Department of Primary Industries) for any permanent or temporary structure that may inhibit or obstruct the movement of fish within a waterway, or for works generally that may impact on fish habitat.

**Threatened species**

The majority of threatened plants and animals are protected by the Office of Environment and Heritage under the Threatened Species Conservation Act 1995. Threatened freshwater and saltwater fish and invertebrates, and saltwater plants are protected by Fisheries NSW under the Fisheries Management Act 1994.

Threatened species have added protection to the protected species discussed above, such as:

- people must not damage the habitat of threatened species;
- the effects on threatened species must be considered when there are any proposed developments; and
- recovery plans must be developed for all threatened species.

Under both the Threatened Species Conservation Act 1995 and the Fisheries Management Act 1994, environmental managers must ensure that threatened native plants and animals (including fish) on reserve trust land are not harmed, damaged, taken or killed. This requirement includes not only actions by the reserve trust when managing the land, but also actions by visitors. This duty contrasts with the obligation to destroy feral animals and weeds on reserve trust land.
Offences relating to threatened species may be dealt with in the local court. In addition, any person may bring proceedings in the Land and Environment Court for an order to restrain, or an order to remedy a breach of the applicable legislation.

A reserve trust should be aware of any recovery plans for any endangered or threatened plant or animal species which might exist on their land or visit their land. Where such a plan exists, it is recommended that it be noted in the reserve trust’s environmental management system and/or plan of management, and that the reserve trust take steps to protect and conserve the species.

Recovery plans aim to promote the recovery of a threatened species, population or ecological community to a position of viability in nature. They are prepared by the Director General of the Office of Environment and Heritage (or where appropriate, jointly with the Director of Department of Primary Industries - Fisheries) under the Threatened Species Conservation Act 1995.

Information on recovery plans that may affect your reserve may be obtained from the Office of Environment and Heritage or at www.threatenedspecies.environment.nsw.gov.au

Listed threatened species for plants, mammals, birds, reptiles and amphibians can be found at www.threatenedspecies.environment.nsw.gov.au/

Listed threatened species for fish and marine vegetation can be found at www.dpi.nsw.gov.au/fisheries/species-protection/protected-species

Listed threatened species for all species listed at the Federal level can be found at www.environment.gov.au/biodiversity/threatened/index.html

**Companion animals**

Companion animals are defined in the Companion Animals Act 1998 as a dog or a cat, including working dogs and guard dogs.

In addition to the general powers granted to any member of the public in respect of problem animals, a reserve trust officer may lawfully:

- seize, injure or destroy a dog or cat if that action is reasonable and necessary for the protection of any person or animal (other than vermin) from injury or death
- seize a dog which attacks or bites a person or animal (other than vermin) on reserve trust land, but only if the owner cannot control the dog
- injure or destroy a dog or cat on enclosed (i.e. fenced) land if it is likely the dog or cat will attack or injure any animal being farmed on the land.

After a dog or cat is seized, it must be delivered to the owner or a pound.

**Pests and feral animals**

A reserve trust must control or eradicate certain pest animals on all of its land. The identification of these animals and insects, also known as feral animals, and the methods of control are detailed in the Rural Lands Protection Act 1998.

Species currently declared as pests in New South Wales include wild rabbits, feral pigs, wild dogs, and a number of locust species (the Australian plague, spur-throated and migratory locusts). Pest animals and insects must be eradicated by prescribed methods.

Fox and mice are presently classed as nuisance animals in New South Wales and there is no obligation for a reserve trust to control these species. The local Livestock Health and Pest Authority can provide advice or assistance as to their control if required.

The Game and Feral Animal Control Act 2002 allows accredited and licensed hunters to participate in feral animal control on public land areas declared for hunting under section 20 of that Act. Hunting on public land is restricted to pest animal species including deer, goats, foxes, rabbits,
feral cats and pigs. At present, Crown Lands declared as public hunting land are Barigan Regional Crown Reserve and Burrendong State Park & Recreation Area.

In addition, persons can be authorised under the Game and Feral Animal Control Act 2002 to control feral animals on public land without the requirement for a licence. Authorised officers include employees of public authorities, such as a reserve trust or Livestock Health and Pest Authority staff, and occupiers of the land.

More information on game hunting can be obtained from the NSW Game Council on (02) 63605111 or view the website: www.gamecouncil.nsw.gov.au/.

11.7 Water management

What you must do

A reserve trust must carry out the following activities where applicable:

- maintain minor floodgates
- maintain channels and other works, which have been constructed through the reserve, in good repair and in efficient condition
- ensure that water used for drinking or recreational purposes meets appropriate standards.

Dams

Where a dam is located on reserve trust land, the reserve trust should liaise with the NSW Dams Safety Committee to ensure that the relevant requirements and risks are addressed in the reserve trust's plan of management. The Dams Safety Committee is established under the Dams Safety Act 1978 to ensure the safety of dams in NSW. The Committee might pass their duties in respect of that dam to the reserve trust. This will only apply if the dam is a prescribed dam (as listed in Schedule 1 of the Dams Safety Act 1978). The duties that may be imposed on the reserve trust include:

- surveying the dam
- examining and investigating the design, construction, operation and maintenance of the dam
- formulating measures to ensure dam safety.

What you must not do

Reserve trusts must also ensure that the following activities are not undertaken. Reserve trusts may be liable for these activities, even if they were actually carried out by visitors to the site:

- wilful waste or misuse of water
- taking of groundwater without approval
- discharge of prohibited matter into sewers or drains
- pollution of waters on the reserve trust land without a licence from the Office of Environment and Heritage
- excavation or removal of material from the bank, shore (or within 40 metres of the top of the bank or shore) or bed of any river, lake, coastal lake or lagoon, or any act which obstructs or affects the flow of rivers, lakes and lagoons without a permit from the NSW Office of Water.
11.8 Bushfire Management

The Rural Fires Act 1997 and the Rural Fires Regulation 2008 provide for the establishment of a State-wide bushfire co-ordinating committee and for local bushfire management committees in rural fire districts.

Reserve trusts are responsible under the Rural Fires Act 1997 for preventing bushfires, extinguishing fires and/or notifying a fire-fighting authority of a fire. At a local level (local government or sometimes multiple local government areas), bushfire activities are co-ordinated by the local bushfire management committee.

The local Bushfire Management Committee

Bushfire management committees are required to produce a Bushfire Risk Management Plan. This plan details how bushfire risks should be managed and the strategies that land managers (including reserve trusts) need to undertake to prevent bushfires. The reserve trust manager’s endorsement of the Bushfire Risk Management Plan should be requested if the plan imposes duties on the reserve trust itself.

Other responsibilities of the bushfire management committee include:

- producing bushfire operation plans, which detail procedures to be carried out in a major bushfire
- administering the Bushfire Mitigation Works Fund which can provide for funding of hazard reduction and fire trail works. The Bushfire Mitigation Works Fund does not fund reports, plans, or capital equipment. Reserve trusts can apply for grants from this Fund through the bushfire management committee, although it would be best to discuss the proposal with the Rural Fire Service or the Crown Lands Reserves Team first.

If the land on your reserve has been identified as bushfire prone, you should contact the bushfire management committee (usually through the Rural Fire Service) to ensure your reserve trust is familiar with the bushfire risk management and operation plans, and to make sure the committee is aware of the bushfire issues on your land.

In cases where a reserve trust has significant areas of bushfire-prone land, a trustee may be asked to become a member of the bushfire management committee.

Duty to prevent bushfires

The Rural Fires Act 1997 imposes certain duties on reserve trusts as public authorities to prevent bushfires. A reserve trust must take any action required by the Bush Fire Co-ordinating Committee, whether or not the action is included in a bush fire risk management plan, and any other practicable steps to prevent or minimise the danger of the spread of a bushfire. In addition during a bushfire danger period, a reserve trust must take all possible steps to extinguish any fire on reserve trust land whether or not it was purposefully or accidentally lit, and must notify the appropriate fire brigade when a fire is observed on the reserve (without leaving the fire untended, if it is practicable to do so).

Hazard reduction works

To prevent bushfires, reserve trusts need to ensure that hazard reduction works are undertaken and protection zones are in place, and that there is an appropriate network of maintained fire trails. (See Planning for Bushfire Protection – A Guide for Councils, Planners, Fire Authorities, Developers and Home Owners (NSW Rural Fire Service and Department of Planning)).

Before carrying out any hazard reduction burning, a reserve trust should consult with the Rural Fire Service or, in urban areas, the NSW Fire Brigade. A permit to burn may be required under the Rural Fires Act 1997. Crown Lands currently has an agreement with the Rural Fire Service in
which the Service will undertake hazard reduction burns on behalf of Crown Lands and community reserve trusts.

**Environmental assessment**

Before any hazard reduction works are undertaken, the law requires that environmental consequences be considered. There is no point in protecting the environment from bushfire if it is destroyed in the process.

Some works require approval under other environmental statutory instruments, such as tree preservation orders regulated by local council.

In many cases the Rural Fire Service can issue a hazard reduction certificate for some hazard reduction works, which overrides the need to get other environmental approvals. If reserve trusts are unsure about which approvals they need to obtain, they should contact the Crown Lands Reserves Team for advice.

**Fire management plan**

If a reserve trust is responsible for land which has been identified as bushfire prone, it should have a fire management plan.

This plan should detail how the bushfire risk to the reserve is to be managed, and the procedures to follow should a fire start. Such details would include, for example, when, where and how fire trails and fire breaks will be constructed and maintained, whether the reserve should be closed or otherwise operated during total fire bans.

Reserve trusts will need to ensure that there are safe operating procedures to deal with a bushfire. Safe operating procedures should include the role and responsibilities of staff, volunteers and trust board members. In most cases this will be encompassed by notifying the local fire authority and evacuating to a pre-determined safe area (e.g. a brick dwelling with a suitable asset protection zone).

**Fire trucks**

There is no requirement for reserve trusts to have fire trucks. Having a fire truck raises many issues such as staff training, protective clothing, public liability, appropriate communication, insurance, and operating procedures.

The Rural Fire Service is required to inspect all fire-fighting apparatus annually. Reserve trusts should notify their local Rural Fire Service of any bushfire equipment they have.

**Additional obligations in respect to fire prevention**

Reserve trusts may have additional fire obligations for their buildings and other operations imposed by the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*, e.g. for fire extinguishers, hydrants, hoses, smoke alarms, fire doors, etc. There are also numerous Australian Standards that relate to these matters.

If it appears to a reserve trust that areas of adjoining land represent a bushfire hazard, it may issue a complaint to the Bushfire Co-ordinating Committee or local bushfire management committee via the local office of the Rural Fire Service. Likewise, adjoining landowners may issue complaints in respect of reserve trust land, requiring the reserve trust to undertake certain prevention measures.

**Fire prevention in caravan parks**

In particular, park managers of all caravan parks and camping grounds on bush fire prone lands must establish and maintain appropriate asset protection zones as per advice from the local fire authority. Asset protection zones must generally be within the existing caravan park boundaries and not on adjoining Crown lands.

In all caravan parks, an appropriate level of fuel management of understorey species must be undertaken in areas in and around caravan sites and camping areas. This does not mean that all native vegetation needs to be removed. Consult with your local fire authority and ensure that any necessary approvals have been acquired prior to any clearing being undertaken. Roof gutters and the site generally are to be regularly maintained to ensure that a build up of combustible materials, such as leaves and twigs, does not occur.

In addition, the caravan park manager must develop evacuation procedures for caravan park residents and other persons who may be using the area at the time of an emergency, in consultation with local emergency authorities. These procedures are to be provided to all occupants and clearly visible to the general public by way of public notices. The procedures must take into account the number of sites in the caravan park, the number of exit points available, whether those exits are vehicular or pedestrian, and assembly areas.

What you must not do

Reserve trusts should note that it is an offence to:

- conceal a fire hydrant or a fire hydrant indicator
- damage fire brigade equipment
- tamper with an alarm or give a false alarm
- obstruct a fire fighter.

11.9 Heritage

Heritage sites and structures (broadly referred to as "environmental heritage") are sites and objects which have a degree of significance or value. They can include buildings, precincts, moveable objects, and landscapes. Most items of environmental heritage are now subject to environmental planning controls under the *Environmental Planning and Assessment Act 1979* (such as through a local environmental plan) and/or under the *Heritage Act 1977* (if determined to be heritage that is of State significance).

Heritage items of State significance are listed on the State Heritage Register, maintained by the NSW Heritage Office (accessed at [www.heritage.nsw.gov.au](http://www.heritage.nsw.gov.au)). Reserve trusts are required to maintain and repair any buildings, works and relics on reserve trust land which are listed on the State Heritage Register. The NSW Heritage Office also maintains the State Heritage Inventory. This Inventory lists all heritage items listed on the State Heritage Register and within LEPs and SEPPs.

Both the State Heritage Register and the State Heritage Inventory can be accessed at [www.heritage.nsw.gov.au](http://www.heritage.nsw.gov.au).

Aboriginal heritage (whether or not it is listed on the State Heritage Register or within LEPs and SEPPs) is also subject to additional provisions in the *National Parks & Wildlife Act 1974*.

Reserve trusts are also required by the Crown Lands Act and the Crown Lands Regulation (Schedule 4) to keep a register of environmental heritage items on their reserve land, and also to report on heritage items in their annual report to the Minister administering the Crown Lands Act.
Aboriginal heritage

All Aboriginal objects and places are protected in New South Wales under the National Parks & Wildlife Act 1974. Amendments to this Act in October 2010 introduced increased penalties and strict liability offences for harming Aboriginal objects and places.

It is an offence to damage known Aboriginal heritage (unless the work is listed in the legislation as ‘exempt’). Therefore it is important to continually check the Aboriginal Heritage Information System (AHIMS), maintained by the NSW Office of Environment & Heritage, for locations of known Aboriginal heritage. Such heritage is categorised as either an ‘Aboriginal object’ or an ‘Aboriginal place’. Work that may affect such objects and places requires an Aboriginal Heritage Impact Permit from the Office of Environment and Heritage.

It is also an offence to (even unintentionally) harm Aboriginal heritage that was not known, except where the work is listed in the legislation as ‘exempt’ or ‘low impact’ or the harm resulted in something ‘trivial’ or ‘negligible’ – unless it can be demonstrated that a process of ‘due diligence’ was undertaken prior to any work to determine whether such heritage might exist.

Therefore, a due diligence investigation should be undertaken prior to any work (other than work listed in the legislation as ‘exempt’ or ‘low impact’) in areas likely to contain unknown Aboriginal heritage to determine whether such heritage might exist.

To assist compliance with the legislation the Office of Environment and Heritage has prepared a Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW. This document also includes descriptions of common types of Aboriginal objects that may be encountered.

Further information is available on the Office of Environment and Heritage website:

For access to AHIMS, telephone 95856513 or 95856345, or go to:

The Due Diligence Code of Practice can be found here:

Non-Aboriginal heritage

Non-Aboriginal heritage includes places, buildings, works, relics, moveable objects, landscapes and precincts of State or local heritage significance.

Reserve trusts must not, or allow others to, damage, destroy, display a notice or advertisement on, or remove vegetation from a heritage object or heritage area without first obtaining necessary approval under the Environmental Planning and Assessment Act 1979 and/or under the Heritage Act 1977.

Reserve trusts should as far as practical allow general public access to items of environmental heritage located on their reserve.

11.10 Pesticides

The Pesticides Act 1999 provides for the control and management of certain agricultural chemical products. The misuse of these prescribed chemical products can cause damage or injury or the chance of damage or injury, and can result in a penalty.

Public authorities (which includes reserve trusts) must not use any pesticide in prescribed public places owned by or under their control without first preparing and notifying the Office of Environment and Heritage of a pesticide use notification plan. Prescribed public places are...
areas which the public is entitled to have access (whether or not on payment of a fee) and includes Crown reserves.

However, a public authority does not have to prepare and notify a pesticide use notification plan:

1. if the pesticide is used by another public authority and that other public authority had prepared, finalised and notified the Office of Environment and Heritage of a pesticide use notification plan and public notice was given in accordance with the Pesticides Act 1999.

2. in relation to the use of pesticide in public baths or in any swimming pool or spa.

Pesticide use notification plans must set out:

- the operational area where pesticides will be used;
- how and when public notice of the use of pesticides will be given;
- the proposed uses, categories of, or specific prescribed public places where the public notification is to operate;
- categories of people who regularly use the prescribed public places to be notified; and
- the protection measures to be taken where the pesticide is to be used in an area adjacent to a sensitive place such as a school, child care centre, hospital, nursing home or a place declared by the Office of Environment and Heritage by notice in the Government Gazette.

Public notice in accordance with the adopted pesticide use notification plan is required to be given prior to the application of any pesticides to reserve land.

**Crown Lands pesticides notification plan**

Crown Lands has prepared a pesticides notification plan that applies to all Crown lands. Reserve trusts should use this as a guide in preparing notices of pesticide use for their reserves. The plan can be accessed at:


For further information about the preparation of pesticide notification plans and notifications of pesticide use, please refer to the Pesticides Regulation 2009, in particular Division 2 of that Regulation, and to the information available on the EPA website at:


**Permits for the possession or use of pesticides**

Permits are required by reserve trusts for the possession or use of other prescribed chemicals.

For information about which chemicals are registered for use in Australia, see the Australian Pesticides and Veterinary Medicines Authority website: [www.apvma.gov.au](http://www.apvma.gov.au)

Pesticides must be stored and labelled correctly. A person must not keep a pesticide in a container that does not bear its approved label, without reasonable excuse. If no trustee or employee has received the appropriate training to handle and use pesticides, the reserve trust must engage a contractor with suitable expertise in this area.

For further detail about the nature of such chemical products and the storage of chemicals, please refer to the Pesticides Act 1999 and the EPA website: [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

**11.11 Contaminated land**

Under section 60 of the Contaminated Land Management Act 1997, a person (including a reserve trust) whose activities have contaminated land or a landowner whose land has been
contaminated is required to notify the EPA when they become aware of the contamination (or ought reasonably to have been aware).

Such a person is required to notify the EPA of contamination in any of the following circumstances:

- The level of the contaminant in, or on, soil exceeds a level of contamination set out in the Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997 with respect to a current or approved use of the land, and people have been, or foreseeably will be, exposed to the contaminant, OR
- The contamination meets a criterion prescribed by the Contamination Land Management Regulations 2008, OR
- The contaminant has entered, or will foreseeably enter, neighbouring land, the atmosphere, groundwater or surface water, and the contamination exceeds, or will foreseeably exceed, a level of contamination set out in the Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997 and will foreseeably continue to remain above that level.

If a reserve trust undertakes an activity that causes contamination of the reserve and that contamination falls within the criteria outlined above then the reserve trust:

1. Must immediately notify the Manager of Reserve Trusts at Crown Lands on telephone: (02) 6883 3385.
2. Must notify the EPA in writing as soon as possible using a Site Contamination Notification Form which is contained within the EPA guidelines, Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997 available at www.epa.nsw.gov.au

If a reserve trust becomes aware (or ought reasonably to have been aware) that any part of the reserve is or may be contaminated (for example, following a chemical spillage of fuel or pesticides) other than by a reserve trust activity and that contamination falls within the criteria outlined above then the reserve trust:

- Must immediately notify the Manager of Reserve Trusts at Crown Lands on telephone: (02) 6883 3385.
- Should also notify the EPA in writing as soon as possible using a Site Contamination Notification Form which is contained within the DECC guidelines, Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997 available at www.epa.nsw.gov.au

Once aware of a possible problem the reserve trust must take action to ensure the health and safety of the general public e.g. fencing and signage. The contamination problem must also be addressed.

Reserve trusts may also be liable for the costs of removing the contamination. These costs will vary depending on the nature and extent of the contamination.

11.12 Dividing fences

Under the Dividing Fences Act 1991, a reserve trust is liable to pay half of the reasonable costs associated with the repair or replacement of a dividing fence. Where a reserve trust can prove that the land under its management is a public reserve or public park, the reserve trust may be exempt from paying these costs.
The term ‘public reserve’ is not defined in the Dividing Fences Act 1991, however has been considered in legal proceedings to be:

… an unoccupied area of land preserved as an open space or park for public enjoyment, to which the public ordinarily have access as of right.

The two criteria which land must satisfy to be a public reserve are that the land must be open to the public generally as of right; and it must not be a source of private profit. 8

Land managed by the reserve trust would be considered to be public reserve only where it satisfies those two criteria. Before a reserve trust can claim an exemption under the Dividing Fences Act 1991, it should determine whether or not it fulfils these two criteria.


11.13 Pollution

The Protection of the Environment Operations Act 1997 regulates activities to protect the environment in relation to air pollution, water pollution, noise pollution and waste management. Under this Act there are a variety of offences for polluting the environment, including:

- causing, permitting or allowing litter to fall, blow, be washed or otherwise escape in a public place,
- polluting the air through excessive emissions from vehicles or equipment,
- burning in open air or incinerators unless authorised. Situations where fires can be lit are:
  - for hazard reduction work under the Rural Fires Act 1997
  - for recreational purposes such as BBQs or camping
  - for agricultural purposes (other than construction)
  - for fire fighting training provided by an official fire control officer, or
  - if approved from the Office of Environment & Heritage.
- wilfully or negligently causing any substance to leak or spill that harms the environment, and
- pollution of waters without a licence.

11.14 Reporting environmental incidents

Environmental incidents occur when there has been a non-compliance with:

- a legal requirement, and/or
- a management requirement.

It is recommended that reserve trusts establish a process for identifying and recording information about environmental incidents to assist in managing risk areas and complying with legal requirements.

The reserve trust should then monitor environmental incidents to identify management actions required and to ensure any relevant authorities have been notified.

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8 Both legal interpretations are from: Council of the Municipality of Randwick v Rutledge (1959) 102 CLR 54.
Reserve trusts are also required to report on environmental management initiatives in the annual report to the Minister administering the Crown Lands Act.

There are a number of specific incidents or circumstances which must be reported to the appropriate authority. The incident reporting process for these issues should be incorporated into the environmental management system (see relevant section earlier in this chapter) or any emergency management plan, as explained in Chapter 9. The six incidences which must be reported to the appropriate government agency are:

- **Contamination**: refer to Section 10 in this Chapter for information on reporting contamination incidents.

- **Noxious weeds**: if it appears the reserve land contains noxious weeds listed as Class 1, 2 or 5 in a weed control order, the reserve trust must notify the local control authority.

- **Pollution**: reserve trusts must notify the Office of Environment and Heritage of pollution incidents occurring on reserve land which cause or threaten to cause harm. Such pollution incidents may result in significant fines and/or imprisonment for individuals.

- **Relics**: if someone discovers a relic on reserve trust land, the reserve trust must notify the Heritage Branch, Office of Environment and Heritage.

- **Bushfires**: if there is a bushfire on reserve land, the reserve trust must notify the appropriate fire brigade if they cannot extinguish the fire themselves.

- **Aboriginal objects**: when an Aboriginal object is found on the reserve, the reserve trust must notify the Office of Environment and Heritage.

### 11.15 Approvals, licences and permits

Certain matters carried out on some reserves may require formal licences or approvals from various State or Commonwealth departments. The requirements for such licences will vary depending on the use that is made of the land.

It must also be kept in mind that any matter which is carried out on reserve land may, in addition to the required approvals listed below:

- have implications for native title (see Chapter 12)
- require development consent under the *Environmental Planning and Assessment Act 1979*, or if it falls within the definition of an “activity”, environmental assessment under Part 5 of that Act (see Chapter 13).

Crown Lands recommends that the reserve trust liaise with the Crown Lands Reserves Team before undertaking any development, in particular where that development would require an approval or licence, because land owner's consent from Crown Lands may also be required.

The reserve trust should also obtain information about additional licences and approvals from the State or Commonwealth department responsible for the administration of the relevant environmental legislation.

It should be noted that more than one piece of legislation may be applicable, and therefore more than one type of approval may be required.

**Commonwealth approvals**: The approval of the Federal Minister for Sustainability, Environment, Water, Population and Communities is required for actions likely to have a significant impact on:

- **World Heritage** and **National Heritage** property
• Ramsar wetlands – which are wetlands of international importance protected under the *Environmental Protection and Biodiversity Conservation Act 1999*

• migratory species

• threatened species

• Commonwealth land.

**Native vegetation:** Approval to clear native vegetation may be required from more than one agency. Clearing of native vegetation is primarily regulated by the *Native Vegetation Act 2003* and necessary approvals can be sought from your local Catchment Management Authority. Approval may also be required from your local Council under its Local Environmental Plan. It is important that reserve trusts proposing to clear native vegetation seek advice from their local Catchment Management Authority and local Council. In the majority of circumstances owner’s consent will also be required from Crown Lands. A series of information sheets about the *Native Vegetation Act 2003* can be found at:


**Threatened species:** Where an activity is likely to harm a threatened species, population or ecological community (whether plant or animal) or damage a critical habitat, a licence is required under either the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994* (depending under which Act the threatened species is listed). Application must be made to either the Office of Environment and Heritage or Fisheries NSW (depending under which Act the threatened species is listed). Such licences will only be issued in certain circumstances, for example where there is a threat to life or property.

**Extraction of water:** A licence may be required for the extraction of water from lakes, rivers, groundwater or from a State water resource, from either State Water or the NSW Office of Water, depending on where the reserve is located.

**Excavations/fill:** A permit may be required from the Office of Environment and Heritage (either the Heritage Branch, or the Parks and Wildlife Group) where it is likely that the proposed work will disturb or otherwise affect, respectively, an object of environmental heritage or Aboriginal heritage. Development consent may also be required for the placement of fill on land.

Any excavation or deposition of material in or near a river, lake or estuary may require approval under the *Water Management Act 2000* from the NSW Office of Water (see separate section on water management in this chapter, above).

**Heritage:** Approval from the Office of Environment and Heritage (either the Heritage Branch, or the Parks and Wildlife Group) required for activities which may damage or affect, respectively, items of environmental heritage or Aboriginal heritage.

**Waterway crossings:** Watercourse crossings are a ‘controlled activity’ under the *Water Management Act 2000*. A Controlled Activity Approval must be obtained from the NSW Office of Water before commencing works.

Approval under the *Fisheries Management Act 1994* may be required from Fisheries NSW for any structure that may temporarily or permanently obstruct the movement of fish within a waterway or harm marine vegetation.

**Local council approval:** In addition to development approvals and consents under the *Environmental Planning and Assessment Act 1979*, prior approval from the local council is required under Section 68 of the *Local Government Act 1993* to:

- Install a manufactured home, moveable dwelling or associated structure
• Carry out water supply work
• Draw water from a council water supply or a standpipe or sell water so drawn
• Install, alter, disconnect or remove a meter connected to a service pipe
• Carry out sewerage work
• Carry out stormwater drainage work
• Connect a private drain or sewer with a public drain or sewer under the control of a council or with a drain or sewer which connects with such a public drain or sewer
• For fee or reward, transport waste over or under a public place
• Place waste in a public place
• Place a waste storage container in a public place
• Dispose of waste into a sewer of the council
• Install, construct or alter a waste treatment device or a human waste storage facility or a drain connected to any such device or facility
• Operate a system of sewage management (as defined in section 68A)
• Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
• Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road
• Operate a public car park
• Operate a caravan park or camping ground
• Operate a manufactured home estate
• Install a domestic oil or solid fuel heating appliance, other than a portable appliance
• Install or operate amusement devices
• Use a standing vehicle or any article for the purpose of selling any article in a public place

Note:
• this list is subject to change and reference should be made to the current version of Section 68 of the Local Government Act 1993 at the NSW Legislation Website at: www.legislation.nsw.gov.au
• - the definition of “public place” includes most (but not all) types of Crown reserves (check, in respect to your reserve, the definition in the Local Government Act 1993)
• - it is Crown Lands policy that caravan or camping activities will not be permitted on Crown reserves unless they have an approval under Section 68 of the Local Government Act 1993.

Fire: If a fire is to be lit on the reserve, notice must be given to:
• the fire control officer of a rural fire district, or
• the officer in charge of the fire station in a fire district.

However, no fire may be lit on the land if:
• the reserve trust is notified in writing by the appropriate authority that no fires will be permitted in its area due to the seriousness of bushfire danger, or
• a fire ban is in place.

The NSW Rural Fire Service publication *Before You Light That Fire* (undated) provides more information and can be downloaded from: www.rfs.nsw.gov.au.

**Regulatory requirements**

**Dam Safety Committee** – www.damsafety.nsw.gov.au
- Dams Safety Act 1978 – Part 4

**NSW Office of Environment and Heritage** - www.environment.nsw.gov.au
- National Parks and Wildlife Act 1974 – Parts 4A, 6, 7, 8 and 8A
- Threatened Species Conservation Act 1995 – Parts 4, 5 and 6
- Native Vegetation Act 2003 – Part 2 and 3
- Native Vegetation Regulation 2005 – Parts 4 and 6
- Soil Conservation Act 1938 – Part 2A

**NSW Environment Protection Authority** – www.epa.nsw.gov.au
- Contaminated Land Management Act 1997 – Section 60
- Pesticides Act 1999 – Part 2
- Pesticides Regulation 2009
- Protection of the Environment Operations Act 1997 – Chapters 2, 3 and 4

**NSW Department of Health** - www.health.nsw.gov.au
- Public Health Act 1991 – Parts 2 and 2B

- *Crown Lands Act 1989* – Sections 10 and 11

**NSW Division of Local Government** - www.dlg.nsw.gov.au
- Companion Animals Act 1998 – Part 3 and 7
- Local Government Act 1993 – Chapter 7

**NSW Department of Planning & Infrastructure** – www.planning.nsw.gov.au
- Environmental Planning and Assessment Act 1979 – Parts 3, 4, 4A, 5 and 7A
- Coastal Protection Act 1979 – Part 3

**Heritage Branch, Office of Environment and Heritage** – www.heritage.nsw.gov.au
- *Heritage Act 1977* – Parts 4, 5, 6 and 7

**Fisheries NSW** – www.dpi.nsw.gov.au
- Fisheries Management Act 1994 – Part 7

**Agriculture NSW** – www.dpi.nsw.gov.au
- Noxious Weeds Act 1993 – Parts 2, 3, 4 and 6
- Rural Lands Protection Act 1998 – Part 11

**NSW Rural Fire Service** – www.rfs.nsw.gov.au
• Rural Fires Act 1997 – Parts 3 and 4
• Rural Fires Regulation 2008 – Part 4

• *Water Act 1912* – Section 120
• *Water Management Act 2000* – Section 91

• (Commonwealth) Environment Protection and Biodiversity Conservation Act 1999 – Part 3

**Further guidance**

• State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the Crown Lands Act 1989, can be found at:
  www.law.nsw.gov.au
• (Commonwealth) Department of Sustainability, Environment, Water, Population and Communities:
  www.environment.gov.au
• Australian Pesticides and Veterinary Medicines Authority:
  www.apvma.gov.au
• NSW Catchment Management Authorities:
  www.cma.nsw.gov.au
• Dams Safety Committee:
  www.damsafety.nsw.gov.au
• Office of Environment and Heritage:
  www.environment.nsw.gov.au
• Heritage Branch, Office of Environment and Heritage:
  www.heritage.nsw.gov.au
• State Heritage Register:
  www.heritage.nsw.gov.au
• Parks and Wildlife Group (formerly National Parks and Wildlife Service) Office of Environment and Heritage:
• Department of Primary Industries:
  www.dpi.nsw.gov.au
• Standards Australia - ISO 14001:
  www.iso14000-iso14001-environmental-management.com
• Livestock Health and Pest Authorities (formerly Rural Lands Protection Boards):
  www.lhpa.org.au/home-page
• NSW Rural Fire Service:
  www.rfs.nsw.gov.au
Trust Handbook

- NSW Office of Water
- Landcare Projects Best Practice Manual:
- Planning for Bushfire Protection – A Guide for Councils, Planners, Fire Authorities, Developers and Home Owners (NSW Rural Fire Service and Department of Planning):

### Revisions to this chapter

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12 Native title and claims under the (NSW) Aboriginal Land Rights Act 1983

This chapter addresses the two different land justice schemes for indigenous people in NSW – claims under the Commonwealth Native Title Act (Cth) 1993 and claims under the NSW Aboriginal Land Rights Act (NSW) 1983.

Native title might exist on your reserve. Where it does, the basis on which the reserve was established remains valid and the use of the reserve for the specified reserve purpose takes precedence over any native title rights that may still exist in the land subsequent to its reservation and the establishment of the reserve trust.

However care must be taken to ensure that where native title may still exist, the procedures for addressing native title as set out in the Native Title Act (Cth) 1993 are followed.

This chapter explains your obligations in this regard and also the implications of the New South Wales system of Aboriginal land claims.

12.1 What is native title?

“........ the recognition by Australian law that some Indigenous people have rights and interests to their traditional laws and customs. The native title rights and interests held by particular Indigenous people will depend on both their traditional laws and customs and what interests are held by others in the area concerned. Generally speaking, native title must give way to the rights held by others. The capacity of Australian law to recognise the rights and interests held under traditional law and custom will also be a factor.”


12.2 Does native title exist over reserve land?

As a general rule, the reservation or dedication of land for a public purpose does not extinguish all native title rights and interests in the land, but might have the effect of extinguishing some rights.

Whether native title exists over a piece of land is a matter for determination by the Federal Court of Australia. The Court can determine that native title exists or does not exist based on evidence of continuing connection with the land or waters. Even if there has been no determination of native title or no claim lodged in respect of the land on your reserve, native title might still exist. Therefore native title might continue to exist over reserve land, whether or not there has been an official ‘determination’ by the Federal Court.

The impact on native title will depend on the purpose of the reservation. “If the act (reserve) affects any native title in relation to the land or waters concerned, the native title is nevertheless not extinguished, either wholly or partly. In such a case, if the act is wholly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title continues to exist in its entirety but the rights and interests have no effect in relation to the (reserve) and if the (reserve) is partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title continues to exist in its entirety, but
the rights and interests have no effect in relation to the (reserve) to the extent of the inconsistency.”

The National Native Title Tribunal (NNTT) maintains a register of the Federal Court’s decisions concerning native title. The NNTT can also provide information on whether a claim has been made in respect to any land. For more information about this, refer to the NNTT’s website at www.nntt.gov.au.

The Crown Lands Reserves Team will also be able to give you information about any determination of native title.

The Crown Lands Reserves Team can also advise you about:

- whether any previous ‘exclusive possession act’ applied to the land making up your reserve (for example, a previous freehold title or lease)
- the effect that any public works undertaken on the land may have had on native title.

12.3 Native title claims over reserved land

The making of a claim confers no special rights on the applicants, although, if the claim passes the registration test provided for in the Native Title Act (Cth) 1993, that Act confers certain procedural rights on the applicants such as a right to receive notice and to comment on some proposed acts affecting native title, and the right to negotiate in relation to potential compulsory acquisitions of native title and the grant of a right to mine.

A reserve trust might be notified by the NNTT that a claim has been lodged. If so, the reserve trust can apply to become a party to the Federal Court proceedings. However, before doing so the reserve trust should consult the Crown Lands Reserves Team as being a party could be both time-consuming and costly. The Minister responsible for Crown Lands is responsible for managing claim applications affecting land and water in New South Wales and is a party to every claim. Accordingly, the Minister might be in a position to represent the reserve trust’s interests.

The reserve trust might be asked to provide information concerning the use and management of the reserve and the public works that exist on it, to help the Minister in the negotiation of the claim and also in any court proceedings. In some cases, the reserve trust might be asked to help the Minister to negotiate outcomes and to play an active role in those negotiations.

If the Federal Court determines that native title exists in a piece of land, the NSW State Government will attempt to negotiate an Indigenous Land Use Agreement (ILUA) which addresses any land management issues with respect to the public lands covered by the determination or recognition. In such cases, the reserve trust will be included in the negotiation of the ILUA if the management of the reserve is to be affected or is an issue.

12.4 When native title has not been extinguished

If native title has not been extinguished over the land making up a reserve, the reserve trust must not undertake any activity which would ‘affect’ native title unless it is done in compliance with the Native Title Act (Cth) 1993. Under that Act, an action ‘affects’ native title if it operates in such a way as to extinguish any native title that exists, or if it is inconsistent with the ‘continued existence, enjoyment or exercise of native title rights and interests’.

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10 The Native Title Act (Cth) 1993 s 238.
11 Ibid.
Reserves created on or before 23 December 1996

Under Subdivision J of the Native Title Act (Cth) 1993, all acts undertaken in the care, control and management of the reserve may be validly undertaken even though they might affect native title—provided the action is undertaken in good faith and is either in accordance with the reservation, or the actions impact on native title is no greater than the impact could have been by any action undertaken in accordance with the reservation. An action will not be regarded as undertaken in good faith if it is undertaken for the principal purpose of extinguishing or otherwise affecting native title.

Subdivision J does not necessarily authorise all acts undertaken in relation to an additional purpose authorised under Sections 34A, 112A and 121A of the Crown Lands Act (NSW) 1989. However, if the new purpose has no greater impact than anything that can be done under the original reservation purpose then Subdivision J (specifically s.24JA) of the Native Title Act (Cth) 1993 would operate to authorise those acts.

Public works

A public work is defined in the Native Title Act (Cth) 1993 to include a building or other structure (including a memorial) that is a fixture; a road, railway or bridge; a well or bore for obtaining water or any major earth works (that is, earth works other than in the course of mining whose construction causes major disturbance to land, or to the bed or subsoil under waters).

Where a proposed action that is a public work is likely to affect native title, before that public work is undertaken a notice must be served on:

- any registered native title body corporate (i.e. corporations established to hold native title where there has been a determination of native title) for the land
- any registered native title applicant for the land
- the Aboriginal and Torres Strait Islander Representative Body for NSW (currently NTSCORP).

The notice must describe the proposed action and provide an opportunity for the recipient to comment on the proposal. The recipient must be given sufficient time in which to comment, usually between 28 and 60 days. The Crown Lands Reserves Team can help you draft appropriate notices and responses and can also advise whether the land is affected by a native title determination or a registered claim.

Where a public work is validly constructed or established the act extinguishes any native title in relation to the land or water on which the completed or established public work is situated and the extinguishment is taken to have occurred when the construction or establishment of the public work began.

Leases and licences

Where the reserve trust proposes to grant a lease, licence or other right which authorises or requires the holder to undertake a public work, the granting of the lease, licence or right is to be regarded as a proposal to undertake a public work.

The granting of a lease or licence that does not require or authorise the construction of a public work does not require the service of any notice. Subdivision J provides that such leases do not extinguish native title.

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12 Section 24JA.
13 Section 24JB.
Native title holder’s right to compensation

A native title holder has a right to claim compensation for any effect an action undertaken under Subdivision J of the *Native Title Act (Cth)* 1993 has on native title. The legislation imposes this obligation to pay compensation on to the State, but in some circumstances the State may pass that obligation on to the reserve trust.

You will need to discuss this issue with the Crown Lands Reserves Team if you propose to undertake actions which will extinguish native title and either there is a determination of native title in force, or a registered claim affects the land.

**Reserves created after 23 December 1996**

Subdivision J of the *Native Title Act (Cth)* 1993 does not apply to reserves created after 23 December 1996.

It may be possible to undertake some actions that have minimal effect on native title under Subdivision L (section 24LA) as “low impact acts”, provided the act takes place before, and does not continue after, an approved determination of native title is made in relation to the land or water where the determination holds native title exists.

Low impact acts might include:

- actions that do not involve the construction of buildings, fixtures (other than a fence) or clearing or excavations
- the granting of a licence or other right which does not confer any right to exclusive possession or permit the construction of buildings, fixtures (other than a fence) or clearing or excavations.

Generally, clearing which is reasonably necessary for public health and safety, for bushfire protection, or for environmental protection work can be undertaken or authorised under Subdivision L.

Any proposal to prepare a plan of management, undertake public works, or grant leases or licences which may affect native title and which do not fall under Subdivision L should be discussed with the Crown Lands Reserves Team.

The following acts are NOT low impact acts under the *Native Title Act (Cth)* 1993:

- A grant of freehold estate; or
- The grant of a lease; or
- The conferral of a right of exclusive possession over any of the land or water; or
- Excavation or clearing of any of the land or water; or
- Mining; or
- Construction of any building, structure (other than fencing or a gate); or
- Disposal or storing on the land or water of any garbage or poisonous, toxic or hazardous substance.

**12.5 Claims under the Aboriginal Land Rights Act 1983**

Section 36 of the New South Wales *Aboriginal Land Rights Act 1983* permits Aboriginal Land Councils to claim title to Crown land (including reserves) which is not lawfully used or occupied, or needed or likely to be needed for an essential public purpose.
Unlike native title, a successful claim will result in the granted lands being transferred to the relevant Land Council and in the consequential revocation of the reserve, or that part of it affected by the successful claim.

The Minister is responsible for investigating and determining land claims. If the land is determined to be claimable Crown land, the Minister must grant the claim and transfer the freehold of the land. If the land is not determined to be claimable Crown land, the Land Council has a right to appeal to the Land and Environment Court.

If a claim is lodged, Crown Lands will seek the advice of the reserve trust concerning the use and occupation of the land and whether the land is needed for an essential public purpose. In some cases this will be followed up by a request for further information (especially if an appeal has been lodged) from the Aboriginal Land Claim Investigation Unit (within Crown Lands).

**Proving lawful use or occupation**

The courts have held that simply creating a reserve trust does not establish that the land making up the reserve is being lawfully used or occupied. The use must be more than notional and occupation should include conduct amounting to actual possession and some degree of permanence. Relevant evidence that the land is being lawfully used or occupied could include details of plans of management, work undertaken on the reserve, expenditure, plans for future work, use by the public, and licences and rights granted.

**Proving essential public purpose**

Whether land is needed or likely to be needed for an essential public purpose depends on the circumstances in any particular case. Most purposes for which lands have been reserved or dedicated are considered relevant public purposes under section 36 of the Aboriginal Land Rights Act, but whether or not it is “essential” and “needed” or “likely to be needed” for that purpose is very much a question of evidence and the circumstance of each case as at the date the Aboriginal land claim was made.

Crown Lands would seek the advice of the reserve trust if this becomes an issue.

**12.1 Regulatory requirements**

- *Aboriginal Land Rights Act (NSW)* 1983
- *Native Title Act (Cth)* 1993
- *Native Title (New South Wales) Act (NSW)* 1994

**12.2 Further guidance**

- National Native Title Tribunal
- Aboriginal Land Rights in NSW

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**Revisions to this chapter**

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13 Managing buildings, assets and infrastructure

Crown land is a valuable public asset. The land must be managed prudently to ensure that the greatest environmental, social and economic benefits to the State and the public are achieved while minimising safety or risk issues. The efficient management of buildings, assets and infrastructure assists in achieving these benefits.

Keeping buildings and structures in good condition is also important to extending the life of the facility, without the need for costly and time-consuming rebuilding. Crown Lands requires that reserve trusts keep a register of structures, facilities, and other assets—including the land itself—recording the value and condition of all the assets.

This chapter provides guidance to help you manage the assets of your reserve effectively.

13.1 Asset register

Section 122 of the Crown Lands Act and clause 33 of the Crown Lands Regulation requires all reserve trusts—unless they have been granted an exemption—to keep a number of records, including a plant and asset register. Corporate reserve trust managers must keep this register of reserve trust assets separate from the corporation’s own asset register. An asset register is critical for the prudent management of assets, including buildings and infrastructure. It should cover all aspects of the likely working life of plant and equipment, including depreciation, providing the financial and non-financial information necessary to manage assets in a sustainable manner.

The reserve trust’s asset register should provide information for the required annual report to the Minister on the value and condition of assets over $5,000.

Overall, the asset register should indicate to the reserve trust when replacement or refurbishment is required as assets near the end of their economic life.

### Contents and structure of the asset register

The asset register should:

1. contain data on asset identification, performance, disposal and accounting, and
2. be integrated with the financial and budgetary strategies.

Chapter 22 provides further information on the asset register. Appendix C contains a sample asset register.

13.2 Efficient siting and scaling of structures

If the reserve trust plans to develop any buildings, assets or infrastructure, you must consider the likely impacts of that development. These will include environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

Further, reserve trusts should take care that decisions regarding the siting and design of developments proposed now do not unduly preclude future development possibilities.

To ensure suitable siting and scaling of proposed buildings, assets and infrastructure, it is recommended that a review panel be established. This panel could consist of some reserve trust representatives with planning or building experience, and other people with relevant skills, such as environmental planners.
The panel should consider a wide range of factors including:

**Appropriate siting (placement) of any proposed development.**

Infrastructure should be positioned to achieve the best and most efficient use of the land and the development, and to satisfy legislative and policy requirements. For instance, it would be most efficient to develop public amenities such as toilets, picnic tables and barbeques in one area with good road and parking access. This would be more convenient for the public while sustaining the surrounding land and environment.

**Efficient scaling of development of infrastructure and assets.**

An appropriate size of the development must be determined in relation to the size of the land, its purpose, expected level of usage, ongoing future demand, etc. It would not be efficient practice to develop buildings, assets and infrastructure on a scale which exceeds future needs, or would have a maintenance requirement greater than the reserve trust’s funding capabilities.

These general guidelines apply (but are not limited) to buildings, toilets, picnic facilities, playground equipment and roadways.

### 13.3 Fire management

Protection of assets and people on site from fire must be a high priority for all reserve trusts. The importance of fire management is highlighted in the following chapters of this Handbook:

- Chapter 7 Managing risk.
- Chapter 8 Insurance and liability.
- Chapter 9 Emergency management.
- Chapter 10 Occupational health and safety.
- Chapter 11 Environmental responsibilities and land management.
- Chapter 19 Sources of Income.

At the most fundamental level, all fire protection systems (e.g. hydrants, hoses, extinguishers, smoke alarms and fire doors) must comply with Australian Standards and be operative at all times. These fire protection systems must be regularly inspected and serviced as per the Australian Standards. Evacuation procedures must be developed, in place, and communicated to staff, any reserve residents and visitors.

All reserve trusts are required by Schedule 4 of the Crown Lands Regulation to keep records of details of fire prevention. These records then also assist in providing information for the annual report to the Minister.

**Caravan parks**

Crown Lands has a specific policy in respect to fire protection within caravan parks:

*Fire Protection Policy for Caravan Parks on Crown Reserves and Leasehold Lands*

Reserve trusts managing a caravan park are required to implement this policy. In addition to matters relating to bushfire management (also outlined in Chapter 11), the policy requires all on-site caravans and cabins to have, as a condition of their occupation on Crown lands, a smoke alarm, an appropriate dry chemical extinguisher, and a fire blanket.

Caravan park managers are to ensure all caravan and camp sites have appropriate separation to prevent ignition from each other. The local fire authority or council should be able to provide advice on this.
An invitation should be given to the local fire authority to visit the caravan park on a regular basis so that they can become familiar with the layout of the park as well as the location and type of fire hydrants.

The *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* requires that hydrants and hose reels must be provided at caravan parks and many camping areas. This Regulation must be complied with at all times.

From 25 February 2011 the *Environmental Planning and Assessment Regulation 2000* requires smoke alarms to be installed in all existing and new moveable dwellings. A moveable dwelling includes:

- caravans, motor homes, campervans, holiday vans,
- buses and other vehicles converted to provide sleeping accommodation, regardless of whether they are registered for road use or not, and
- annexes and associated structures made of non-flexible material (not tents).

Caravan park managers are required to ensure that all moveable dwellings made available for human occupation are fitted with appropriate smoke alarms.

### 13.4 Maintenance plans and inspections

The reserve trust should develop a systematic approach to maintenance as part of the effective management of its buildings, assets and infrastructure. This systematic approach should consist of routine maintenance and regular inspections, which in turn should incorporate condition assessments to identify maintenance needs.

Standardised inspection forms can assist to ensure a consistent process and sound record-keeping.

A systematic approach to maintenance management aims to achieve the following outcomes:

- the recognition, protection and enhancement of significant assets and infrastructure
- establishment of the level of management resources required to manage the assets prudently
- establishment of best management practice for each reserve.

An outline of a systematic approach to maintenance is shown in Figure 13.1.
### Maintenance plans

The reserve trust should develop written maintenance plans specific to its reserve, to assist in the scheduling of routine inspections and maintenance.

- The plan should specify how often to inspect the infrastructure and potentially hazardous natural features (such as waterways and trees over picnic or parking areas).
- An ongoing record of inspections, with dates, should be maintained. If there is litigation, this record can be produced in court to substantiate that care has been taken.
- When developing the plan, the reserve trust should observe environmental protection principles to conserve natural resources (including water, soil, flora, fauna, and scenic quality). (Refer to Chapter 11).
- Plans should be clear, simple and provide a straightforward process to be followed. This will ensure they are easily understood by all users, including volunteers who might be new to the process. In this regard it might be useful to develop a standard maintenance and inspection form.
- All premises, fittings and plant must be kept in sound condition.
- Only competent people should be used to perform maintenance.
- All reasonable precautions should be taken to prevent both bodily injury and damage to property. Reserve trust managers and their employees must comply with the statutory obligations and any by-laws or regulations imposed for the safety of people or property. Specifically, the reserve trust must observe the requirements of the Work Health and Safety Act 2011, to protect the welfare of employees and visitors. (Refer to Chapter 10).

### Routine maintenance and inspections

Crown Lands requires that reserve trust managers undertake regular inspections of the reserve, facilities and equipment to ensure safety hazards do not arise.

- All assets, buildings and infrastructure will require some inspections and maintenance. For example, it may be necessary to inspect the quality of play equipment, safety of built structures, access arrangements etc.
- Frequency of inspections will depend on the type of assets and infrastructure. For example, high-risk infrastructure such as gas barbeques may require monthly inspections, whereas picnic tables or footpaths may only require six-monthly inspections.
- Where there is doubt about the safety of facilities or equipment, remedial action should be taken. This might include removing equipment or prohibiting use or access through signs, barriers or fences.
- It is likely that the key maintenance requirements will include mowing, weed removal, irrigation, building/equipment repairs, painting, rubbish collection, and addressing damaging acts like vandalism.

### Assessment of condition

Part of the routine maintenance and inspection process is assessment of the current condition of land, infrastructure and facilities. Reserve trust managers should maintain written records of the ongoing conditions over time.

- The assessment may describe major changes to vegetation, landscape and land, as well as to physical assets such as buildings and infrastructure.
- Changes in the condition of the land and assets can then be related to management practices. The condition assessment will reflect the rate of asset deterioration or improvement from maintenance practices, helping the reserve trust to track the value of assets for its asset register.
- Condition assessments are also important for workplace health and safety management, in ensuring that machinery and assets are adequately maintained and operating safely.
- Installation of and maintenance of smoke alarms in moveable dwellings as required.
Routine maintenance, inspections and condition assessments will produce the information necessary to identify the maintenance needs of the reserve.

- Inspections of the land will reveal areas which require immediate action to maintain safe standards.
- The condition assessment will highlight aspects of buildings, assets and infrastructure which could be improved by major maintenance projects, and identify opportunities for more efficient grouped and precautionary maintenance.
- Both the inspections and the condition assessment will indicate the necessary level of routine maintenance required to sustain resources.
- As the specific maintenance needs are identified, detailed plans of these needs should be developed and incorporated into the maintenance plans. These should include specifications of the maintenance needs, how they are to be realised, funding requirements, expected benefits, anticipated timeframes, etc.

For example it may be identified that the reserve’s access road requires annual maintenance to prevent substantial deterioration. Based on past experience of maintaining the road, the reserve trust could develop a plan which includes estimates of cost, how long access will be blocked during the maintenance repairs, and how the maintenance is most efficiently completed, i.e. use of specific contractors, donated labour, etc.

### 13.5 Upgrading and replacing infrastructure

The reserve trust is responsible for upgrading and replacing infrastructure, buildings and facilities, with a view to achieving maximum asset life. The scale and requirements of any infrastructure development will depend on your particular resources, assets, and perceived public demand or need. You should also take into account the maintenance condition assessment reports and any plan of management for the reserve.

When considering developments and upgrading of infrastructure, buildings, etc, the reserve trust will need to observe the regulatory and statutory requirements and deal with and make application to appropriate authorities as required. Under the Environmental Planning and Assessment Act 1979, ‘development’ includes the erection of a building, the carrying out of a work, demolition, subdivision, and changes in the use of land.

‘Development’ can involve a very minor work on land such as the erection of fences or advertising signs, or it can involve no physical change to the land at all. For example, changing the use of land from a cow paddock to a sports field would be a form of ‘development’, even if no structures were erected. Therefore, it is critical that reserve trust managers be very conscious of possible regulations and requirements which might apply.

Before considering any development, refer to Chapter 12 and, if appropriate, consult the Crown Lands Reserves Team to clarify any possible native title issues.

### 13.6 Development controls and approvals

The Environmental Planning and Assessment Act 1979 (EP&A Act) regulates development in NSW, and has established a framework for the control and assessment of development proposals consisting of environmental planning instruments (which contain the development controls) and an application, assessment and approval process. The application, assessment and approval process differs according to the nature and scale of the development proposed.
Environmental planning instruments

Environmental planning instruments are made under the EP&A Act and contain the controls that apply to land or to certain types of development. There are three types of environmental planning instruments, which could apply to your reserve:

- **Local Environmental Plan (LEP):** These are prepared by the local council and approved by the Minister for Planning & Infrastructure. LEPs divide a local government area into a series of zones according to land use types (e.g. residential, commercial or industrial), specify the developments which are permissible in each zone, and contain development standards that must be complied with.

- **State Environmental Planning Policy (SEPP):** These cover particular types of development issues considered to be of State-wide significance. SEPPs can relate to certain types of development wherever they occur (e.g. SEPP 21 – Caravan Parks), or to certain areas (e.g. SEPP 14 – Coastal Wetlands), or to certain categories of development (e.g. ‘exempt development’ and ‘complying development’).

- **Regional Environmental Plans (REPs):** As of 1 July 2009 REPs are deemed to be SEPPs. The removal of the REP layer is to simplify the State’s planning system. No new REPs will be created, and existing REPs (now deemed to be SEPPs) will be progressively reviewed to see if they can be repealed.

A full list of environmental planning instruments is at: www.legislation.nsw.gov.au

The development application, assessment and approval system

Development is defined in the EPA Act as:

- the use of land
- the subdivision of land
- the erection of a building
- the carrying out of a work
- the demolition of a building or work
- any other act, matter or thing that is controlled by an environmental planning instrument.

Development is categorised by type according to definitions contained in an environmental planning instrument. It is necessary to classify the proposed development by its relevant definition, as the zoning table will list developments by those definitions. For example, a boat landing facility or a playground may be defined as a ‘tourist facility’, or a building or place owned or controlled by a reserve used for public purposes may be defined as a ‘community facility’.

Zoning generally comes from a LEP, and can be determined either by consulting the LEP maps held at the local council or by applying for a Section 149 Certificate (of the EPA Act) from your local council. This certificate will explain the zoning of the land, the activities which are permissible on that type of land, and the environmental planning instruments (EPIs) which apply. A fee is applicable to obtain a Section 149 certificate from council.

The process for obtaining consent for development, or whether consent is required at all, will depend on the categorisation of the development within an environmental planning instrument and the zoning of the land. The following categories of development apply:

- ‘development with consent’ requires submission of a development application to a consent authority (generally a local council) and assessment and approval of that application. The process for ‘development with consent’ is set out in Part 4 of the EP&A Act.
• ‘State significant development’ (Division 4.1 of the Act) and ‘State significant infrastructure’ (Division 5.1 of the Act) refers to proposals defined as ‘state significant’ in State Environmental Planning Policy (State and Regional Development) 2011 (or as otherwise determined by the Minister for Planning & Infrastructure). These proposals tend to be of large scale and particular processes relating to application, assessment and approval apply.

• ‘activities’ are development proposals that do not require a development consent, however are still required to undergo an environmental assessment in accordance with the procedures set out in Part 5 of the EP&A Act.

• ‘exempt development’ is development that is regarded as minor enough to be able to proceed without the need for any development consent (under Part 4) or any environmental assessment (under Part 5).

• ‘complying development’ is development that does not require development consent provided it is consistent (i.e. “complies”) with a pre-set list of criteria. Complying development can proceed if a certificate (“complying development certificate”) is issued confirming that all such criteria have been met.

Exempt Development

Development that is exempt is listed in either an LEP, SEPP 4 – Development Without Consent and Miscellaneous Exempt and Complying Development, SEPP 60 – Exempt and Complying Development, SEPP (Exempt and Complying Development Codes) 2008 or SEPP (Infrastructure) 2007. There are a wide range of development types that are exempt, including fences, shade structures, water tanks and certain types of signs.

It is necessary to consult with the local council to confirm if a development is exempt, as the relevant LEP or SEPP may specify certain areas where the exempt provisions do not apply, and the types of development categorised as exempt varies from council to council. In particular, development is not usually exempt if it is on habitat which is declared as ‘critical habitat’ or in ‘environmentally sensitive areas’. Land reserved or dedicated under the Crown Lands Act for the preservation of flora, fauna, or geological formations or for other environmental protection purposes is classed as an ‘environmentally sensitive area’. If a development is confirmed to be exempt development, then no application for consent is required. Environmental assessment under Part 5 of the EP&A Act is also not required for exempt development.

Complying Development

Complying development is routine development (such as dwellings, alterations and additions to buildings and some changes of use, etc) which may be carried out “as a right” provided it fully complies with the requirements and conditions nominated for that development. Development categorised as complying is listed either in an LEP, SEPP 4 – Development Without Consent and Miscellaneous Exempt and Complying Development, SEPP 60 – Exempt and Complying Development, SEPP (Exempt and Complying Development Codes) 2008 or SEPP (Infrastructure) 2007.

An application for a complying development certificate must be lodged with the local council or a private certifier holding accreditation under the EP&A Act. A plan of the proposed development, the applicable fee and all other requirements specified on the application form must be submitted to the council or private certifier. Accredited certifiers are private sector professionals accredited to issue certain certificates and perform specific duties under the EP&A Act, and can be used instead of the council to issue a complying development certificate. To find an accredited certifier, consult the website of the Building Professionals Board (www.bpb.nsw.gov.au).
Development that requires consent

Development that may be carried out only with development consent is listed in either an LEP or SEPP. The majority of development falls within this category, and includes development such as the construction or alteration of buildings and structures, subdivision, and the change of use of buildings or land.

A development application (DA) is required to be submitted to the local council seeking development consent for the proposal. A DA form (obtained from the council) must be submitted with the relevant fees, plans of the proposed development, and a "statement of environmental effects" which describes the proposed development and its environmental impacts. A Species Impact Statement will also be required to be submitted with the DA if the land is or is part of critical habitat14 or if the development is likely to have a significant impact on threatened species. The information to be included with a DA is listed in Schedule 1 of the Environmental Planning and Assessment Regulation 2000, however most councils will also have a checklist.

The required Statement of Environmental Effects may be prepared by the reserve trust or by a consultant (such as a town planner). It must indicate the environmental impacts of the development, how the impacts have been identified, and the steps which will be taken to protect the environment, lessen harm to the environment or remove those impacts altogether.

A Species Impact Statement (SIS) assesses the significance of the effect of a proposal on threatened species, populations and ecological communities, or their habitats. A SIS is to be prepared by a qualified person who has been accredited by the Director-General of the Office of Environment & Heritage and in accordance with requirements in the Threatened Species Conservation Act 1995 or Fisheries Management Act 1994. A SIS is to include a full description of the proposal, detailed information about threatened species and populations in the area, an assessment of the likely effect of the proposal on those species, a description of any feasible alternatives and any mitigation measures proposed.

The EP&A Act provides that a DA can only be made by the owner of the land or a person who has the landowner's written consent. Third parties and lessees proposing development on reserves must receive written consent from Crown Lands to lodge a DA before the DA is lodged with the consent authority.

Where a reserve trust is to lodge a DA, the EP&A Act requires that a copy of the DA must be provided to Crown Lands before it is lodged with the consent authority. Any DA proposal must be consistent with the reserve purpose (or approved additional purpose) and any adopted plan of management. Reserve trusts are encouraged to discuss their proposal with Crown Lands prior to preparation of a DA if the proposal is of a significant size or value.

Integrated Development

Development that requires development consent from a council and also an approval from another government department under other nominated legislation is categorised as ‘integrated development’. Section 91 of the EP&A Act lists the other nominated required approvals which trigger the integrated development provisions. This could include a permit from the Office of Environment & Heritage under the National Parks and Wildlife Act 1974 to destroy or damage a known Aboriginal object or place, or an approval from the Heritage Branch of the Office of Environment & Heritage to carry out works affecting a heritage item listed on the State Heritage Register.

The application and approval process for integrated development is similar to that for development that requires consent, as described above; however the council will require additional plans and fees so the application can be referred to the other government agencies. It

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14 A list of critical habitats can be found at: www.environment.nsw.gov.au/criticalhabitat/CriticalHabitatProtection.htm
is the responsibility of the council to refer the application to these other agencies; however the reserve trust is responsible for identifying those other required approvals on the DA form and submitting the relevant fees and plans.

**State Significant development**

State significant development, formerly known as Part 3A major projects, is development for which the Minister for Planning (or delegate) is the consent authority, and generally comprises large scale development with State or regional significance. State significant developments are declared by the Minister by way of an order in the Government Gazette, or are listed in SEPP (State and Regional Development) 2011, and include State Government infrastructure projects, particular sites or localities declared State significant, and other projects declared by the Minister for Planning.

State significant development (dealt with under Division 4.1 of the EP&A Act) applies to major projects significant to the NSW economy and large-scale or complex projects that may involve significant environmental impact.

State significant infrastructure (dealt with under Division 5.1 of the EP&A Act) applies to large-scale linear infrastructure such as rail lines, roads, electricity transmission lines, pipelines, ports and major water supply systems.

Applications for State significant development or infrastructure are to be made to the Department of Planning and Infrastructure. Reference should be made to the Department of Planning and Infrastructure website for application requirements.

Any reserve trust considering or approached by a third party or other government authority to undertake State significant development or State significant infrastructure within their reserve should first consult with the Crown Lands Reserves Team.

Former Part 3A “major projects” continue to be assessed under those previous provisions, and are listed in SEPP (Major Development) 2005.

**Designated Development**

Designated development is “development that requires consent” that is likely to have significant impacts on the environment and is subject to special regulatory procedures. A list of designated developments is contained in Schedule 3 of the *Environmental Planning & Assessment Regulation 2000*, and includes developments such as marinas, intensive agricultural activities, aircraft landing facilities and extractive industries. Some environmental planning instruments will also specify that developments in particular areas are designated. SEPP 26-Littoral Rainforests is an example.

“Designated development” requires a DA to be lodged with the relevant consent authority (either the council or the Department of Planning and Infrastructure), together with the relevant fees, plans and an environmental impact statement (EIS).

The EIS considers in detail all potential impacts of the development on the environment of the site and surrounding area and will generally be required to be prepared by an appropriately qualified expert. An EIS must contain the information specified in Schedule 2 of the *Environmental Planning & Assessment Regulation 2000*, including:

- a description of the development
- a description of the environment which is likely to be affected by the development
- an analysis of the likely impacts of the development
- measures proposed to lessen harm to the environment caused by the development
- any feasible alternatives to the development, and
• a justification for carrying out the development as proposed, having regard to biophysical, economic and social considerations, including the principles of ecologically sustainable development.

Reserve trusts considering a designated development should discuss their proposal with Crown Lands prior to preparation, and must provide a copy of the DA to Crown Lands before it is lodged with the consent authority. If a designated development is proposed by a third party or a lessee, then written consent to submit the DA is required from Crown Lands prior to lodgement.

**Prohibited Development**

Environmental planning instruments will nominate certain types of development that are prohibited in each zone. Consent cannot usually be granted to prohibited development, however, SEPP (Infrastructure) 2007 and the provisions relating to State significant development and State significant infrastructure provide some exceptions to enable consent to be granted for prohibited development.

**Development comprising clearing of native vegetation**

Clearing of native vegetation may require development consent under the *Native Vegetation Act 2003*, regardless of the provisions of any environmental planning instruments. Native vegetation is vegetation that is indigenous to NSW, and clearing includes cutting down, felling, thinning, logging or removing native vegetation, or killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation.

The clearing of native vegetation should be avoided where possible. Where clearing of native vegetation is required, the reserve trust may apply to the local Catchment Management Authority (CMA) for either development consent or approval of a Property Vegetation Plan (PVP). A PVP is a voluntary but binding agreement with a CMA which nominates and approves clearing and also incorporates positive land management requirements. The reserve trust should consult the relevant CMA to determine which process is best suited to the reserve land, and what process will apply to obtain approval. Before a PVP can be approved by the CMA, written consent from Crown Lands, on behalf of the Minister administering the Crown Lands Act, is required. A list of CMAs and their contact details is available at [www.cma.nsw.gov.au](http://www.cma.nsw.gov.au).


**The development consent process**

When assessing an application for development consent, the consent authority must consider the matters listed in Section 79C of the EP&A Act, which are:

• the provisions of any environmental planning instrument and development control plan, and any draft environmental planning instrument that has been exhibited;

• the likely impacts of the development, including environmental impacts on the natural and built environment, social impacts and economic impacts;

• the suitability of the site for that development;

• any submissions made in relation to the proposal, including government agencies and nearby landowners or residents; and

• the public interest.

DAs may be granted consent, either conditionally or unconditionally, or may be refused. If a local council is the consent authority, the determination will be made by the local councillors at a council meeting, or it may be delegated to council officers. If a Joint Regional Planning Panel is the consent authority, the determination will be made by the members of the panel at a meeting.
of the panel. If the Minister for Planning and Infrastructure is the consent authority, the
determination will be made either by the Minister or it may be delegated to the senior officers of
the Department of Planning and Infrastructure or to the Planning Assessment Commission.

13.7 Environmental assessment of “development without consent”

Developments that do not require development consent and are undertaken by a public authority
or undertaken on public land and/or require some other type of approval from a public authority
require an assessment of their environmental impact in accordance with the provisions of Part 5
of the EP&A Act. Note that development categorised as ‘permitted without consent’ differ to
‘exempt development’ and ‘complying development’.

For the purposes of the EP&A Act, a reserve trust is a public authority.

It must be noted that even when a development does not require consent under the EP&A Act, it
still must be consistent with the declared purpose (or approved additional purpose) of the
reserve under the Crown Lands Act.

Developments that require environmental assessment under Part 5 of the EP&A Act are called
‘activities’. The definition of ‘activity’ is similar to that for ‘development’.

SEPP (Infrastructure) 2007 designates a number of types of infrastructure and works as
‘development without consent’ when they are carried out by public authorities. Where a local
council as a reserve trust manager proposes to carry out development that
SEPP (Infrastructure)

provides does not require consent and that development involves the construction of large
or significant permanent structures on a Crown reserve (e.g. roads, car parks, visitors’ centres,
maintenance depots, outdoor recreation facilities such as skate parks), the council must notify
the Crown Lands Reserves Team in writing of the details of the development and proposed
construction program prior to carrying out the activity.

An environmental assessment under Part 5 of the EP&A Act must “examine and take into
account to the fullest extent possible all matters affecting or likely to affect the environment”.
This required environmental assessment is designed to encourage both the applicant and the
decision maker to consider what measures can be adopted to minimise the environmental
impact of the proposal.

The factors that must be considered include:

- conservation agreements and plans of management under the National Parks and
  Wildlife Act 1974 and joint management agreements under the Threatened Species
  Conservation Act 1995;
- the effect on any wilderness area;
- the effect on critical habitat, threatened species, populations and ecological
  communities and their habitats and protected fauna and native plants; and
- all environmental and related factors set out in clause 228 of the Environmental
  Planning & Assessment Regulation 2000.

Where the activity is likely to have significant impacts or significantly affect the environment
(including critical habitat) or threatened species, populations or ecological communities or their
habitats, additional procedures will apply, including the possibility that the proposal will require
an Environmental Impact Statement (EIS) and/or a Species Impact Statement and/or become a
“State significant project” subject to assessment by the Department of Planning & Infrastructure

Further information about environmental assessment of activities under Part 5 of the EP&A Act
such as:
i. a standard format that can be used for carrying out an environmental assessment (where an EIS is not required);

ii. a guide to using this Standard Format; and

iii. two examples of completed assessments to illustrate the extent of considerations required.

Reserve trusts are encouraged to contact the Crown Lands Reserves Team for further advice and assistance.

13.8 Heritage/cultural values

The reserve trust is responsible for protecting and preserving aspects of heritage or cultural value on the reserve. Such resources may include buildings, works, relics, or other matters of Aboriginal or non-Aboriginal historic, scientific, social, archaeological, architectural, natural or aesthetic significance. The responsibilities relating to items of heritage or cultural value include the seeking of required approvals to carry out works to them, and the keeping up of a minimum level of repair and maintenance to prevent their degradation.

Where feasible or appropriate, reserve trusts should seek expert advice on the level of heritage significance for any item or feature on their reserve. A good source of information is the local council. Many councils in NSW have a free or low cost heritage advisory service. The heritage advisor can give expert advice on:

- how to look after heritage assets
- how to incorporate change, e.g. wheelchair access and fire protection
- work which does not require formal council approval (most conservation work, e.g. repairs and repainting, does not require approval)
- funding sources, including funding through the local council itself.

There are a number of local, State and Commonwealth statutory controls that may apply, and measures which can be invoked to protect cultural and natural heritage features and places. If there is any doubt about whether any of the following legislation applies, advice should be obtained in writing from the relevant government agency listed for the following legislation.

- **Environmental Planning and Assessment Act 1979** enables heritage items, such as buildings, structures, landscape items or places known as ‘conservation areas’, to be listed in an LEP or an SEPP. Particular controls then apply to listed heritage items. The ‘exempt development’ provisions often do not apply, and development proposals may require submission of heritage impact statement as part of a development application. Contact the local council for more information.

- **Heritage Act 1977** focuses on items that have State heritage significance. These are listed on the State Heritage Register administered by the Heritage Branch of the Office of Environment and Heritage. An application to carry out works affecting an item on the State Heritage Register will generally require separate approval under the Heritage Act (though can be combined with a development application as ‘integrated development’). Contact the Heritage Branch for more information.

- **National Parks and Wildlife Act 1974** provides for the protection and management of Aboriginal objects and places in NSW. Works that will damage or destroy known Aboriginal objects or places will require approval from the Parks and Wildlife Group at the Office of Environment and Heritage (though can be combined with a development application as ‘integrated development’). Contact the Parks and Wildlife Group for more information.
• **Environment Protection and Biodiversity Conservation Act 1999.** This Commonwealth Act protects Australia’s National Estate, which consists of places of aesthetic, historic, scientific or social significance owned by the Commonwealth or that have heritage value to the nation. These items are listed on the Australian Heritage Database, administered by the Commonwealth Department of the Sustainability, Environment, Water, Population and Communities (DSEWPaC). An approval under the Act may be required if a proposal is likely to have a significant effect on a listed item. Contact DSEWPaC for more information.

The State Heritage Inventory, maintained by the Heritage Branch of the Office of Environment and Heritage provides a handy list of all heritage items listed in an LEP, an SEPP, or on the State Heritage Register:

www.heritage.nsw.gov.au/07_index.htm%20
Regulatory requirements

The following legislation, regulation and policies might be applicable to your management of assets and infrastructure on Crown reserves. This list is not exhaustive, and should only be used as a guide as to which regulations may apply.

Documentation

Crown Lands Act 1989 (section 122)
Crown Lands Regulation 2006 (clause 33, and Schedule 4)

Management Plans

Crown Lands Act 1989 (sections 112 - 116)
Crown Lands Regulation 2006 (clause 34)

Work Health and Safety Act 2011

Development and Planning

Environmental Planning and Assessment Act 1979 Environmental Planning and Assessment Regulation 2000

Native Vegetation Act 2003

Threatened Species Conservation Act 1995

Heritage/Cultural Value

Heritage Act 1997

National Parks and Wildlife Act 1974

(Commonwealth) Environmental Protection and Biodiversity Conservation Act 1999

Further guidance

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the Crown Lands Act 1989, can be found at:
  www.legislation.nsw.gov.au
- For further guidance on the efficient management of buildings, infrastructure and assets, or environmental and development assessment requirements, contact the Crown Lands Reserves Team.

Revisions to this chapter

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In many cases, the major activities that occur on reserves are not carried out by the reserve trust itself. Reserves are used by a wide range of bodies, including sporting clubs, show and agricultural societies, commercial organisations and individuals providing services for the community.

In these cases, because the reserve trust is not conducting the activity, the reserve trust should not take responsibility for the risks involved and should enter into a suitable agreement that passes the responsibilities to the lessee or licensee. A lease or licence should be granted to document the terms and conditions on which the other party may use the reserve.

Reserve trusts can enter into leases and licences with individuals, groups and organisations, schools, companies or even the local council, who may want to use all or part of the reserve on a temporary or ongoing basis. Unless it is for a short-term, low-impact use (involving a temporary licence), the Minister’s consent to enter the agreement must be obtained.

A leaseholder has effective control of the leased area in the same way someone renting a house has sole rights to use the house. Any rules about what the leaseholder can and cannot do should be clearly stipulated in the lease, along with other requirements such as insurance, weed control, lease payments and so on.

A licence holder does not have sole rights to an area, but has a form of personal permission to use the reserve or a particular part of it in a limited way, that may be restricted by times or uses. Sometimes there may be a number of licences that allow use of the reserve at the same time.

This chapter explains the conditions and requirements for leasing or licensing Crown reserves.

In addition, a range of new land management agreements designed to achieve various environmental outcomes are now available for application to reserve land in exchange for direct payments or tradeable credits (e.g. carbon credits, biodiversity credits). The conditions and requirements for entering into these agreements on Crown land are explained in Section 14.8.

14.1 When can a reserve be leased or licensed?

Generally, a lease or licence of a reserve can only permit the lessee/licensee to use the reserve in a way that is consistent with the reserve purpose (as stated when the reserve was dedicated or reserved).

However, temporary licences (licences for up to one year) can be granted for purposes listed in clause 31 of the Crown Lands Regulation 2006.

With all leases and licences, including temporary licences, reserve trust managers must make sure that all lessees and licence holders pay rent and have appropriate insurances in place.

A proposed lease or licence may affect native title interests in the reserve. Before granting a lease or licence, or when re-negotiating existing arrangements, reserve trust managers should refer to Chapter 12 and, if appropriate, consult the Crown Lands Reserves Team to clarify any possible native title issues before proceeding.

When a lease should be used

A lease should be used when the proposed user needs exclusive use of part of the reserve or a building because of the type of business or activity they will be conducting.
A lease may also be required if the proposed user has invested or proposes to invest substantial sums of money installing or improving facilities on the reserve. This is usually likely to be a major user of the reserve, such as a sporting club.

A leaseholder has effective control of the leased area in the same way someone renting a house has sole rights to use the house. The lease document must contain all the provisions applicable to the use and occupation of the land by the lessee.

**When a licence can be used**

When the proposed user does not need exclusive use of any part of the reserve, a licence is more appropriate than a lease.

Occasional or short-term use of a reserve is usually covered by a licence; for example, the use of a showground by a show society on specific days of the year.

Licences can also provide greater flexibility of use by different users. Provided their uses don’t directly conflict, licences covering the same reserve can operate at the same time. For example, a sporting club can use a playing field under licence, while food and other goods are sold on the site by a vendor under a separate licence.

A number of licences can be issued over the same area for different times or days; for example, a sporting field might have several different users on the same day or on different days.

**To whom may a lease or licence be granted?**

A lease may be granted to an individual, a company, an incorporated association or a local government body.

A licence may be granted to any of the above and, in addition, consideration can be given to the granting of short term or temporary licences to persons representing unincorporated associations and unincorporated schools.

**Minister’s power to grant leases**

The Minister responsible for the Crown Lands Act can grant licenses, leases, permits, easements and rights of way over Crown reserves even where a reserve trust manager has been appointed for that reserve.

The Minister may, for example, wish to issue leases or licences with consistent terms and conditions to infrastructure providers from a particular industry across a number of reserves without having to excise the land from an existing reserve. A common example of this is telecommunication towers in rural areas where the optimal location is frequently at the highest available point in a network area, on land which may be Crown land reserved for a different purpose.

Before granting a lease, licence, permit, easement or right of way, the Minister must consult with any appointed reserve trust or other Minister who has an interest in the reserve.

If the purpose for which a lease or licence is to be granted is different from or additional to the declared purpose of the reserve, the Minister must specify, by notice published in the Government Gazette, the additional purposes for which the Crown reserve is to be used or occupied.

Funds received by the Minister from the lease or licence may be applied as the Minister directs, including to the reserve trust.
14.2 Types of leases and licences

Commercial leases and licences

Leases or licences for commercial purposes can only be granted where the commercial activity is consistent with the reserve purpose.

Examples of commercial activities that may be consistent with a reserve purpose are:

- a kiosk at a recreation reserve or at a playing field operated by a sporting club or its contractor
- a pro shop at a golf course
- the hiring of equipment at a beach reserve.

Generally, any commercial uses should also be consistent with the specific actual use of the reserve and should not overpower or dominate the reserve. On reserves for public recreation, commercial uses should not result in exclusivity for individuals or groups or clubs.

Telecommunication transmitters

The installation of mobile telephone transmitters can be a problem for reserve trusts, as the use of a reserve for such an installation may not be consistent with the purpose for which the reserve was created. In such cases, the reserve trust cannot grant a lease or licence to the telecommunications company.

Contact the Crown Lands Reserves Team as soon as possible if you have been approached regarding the installation of a transmitter tower in the reserve, or transmitters on a building or other structure already built in the reserve.

Negotiating commercial leases and licences

When negotiating leases or licences for commercial activities (e.g. food outlets), the reserve trust should invite competitive tenders or proposals in order to attract the best operator and financial return for the reserve trust.

Leases or licences for non-commercial users

A non-commercial user of the reserve may need the security of a long-term lease or licence because they have an on-going need to use the reserve, or their organisation may be making a significant financial commitment to the reserve; for example, by building or improving a clubhouse, grandstand or other facilities.

As with commercial leases and licenses, a lease or licence cannot be granted for a purpose which is inconsistent with the reserve purpose.

Temporary licences

Temporary licences allow the trust to permit short-term and generally low impact activities on the reserve without the Minister’s consent. Temporary licences cannot be issued for periods greater than 12 months. Under section 108 of the Crown Lands Act, a reserve trust can grant temporary licences for a use which may not always be permitted within the reserve purpose.

However, the use of the reserve through these temporary licences should not diminish the availability and use of the reserve for the purpose for which it was set aside. The purposes for which temporary licences may be issued are listed in clause 31 of the Crown Lands Regulation, and are set out in Figure 1.
Figure 1 - Purposes for which temporary licences may be granted

<table>
<thead>
<tr>
<th>Access through a reserve</th>
<th>Filming (this term is defined in detail in the Local Government act 1993)</th>
<th>Mooring of boats to wharves or structures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertising</td>
<td>Functions</td>
<td>Sales</td>
</tr>
<tr>
<td>Camping using a tent, caravan or otherwise</td>
<td>Grazing</td>
<td>Shows</td>
</tr>
<tr>
<td>Catering</td>
<td>Hiring of equipment</td>
<td>Sporting and organised recreational activities</td>
</tr>
<tr>
<td>Emergency occupation</td>
<td>Holiday accommodation</td>
<td>Stabling of horses</td>
</tr>
<tr>
<td>Entertainment</td>
<td>Markets</td>
<td>Storage</td>
</tr>
<tr>
<td>Equestrian events</td>
<td>Meetings</td>
<td></td>
</tr>
<tr>
<td>Exhibitions</td>
<td>Military exercises</td>
<td></td>
</tr>
</tbody>
</table>

Leases for resident employees (including caretakers)

Where an employee’s terms of employment include them residing on a part of the reserve (e.g. a resident caretaker), care should be taken to separately document this arrangement in both their employment contract and within any lease of premises. Such a lease, like other leases, will require the consent of the Minister before it is granted.

Leases and licenses for filming on Crown Reserves

The *Filming Related Legislation Amendment Act 2008* amended the Crown Lands Act to allow a reserve trust to grant a lease or licence to enable a filming project whether or not this use is consistent with the purpose of the reserve or an adopted plan of management.

A *filming project* means the filming component of a film, a documentary, an advertisement, a television program or a set of television programs.

Reserve trusts will still need to seek the Minister’s consent to these licences (other than temporary licences) and leases.

Consistent with the policy position of the New South Wales Government to “make NSW film friendly”, reserve trusts are encouraged to ensure:

- there is a responsive and cooperative attitude in dealing with filming requests for the Crown reserves they manage;
- applications for access to Crown reserves for filming are processed promptly;
- access to Crown reserves for filming is supported wherever possible and should not be unreasonably withheld;
- where an application is refused, clear reasons for refusal should be provided, and alternative arrangements for sites offered if possible;
• fees are kept to a minimum and should only reflect costs.

Some proposed filming locations could have significant environmental values or constraints. Reserve trusts should still give proper consideration to such issues when considering a filming application. In such cases the proponent film-maker should already have undertaken some form of environmental assessment. A copy of this assessment should be sought as part of the application process and used to assist the reserve trust in ensuring the sustainable use of the location.

Reserve trust managers who are local government councils should also refer to the Local Government Filming Protocol 2009. The protocol applies to both council-owned land and land that a council is the steward for, such as Crown land. The Protocol provides general information relating to the film industry and location filming that would be of assistance to all reserve trusts. The Protocol can be accessed at:


14.3 Minister’s consent

A lease or licence is an important contract which regulates the use of the leased/licensed area and sets out the rights and responsibilities of both the reserve trust and the lessee/licensee. It therefore requires a formal agreement.

The importance of this formal agreement is reflected in the need for the Minister’s consent and the early involvement of Crown Lands. Together, these ensure that the agreement is properly structured and meets the requirements of the State and local governments, as well as the community.

Local councils need to be aware that devolution of care, control and management of reserves under the provisions of Section 48 of the Local Government Act 1993 does not empower them to enter into lease/licence agreements without the Minister’s consent.

Exemption

The Minister’s consent does not need to be obtained before a lease or licence is signed if:

• it is a temporary licence (i.e. the term is not for more than one year) and it is for a use that comes within one of the permitted purposes under clause 31 of the Regulation (see Figure 14.1); or

• the reserve trust manager has obtained prior written consent under section 102A of the Crown Lands Act to enter into certain leases and licences without the need for Ministerial consent.

Where a reserve trust does not need approval from either the Minister or Crown Lands to grant a temporary licence, it should apply similar considerations (as may be appropriate) to those that would be given by the Minister, in deciding whether or not to grant such a licence. These considerations are listed in the next section, below.

Where a reserve trust does not need approval from the Minister to issue a lease or licence because it is authorised to do so under section 102A of the Crown Lands Act, the reserve trust should be careful to check that it complies with all required conditions in section 102 and of that authorisation.

Considerations with respect to Minister’s consent

Application for the Minister’s consent is made through Crown Lands. It is important to speak to Crown Lands when consideration is first given to the leasing or licensing of reserve assets particularly if the reserve has not been used for the proposed use before.
In considering whether or not consent will be given to the grant of a lease or licence the following issues will be considered:

- whether the proposed lease or licence is in the public interest
- whether the purpose of the proposed lease or licence is compatible with the reserve purpose
- the environmental impacts of the activities to be permitted by the lease or licence
- the proposed term of the lease or licence
- whether the proposed lease or licence was or is proposed to be selected by public competition or, if not, the circumstances relating to the selection of the proposed lessee or licensee
- whether the proposed rent represents a proper return to the public for the use of the public land
- whether the proposed lease or licence will contain provisions for the periodic updating or review of the rent
- whether the proposed lease or licence contains clauses relating to:
  - the termination of the lease or licence in the event of a revocation of the reserve
  - the indemnification of the reserve trust, the Crown and the NSW Government against claims for compensation
  - appropriate insurance provisions.

### 14.4 Templates for licences and lease conditions

Crown Lands has a number of requirements which must be incorporated in any lease or licence agreement. To ensure these requirements are included, separate templates for licences, temporary licences, and conditions to be attached to leases, have been prepared for use by all reserve trusts. These templates are suitable for use with both commercial and non-commercial operators and other users of the reserve.

Lease and licence templates can be accessed by contacting the Crown Lands Reserves Team. Appendix E is a template for temporary licences under s108 of the *Crown Lands Act 1989*. Trust boards should ensure they use the latest available version of the lease and licence templates (as available from Crown Lands) each time they enter into a new lease or licence.

The standard lease conditions and licence templates do not negate the need for the reserve trust to seek Minister's consent from Crown Lands before the lease or licence is signed (unless a local council has prior consent under s.102A of the Crown Lands Act to enter into certain leases/licences or a temporary licence is being granted).

The templates also do not negate the need for reserve trusts to use a solicitor. In granting leases and licences (other than temporary licences) reserve trusts are encouraged to engage the services of a solicitor to provide advice to the reserve trust on legal aspects concerning the grant of the proposed tenure.

You will also need to work through the templates to choose whichever clauses are appropriate to your particular situation.

As explained further below, the lease conditions sourced from the Crown Lands template become an attachment to the standard Real Property Lease (Form 07L) used for leases generally in NSW. For a copy of Form 07L, contact the Crown Lands Reserves Team.
Leases

All leases submitted for the Minister’s consent should be in the form of a *Real Property Act 1900* lease. The lease document will comprise the standard Real Property Lease format used in NSW (Form 07L, available from the Crown Lands Reserves Team), amended as necessary, plus a schedule of conditions sourced from the Crown Lands lease template. Leases for more than three years should generally be registered at Land & Property Information NSW. More information is available at: [www.lpi.nsw.gov.au/land_titles/dealing_forms/manual_dealing_forms](http://www.lpi.nsw.gov.au/land_titles/dealing_forms/manual_dealing_forms)

If there is no Real Property Act Title (Torrens Title) for the land and a lease is proposed to be registered, then early contact needs to be made with the Crown Lands Reserves Team to arrange for either the creation of a title or registration in the General Register of Deeds.

Leases for less than 3 years are not required to be registered. However, it is desirable that the lease is registered if there is some other competing interest in the land.

Reserve trusts should note that in some circumstances the grant of a lease over part of a reserve may require subdivision consent from the local council under the *Environmental Planning and Assessment Act 1979* in order to accurately identify the land involved. A lease of a building only or part of a building would not generally constitute a subdivision.

Reserve trusts should use the Crown Lands lease conditions template. It is designed to allow flexibility, and the addition of special conditions if required (refer clause 69 of the template).

However, reserve trusts should note that the lease conditions template is not suitable for use without significant amendment where the lease is for a purpose to which the *Retail Leases Act 1994* or *Residential Tenancies Act 1987* apply. Both these Acts contain provisions which imply or import special provisions into leases or prohibit certain provisions or requirements in a lease. In both cases the legislation requires certain documents to be served and actions taken before a lease may be granted. Reserve trusts should ensure that their legal advisors address these issues. Examples of the purposes where the *Retail Leases Act 1994* would apply to a lease within a reserve include amusements and entertainment services, food shops of many types (including fast food and beverages, convenience and tea and coffee), chandlers, mixed businesses, restaurants, cafes etc, seafood shops, equipment hire. For more detail see Schedule 1 of the *Retail Leases Act 1994*. It should be noted that in some circumstances the *Retail Leases Act 1994* provides that a lease for less than 5 years (including renewals) is deemed to be for a term of 5 years (see s.6A dealing with short term leases, and s.16).

Reserve trusts should also be aware that in some cases other legislation may also apply requiring clauses in the lease conditions template to be amended or special conditions modified. Examples of such legislation include the *Residential Parks Act 1998*, *Holiday Parks (Long Term Casual Occupation) Act 2002*, *Retirement Villages Act 1999*, *Liquor Act 2007*, and *Registered Clubs Act 1976*.

Licences (other than temporary licences)

Reserve trusts are encouraged to use the Crown Lands licence template (available by contacting the Crown Lands Reserves Team) but, as in the case of leases, reserve trusts should be aware that other legislation may require the template to be significantly amended, for example, the *Retail Leases Act 1994* treats a licence as a retail lease for the purposes of that Act (but also note s.6A (short term leases) of that Act, referred to above).

Where it is proposed that other persons or the public as well as the licensee are to be entitled to use the land the subject of the licence (whether at the same time or at different times, and whether for the same purpose or for different purposes) care needs to be taken to ensure that the relevant arrangements are clearly set out in the licence document.
14.5 How reserve trusts prepare a lease or licence

The procedure that should be followed is set out below:

1. The reserve trust consults the Crown Lands Reserves Team as to the appropriateness of the proposed use and the leasing or licensing arrangements. Preliminary discussions should include market rent for the site, appropriate discounts for non commercial users, and potential improvements.

2. The reserve trust should generally invite competitive tenders or proposals in order to attract the best operator and financial return. Crown Lands will advise whether it wishes to be involved in the review and selection process.

3. Once the most suitable lessee or licensee has been selected, the reserve trust’s solicitor prepares a draft lease or licence using, as far as practicable, the standard lease conditions template or standard licence template.

4. The reserve trust’s solicitor provides the draft lease/licence to the lessee/licensee.

5. If the lessee/licensee requests any amendments that the reserve trust agrees are acceptable, the amendments are incorporated into the draft lease/licence.

6. The reserve trust sends the final draft to Crown Lands for comment and/or in-principle approval.

7. Crown Lands notifies the reserve trust of any amendments and any in-principle approval. If the agreement is a lease for a term exceeding 5 years, advertising costs will be requested and on receipt, arrangements made to advertise the Minister’s intention to give consent in accordance with Section 102(2) of the Crown Lands Act. Following advertising, and provided any concerns that may be received from the public are resolved satisfactorily, the reserve trust will be requested to prepare the final documents.

8. When the final form of the lease/licence document is agreed to by all parties and approved by Crown Lands, the reserve trust’s solicitor issues three copies to the lessee/licensee for signing.

9. All three copies are signed by the parties, stamped with the appropriate stamp duty (for leases only) and returned to Crown Lands. Execution of the lease/licence by the reserve trust needs to be in accordance with Section 50 of the Interpretation Act 1987.

10. The three executed documents are checked to confirm that they match the approved draft and include any amendments as required by Crown Lands. The Minister’s consent is then added to the documents.

11. One copy is retained by Crown Lands and two copies are returned to the reserve trust’s solicitor for registration and delivery to the parties.

12. With respect to leases over three (3) years, the reserve trust is required to register the lease at Land & Property Information NSW. All leases may be also be registered on the title.

13. Prior to the termination date of the lease/licence, the reserve trust should undertake, where appropriate, a competitive tendering process for the granting of a new lease or licence if the leasing or licensing arrangements are to continue. For some leases or licences the tendering process may need to commence some 12 to 18 months before the terminating date of the lease or licence. You should advise the Crown Lands Reserves Team of any proposed tendering for a new lease or licence.

Other points to be kept in mind

• The Minister may not consent to the granting of a lease for a term exceeding 5 years (or a lease for a term that, by the exercise of an option, could exceed 5 years) unless
at least 14 days have elapsed from the date of a notice of intention to give consent published in a newspaper circulating in the locality in which the land is situated or in a newspaper circulating generally in the State.

- Rent should reflect a commercial approach, having regard to purpose of the lease or licence, site value, and ownership of existing improvements. Reserve trusts are encouraged to seek advice from the Crown Lands Reserves Team or have an independent valuation undertaken to determine the market rent of the site of the proposed lease or licence.

- Crown Lands has established a policy (*Policy on concessions and hardship relief for Crown lands tenures*) to guide reserve trust managers when considering applications for rental rebates, waivers and hardship relief. This policy will also be used by Crown Lands when considering any request for the Minister’s consent to any concessions proposed by a reserve trust in relation to a proposed tenure. The policy can be found at: [www.lpma.nsw.gov.au/crown_lands/leases/concessions_and_hardship_relief](http://www.lpma.nsw.gov.au/crown_lands/leases/concessions_and_hardship_relief).

- The standard templates require rent to be adjusted annually using the Consumer Price Index with market rent determinations occurring once every three years for the term of the lease.

- Where a nominal rental is imposed because the lessee/licensee is a charitable or non-profit organisation, such rental should generally not be less than the statutory minimum rental applicable to tenures under the Crown Lands Act. The discount given to the lessee or licensee is to be specified in the agreement. Contact the Crown Lands Reserves Team for advice on the current statutory minimum rental.

- For reserve trusts managed by a local council it is important to ensure a separation of council and reserve trust business. The lease/licence should only reflect the business of the reserve trust.

- In the case of sub-leases, the head lease must contain a provision that allows a sub-lease, reference should be made to the head lease in the preamble of the sub-lease, and the term of any sub-lease should not extend beyond the date of expiry of the head lease.

- The Minister may require that a sub-lease or assignment of a lease not be permitted without prior written consent of the Minister.

- If part only of a reserve is being leased, a diagram specifying the area involved must be annexed to the lease documents.

### 14.6 Content of the document

#### Length of term

The term of a lease/licence should be as short as possible, taking into account the particular circumstances of the reserve and the lessee’s proposed use of it. Future changes in community needs should also be kept in mind when negotiating the length of term.

Terms of more than 20 years will not normally be approved by Crown Lands.

Options for renewal or lengthy ‘holding over’ rights at the end of a lease/licence will also not normally be approved. Any “holding over” should not exceed 12 months. If there is still a need for the activity at the end of the term, a new lease/licence can be negotiated. This gives the reserve trust the opportunity to review the arrangement in the light of current and anticipated community needs.

When considering whether to grant a lease or a licence under the Crown Lands Act the Trust must consider the risks and related regulations that may apply to lease activities.
The lease should, to the fullest extent possible, obligate the lessee to manage regulatory compliance and risk management.

Lease activities may have Work Health and Safety, Public Safety, Bushfire or Contamination implications amongst other risks.

Activities where significant risks to people or property may exist, should be documented so the lessee is clear on obligations and responsibilities. The lease should contain an emergency management provision which sets out the communication protocols and actions that should be undertaken in the event of an emergency.

**Rent and rent review**

The rent or licence fee should normally be a commercial market rent.

Relevant factors to consider include:

- the permitted use under the lease/licence
- the value of the part of the reserve being used
- who owns the building or improvements to be used by the lessee/licensee
- costs to be incurred by the trust.
- the *Policy on concessions and hardship relief for Crown land tenures* for eligible tenures.

**Nominal rents**

Where a reserve trust wishes to charge a rebated rent because the lessee is a charitable or non-profit organisation, the reserve trust should contact the Crown Lands Reserves Team to discuss whether a rebate from market rent is appropriate, and if so, the level of the rebate.

**Rent reviews**

Leases and licences should provide for regular rent reviews.

Rent should be reviewed annually by reference to the Consumer Price Index or some other agreed factor (e.g. a fixed percentage).

With longer leases, in addition to the annual Consumer Price Index reviews, the rent should be reviewed to market rent at least every three years. There should be a mechanism to have the market rent determined by an independent expert such as a valuer, if the reserve trust and the lessee cannot agree on the market rent.

**Payment of part of rent to Public Reserves Management Fund**

Under Section 106 of the Crown Lands Act, the Minister can direct where rents received are to be applied. This can include requiring that a proportion of the rent received under a lease or licence be paid into the Public Reserves Management Fund.

This will be specified in the Minister’s consent to the grant of the lease or licence.

**Buildings and improvements**

Where the lease or licence requires the lessee/licensee to undertake building or development works, the lease/licence should specify that no work is to be undertaken until:

- plans have been approved by the trust and the Minister
- any necessary development consents or construction certificates have been obtained from the local council.

At the end of a lease/licence, any improvements become the property of the reserve trust. A lease or licence should not give the lessee/licensee a right to receive compensation for buildings
or other improvements installed by them. In appropriate cases, the lessee/licensee should be required to clear and restore the reserve to the satisfaction of the reserve trust and the Minister at the expiry of the lease or licence period.

**Consents and approvals**

The lessee/licensee must obtain all consents or approvals it needs to use the reserve and buildings or to operate its business. This may include:

- development consent from the local council, to permit the reserve or a building to be used for the purpose proposed by the lessee/licensee
- construction certificate (previously called Building Approval) from the local council or an accredited certifier for any building or renovation works
- occupation certificate from the local council or an accredited certifier if this is required in connection with any approved building or renovation works
- notification to the relevant authority that a food business is being operated (under s.100 of the *Food Act 2003*)
- any other approvals which are particular to the type of business or operations to be undertaken by the lessee or licensee.

The lease or licence should make the lessee/licensee responsible for obtaining all necessary consents, approvals and notifications, and for keeping them current.

**Liquor licences**

A licence under the *Liquor Act 2007* and the *Liquor Regulation 2008* is required to enable the sale and supply of liquor. There are six types of licences available under the legislation. Licences are obtained through the NSW Office of Liquor, Gaming and Racing. Special additional provisions (s.36(5) and s.38(4), and s.36(6) respectively) of the Act apply to surf clubs and racing clubs.

When considering whether to grant a lease or a licence under the Crown Lands Act that would then allow the lessee/licensee to apply for a liquor licence, reserve trusts must consider the suitability and appropriateness of permitting licensed premises on Crown land. This will require consideration of factors such as the declared reserve purpose, the site context, location and surrounds, existing tenure conditions, commercial potential of the site and competition policies, community amenity and safety, insurance/indemnity requirements and the greater public interest. The Liquor Act 2007 also provides for local ‘Liquor Accords’ to be initiated by Councils, liquor licensees, the police, and community groups to establish agreed operating guidelines to address particular local issues arising from the consumption of alcohol. When considering whether to allow a liquor licence of their reserve, reserve trusts should check any local Liquor Accord as a way of becoming familiar with any issues in the locality around the sale of liquor.

Also relevant here are the following Crown Lands policies:

- Food and Beverage Outlets on Crown Reserves Policy 1997
- Tourist and Associated Facilities on Crown Lands Policy (Circular 2007/05).

Applicants that apply for a liquor licence for premises that are located on Crown lands must, within 2 working days of making the application (to the Office of Liquor, Gaming and Racing) notify the Minister that the application has been made.

It is strongly recommended that reserve trusts consult with the Crown Lands Reserves Team before itself making an application for a liquor licence, or before granting a lease or licence that will permit a lessee/licensee to make a liquor licence application.
Changing the use of a premise to a licensed premise may also require development consent from the local consent authority. Lessee/licensees should make enquiries to the local council to ascertain this, and the lease or licence should make the lessee/licensee responsible for obtaining all necessary consents.


14.7 Managing lessees and licensees

Tenancy management

The rents received under leases and licences often represent a significant part of a reserve’s income. It is therefore important that the reserve trust makes sure the lessee or licensee is:

- obeying the terms of its lease or licence
- paying rent and other money on time
- not doing anything that is inconsistent with the lease or licence or the permitted purposes of the reserve.

Regular inspections

The reserve trust should regularly inspect the area occupied by the lessee/licensee, as a part of its general inspection program. Any breaches of the lease or licence or other matters of concern should be communicated to the lessee/licensee promptly, rather than ‘letting things slide’. A lessee/licensee is less likely to respond to the trust board’s concerns if known breaches have been left unmentioned for any length of time.

Where a lessee/licensee appears to be doing something that goes beyond the permitted use, the trust board must act promptly to either have the activity stopped, or to review the activity and renew the lease or licence to permit the activity if appropriate.

Monitoring of rent payments

The reserve trust treasurer must monitor payments of rent or any other money payable under the lease or licence, and report any arrears or irregularities to the trust board as soon as they become apparent.

Dates for rent reviews and the expiry of leases and licences should be diarised and reviewed at the annual general meeting or at other appropriate meetings during the year.

Resolving user conflicts

A reserve trust will sometimes grant more than one lease or licence over its reserve.

When negotiating leases or licences, the trust board must take into account any other arrangements that have already been entered into, to avoid overlap or conflict over:

- leased or licensed areas
- times for use of particular facilities
- uses which are inconsistent with each other (for example noisy activities occurring at the same time as activities where quiet is desired).

Where a reserve is regularly used by a number of different users, it may help if specific provisions to deal with the resolution of these types of conflict are included in the reserve plan of management. See Chapter 5 for more information about plans of management.

If a dispute should arise between users, the trust board must not favour one user over another when seeking to resolve it, and must act fairly and in accordance with the leases, licences or other agreements it has entered into.

14.8 Land Management Agreements

A number of mechanisms have recently been introduced to impose long-term management obligations on land in order to achieve broader environmental objectives in exchange for direct funding or for tradeable credits. Such land management agreements include:

- native vegetation incentive funding via Property Vegetation Plans (PVPs)
• catchment management incentive funding
• covenants in support of Carbon Credits under various State and National schemes
• biodiversity offset schemes such as Biodiversity Banking (Biobanking) Agreements.

These land management agreement types are further described below.

When are land management agreements appropriate on Crown reserves?

For Crown reserves managed by a reserve trust, the key issues associated with any long-term legally binding external commitment are:

• consistency with the reserve’s public purpose and any relevant Plan of Management,
• the impact on future reserve use options, and
• funding of ongoing maintenance responsibilities under the land management agreement (and their relationship with maintenance obligations under the Crown Lands Act).

The objective of any proposed land management agreement (e.g. habitat rehabilitation or carbon sequestration) must be consistent with the public purpose or purposes of the reserve, although it is also possible to change the reserve purpose (see Chapter 1 of this handbook). The impact on the public’s use and enjoyment of the reserve, particularly any existing uses, should also be considered. Where a Plan of Management is in place, this also needs to be taken into consideration, and may need to be amended to enable a land management agreement to be established.

Where a reserve, or part of a reserve, is subject to a land management agreement, alternative future use options for the land will be significantly constrained. The term of the land management agreement will be a major factor, with current options usually ranging from 15 years to in-perpetuity. In some cases shorter agreements may be an option.

Where a binding commitment for conservation (or any other purpose) is made in perpetuity, an adequate ongoing income stream also needs to be identified to cover the future maintenance cost associated with this obligation. These future maintenance costs may be difficult to estimate and there is a risk of creating unfunded liabilities for future reserve trust managers.

When is the consent of the Minister required for land management agreements?

Entering into a land management agreement that is registered as a covenant on the title of the land or as some other form of legally binding agreement is an important decision with long-term implications for future use and management of the land.

As for leases, licences and land sales, the consent of the Minister is required before a reserve trust can enter into a land management agreement. This consent can be given under delegated authority by Crown Lands. The early involvement of Crown Lands is essential in the development of these land management agreements. The Crown Lands Reserves Team should be involved throughout the scoping of the project and any ongoing negotiations.

In considering whether or not consent will be given to agreements of this nature, the following issues will be considered:

• Whether the proposal is in the public interest and is equitable for current and future generations.
• Whether the agreement is consistent with the reserve’s public purpose and any relevant Plan of Management.
• Any environmental impacts of the proposal.
• The term of the covenant or legally binding agreement.
• Whether the granting of tradeable credits, a one-off grant, or an income stream represents a reasonable return to the public in exchange for the foregone use opportunities (opportunity cost).

• Whether the proposal includes adequate financial provision for ongoing maintenance after the initial payment or period of income generation.

• Whether the agreement contains provisions to:
  o allow flexibility of land use and management should matters arise that are of public or environmental significance;
  o indemnify the reserve trust, the Crown and the NSW Government against claims for compensation;
  o provide appropriate insurance (e.g. against a fire that would result in the loss of sequestered carbon, and then the obligation to purchase the equivalent credits at current market rates).

It should not be assumed that the Minister’s consent will be forthcoming.

As is the case in relation to the sale of a reserve or a part of a reserve; a legally-binding land management agreement in perpetuity over reserve land will only be considered in exceptional circumstances. Generally the land management agreement should be consistent with the reserve purpose or purposes, and is supported by a strong case that the land will not be required for any other public purpose in the foreseeable future.

**Native Vegetation Incentive Funding (via PVP’s)**

Catchment Management Authorities (CMAs) may provide incentive funding to landholders (including reserve trust managers) to undertake certain vegetation and biodiversity enhancements on their land. This is usually undertaken through the preparation of a **Property Vegetation Plan** (PVP) by CMA staff with input from the land owner. The term of the obligation imposed on the land as part of these agreements can vary from several years to in-perpetuity. Generally, long-term commitments attract a higher level of initial funding. Most CMAs have agreed funding thresholds, so that grants above a defined threshold requires a minimum period of commitment. Overall administration of the PVP scheme, including compliance with PVP agreements, is the responsibility of the NSW Office of Environment and Heritage (OEH).

A PVP is a voluntary, legally binding agreement between a landholder and the local CMA, and may be obtained for a number of reasons, including:

• applying for native vegetation incentive funding

• to confirm that native vegetation on a property is regrowth, thus providing a landholder with assurance that they will not need future clearing approval (this would not usually be relevant to reserve trust management)

• to change the regrowth date of native vegetation to an earlier date, based on proof of two previous clearing events associated with rotational farming (this is generally not relevant to reserve trust management)

• to confirm whether existing rotational farming, grazing or cultivation practices meet the definition of these in the **Native Vegetation Act 2003** so that clearing approval is not required (this is generally not relevant to reserve trust management)

• to obtain approval to clear native vegetation and to lock in place any offsets associated with that clearing.

PVPs made for the purpose of defining areas of post-1990 regrowth are unlikely to be needed on Crown reserves. However, where required they would relate to the broader environmental
Trust Handbook

and land management responsibilities for that reserve. Issues associated with the approval of vegetation clearing are addressed in Chapter 11 of this handbook.

It is anticipated that reserve trusts are most likely to consider entering into a PVP in order to seek CMA incentive funding. Crown Lands, on behalf of the Minister administering the Crown Lands Act, must consent to the PVP in writing because of the long-term maintenance obligations and the impact on future use options associated with these agreements.

The term of the PVP is linked to the environmental outcome and the amount of funding. Long-term commitments attract a higher level of initial funding but also carry a much higher ongoing unfunded maintenance obligation. Most CMAs have agreed funding thresholds, so that grants above a defined dollar value require a minimum period of commitment. The largest grants require a management commitment in perpetuity. These management commitments (contained in the PVP) run with the land and apply to future owners if the land is sold. They are recorded by local government and included in any planning certificate issued under section 149 of the Environmental Planning and Assessment Act 1979.

The incentive funding provided via the CMAs covers the initial work but not the ongoing maintenance costs. Therefore careful consideration should be given to any proposal to enter into a management contract that binds the Crown to long-term environmental outcomes or where large amounts of funding are sought. PVPs beyond a fifteen year term are not generally encouraged on Crown reserves because of the un-funded ongoing maintenance obligation and the difficulty in identifying long-term future use requirements.

For more detail on PVPs and CMA incentive funding, contact your local CMA or go to: www.environment.nsw.gov.au/vegetation/nvmanagement.htm

Note: PVPs that propose offsets on Crown land associated with clearing on adjoining private land are not generally supported as they result in an off-reserve private benefit and on ongoing public reserve management financial obligation.

Catchment Management Incentive Funding via Management Agreements

CMAs can also use common law management contracts (rather than PVPs) to secure funding for improved land management and revegetation programs. Management contracts that are not part of a Property Vegetation Plan (PVP) are not formally tied to the land but to the individuals that enter into the contract or agreement.

The term of the management contract is linked to the environmental outcome and the amount of funding. Management contracts are generally for 5-10 years but shorter terms can be negotiated and these arrangements vary between CMAs.

As the land owner, Crown Lands, on behalf of the Minister administering the Crown Lands Act, must consent in writing to a reserve trust applying for funding as part of a management contract.

Carbon sequestration

Carbon sequestration projects include reforestation, revegetation and other projects that increase the secure storage of carbon. In turn, these projects can generate tradeable carbon credits under various trading schemes.

There are a range of markets for trading carbon credits gained through either reductions in emissions or the sequestration of carbon in biomass (and soils). These include carbon credits which comply with the internationally recognised Kyoto protocol and carbon credits which do not comply. Kyoto compliant offsets count towards Australia’s international commitment under the Kyoto Protocol or a subsequent binding international agreement. In order to qualify they need to meet a high standard of accountability and be guaranteed over a long period of time. For these reasons they tend to have a higher market value than non-Kyoto compliant credits.
The **Crown Lands (Carbon Sequestration) Act 2006** enables Crown land in NSW to be used as a carbon sink in the same way as freehold land, where the Minister administering the Crown Lands Act has granted carbon sequestration rights. However, it is anticipated that these provisions will more commonly be applied on tenured Crown land than to Crown reserve land. To date (2012), uncertainty about transitional arrangements to a national carbon trading scheme has discouraged participation by Crown land managers and tenure holders.

Until recently the main Kyoto compliant trading scheme in NSW has been the NSW Greenhouse Gas Abatement Scheme (GGAS) which commenced in 2003. However this scheme closed on 30 June 2012 because of duplication with the Commonwealth Government National Carbon Trading Scheme which commenced on 1 July 2012 under Commonwealth **Clean Energy Act 2011** and other legislation. The first three years of the Scheme does not allow trading of certificates but sets a fixed price (or "tax") on carbon emissions.

The Scheme includes the National Carbon Farming Initiative (CFI). Projects under the CFI can comprise either Kyoto offsets or non-Kyoto offsets. In the case of Kyoto compliant offsets, Australian Carbon Credit Units (ACCUs, or "Kyoto ACCUs") can be issued. ACCUs can be used in the domestic carbon market (established under the **Clean Energy Act 2011** or in any international compliance carbon market that accept these units.

The **Carbon Credits (Carbon Farming Initiative) Act 2011** sets out eligibility requirements. For Kyoto-eligible projects the reporting period must end before the Kyoto abatement deadline. Like other tradeable offset schemes, the CFI uses the concept of "additionality". This means that the emissions reduction or the carbon sequestration must be additional to, or beyond, what would have been achieved under "business as usual" arrangements. In the case of a sequestration offset project on Crown land, s27(4)(h) of the **Carbon Credits (Carbon Farming Initiative) Act 2011** requires the Minister administering the Crown Lands Act to certify in writing that the applicant holds the applicable carbon sequestration right in relation to the project area. Provision is also made for any arrangements made under the CFI to be entered on the title of the property in order to draw attention to the existence of the arrangements and associated ongoing maintenance obligations.

Clause 3.35 of the **Carbon Credits (Carbon Farming Initiative) Regulation 2011** lists the following kinds of projects as Kyoto-compliant:

- reforestation projects
- the protection of native forest from deforestation
- the establishment of vegetation on land that was subject to deforestation, by:
  - seeding; or
  - planting; or
  - human-induced regeneration by means of:
    - the exclusion of livestock
    - the management of the timing and extent of grazing
    - the management, in a humane manner, of feral animals
    - the management of plants that are not native to the project area
    - the cessation of mechanical or chemical destruction, or suppression of regrowth.

Other carbon sequestration project types under the CFI (e.g. the sequestration of carbon in soils) are automatically classified as non-Kyoto compliant offsets.
The legislation also establishes the Domestic Offsets Integrity Committee as an independent expert committee to assess draft methodologies proposed for use under the Scheme and to advise the Commonwealth Minister for Climate Change and Energy Efficiency on whether to approve certain methodologies. The Committee also provides advice to the Minister on the specification of eligible activities under the CFI that are not common practice.

The Scheme includes substantial documentation requirements, such as the inclusion in any application of a prescribed audit report prepared by a registered greenhouse and energy auditor.

For more on the National Carbon Farming Initiative go to: www.climatechange.gov.au/cfi

**BioBanking**

The Biodiversity Banking and Offsets Scheme (BioBanking Scheme) has been established under Part 7A of the *Threatened Species Conservation Act 1995*. Its main aim is to help address the loss of biodiversity in NSW by establishing a market for biodiversity credits. Biobanking works by establishing conservation measures on land outside the formal reserve system and converting those measures into tradeable biodiversity credits which can be purchased by developers to offset the impact of development activities elsewhere. A BioBanking agreement involves an in-perpetuity contract between the land owner and the Minister for Environment and Heritage.

BioBanking credits can only be created if the management actions are additional to any biodiversity conservation measures, or other actions, that are already being carried out on the land, or are required to be carried out under existing agreements or management arrangements. This “principle of additionality” means that credits generated on Crown land will be subject to discounting to take account of existing management actions and obligations (refer Clause 4 of the *Threatened Species Conservation (Biodiversity Banking) Regulation 2008*).

Further, clause 11 of the Regulation excludes certain land from being designated as BioBank site. Land reserved under Part 4 or Part 4A of the *National Parks and Wildlife Act 1974* and land identified as a flora reserve under the *Forestry Act 1916* is explicitly excluded. Land subject to existing offset requirements or environmental requirements is also excluded. Some excluded categories that could be relevant to reserve trusts are:

- land subject to off-sets under a Property Vegetation Plan;
- land subject of a requirement to carry out on-going biodiversity conservation measures under a condition of an approval or consent under the *Environmental Planning and Assessment Act 1979*; and
- any other land where the Minister for the Environment is of the opinion that biodiversity conservation measures are already being carried out or are required to be carried out under an offset arrangement required under any Act.

Land is also excluded where the land use (past, present or proposed future) is inconsistent with biodiversity conservation or where adjoining land use (past, present or proposed future) would impact on biodiversity conservation management actions on the land. Crown land is not explicitly excluded from BioBanking except where the above conditions apply.

**Discounting of BioBanking Credits:** The Director-General of Office of Environment & Heritage (OEH) determines any discount rate to be applied for the purpose of determining the credits that can be generated from a BioBanking site. This is the mechanism by which “additionality” is determined. These discounting rates will apply in relation to BioBanking credits generated on Crown land. The extent of discounting that will apply is likely to be influenced by the reserve purpose and OEH’s interpretation of what management obligations are implied as a result of the land being reserved for that purpose, as well as any pre-existing funding and obligations to manage the land for biodiversity conservation. Guidelines established by OEH set out the
discount rates applicable to a range of possible existing management obligations—refer to Tables 11 and 12 of the BioBanking Operational Manual (BioBanking Assessment Methodology and Credit Calculator). Existing management actions or obligations discounted in this way include management of grazing, weed control, feral animal control, nutrient control, erosion control, retention of dead timber, and retention of bush rock. Refer: www.environment.nsw.gov.au/resources/biobanking/09181bioopsman.pdf

The viability of entering into a BioBanking agreement over Crown land may be dependent on the extent to which the potential BioBank credits are discounted.

All BioBanking agreements require a commitment in perpetuity and therefore entering into such a commitment prevents any future change in use. For this reason the consent of the Minister administering the Crown Lands Act is required. However the BioBanking scheme does make provision to set aside funding to cover ongoing maintenance in a trust fund managed by the OEH.

For further details on Biobanking, go to: www.environment.nsw.gov.au/biobanking/

**Regulatory requirements**

- Consent of Minister administering the Crown Lands Act:
  Crown Lands Act 1989 – section 102(1)(d)
- Required advertising of leases longer than five years:
  Crown Lands Act 1989 – section 102(2)(b) & (c)
- Temporary licences:
  Crown Lands Act 1989 – section 108
  Crown Lands Regulation 2006 – clause 31
- Lease or licence granted by Minister
- Crown Lands Act 1989 – Section 34A
- Retail uses:
  Retail Leases Act 1994
- Liquor licences:
  Liquor Act 2007
- Food businesses:
  Food Act 2003
- Carbon sequestration on Crown land
  Crown Lands Act 1989 – Part 4 Division 5A
- (Former) NSW Greenhouse Gas Abatement Scheme (GGAS)
- Electricity Supply Act 1995 – Part 8A
- Biobanking agreements:
  Threatened Species Conservation Act 1995 – Part 7A
  National Carbon Pricing Mechanism
  (Commonwealth) Clean Energy Act 2011
- Land management based carbon sequestration incentive:
  (Commonwealth) Carbon credits (Carbon Farming Initiative) Act 2011
Further guidance

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the *Crown Lands Act 1989*, can be found at:
  www.legislation.nsw.gov.au
- Fact sheets on liquor licensing, from NSW Office of Liquor, Gaming and Racing:
- Factsheets and guidelines from the NSW Food Authority:
- Crown Lands Policy on concessions and hardship relief for Crown land tenures:

Revisions to this chapter

<table>
<thead>
<tr>
<th>No.</th>
<th>Revision</th>
<th>Date</th>
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<tbody>
<tr>
<td>1</td>
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<td></td>
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</tr>
</tbody>
</table>
When the reserve trust employs staff or contractors, care needs to be taken to make sure that it is done legally and the employee or contractor is properly engaged with all the required benefits or insurances in place. The recruitment process should be fair and equitable. It is not appropriate to give a job to a friend or to someone who has been doing the job in a voluntary capacity for many years, unless they are selected as part of a formal recruitment process.

Regardless of whether or not the person doing a job is being paid, they should have the appropriate skills and training. Training or certification can help avoid accidents occurring in the workplace. Employees are entitled to all the rights available to them under the *Work Health and Safety Act 2011*.

This chapter sets out the rights and obligations of both employees and trust board members with regard to employment conditions, benefits and responsibilities.

### 15.1 Appointment of paid staff, volunteers and contractors

Appointing staff is the first step in a labour management system. To ensure the appropriate staff is appointed, and the process of sourcing that labour is fair and transparent, the responsibilities and requirements of the intended position must be clearly defined and understood.

In this way, the selection of one individual in preference to another is based on the ability to perform a clearly defined task with a skill set appropriate to the role in question.

Generally, reserve trusts should not employ family members or close relatives in paid positions. Where family members or close relatives are applicants for positions, the reserve trust should ensure that there is no conflict of interest in the decision-making process and that decisions are made by, and consistent with, fair and equitable assessment processes.

When appointing staff, it is important to document all details of the selection process. It might be necessary sometime in the future to show that the appropriate actions were taken in the placement process, and written records will assist this.

Where a proposed employee’s employment terms includes residing on a part of the reserve (e.g. as a resident caretaker), care should be taken to document their employment contract and any lease of premises separately. The granting of such a lease will require the consent of the Minister (see Chapter 14). Note that a caretaker position is ancillary to the purpose of the reserve but the caretaker themself is an employee of the reserve trust.

To ensure that your recruitment process is fair and transparent to all parties concerned, you need to be aware of your responsibilities. Other Chapters of this Handbook can assist you with this:

- anti-discrimination, equal opportunities and unfair dismissal (Chapter 16)
- Working With Children checks (this chapter)
- privacy (Chapter 24).

### Job and work descriptions

When appointments are made, it is important to have accurate job and work descriptions for both employees and volunteers to ensure there is a clear understanding of expectations between individuals and the reserve trust.
The first stage of developing a job or work description is to undertake a job analysis. A job analysis aims to answer three key questions about the role:

- what is done?
- how is it done?
- why is it done?

The Crown Lands Reserves Team can provide a checklist of the matters that should be covered when undertaking a job analysis.

Using the information gathered through the job analysis, a job or work description can be developed. Ideally, job descriptions should be:

- simple
- honest in describing the expectations of the role
- focused on work requirements and organisational conditions
- prepared, where possible, with the input of position holders.

The headings in Figure 15.1 provide a format to follow when drafting job descriptions.

**Advertising a position**

There are a number of approaches that can be taken to advertising positions on the trust board itself and positions employed by the trust. Depending on the nature of the position these might include:

- advertising in the local/national press
- advertising in specialist publications
- using a recruitment agency.

**Selecting a candidate**

The reserve trust should convene a panel to assess applications and interview potential candidates. Panel members may include trust board members, reserve trust management and staff and should include both males and females. Panel members should be familiar with the job and work descriptions of the position being advertised. For the selection of a candidate to be transparent and fair, members of the panel should declare any interest they have in selecting or excluding a particular candidate, and if they have a personal interest should not take part in the selection process.

The interview panel should select a candidate based on the agreed selection criteria, developed from the job and work descriptions (described above).
Figure 15.1 - Structure of a job description

<table>
<thead>
<tr>
<th><strong>Job title:</strong></th>
<th>This should be brief, simple and make it clear what the job is.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purpose of the job:</strong></td>
<td>This is a brief statement of why the job exists and its objectives.</td>
</tr>
<tr>
<td><strong>Reporting and organisational relationships:</strong></td>
<td>This describes where the job fits in the organisation, and who the position holder reports to. This section should also include clear guidelines as to any relationships between the position holder and committees or other agencies.</td>
</tr>
<tr>
<td><strong>Authorities:</strong></td>
<td>This sets guidelines for the type of authority the position has in the areas of spending money, hiring staff and decision-making.</td>
</tr>
<tr>
<td><strong>Accountabilities and results:</strong></td>
<td>This section should focus on the results expected, rather than just listing the activities needed to achieve those results.</td>
</tr>
<tr>
<td><strong>Training/experience required:</strong></td>
<td>This section describes whether any previous experience is required, whether the candidate will be required to undertake any training for the role and selection criteria for the position.</td>
</tr>
<tr>
<td><strong>Selection criteria</strong></td>
<td>on which the candidate will be selected should be developed from the job description, applicants should address these criteria in their applications.</td>
</tr>
</tbody>
</table>

**Appointing paid employees**

As discussed above, a job description should be developed which outlines the purpose, accountabilities and reporting relationships of the role. The basis of selection will be the individual’s ability to meet the responsibilities and accountabilities outlined in the job description.

When interviewing potential employees, it is best to use behaviour-based questions, in which individuals are asked to give examples of their previous behaviour as an indicator of how they are likely to act in a similar situation in the future. Where possible, you should ask questions relating to situations which might arise in the role.

**Volunteers**

Many reserve trusts operate with the assistance of volunteers. Volunteers provide a range of support services and often have a personal interest in the objectives of the reserve – for example, volunteers who are members of a showground society, club members using the reserve for meetings, local Landcare members.

Volunteers can assist with tasks such as:

- maintenance – including gardening, minor repairs, painting, removing noxious weeds and feral animals
- fundraising – running stalls, photocopying, letter box drops
- administration – answering phones, preparing financial statements, developing promotional material
- visitor management – information services, guided tours, selling entry tickets.

Where practical, a work description should be developed for volunteer roles. As with a job description for a paid employee, a work description outlines any special skills or experience required, and the amount of time required of the volunteer. Similar techniques that are used to
recruit paid employees (such as behaviour-based interview questions) can be used to appoint volunteers.

Where possible, volunteers’ preferences regarding the type of work they do should be accommodated. This is likely to generate greater commitment from the volunteer, and reduce the risk associated with carrying out unfamiliar tasks. Chapter 18 provides information on how to attract volunteers.

**Recognising and retaining volunteers**

An important part of managing and retaining volunteers is providing recognition for their efforts. There are a number of cost-effective ways to do this, such as:

- arranging social events for the volunteers when a project is finished
- making an announcement at group meetings to thank volunteers for their effort, and if appropriate, identifying individuals who have made an exceptional contribution
- providing training opportunities for volunteers to develop their skills
- recognising their expertise by allowing them to take a greater role in decision-making within the reserve
- ensuring that they are given regular feedback about their performance
- marking the anniversary of volunteers beginning work at the reserve
- continually acknowledging individual volunteers by saying ‘thank you’.

While there are many methods to recognise volunteers, it is important to consider what the individuals will value. For example, longer-serving volunteers may be more likely to prefer a social event than are new employees; volunteers in a specialised role may value further skills training.

Volunteers are not paid and generally do not receive any financial incentives or rewards for the work they do. However expenses reasonably related to the work carried out for the reserve trust can be reimbursed (refer to chapter 20 concerning out-of-pocket expenses of volunteers). Any regular payments or allowances paid to volunteers may in fact deem that volunteer to be an employee which may attract taxation implications.

**Section 97A delegates**

The previous section outlined the important role volunteers can play in assisting with the management of a Crown reserve. Under section 97A of the Crown Lands Act a reserve trust may delegate, with the Minister’s consent, any of its functions to a management committee, organisation, group or individual, who act in a voluntary capacity.

Some volunteer community groups may wish to be involved in managing a Crown reserve but do not want the legal responsibility that is involved in being a trust board member. By using section 97A a trust manager can give volunteer groups or individuals formal responsibility for a particular aspect or aspects of the management of a Crown reserve on an ongoing basis. Refer to Chapter 17 under “delegated subcommittees” for further details.

**Appointing contractors**

At times it may be necessary to use the services of contractors. Crown Lands has a policy on the management of consultants and contractors that can be requested from your the Crown Lands Reserves Team. The policy outlines how contractors and consultants should be sourced and managed.

Where the services of contractors are used it is essential to ensure that the worker is actually a contractor and is classified as such, rather than being classified as an employee. If an individual
is incorrectly employed as a contractor when they should be an employee, the reserve trust might underpay workers compensation and payroll tax obligations, or be liable for employee entitlements.

**Employee or contractor?**

There is no definitive test to determine employee versus contractor status. Figure 15.2 provides some indicators that can be used to assess whether a worker is a contractor or an employee.

These indicators can also be used to review the status of existing contractors.

**Figure 15.2 - Employee status versus contractor status**

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Worker is likely to be an employee</th>
<th>Worker is likely to be a contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Control</td>
<td>The trust has the right to control how, when and where the worker carries out the work.</td>
<td>The worker is required to provide a specified result and may manage how, when and where the result is achieved.</td>
</tr>
<tr>
<td>Results</td>
<td>The contract is for the labour or services of the worker.</td>
<td>The contract is for the achievement of a given result.</td>
</tr>
<tr>
<td>Independence</td>
<td>The worker is obliged to perform more than just a set of specific duties in accordance with a contract.</td>
<td>The worker is obliged to perform only the specific duties that are detailed in the contract.</td>
</tr>
<tr>
<td>Power to delegate</td>
<td>The worker does not have the right to delegate work to others. Permission may be required from the worker’s supervisor to make such a delegation.</td>
<td>The reserve has unlimited power to delegate work to others in order to complete a task.</td>
</tr>
<tr>
<td>Risk</td>
<td>The worker has little or no exposure to risks associated with the work being performed. Examples of risk include prospective cost of injury, prospective cost of payment default.</td>
<td>The worker stands to make a profit or a loss on the task. He or she also is exposed to risks associated with the work.</td>
</tr>
<tr>
<td>Basis of payment</td>
<td>The worker is paid an hourly rate, piece rates or award rates.</td>
<td>The worker is paid based on the achievement of the specified results.</td>
</tr>
<tr>
<td>Tools and equipment</td>
<td>The worker uses tools and equipment provided by the employer.</td>
<td>The worker uses his or her tools and equipment.</td>
</tr>
<tr>
<td>Hours of work</td>
<td>The worker works standard or set hours.</td>
<td>The worker is free to determine his or her own hours of work.</td>
</tr>
<tr>
<td>Appointment</td>
<td>The worker is recruited via an advertisement by the employer.</td>
<td>The worker advertises his or her services to the public at large.</td>
</tr>
<tr>
<td>Conditions of engagement</td>
<td>The agreement has characteristics associated with an employment relationship, such as leave entitlements, superannuation benefits and reimbursement of expenses.</td>
<td>The agreement is not characterised by conditions usually associated with an employment agreement.</td>
</tr>
</tbody>
</table>

Additional help on distinguishing employees and contractors is available at:
15.2 Employment and job skills programs

The Commonwealth Department of Education, Employment and Workplace Relations co-ordinates a range of employment and job skills programs which might be helpful in providing appropriate workers for the reserve. Up-to-date information on these programs is available at: www.deewr.gov.au

Reserve trusts should ensure that workers sourced through government programs are provided with detailed information on the tasks they are required to undertake and, at least initially, are closely supervised to ensure that they perform effectively.

15.3 Other labour

Apart from local community members and tradespeople who donate their time and labour to assist reserve trusts, Corrective Services NSW occasionally offers ‘free’ labour, either through inmates of low-security correctional institutions, or through the Community Services Program for minor offenders.

Contact Corrective Services NSW on (02) 8346 1333 to enquire about specific works programs.

Reserve trusts should be prepared to provide their own supervision to achieve optimum outcomes when using labour provided under these work programs.

15.4 Orientation and training

Orientation

Following the appointment of workers, both paid and unpaid, or the delegation of functions to an individual or group, it is important to ensure they are quickly introduced to the reserve. An effective orientation program can reduce the time taken for a worker to be productive, increase their job satisfaction, reduce the level of worker turnover, and assist workplace health and safety.

Key elements to cover in a reserve orientation program are:

- the aims and objectives of the reserve trust and the purpose of the reserve
- introductions to fellow workers (including paid employees and volunteers)
- familiarisation with the office and reserve amenities
- codes of conduct – both the code of conduct adopted by the reserve trust and the NSW Department of Trade and Investment, Regional Infrastructure and Services’ Code of Conduct for members of advisory committees / boards, contractors and consultants to the NSW Department of Trade and Investment, Infrastructure and Services (see Chapter 3, and this chapter below)
- overview of relevant risk management and work health and safety procedures, including emergency procedures and first aid.

Paid employees might require a more job-specific orientation as well. This should focus on details such as clarification of duties, targets, expectations and daily interactions needed to carry out their role.
An effective way of managing orientation, where resources allow, is to allocate a ‘buddy’ to the new worker. A buddy is an experienced worker who can assist the new worker and answer questions during the early stages of their employment.

**Training**

To ensure maximum performance of the workers on the reserve (both paid employees and volunteers), training requirements should be considered. For example, from a risk management perspective it may be necessary for certain workers to have regular health and safety training sessions. When considering reserve-wide training needs, reserve trusts should consider any high-risk areas identified from the risk management checklist.

**Types of training that may be required**

When assessing what type of training is required, the best starting point is to review the job or work descriptions and then consider the outcome of recent performance discussions (managing performance is discussed below). This will provide a comparison of what is expected of the role with the current level of performance in the role. Where there are differences between the expectations of a position and what is being delivered by the position holder, it may indicate a development need which could be addressed by training.

Training might also be required to prepare for future changes: for example, the introduction of a new system, or new activities in the reserve.

‘Training’ is not limited to formal training sessions. Effective learning can be achieved through informal on-the-job methods, such as job shadowing, mentoring by experienced co-workers, visiting other reserves, and team meetings. Making sure the training is relevant to those involved is a key component in maximising its effectiveness.

**15.5 Managing performance**

Managing the performance of paid employees and volunteers is another important component in effective labour management. It is not necessary to have a complex performance management system. However, monitoring performance, recognising areas of high performance, and identifying development needs should be a continuous process.

At a minimum, on a regular basis (i.e. quarterly or six monthly, depending on the role) paid employees and volunteers will want to know the answers to the following questions:

- what do you want me to do?
- how well am I doing? What do you think of my performance?
- how could I be doing my job better?
- how will I be recognised for my contribution?

Referring to the job or work description which outlines the responsibilities and accountabilities of a position should be helpful when conducting a performance management discussion.

Once performance levels have been agreed during a performance management discussion, the achievement of those levels can be reviewed at later discussions.

**15.6 Code of conduct**

Crown Lands requires reserve trusts to adopt a code of conduct in relation to the ethical conduct of trust board members and employees. All paid and volunteer employees should be given a copy of the code of conduct during their orientation.

In addition, as reserve trusts carry out work for the NSW Department of Trade and Investment, Regional Infrastructure and Services (through their appointment by Crown Lands, which is an
agency of this Department) they are also required to comply with the Code of Conduct for members of advisory committees / boards, contractors and consultants to the NSW Department of Trade and Investment, Infrastructure and Services, found at:

Guidance on how to prepare and adopt a code of conduct is given in Chapter 3.

15.7 Employer obligations
An important part of managing labour is ensuring that all employer obligations are met.
For example, a range of employment-related taxes may be relevant, such as:
- Pay As You Go (PAYG) withholding
- Fringe Benefits Tax (FBT)
- Payroll Tax.

Other employer obligations which must be met are:
- Superannuation Guarantee
- Workers Compensation
- Leave entitlements.

The reserve trust’s obligations in this regard may change from time to time, and will vary between reserve trusts. It is important to ensure you are up to date with what is required. Please refer to Further Guidance at the end of this chapter for a list of websites and contact numbers which can assist with any questions you might have.

15.8 Child protection
“The communities that children and young people live in and the organisations they are part of are important to their well-being.

And every day children and young people across NSW spend time with adults in organisations such as schools, childcare centres, refuges, sporting clubs and hospitals.

Keeping children and young people safe in the workplace is part of your broader responsibility, as an employer, to manage risks within your organisation.\(^{15}\)

Every day children and young people around NSW are involved in child care, schooling, health treatments, refuges, clubs, church groups and other places where adults are employed to work with them.

Most adults do a great job in helping kids grow and develop safely in these environments. However there are always risks when you take responsibility for the wellbeing of children and young people. Being a child-safe and child-friendly reserve trust, and the “Working with Children Check” helps manage these risks.

The following information has largely been sourced from the NSW Commission for Children and Young People website: www.kids.nsw.gov.au.

Reserve trusts should consult this website for further information and guidance.

\(^{15}\) Gillian Calvert, Commissioner for Children and Young People, NSW Commission for Children and Young People – Working With Children Check Guidelines.
Reserve trust obligations as an employer (Working with Children program)

All employers in NSW, including reserve trusts, have responsibilities under the Working with Children program. Under that program:

(i) “employment” includes all of the following:
- performance of work under a contract, or
- performance or work as a self-employed person, or
- performance of work as a subcontractor, or
- performance of work as a volunteer, or
- undertaking practical training as part of an educational or vocational course.

(ii) “child-related employment” is employment:
- in the work settings listed in the employer guidelines issued by the Commission for Children and Young People; and
- that primarily involves contact with children; and
- that involves direct contact with children; and
- where that contact is not directly supervised by a person having the capacity to direct the employee in the course of the employment.

The employer guidelines are available at:

Refer also to the matters included in the definition of “child-related work” as listed in the Child Protection (Working with Children) Act 2012.

There are three key strategies within the Working with Children program. Together, the first two strategies (the exclusion of prohibited persons, and the Working with Children background check) make up the “Working with Children Check”:

Exclusion of prohibited persons

This strategy focuses on specified, identified offenders and targets the high risk population of known offenders, called prohibited persons.

Under the Commission for Children and Young People Act 1998 prohibited persons are prevented from working in child-related employment. People who have committed serious sex offences against children or adults, or serious physical assault, kidnap or murder offences against children are prohibited persons.

**Background checks**

The Working with Children background check involves checking the relevant records of people who are being recruited to child-related employment to consider whether they indicate any risk to children.

Relevant records are examined to develop an estimate of the risk to children. The result of the estimate of the risk is to be used by the reserve trust to inform its final recruitment decision.

To find out more about a reserve trust’s responsibilities under the Working with Children Check and for all relevant forms and checklists go to the Working with Children Check on the Commission for Children and Young People website:

**Developing child-safe and child-friendly organisations**

This strategy builds an organisation so it is a safe and friendly environment for children and minimises the risk of harm occurring.

Experience shows that commitment to risk management helps make an organisation safer for children, young people and the adults who work there.

Making an organisation safer and more welcoming for children provides the foundation for the other strategies above, and make them more effective.

The Commission for Children and Young People has developed resources to help put in place policies, procedures and mechanisms for identifying and managing the risks in an organisation, its activities and its staff positions, and for assuring quality.

These resources include recruitment, supervision, training, complaints and disciplinary procedures which address the identified organisational and situational risks. They also include the establishment of participatory mechanisms that guard against risk by creating a culture and environment that promotes openness, makes children feel welcome and encourages children to tell someone if something is worrying them.

Further information is available from the “Child-safe Child-friendly” section of the Commission for Children and Young People website. The NSW Ombudsman has a role in relation to child protection and “reportable conduct” in the workplace under Part 3A of the Ombudsman Act 1974. These provisions require:

- the reporting to the Ombudsman of certain conduct or behaviour in relation to children (“reportable conduct”)
- the NSW Ombudsman to scrutinise the systems employers put in place to prevent “reportable conduct” actually occurring by employees within designated government and non-government agencies and other public authorities.

Section 25A(1) of the Ombudsman Act 1974 defines 'reportable conduct' as:

- any sexual offence or sexual misconduct committed against, with or in the presence of a child - including a child pornography offence
- any assault, ill-treatment or neglect of a child
- any behaviour that causes psychological harm to a child – even if the child consented to the behaviour.

Designated government and non-government agencies are defined in the Ombudsman Act 1974 and the Ombudsman Regulation 2005. The definition of a public authority under the Ombudsman Act 1974 is understood not to include reserve trusts as such and therefore some
reserve trust managers such as trust boards. However the definition does include any
department or local government authority that might also be a reserve trust manager.

Local government authorities, state government and other agencies to which the *Ombudsman
Act 1974* applies should refer to the NSW Ombudsman’s website for clarification of their
responsibilities under this Act and for relevant contacts at the NSW Ombudsman. Refer to:

**Guidelines for agencies - NSW Ombudsman**

**Regulatory requirements**

- *Child Protection (Working with Children) Act 2012*
- *Commission for Children and Young People Act 1998*
- *Ombudsman Act 1974*

**Further guidance**

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the
  *Crown Lands Act 1989*, can be found at:
- A job analysis checklist and behaviour-based interview questions can be found in
  Appendix I.
- The following websites and phone numbers should be able to answer your questions in
  relation to employment taxes and other employer obligations.
  - Tax Basics for Non-Profit Organisations:
    - or call 1300 720 092 and quote publication number 7966
  - Non-Profit Organisations and Volunteers:
    - or call 1300 720 092 and quote publication number 4612
  - Superannuation Guarantee:
    - or call 13 10 20
  - Workers Compensation:
    - or call 13 10 50
- For equal opportunity in employment matters, refer to:
  - Guidelines for disability action planning by NSW Government agencies:
  - The NSW Public Service Commission has information on workplace adjustments
    that can be made to cater for people with a disability. This can also be a useful
guide to help reserve trust managers meet the needs generally of visitors with a
disability. Refer to:
- Information on attracting and managing volunteers can be found on the NSW Government “Community Builders” website.

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Every person has the right to be treated equally. Similarly, every person should respect the rights of others. In Australia, it is unlawful to discriminate against people, not only in the areas of employment and management of staff, but also in the provision of services.

Crown Lands supports a policy of equal opportunity reflecting the spirit and intent of both State and Commonwealth legislation. Crown Lands actively discourages any practices that involve bias due to race, gender, nationality, sexual preference, age, disability, marital status, religious or political beliefs or pregnancy.

It is therefore important that an employee’s ability to perform their workplace responsibilities are the only matters considered with respect to their employment with reserve trusts. In addition, a reserve trust needs to ensure that, when providing services or allowing access to property, the environment be free from discrimination.

The Crown Lands policies Equal Employment Opportunity and Harassment in the Workplace prohibit all forms of unlawful discrimination and harassment within Crown Lands.

This chapter sets out information about what constitutes discrimination and your responsibilities in that regard.

16.1 What is discrimination?

Discrimination is treating somebody less favourably than someone else on the basis of a particular characteristic or attribute. Discrimination also includes imposing criteria or conditions that have a disadvantageous impact on those with a particular characteristic.

The meaning of discrimination encompasses more than simply treating everyone the same. Rather, it recognises that sometimes even apparently neutral conditions or rules can have the effect of disadvantaging a group of people.

To avoid discrimination, a reserve trust must first engage in formal equality by treating everyone the same regardless of their different characteristics. For example, it is discriminatory to treat a non-Aboriginal person differently from an Aboriginal person on the basis of race.

Second, the reserve trust must engage in substantive equality by ensuring that any criteria or conditions imposed do not have a different impact on groups who possess different characteristics. For example, it may be unlawful discrimination to fail to provide toilets with wheelchair access as this would be treating people with this characteristic differently.

16.2 Anti-discrimination law

Under both Commonwealth and State anti-discrimination legislation, it is unlawful to discriminate on a variety of grounds.

NSW legislation

The Anti-Discrimination Act 1977 (the AD Act) makes it unlawful to discriminate against people because of their race, age, sex, marital or other domestic status, physical or intellectual impairment, pregnancy or potential pregnancy, carer’s responsibilities, infectious disease, sexuality, or association with someone with such characteristics, in certain areas of their public life. These areas include:

- the provision of goods and services
Trust Handbook

- accommodation
- employment – in all aspects from recruitment to termination and including conditions of work
- education
- access to premises.

‘Services’ is defined in the AD Act to include services relating to entertainment, recreation or refreshment and services provided by a council or public authority.

The management of Crown reserves therefore falls within the scope of the AD Act.

Commonwealth legislation

There are four Commonwealth Acts which address discrimination on particular grounds. These are:

- Racial Discrimination Act 1975 (C’th)
- Sex Discrimination Act 1984 (C’th)
- Disability Discrimination Act 1992 (C’th)
- Age Discrimination Act 2004 (C’th).

The Commonwealth Fair Work Act 2009 also prohibits certain forms of discrimination.

Provision of goods and services

‘Services’ is defined broadly in the AD Act to include services relating to entertainment, recreation or refreshment and services provided by a council or public authority. It is irrelevant whether the goods or services are for payment or not.

In general, a reserve trust must ensure that neither it, nor its employees, refers to a person’s (or their relative’s, friend’s or associate’s) sex, age, race, etc to decide:

- whether to provide a service; for instance, refusing to sell certain goods or provide a service to someone on the basis of their sexual preference
- what type of service to provide; for instance, you cannot charge members of different sex different amounts for the same or similar service
- the manner in which the service is provided; for instance, a person must not be harassed or ignored because of their age, sex, etc.

A reserve trust and those employees to whom it entrusts responsibility may be held liable for any such discrimination or harassment that happens:

- by staff to clients/customers
- by clients/customers to staff
- between clients/customers.

Restriction of entry

Anti-discrimination legislation prohibits discrimination in respect of the right of entry to any public place or access to any service intended for use by the public, such as restaurants, cafes, theatres and parks.

The NSW AD Act and the Commonwealth Racial Discrimination Act 1975 specifically prohibit such discrimination on the grounds of race. Race is defined as a person’s colour, nationality, descent, and national or ethnic origin as well as a person’s race.
The Commonwealth *Disability Discrimination Act 1992* and *Age Discrimination Act 2004* prohibit discrimination on the grounds of disability and age respectively.

### 16.3 Breaching anti-discrimination law

Any person managing or working at a reserve is legally obliged not to discriminate against colleagues or potential employees or when providing services or determining access arrangements to the land or buildings and other facilities. If a person discriminates against another, the party discriminated against may request that the discriminatory activity be prohibited and, further, may seek compensation by the discriminator or the reserve trust.

A reserve trust may also be in breach of the anti-discrimination laws if the reserve trust, or an employee or member of the trust board:

- refuses to admit a person or group with particular attributes or characteristics to a reserve.
- applies different behaviour rules to particular groups or individuals with specific attributes or characteristics. Note that previous bad experiences with members of a group will not justify subsequent discrimination against group members.
- restricts a person or group with particular attributes or characteristics to particular parts of a reserve.
- organises staff meetings at times when it is difficult for employees with children to attend.
- requires employees to work regular overtime.

If any of a reserve trust’s employees or volunteers discriminates unlawfully, the reserve trust may also be liable for their behaviour. The reserve trust may have a defence in such a case if it has established and implemented policies to prevent discrimination in the workplace, educated its employees in these policies and vigorously enforced these policies.

### Direct and indirect discrimination

Both Commonwealth and NSW anti-discrimination laws reflect the requirements of formal equality and substantive equality by defining two types of action – direct discrimination and indirect discrimination.

*Direct discrimination* occurs when, in circumstances that are the same or not materially different, a person is treated less favourably than someone who does not have the attribute that has led to the less favourable treatment.

*Indirect discrimination* occurs when a person is required to comply with a requirement, condition, rule, practice or policy, which appears to be fair and neutral but has a disproportionate impact on a group of people with a particular attribute. For example, requiring employees to work overtime on a regular basis may have a disparate impact on those with carer’s responsibilities.

### 16.4 Harassment

Under anti-discrimination laws, a reserve trust is also liable for any action that constitutes harassment or vilification.

Sexual harassment is specifically prohibited under the Commonwealth *Sex Discrimination Act 1984*. In addition, any harassment or vilification claims falling within a prescribed ground under a Commonwealth Act or the (NSW) AD Act will generally be treated in law as an act of unlawful discrimination.

Sexual harassment is defined broadly as encompassing a range of conduct. A person sexually harasses another if they make an unwelcome sexual advance or an unwelcome request for
sexual favours; or if they engage in other unwelcome conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would be offended, humiliated or intimidated.

16.5 Other possible claims

In addition to a reserve trust’s specific obligations under the legislation, reserve trusts must also be aware that if an employee suffers discrimination in the workplace or in relation to his or her employment, that employee may also have a claim under the Commonwealth *Fair Work Act 2009* or the (NSW) *Industrial Relations Act 1996* for unfair dismissal, unlawful termination, or unfair contract.

16.6 Who can complain?

Any person or group of people who think they have been discriminated against according to the relevant anti-discrimination legislation can complain to the NSW Anti-Discrimination Board or to the Australian Human Rights Commission (previously the Human Rights and Equal Opportunity Commission, HREOC).

People can also complain on behalf of others.

Where a number of people have the same complaint, one of them can represent the others.

**Claiming direct discrimination**

A complainant who has brought an action for direct discrimination will need to establish that they suffered detriment through less favourable treatment compared with another person, whether real or hypothetical, who is in the same circumstances but does not possess the complainant’s particular characteristics or attribute.

**Claiming indirect discrimination**

A complainant who has brought an action for indirect discrimination will need to establish that the alleged discriminator has required them, as a member of a particular “group”, to comply with a requirement which the complainant cannot comply with, which is unreasonable, and with which a substantially greater proportion of those falling outside the group are able to comply.

16.7 Investigating and determining complaints

After an official complaint has been lodged with either the NSW Anti-Discrimination Board or the Australian Human Rights Commission, the relevant agency will conduct an initial investigation and an attempt will be made to settle the matter by conciliation. The conciliation stage is private and compulsory.

Only if conciliation fails can a victim proceed to a hearing for determination of damages.

If the claim is being made under the (NSW) AD Act, the hearing will be held at the Administrative Decisions Tribunal (Equal Opportunity Division). Damages are capped at $40,000, and each party must pay their own costs.

If the claim is being made under a Commonwealth Act, the hearing will be before the Federal Court or Federal Magistrates Court. Damages are not capped and costs may be awarded.

**Regulatory requirements**

- *Age Discrimination Act 2004 (C’th)*
- *Disability Discrimination Act 1992 (C’th)*
- *Australian Human Rights Commission Act 1986 (C’th)*
- *Racial Discrimination Act 1975 (C’th)*
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- *Sex Discrimination Act 1984 (C’th)*
- *Fair Work Act 2009 (C’th)*
- *Anti-Discrimination Act 1977*
- *Industrial Relations Act 1996*

**Further guidance**

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the *Crown Lands Act 1989*, can be found at: [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)
- NSW Administrative Decisions Tribunal:
  Ph: (02) 9223 4677
- NSW Anti-Discrimination Board
- Australian Human Rights Commission:
- General Enquiries: (02) 9284 9600
  Complaints Infoline: 1300 656 419
- General workplace information:
- The NSW Public Service Commission has information on workplace adjustments that can be made to cater for people with a disability. This can also be a useful guide to help reserve trust managers meet the needs generally of visitors with a disability. Refer to:

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17 General administration

A reserve trust is responsible for the care of public land in the interest of the community. Everything the reserve trust does should therefore take place and be recorded in an open and accountable manner to ensure public confidence in its operation is maintained and good clear records are kept.

In summary, reserve trusts are required to keep records on its financial management, assets and asset management, leases and licences, meeting minutes, and activities for which fees are collected. Meetings must be conducted according to the rules and a common seal used on certain documents such as leases or licence agreements and transfer of mortgages. Reserve trust managers should never be in breach of the public trust that is given to them.

This Chapter explains a number of general matters and related requirements in terms of the administration of the reserve trust and the reserve.

Note also that the Crown Lands (General Reserves) By-law 2006 contains detailed requirements in respect to certain administrative matters. Some provisions in the By-law apply to all reserves; other provisions only to reserves listed in Schedule 1 to the By-law. See Chapter 3 of this Handbook for more details about this By-law.

17.1 Making business decisions

All actions taken by the reserve trust must be authorised by a resolution of the trust board, where applicable, or the reserve trust manager.

In particular, all contracts and other agreements must be authorised by resolution and must be made in the corporate name of the reserve trust.

17.2 Records that must be kept

Under the Crown Lands Act (Section 122) and the Crown Lands Regulation (Clauses 32-33, and Schedule 4), all reserve trusts – unless they have been granted an exemption – are required to keep records which need to be furnished to the Minister each year within 3 months of the close of the reserve trust's financial year or as required by the Minister. The records are to include details of income, expenditure, assets, liabilities, improvements effected, leases and licences granted or in force, uses made of the reserve and any particulars of financial interests. Where a reserve trust is managed by a corporation, the records of the reserve trust must be separate from the records of the corporation itself.

The Crown Lands Regulation specifies that the following records be kept by a reserve trust:

a) account books showing details of all income and expenditure
b) records of assets and liabilities and improvements effected
c) bank, building society or credit union deposit books or statements
d) records of other financial instruments or investments
e) a plant and asset register
f) a heritage register
g) records of leases and licences granted or in force
h) insurance policies and certificates
i) details of fire prevention and other workplace health and safety measures in place
j) a register of conflicts of interests
k) such other records as may be necessary to prepare the report in accordance with clause 32 of the Regulation.

Chapter 22 of this Handbook sets out details of these documents and registers and how to maintain them.

In addition, the reserve trust must keep records of:

- insurances
- the hiring of grounds and letting of buildings
- other services for which the reserve trust collects income or fees
- acquittal of cash advances / travel cards
- written reports from conference participants to the reserve trust on conferences attended by trust board members, volunteers or employees at the expense of the reserve trust
- wages, annual leave, sick leave and long service leave and proof of workers compensation payments for any staff employed by the reserve trust.

Records should be kept safely and securely. It should be noted that a reserve trust’s reporting mechanisms may be reviewed at any time as part of the existing audit process of Crown Lands, as the agency that oversees the activities of reserve trusts. Refer to Chapter 22 in respect to records required to be kept in relation to accounts and other financial management matters.

At the end of the term of each reserve trust manager, the records of the reserve trust must be handed over to Crown Lands or to the body which replaces the reserve trust manager as manager of the reserve (for example, another trust board, a council, a corporation or an administrator).

17.3 Trust board meetings (where a trust board is appointed)

Meetings of trust boards do not need to be excessively formal. However, observing basic meeting procedures and appropriate record-keeping will assist in maintaining the public’s confidence in the operation of the reserve trust.

For many reserves, the frequency of trust board meetings will depend on issues such as the size of the reserve and its trust board, the nature of its operations or its dealings with third parties.

A number of reserves are covered by the Crown Lands (General Reserves) By-law 2006. This By-law contains detailed requirements for meetings, elections and related operational matters.

The reserves to which these provisions of the By-law apply are listed in Schedule 1 of the By-law. The By-law can be found at: www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+493+2006+cd+0+N.

The following sections deal with reserves covered by the By-law. Where a reserve is not covered by the By-law, the procedures and processes it covers may nevertheless assist reserve trusts in deciding how to manage their affairs.

Note also that some of requirements as specified in the Crown Lands Act or Crown Lands Regulation apply to all reserve trusts. For example, Clause 18 of the By-law, which deals with the setting of fees and charges, applies to all reserves.
Frequency
A trust board must meet at least four times a year. Reserves with a high number of visitors, or those which generate substantial income may need to meet once a month and at other times as needed.

Annual general meeting
A trust board must have an annual general meeting (see below).

Time and place of meetings
The trust board can determine where it meets and the time of meetings.

Special meetings
A special trust board meeting must be called if at least two members of the trust board give the chairperson a written, signed request for a meeting. The request must state the purpose of the meeting.

The meeting must be held within 28 days after the request is delivered to the chairperson, who can specify the time of the meeting and where it will be held.

Notice of the special meeting and an agenda must be sent to the trust board members (see below). The chairperson can give less than 10 days notice if he or she believes the meeting should be held as soon as possible.

Quorum
A meeting of the trust board can only take place if there is a quorum. The quorum is one more than half the number of members (ignoring fractions). For example, for a trust board with seven members, the quorum is four; for a trust board with six members, the quorum is also four.

Notice of meetings and agenda
Notice of each meeting and an agenda must be circulated to the members of the trust board at least 10 days before each meeting.

A sample agenda for a meeting (other than the annual general meeting) would include the following items:

- the chairperson’s opening address
- record of members present and apologies from absent members
- confirmation of minutes of the previous meeting
- business arising from the minutes
- report by the secretary/correspondence
- report by the treasurer/accounts for payment
- current risk management and workplace health and safety issues
- general business items
- other matters for discussion
- date and place for the next meeting
- close of meeting.

Conduct of meetings
The chairperson is responsible for the orderly conduct of a meeting. If the chairperson is not present, the deputy chairperson should chair the meeting. In his or her absence, the members present at the meeting must elect someone to preside.
The meeting should keep to the agenda and members should be encouraged to discuss the matters under consideration without interruption from other members.

Meetings can be ‘open’, to be observed by members of the public. The trust board can decide if it wishes to hear from members of the public on any issues under discussion.

Voting
Where an issue requires action, or where a contract or agreement is to be entered into, the matter must be agreed upon by a resolution of the trust board.

All members, including ex officio members and the person chairing the meeting, have one vote on resolutions. A resolution is approved if a majority of the votes cast are in favour of it. If the votes are tied, and if the Crown Lands (General Reserves) By-law 2006 applies to the reserve, the person chairing the meeting has a second, ‘casting’ vote. Otherwise, the person chairing the meeting has only one vote and a tied vote means that the resolution is not approved.

A member cannot vote on a matter in which they have a financial or non-financial interest unless the trust board has agreed that they can do so (see Chapter 3). Where a member has a financial or non-financial interest, or other conflict of interest, they should not only abstain from voting, but also absent themself from the discussion and the voting to enable free and frank discussion of the matter at hand by the other members.

Minutes
The minutes of trust board meetings are recorded by the secretary. Minutes should indicate which trust board members are responsible for following up any action agreed at the meeting.

The secretary should arrange for copies of the minutes to be forwarded to all members as soon as possible after each meeting, to allow action to be taken before the next meeting.

Note that the records that a reserve trust is required to keep under the Crown Lands Act and the Crown Lands Regulation (unless they have been granted an exemption) (see Section 17.2, above) include the number of trust board meetings held during the financial year and the attendances at these meetings.

The minutes are not required to be made generally available to the public. A trust board can decide to make the minutes available, but is not obliged to do so.

Reports presented at meetings
At all meetings, the secretary should provide a report of follow-up action from previous meetings, and a report of correspondence sent and received.

The treasurer should provide a report which explains monthly results for key items included in the annual report and financial statement (see the templates in Appendix C).

17.4 Annual general meetings for trust boards
The chairperson and deputy chairperson are elected at the annual general meeting.

A secretary and a treasurer can also be elected at the annual general meeting. Reserve trusts covered by the Crown Lands (General Reserves) By-law 2006 can employ people who are not members of the trust board to carry out these roles. Although trust board members can be elected to positions of reserve trust secretary and/or treasurer, trust board members can only be employed as secretary or treasurer with the approval of the Minister.

An annual statement of accounts, setting out the financial position of the reserve trust, must be presented at the annual general meeting.
17.5 **Subcommittees**

**Member subcommittees (relevant for trust boards)**

Where a trust board has been appointed to manage a reserve trust the trust board might find it helpful in carrying out its business to establish subcommittees comprised of members of the trust board to deal with management, finance, planning or maintenance.

The role of such subcommittees is to make recommendations and provide advice to the trust board, but not to make decisions.

While the make-up of these committees is at the discretion of the trust board, the level of expertise required for the tasks to be undertaken is an important factor that should be considered when selecting members.

The trust board should define the terms of reference for any subcommittees. Meetings of subcommittees are conducted in the same way as meetings of the board.

The treasurer should be a member of any subcommittee dealing with finance and the preparation of budget estimates.

**Delegated subcommittees (relevant for all reserve trusts)**

All reserve trusts may delegate, with the Minister’s consent, any of its functions to a management subcommittee, organisation, group or individual (refer Section 97A of the Crown Lands Act).

Management subcommittees can take on responsibility for the day-to-day decisions affecting the reserve and could assist with the day-to-day operations such as landcare, painting and other maintenance, and collection of fees. It is hoped that this initiative will encourage more people in the community to become involved with the management of the Crown estate.

Should a reserve trust wish to delegate functions to a subcommittee, contact should be made with the local office of Crown Lands to discuss the proposal and the requirements or limitations that the Minister may wish to put in place.

A reserve trust may generally delegate by resolution and with the Minister’s consent any of the functions of the trust to a person or management committee, other than functions associated with:

- the making of a charge
- the fixing of a fee
- the borrowing of money
- the voting of money for expenditure on its works, services or operations
- the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment)
- granting leases, licences, easements and related matters
- the acceptance of tenders
- the adoption of a plan of management
- the adoption of a financial statement included in an annual financial report
- a decision to contribute money or otherwise grant financial assistance to persons.

Note also that a number of these functions, such as compulsory acquisition, purchase of land and the granting of leases and licences, always require the consent of the Minister.
The reserve trust needs to be clear about the functions it proposes to delegate and in what circumstances they may be exercised, as well as the reporting and other arrangements proposed to be put in place. It is recommended that the roles and responsibilities of any approved delegated subcommittees and how they are to operate, relate to and report to the reserve trust are clearly defined in a written document such as a “terms of reference”. This should be signed by both the approved delegated subcommittee and reserve trust.

17.6 Common seal

A reserve trust must have a ‘common seal’. However where a reserve trust is managed by a corporation the seal of the corporation may be used instead of the seal of the reserve trust.

A common seal is usually a rubber stamp, which can be made by any of the stationery companies which offer this service.

The common seal must include the words “Common Seal” and show the full name of the reserve trust, for example:

“Brownsville Oval (R123456) Reserve Trust”.

The common seal must be kept by the secretary or some other person appointed by the reserve trust and must only be used following a resolution of the reserve trust to do so.

The common seal should only be put on a document when the secretary or a trust board member is present to sign and date it.

The common seal is required for the following documents:

- contracts of sale*
- transfer or mortgages of land*
- lease* or licence agreements
- contracts for services
- contracts for the supply of major goods.

* Note that Crown reserves cannot be sold, transferred or mortgaged, or leased without the approval of the Minister (refer to Chapter 21).

The common seal is not needed on bank deposit and withdrawal slips, receipts, admission tickets, insurance cover notes, documents about hiring motor vehicles, furniture or short-term services.

17.7 Investigations by the NSW Independent Commission Against Corruption

The NSW Independent Commission Against Corruption (ICAC) is responsible for investigating reports of corrupt conduct within the NSW public sector. Corrupt conduct by a public official involves a breach of public trust and leads to inequality, wasted resources and wasted public money.

Examples of corruption that could occur within a reserve trust environment are:

- official misconduct
- bribery
- blackmail
- obtaining or offering secret commissions
- fraud
- theft
Trust Handbook

- revenue evasion
- obtaining financial benefit by vice engaged in by others
- forgery.

Any person may report suspected corrupt conduct by a NSW public authority. Public authorities include reserve trusts.

In addition to its investigative functions, ICAC uses reports from members of the public and from reserve trust officials to recognise patterns and trends and identify risk areas in corruption generally within the NSW public sector. This enables ICAC to ensure its work provides the greatest benefit to the people of NSW.

The Public Interest Disclosures Act 1994 allows people to make a complaint of suspected wrongdoing about a NSW public authority without fear of recrimination. Complainants are protected under this Act by making it an offence to take detrimental action against a person who makes such a (protected) disclosure.

People wishing to make a complaint under the Public Interest Disclosures Act 1994 can use the online corruption report form obtained from the ICAC website:


If you are an official who performs duties on behalf of a reserve trust and wish to make a protected disclosure about the trust, refer to the “how and what to report” section of the ICAC website for more information:


ICAC uses a number of methods to investigate a disclosure. The method used depends on:

- the nature of the suspected misconduct
- whether the conduct has occurred in the past or is still occurring
- the extent to which there is readily available evidence to support the disclosure.

**Regulatory requirements**

- Public Interest Disclosures Act 1994
- Crown Lands Act 1989
- Records to be kept:
  - Clauses 32-33 and Schedule 4, Crown Lands Regulation 2006
- Meetings – time and place, frequency, AGM:
  - Clause 6, Crown Lands (General Reserves) By-law 2006
- Meetings – special meetings:
  - Clause 7, Crown Lands (General Reserves) By-law 2006
- Quorum:
  - Clause 2, Schedule 5, Crown Lands Act 1989
- Notice of meeting and agenda:
  - Clause 8, Crown Lands (General Reserves) By-law 2006
- Conduct of meetings:
  - Clauses 10(1) & (2), Crown Lands (General Reserves) By-law 2006
- Voting and tied votes:
  - Clause 3, Schedule 5, Crown Lands Act 1989
  - Clause 10(3), Crown Lands (General Reserves) By-law 2006
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- Minutes:
  Clause 4, Schedule 5, Crown Lands Act 1989
- Annual General Meeting, elections:
  Clause 6(2), Crown Lands (General Reserves) By-law 2006
- Subcommittees:
  Clause 11, Crown Lands (General Reserves) By-law 2006
- Common seal:
  Clause 15, Crown Lands (General Reserves) By-law 2006

Further guidance

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the Crown Lands Act 1989, can be found at:
  www.legislation.nsw.gov.au
- For guidance on meeting procedures, etc:
- For further information on ICAC:
  www.icac.nsw.gov.au

Revisions to this chapter

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Reserve trusts are required to make the best use of the reserve and the income received, within the constraints of the public purpose of the reserve and, if applicable, the reserve’s plan of management. Promoting a reserve has two advantages:

- First, it makes more people aware of the facilities that are available, increasing the number of people using the reserve.
- Second, as more members of the community become aware of the reserve, there should be more interest in supporting its endeavours. This could be through involvement as a trust board member, by becoming a volunteer, or by providing financial support.

This chapter provides guidance on how to promote your reserve to the best effect.

### 18.1 Finding the best form of publicity

There are a number of types of publicity that can be used, and all work best in different situations. Each reserve trust will need to review its own needs and objectives to determine what works best for them. The Crown Lands Reserves Team can assist you in finding the best form of publicity for your reserve trust. Some of the types of publicity that you might use are:

- media releases – to promote an event, to communicate some news about the reserve trust or the reserve itself, to remind the community about reserve facilities, to advise of major upgrades or changes, etc
- interviews with local media outlets – similar to the above
- a reserve trust website – similar to the above
- advertisements – for major events in particular
- signage – communicating to those in the local area about reserve facilities, events, changes, news
- sponsorship – see below.

You might find it useful to seek input from members of the local community regarding the type and frequency of publicity that they believe would be beneficial. This will help you when allocating limited publicity resources into those areas where you will gain the best result.

### 18.2 Marketing and advertising

Marketing is part of promoting and publicising your reserve trust. It involves determining:

- who you want to communicate with – i.e. who your audience is
- what you want to tell them
- how you will communicate with them
- how often you will communicate with them
- how much you want to spend.

Considering these elements will help you allocate your resources to those areas where you will gain greatest benefit.
One of the mechanisms you can use to communicate with your chosen audience is advertising. Advertising usually involves paying for publicity in your local media. You might also be able to gain free advertising through sponsorship arrangements or community service announcements. The Crown Lands Reserves Team can assist you further in this area.

18.3 Media relations

It is important to develop good relationships with members of your local media outlets. This will assist in generating good publicity for your reserve trust and its operations. Media outlets that you should consider developing relationships with are:

- radio
- television
- newspapers
- local newsletters and guides.

Some things you can do to encourage good media relations are:

- getting to know your local media representatives – invite them to functions and events
- following up press releases to make sure your information has been communicated in the way you intended
- identifying the main media outlets you are interested in appearing in – there is no need to spread information across all forms of the media
- selecting a single spokesperson so that the media representatives have a consistent point of contact within your reserve trust.

18.4 Media releases

A media release can be a good way of gaining publicity for your reserve.

When drafting a media release, you may wish to consult the Crown Lands Reserves Team before issuing it. This is of particular importance for more significant or sensitive issues.

A media release is generally a one-page story that communicates its message to your local community in a simple, straightforward way. The reserve trust's letterhead should be used when issuing the media release and, generally, a media release should contain:

- a catchy headline that gets to the point of the story
- a first paragraph summarising the story, containing the most important information
- more details in subsequent paragraphs
- quotes from a respected person that the media can use in their own reporting – this could be a trust board member or even someone outside the reserve trust
- any photographs, plans or diagrams relevant to the story
- an all-hours contact and phone numbers and spokesperson details.

18.5 Developing and maintaining a website

Another way of generating publicity for your reserve trust is through a website. This might contain information such as the type of activities that can be undertaken on the reserve, how to contact the reserve trust, who the reserve trust members are, and publicity for reserve trust events.
There are various organisations and individuals who can help you in this process. These can be located through an internet or phone directory search for Website Design and Website Development. You should contact the Crown Lands Reserves Team first to ensure that appropriate Crown Lands’ policies, including any standard templates, imaging and branding, are complied with.

Developing and maintaining a website has certain advantages and disadvantages you should consider before starting. Some of these are set out below.

**Figure 18.1 – Advantages and disadvantages of a website**

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
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<tr>
<td>- Visitors and potential visitors can find out about reserve facilities any time of the day or night.</td>
<td>- There will be an initial cost involved in establishing the website, plus ongoing maintenance and hosting costs – you will need to ensure that the reserve trust has sufficient funds available for this.</td>
</tr>
<tr>
<td>- You may attract a new pool of visitors who may not otherwise be aware of your reserve.</td>
<td>- People will rely on the information contained on your website so you will need to ensure that it is up to date and accurate.</td>
</tr>
<tr>
<td>- You can share information with other reserve trusts or similar organisations.</td>
<td>- Gaining more exposure may have some flow-on costs in terms of additional maintenance requirements for the reserve itself.</td>
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<tr>
<td>- You can promote special events that you may be hosting – you can then link this to other websites such as those servicing regional tourism associations.</td>
<td>- A website provides little opportunity to target particular visitors or groups of visitors.</td>
</tr>
<tr>
<td>- Visitors and potential visitors can use the website to get answers to many of their questions, which will help to reduce the number of phone calls you receive with simple inquiries.</td>
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### 18.6 Sponsorship

There are two aspects to sponsorship – becoming a sponsor and being sponsored.

**Becoming a sponsor**

Acting as a sponsor for a local organisation, team or group can be a good way of generating publicity for your reserve trust.

However, any sponsorship to be provided by the reserve trust must be approved by the Minister responsible for administration of the Crown Lands Act. If you are considering becoming a sponsor, contact the Crown Lands Reserves Team for advice on the approval process.

**Finding a sponsor**

Gaining access to a sponsor can be an effective way of generating revenue for a reserve trust. Sponsors are particularly effective for those reserve trusts where public visitation or promotion of reserve trust achievements is high, and the sponsors can easily see the benefits of the sponsorship arrangement.

Sponsorships can be:

- linked to an event such as a horse race or agricultural show
• linked to a particular reserve trust project – such as regeneration of a piece of bushland, replacing warning signs, providing enhanced visitor facilities
• ongoing or one-off
• monetary or in-kind – such as providing plants for a regeneration project or building materials for maintenance of reserve trust assets.

Sponsors will need to see some benefit to them. A sponsorship is not a donation. It may be appropriate to thank your sponsors publicly through an annual media release or when a particular sponsorship is received.

The documents referred to in the Further Guidance section below may provide you with some pointers for when you are seeking a sponsor.

**Regulatory requirements**

- *Crown Lands Act 1989*

**Further guidance**

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the *Crown Lands Act 1989*, can be found at:
  
  www.legislation.nsw.gov.au

**Sponsorship:**

- See *Your Guide to Seeking Sponsorship* on the Victorian Landcare Gateway website:
  
  www.landcarevic.net.au/resources/money-volunteering-skills-your-guide-to-seeking-sponsorship

- See *Engaging Corporates in Landcare Activity across Australia* on the Landcare Australia website:
  

**Media releases:**

- The “Our Community” website contains a guide for writing a media release:
  

### Revisions to this chapter

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Sources of income

The best way to guarantee ongoing income for your reserve trust is to encourage suitable economic activities within the reserve, while keeping uses in accordance with the reserve’s purpose. Fundraising activities are also appropriate.

A reserve trust has access to a number of sources of funding and other resources to support its responsibilities. These resources can support the general activities of the reserve trust or may be targeted at a specific initiative. The primary sources are set out in this Chapter.

19.1 Sourcing funds through loans or contracts

If a particular source of funding involves committing to a loan agreement or contract, Crown Lands requires the reserve trust to consult with the local Crown Lands office. Assistance provided by Crown Lands can include:

- arranging a loan or grant, through the Public Reserves Management Fund Program
- advising of other non-government sources of funds available to community organisations
- obtaining funds for bushfire hazard reduction work through the local bushfire management committee.

19.2 The Public Reserves Management Fund

Crown Lands administers the Public Reserves Management Fund (PRMFP) which provides funds as grants and/or loans (at competitive interest rates) for the development, maintenance and improvement of Crown reserves throughout New South Wales. The PRMFP allocates funds each financial year to reserve managers through a robust assessment process.

More than $135m has been allocated by the NSW Government through the PRMFP over the last 10 years. This funding has supported important initiatives such as the maintenance of showgrounds and community halls, the improvement of local parks and reserves and the development of Crown caravan parks.

The Fund is self financing, generating revenue from levies and rent from certain income generating Crown reserves and interest earned from loan repayments.

The objectives of the PRMF are:

- maintain and develop recreational and tourism facilities on public reserves for community use and enjoyment
- facilitate improved management of community facilities on public reserves, including community halls, showgrounds and parks
- manage and renovate infrastructure and other assets on public reserves to optimise value to the community and comply with regulatory obligations
- enhance environmental assets by supporting conservation initiatives, bushfire management and weed and pest control on public reserves
• support business opportunities that realise the potential of the Crown land estate, support regional economies and promote greater financial sustainability
• support the important role that volunteers play in the ongoing management of the Crown reserve system, and
• ensure the PRMFP is self-sustaining and managed in a contemporary and efficient manner, with appropriate planning and administrative processes.

In addition to these Program objectives, funding priorities are established annually and are available on the Crown lands website at: http://www.lpma.nsw.gov.au/crown_lands/crown_reserves/funding

Applying for PRMF funding

Calls for applications for funding under the PRMFP are made annually. Application opening dates are advertised on the Crown Lands website and reserve trusts are also notified by email and letter. Applications are made online via the Crown Reserves Reporting System. Further details on how to make an application and eligibility requirements are available on the Crown Lands website: http://www.lpma.nsw.gov.au/crown_lands/crown_reserves/funding.

19.3 Other sources of funding

Other sources of funds that may be available to reserve trusts include grants from other government organisations and from private sector foundations and trusts. The following websites provide links to some of these funding opportunities and include tips on how to prepare a successful grant application:

Figure 19.1 –Possible sources of funding for reserve trusts

<table>
<thead>
<tr>
<th>Community builders</th>
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<tr>
<td>Community builders is a website operated by the NSW Government. In addition to general information about community development and services, the site has links to funding programs from federal, state and local government, as well as institutions, philanthropic trusts and businesses.</td>
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<tr>
<td>Follow the menu link to Funding &amp; Grants:</td>
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<tr>
<td><a href="http://www.communitybuilders.nsw.gov.au">www.communitybuilders.nsw.gov.au</a></td>
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<tr>
<td>The Funding &amp; Grants section also contains documents that advise of alternative ways of raising funds, and how to write submissions. More resources are regularly added to the site.</td>
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<th>Our Community</th>
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<tr>
<td>Our Community is a web-based gateway for community groups and schools. It contains information about what grants are available, advice on developing a grant submission, and other general guidance on accessing community resources.</td>
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<tr>
<td><a href="http://www.ourcommunity.com.au">www.ourcommunity.com.au</a></td>
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<tr>
<th>NSW Office of Environment &amp; Heritage – NSW Heritage Grants</th>
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<tr>
<td>NSW Heritage Grants aims to recognise and protect the state’s most significant heritage</td>
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places and values to ensure future generations can enjoy them. For more information, contact the Heritage Branch. See [http://www.environment.nsw.gov.au/Heritage/funding/index.htm](http://www.environment.nsw.gov.au/Heritage/funding/index.htm)

**Sponsorship**

Chapter 18 discusses how to access sponsorship resources.

**Australian Government – Caring for Our Country**

Caring for our Country is a Federal Government program that funds projects across the country to achieve national targets - projects that improve biodiversity and sustainable farm practices. This funding supports regional natural resource management groups, local, state and territory governments, Indigenous groups, industry bodies, land managers, farmers, Landcare groups and communities. See [www.nrm.gov.au](http://www.nrm.gov.au).

### 19.4 Fundraising

Fundraising activities are a good way of getting the local community involved in supporting your reserve trust. There are a variety of activities that can be used to generate funds in this way. In some instances (for example raffles), appropriate permits need to be obtained from your local council or from the Office of Liquor, Gaming and Racing. Your local Crown Lands office can assist with further advice in this regard.

Fundraising activities might include:

- cake and homemade gift stalls
- trivia nights
- fetes
- chocolate sales
- auctions
- guessing competitions.

More examples can be found at: [www.fundraisingideas.com.au/](http://www.fundraisingideas.com.au/)

Before undertaking a fundraising activity, you should consider the following points:

- does the activity align with the objectives of the reserve?
- are there particular insurance requirements associated with the activity?
- do you have enough volunteers and staff to support the activity?
- do you have the necessary skills or will you require assistance?
- do you require approval from Crown Lands?
- do you require permits or approvals from local authorities or from State Government?
- will you need support from organisations such as St John Ambulance?
- what promotion is required?
- how much will the activity cost and how much revenue is it likely to generate?
19.5 Volunteer labour

Attracting volunteers

In addition to the establishment of subcommittees with delegated authority to undertake certain tasks (e.g. bushcare), reserve trusts are encouraged to be proactive in seeking volunteers from their local areas. There are a number of factors that can assist in attracting the services of volunteers:

- Targeting groups that are regular users of the reserve can be an effective way of gaining additional volunteer support. You might also be able to access local groups such as Rotary, Lions Club, Scouts or Girl Guides to undertake specific initiatives – such as fixing a fence or tree planting.
- Volunteering Australia has established a volunteer recruitment website that provides free internet advertising for not-for-profit community organisations looking for volunteers:
  
  www.govolunteer.com.au

- To attract as many volunteers as possible, the work descriptions should cover a range of experience levels, and a range of levels of commitment (i.e. the number of hours the role will require). It is a good idea to develop several tasks that require a short concentrated effort, and a smaller number of roles that require greater commitment.
- Generally when someone volunteers, they want to be involved in something straight away. It is therefore important to have appropriate volunteer tasks available, as the longer it takes to get back to them; the more likely they are to lose interest.
- If specific skills are needed for a volunteer task, try to identify groups within the local community that might have that expertise. Potential target groups might be industry associations, local business people, or particular university or TAFE courses.
- A high proportion of volunteers initially volunteer because they are asked by a friend. Use your current volunteers and employees to build your number of volunteers.

Chapter 15 provides further information on the appointment of volunteers.

Out-of-pocket expenses for volunteers

Volunteers might incur expenses in conjunction with their activities. This could include travel costs, payments for goods or materials (such as building materials, protective clothing, or tools).

Reserve trust funds are by their very nature, public funds held “on trust” and reserve trust managers must be able to demonstrate that expenditure and the use of these funds is reasonable, acceptable, has been necessary and is incurred for the general purposes of the reserve trust. Reserve trust managers are wholly accountable for reserve trust funds under their control and high standards of accountability, transparency and good governance surrounding the use of these funds and expenditure are necessary to support this. Chapter 20 sets out further details on the use of reserve trust funds.

The reserve trust should offer to reimburse volunteers for their expenses or provide the relevant protective clothing etc where it is only labour that is being volunteered.

The reserve trust should confirm with the volunteers, before the volunteer work begins, what they expect regarding reimbursement.

Volunteers should be required to provide a receipt before any reimbursement is made and any costs should be assessed as reasonable, acceptable, necessary, has been incurred for the general purposes of the reserve trust and is consistent with the reserve trust’s adopted formal policies in relation to out-of-pocket expenses (refer to Chapter 20 for further information).
See also Chapter 15 about the appointment of volunteers, employed staff and contractors.

19.6 Selling assets to raise funds

A reserve trust can sell its assets in the ordinary course of its operations and does not need approval from Crown Lands to do so. This includes motor vehicles, furniture, plant and other equipment, but does not include the reserve land itself.

The decision to sell should only be made after considering the plan of management, the current and anticipated needs of the reserve, and the capacity of the reserve trust to buy appropriate replacement equipment if needed.

Assets should not be sold merely to cover short-term cash-flow problems. If in doubt, consult your local Crown Lands office for advice.

19.7 Financial hardship

Should a reserve trust experience financial hardship and be unable to secure income to meet its financial obligations the trust should immediately contact the local Crown Lands office. Informing Crown Lands early enables staff to work with the trust to assess and resolve the financial hardship. In certain circumstances the Department can access emergency funding through the Public Reserves Management Fund Program to support reserve management.

Regulatory requirements

- Australian Tax Office regulations and policies – reporting of income (including in-kind donations), deductible gift recipient status requirements
- Public Reserves Management Fund Act 1987

Further guidance

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the Crown Lands Act 1989, can be found at: www.law.nsw.gov.au
- Sponsors – see Chapter 18.
- Deductible gift recipient status
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- Fundraising
  - Fetes, festivals and fundraising: www.fetesandfestivals.com.au
  - Fundraising ideas: www.fundraisingideas.com.au

- Grants
  - Communitybuilders: www.communitybuilders.nsw.gov.au
  - Office of Environment & Heritage:
  - Landcare: www.landcare.nsw.org.au
  - The Australian Government's Caring for Our Country natural resource management initiative
    www.nrm.gov.au

Revisions to this chapter

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A reserve trust manager must be diligent in how it uses reserve trust funds and ensure that all payments and investments are in accordance with the relevant legal requirements and consistent with the use of public monies generally. This chapter contains information on the investments that reserve trust managers can make, and your responsibilities in ensuring that reserve trust funds are used to maximise benefits to the reserve.

### 20.1 Legal requirements

Reserve trust funds are public funds held “on trust”. Reserve trust managers must be able to demonstrate that all expenditure and the use of reserve trust funds is reasonable, acceptable, has been necessary and is incurred for the general purposes of the reserve trust. Reserve trust managers are wholly accountable for the reserve trust funds under their control and high standards of accountability, transparency and good governance surrounding the use of these funds and expenditure are necessary to support this.

Inappropriate use or misuse of reserve trust funds could result in action against the reserve trust manager and/or individuals (such as trust board members, employees and volunteers) which could include removal from office or legal action where deemed appropriate.

Reserve trust managers are required to comply with the *Crown Lands Act 1989* (the Act), the *Crown Lands Regulation 2006* (the Regulation) and the *Crown Lands (General Reserves) By-Law 2006* (the By-Law), as well as any other relevant legislative requirements.

The *Crown Lands Act 1989* requires reserve trust managers to comply with any directions the Minister makes regarding the use of the reserve trust’s funds. In the absence of directions, funds may be used for the general purposes of the reserve trust.

Reserve trust managers should ensure appropriate processes and procedures are in place to enable them to establish that expenditure and use of reserve trust funds has been necessary and is incurred for the general purposes of their reserve trust. These processes and procedures should describe the terms, conditions and requirements for the use of the reserve trust’s funds and for incurring the expenditure.

All reserve trust managers should adopt and implement formal policies in relation to:

### Conferences / travel

- Expenses incurred by spouses/partners accompanying trust board members and/or employees on local and overseas conferences should be borne personally and not charged to the reserve trust;
- The number of trust board members/employees attending a conference should be proportional to the value of the conference to the specific needs of the reserve trust;
- Accommodation expenses in connection with conferences/travel should be consistent with daily allowances provided for under NSW government policies.

### Out-of-pocket expenses

- Controls to approve payment of out-of-pocket expenses incurred for meals and entertainment consistent with equivalent allowances under NSW Government policies;
- Controls/conditions to be met for payment for the purchase of liquor;
• Working meals should not be a regular occurrence and typically only held when it is reasonable to acknowledge the necessary attendance of external clients, stakeholders, or other persons with a legitimate interest in the matters of the reserve trust to be discussed at that meeting;

• Consideration should be given to adopting a list of expenses that the reserve trust considers are inappropriate and therefore not allowed, including a list of examples.

**Reporting**

• The regular reporting of expenditure;

• Acquittal of cash advances/travel cards;

• Conference participants providing to the reserve trust a written report on the conference attended.

Refer to the NSW Department of Premier and Cabinet website for the latest circular setting out allowances (currently PSIR C2012-03 Review of Meal, Travelling and other Allowances).

Reserve trust funds must be used and managed in the best interests of the reserve and all reserve users. Reserve trust funds are not usually available to assist major reserve users (e.g. a sporting club) or for purposes not connected with the reserve. In addition reserve trust funds are not to be used solely in the interest of any organisations represented on the trust board or the corporate reserve trust manager.

It is also important to keep in mind that any money raised through the operation of the reserve trust, (e.g. from any approved tenure, sale of part of the reserve or entry or parking fees), must be used only for the purpose of improving and maintaining the reserve and for the reserve trust’s operations.

Where a reserve trust manager is appointed to manage more than one reserve trust, any money raised by each reserve trust and any investment income earned on that money must be separately accounted for and cannot be transferred between the reserve trusts.

Where a corporation is appointed reserve trust manager, trust activities, records and funds should be kept separate from the corporation’s own activities, records and funds.

In certain circumstances, and only with the Minister’s approval, a reserve trust can donate trust money to other groups for purposes which will benefit the reserve itself (e.g. a donation to assist a major user of the reserve to build or repair facilities), or will benefit the community in some other way.

Before committing to make any form of donation, reserve trust managers must have the Minister’s approval which should be obtained by contacting the Crown Lands Reserves Team.

### 20.2 Allowable investments

If a reserve trust has money which is not needed for normal operating expenses, investment should be in line with the **Investment Policy for Trust Boards Managing Crown Reserves and Commons 2005**. Refer to:


Unless the investment has been approved by Crown Lands on behalf of the Minister, on the basis of independent advice provided through the reserve trust or unless Crown Lands has advised that endorsement is not required for a particular reserve trust in specified circumstances, a reserve trust manager should only invest reserve trust funds in:
(a) any public funds or Government stock or Government securities of the Commonwealth or any State,

(b) any debentures or securities guaranteed by the Government of New South Wales,

(c) any debentures or securities:
   (i) issued by a public or local authority, or a statutory body representing the Crown, constituted by or under any law of the Commonwealth, or of any State or Territory, and
   (ii) guaranteed by the Commonwealth, any State or Territory,

(d) interest-bearing deposits in a bank,

(e) any deposit with, withdrawable shares in, or loan of money to, an authorised deposit-taking institution,

(f) deposits with or withdrawable shares in a building society or credit union (not including certificates of deposit or other transferable securities),

(g) deposits with the NSW Treasury Corporation,

(h) investments in an “Hour-Glass Investment Facility” of the NSW Treasury Corporation (being an investment facility where the NSW Treasury Corporation accepts funds on behalf of government and public or other authorities for investment by fund managers that it has approved).

The decision to invest money should be agreed at a reserve trust meeting and should be documented in the minutes. All loans are required to be approved by Crown Lands on behalf of the Minister, must be at arm’s length and must not create conflicts of interest in any form.

Reserve trusts are not to make loans (secured or otherwise) or provide security for loans to trust board members, employees or their families, and must not provide any mortgage loans. All accounts established with financial or other institutions for the management of reserve trust funds are to be in the name of the reserve trust.

20.3 Purchasing policy

Reserve trust managers are to achieve maximum returns from their procurement activities while complying with all relevant legislation and guidelines and maintaining the highest level of probity.

Principles

Procurement activities undertaken by reserve trust managers are to be guided by the following principles:

- Reserve trust managers are to follow NSW Government policies, guidelines, and procedures for the purchasing of goods or the procurement of services. This includes considering work health and safety needs and possible implications for procurement. Refer to www.procurepoint.nsw.gov.au

- All potential suppliers must be treated with impartiality and fairness and given equal access to information and opportunities to submit bids.

- Reserve trust managers are held fully accountable for their decisions and actions.

- Reserve trust managers must adhere to their reserve trust’s code of conduct in relation to any actual or potential conflicts of interest.

- As all reserve trusts are entities under NSW Trade & Investment, reserve trust managers are required to comply with the Department’s Code of Conduct for members of
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advisory committees / boards, contractors and consultants to NSW Trade & Investment which can be found at:


- Also refer to Chapter 2 for more information on codes of conduct.
- All processes and decisions must be fully and clearly documented to provide an identifiable audit trail and to allow for effective contract performance review.
- Reserve trust managers should purchase and use energy-efficient equipment, products containing recycled materials, and environmentally friendly products wherever practical.
- To comply with audit requirements, the authority to approve expenditure should be clearly segregated from the certification of performance of service, or of goods being received in good order.
- ‘Order splitting’ is inconsistent with the objectives of the procurement system and is prohibited. Reserve trust managers must not intentionally split purchase requirements into either components or a succession of orders for the same or similar goods and services for the purposes of enabling them to be obtained under Procurement Board Direction 2012-02. This Direction states that a government agency located in non-metropolitan areas can purchase goods and services valued up to $5,000 (including GST), from local sources, despite those goods and services being available on whole-of-government contracts, provided that the supplier’s rates for the goods or services are reasonable and consistent with normal market rates.

NSW Procurement Policy Framework

Reserve trust manager’s procurement practices are to comply with the NSW Government Procurement Policy Framework and the Goods and Services Guidelines

Local councils that are reserve trust managers should also refer to the Tendering Guidelines for NSW Local Government (October 2009), published by the Division of Local Government, which can be found at:


Procurement through Whole-of-Government Contracts and Pre-qualification Schemes (“in-contract procurement”)

Whole-of-Government Contracts and Pre-qualification Schemes are arrangements made by the NSW Government with suppliers to supply or dispose of specific goods or services. For some contracts there may be a panel of suppliers who can provide goods and services, and in other case there may be a sole supplier. Government agencies, including reserve trust managers on behalf of reserve trusts, must use Whole-of-Government Contracts and Pre-qualification Schemes where they are available.

It is recommended practice to seek quotations from several of the contract panel members wherever practical.

When purchasing under whole-of-government contracts, reserve trust managers can use the NSW Trade & Investment NSW Buy ID 91903 to obtain contract rates. This is for reserve trust use only and personal use items are not to be purchased using Whole-of-Government Contract rates (eg office stationery, hardware, etc).

Where no Whole-of-Government Contract is available for the goods or services a reserve trust manager may wish to procure, reserve trust managers can procure in accordance with the
Trust Handbook

procedures below. To see if there is an applicable contract, check the ProcurePoint website: www.procurepoint.nsw.gov.au/before-you-buy/buying-contracts.

There is an exemption from using Whole-of-Government Contracts and Pre-Qualification Schemes if the reserve trust is located in a non-metropolitan area* (which includes towns with a population of less than 1000), provided that the supplier’s rates for the goods or services are reasonable and consistent with normal market rates. This exemption allows for local purchases by reserve trust managers of up to $5000 in value (including GST).

Note: “Non-metropolitan areas” is that part of the State that excludes the following local government areas: Ashfield, Auburn, Bankstown, Blacktown, Blue Mountains, Botany Bay, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, Fairfield, Gosford, Hawkesbury, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly Marrickville, Mosman, Newcastle, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland, Sydney, The Hills, Warringah, Waverley, Willoughby, Wollondilly, Wollongong, Woollahra and Wyong.

“Out-of-contract procurement”

Procurement outside the Whole-of-Government Contracts (known as ‘out-of-contract’ procurement) requires reserve trust managers to take appropriate action to obtain quotations or to undertake a tender process and to ensure that:

- the rates or charges are reasonable, consistent with market rates and will provide ‘value for money’ to the trust;
- requirements are not split into components; eg:
  - a succession of orders for the same goods or services;
  - purchases over a period of time;
  - any other measure that would enable the goods or services to be obtained under a less stringent provision of the requirements set out below or to contain expenditure within delegation limits;
- the reasons for selecting a particular source of supply, in addition to following the appropriate quotation or tender process, are clearly documented together with all other aspects of the procurement.

Quotes required for out-of-contract procurement

For out-of-contract procurement of goods and services up to $3,000 in value (including GST): reserve trust managers need not obtain quotations. However, as a matter of good practice, reserve trust managers should consider seeking up to three quotes wherever possible.

Crown Lands requires that:

- reserve trust managers obtain at least one written quotation for all procurements of goods and services over $3000 and up to $30,000 in value (including GST);
- reserve trust managers obtain at least three written quotations for out-of-contract procurement of goods and services over $30,000 and up to $250,000 in value (including GST); and
- reserve trust managers invite open tenders for out-of-contract procurement of goods and services over $250,000 in value (including GST).

- Reserve trust managers obtain at least three quotations for whole-of-government contract procurements over $150,000 in value (including GST).
Procurement over $30,000 are to be registered with the NSW Trade & Investment Strategic Procurement Group, prior to seeking quotations or tenders. Tenders must be advertised on the NSW Government eTendering website. Contact Strategic Procurement Group at procurement.unit@industry.nsw.gov.au for procurement advice and assistance.

Quotations can be received by email to the Department’s generic tender responses email inbox at tender.responses@industry.nsw.gov.au to provide a greater level of probity around the procurement. Contact the Strategic Procurement Group if you would like to use this easy-to-use resource.

20.4 Issuing tenders and contracts

When a reserve trust manager issues a tender on behalf of the reserve trust, the notice inviting tenders should:

- Be prepared on NSW Trade & Investment Request for Tender templates (available by emailing details of the procurement to procurement.unit@industry.nsw.gov.au)
- set out the nature of the work or services to be performed or the goods to be supplied under the contract
- invite people who are willing to perform the work or services or supply the goods, to submit tenders to the trust on or before a specified date (generally at least 21 days after publication of the notice).


Tenders advertised on eTendering are managed by the Strategic Procurement Group in Orange. Tenders are to be received electronically through the electronic tender box in eTendering will be opened in Orange and the responses emailed or sent via courier to the trust reserve manager, upon receipt of a signed tender evaluation plan.

A tender evaluation committee should be formed to handle tenders and appropriate documentation (tender evaluation plan) should be used to assess tenders fairly. Any potential or actual conflicts of interests between a tenderer and the reserve trust manager should be identified, registered and appropriately managed.

20.5 Leasing equipment

When equipment is leased, the lessor / supplier will often request that a security deposit or a personal guarantee be given.

Trust board members do not have personal liability for actions taken in good faith in the operation of the trust. Therefore they do not have to give personal guarantees.

If a security deposit is to be paid, reserve trust managers should seek to ensure that it is held by the lessor / supplier in a separate interest-bearing account, and not merely banked by the lessor / supplier into its general funds. This is particularly important for longer-term arrangements or where the deposit amount is substantial.
20.6 Sponsorship

Reserve trust managers should consider in detail any proposals to attract or maintain sponsorship for the reserve trust.

A decision by a reserve trust manager to seek or maintain sponsorship should deal specifically with how the reserve trust’s funds can be used to attract sponsorship and how much money can be spent. General ‘hospitality’ or ‘entertainment’ allowances for reserve trust managers should not be considered.

Where a sponsor is to pay money to the reserve trust, the sponsorship arrangement cannot require the reserve trust manager to use the sponsorship money in any way which is not consistent with the purposes of the reserve.

For more information on sponsorship see also Chapter 18.

Regulatory requirements

- *Crown Lands Act 1989* – sections 106 and 107
- *Crown Lands Regulation 2006*
- *Crown Lands (General Reserves) By-Law 2006*

Further guidance

- NSW Government policies, procedures and guidelines on procurement and contracting – refer to the ProcurementPoint website:
  

Revisions to this chapter

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<tr>
<td>1</td>
<td>Revised procurement and tendering requirements</td>
<td>August 2013</td>
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21 Selling, mortgaging and acquiring reserve trust land

Reserve trusts manage Crown land for the benefit of the community. To assist the reserve trust in undertaking this management responsibility, the Crown Lands Act provides that the reserve trust effectively holds ownership of the land making up the reserve. However, the Crown Lands Act also provides that in many of its dealings in respect to reserve land, the reserve trust cannot act independently without reference back to the Minister responsible for the administration of the Crown Lands Act.

This means that, provided the Minister’s consent is obtained, the reserve trust can lease, license or enter into other formal agreements concerning the use of the land as if it were the owner. Parts of the reserve can also be sold or mortgaged, or added to through purchase or lease, but only in very limited circumstances.

In all cases, a reserve trust proposing to sell or mortgage a reserve, or to purchase or lease additional land must approach Crown Lands to obtain the Minister’s consent.

The leasing, licensing or issue of other types of tenure over reserve trust land and the need for the prior consent of the Minister is dealt with in Chapter 14.

A sale or mortgage of the whole or a part of the reserve may affect native title interests in the reserve. Before entering into any transaction, reserve trust managers should refer to Chapter 12 and consult their local Crown Lands office to clarify any possible native title issues.

21.1 Selling Crown reserves

The sale of a reserve or a part of it will only be considered in very exceptional circumstances. A sale can only occur with the Minister’s consent and would usually involve public competition for the land concerned.

A common reason for selling part of a reserve is because the reserve trust decides that it is not suitable for the purposes for which the reserve was created, particularly if the funds are to be used to purchase more suitable land.

If the trust board decides that it wishes to sell the whole or a part of the reserve, it should first discuss the proposal with the local Crown Lands office. After this consultation, if the sale is to proceed, the reserve trust must then publish a notice to that effect in a local newspaper.

Notice of intent to sell

The notice must specify the details of the land in question; the reasons for the decision to sell; and any other relevant matters; for example that the reserve trust has identified other land which will be purchased to replace the part sold. The notice should invite members of the public and any other interested bodies to send comments regarding the proposal to the reserve trust within 14 days (or any other longer time the reserve trust may decide) after its publication.

Application for consent to sell

The reserve trust must wait at least 14 days after the notice is published before making a formal application to Crown Lands for the Minister’s consent. The actual time taken to make this formal application should though give the reserve trust sufficient time to receive any submissions from the community and consider their content, and reflect any time longer than 14 days that the reserve trust has allowed for persons to respond to the notice. The application for consent should include copies of any responses received from the community, plus any relevant comment the reserve trust wishes to make regarding those responses.
Consent and conditions

The Minister’s consent, if given, may be subject to conditions, for example that the money received from the sale must be:

- used to purchase other land to become part of the reserve
- paid into the Public Reserves Management Fund
- given to another reserve trust.

If no conditions are imposed, the money received can be used for the general purposes of the reserve trust (maintenance, promotion, operating expenses, etc).

Crown Lands will not normally support the sale of part of a reserve simply to raise funds for maintenance.

21.2 Can a reserve trust grant a mortgage over the reserve?

A reserve trust can grant a mortgage over the reserve land in limited circumstances. The Minister’s consent is required.

However, a reserve trust should not consider raising funds through a mortgage unless:

- there is a specific construction project or improvement program for which the money is needed
- a loan through the Public Reserves Management Fund or other government assistance is not available
- the reserve trust can demonstrate that it has the financial capacity to repay the loan.

Unless these criteria are met, a mortgage will not be approved.

Note here that it may be possible for a reserve trust to obtain funding through a combination of government grant and loan, either from the PRMF or an outside lender. The reserve trust should consult the Crown Lands Reserves Team regarding the alternative types of funding that are available.

21.3 Can a reserve trust lease or purchase land?

A reserve trust can buy land or take a lease of land for use in its management of the reserve. The Minister’s approval is required.

When land is bought or leased, the land is added to the reserve and the by-laws and rules applying to the rest of the reserve will apply to that land.

Subject to availability of funds, approval to buy or lease land to create new reserves or add to existing reserves will normally only be granted if at least one of the following criteria is met:

- There is a need to provide more public reserve facilities on the basis that the existing Crown reserves are not sufficient to meet the needs of the area (for example, there may be a need for additional camping facilities or for the extension of a nature reserve in a particular area).
- The local community can raise a substantial contribution towards the cost of purchase (usually at least 50% of the cost).
- The land to be acquired can be used to raise money (through admission fees, rents or licence fees, etc) to assist the Public Reserves Management Fund or to provide financial support for the management of other reserves.
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- The land to be acquired will improve the management of an existing reserve (for example, improved access).
- The sale and purchase of land along a reserve’s boundaries will make management of its boundaries easier (this may sometimes involve ‘exchange’ of land with a neighbour).

Regulatory requirements
- Sale of reserve land: Sections 102 and 103, *Crown Lands Act 1989*
- Mortgaging of reserve land: Sections 102 and 103, *Crown Lands Act 1989*
- Purchase or leasing of additional land: Section 101, *Crown Lands Act 1989*

Further guidance
- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the *Crown Lands Act 1989*, can be found at: www.legislation.nsw.gov.au

Revisions to this chapter

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</table>
22 Accounting and financial management

Good accounting and financial management is a basic principle of effective business, and is therefore an integral part of managing a reserve.

The responsibility for the care, control and management of a reserve and its improvements rests with the reserve trust manager. Therefore, it is essential that reserve trust managers exercise good financial management and control. However, trust board members are not expected to become accountants or professional bookkeepers. If you have access to a community-spirited accountant, this person would be ideal to assist with maintaining accounting records.

Reserve trusts are responsible for ensuring records are created in accordance with the State Records Act 1998. Helpful advice can be found at www.records.nsw.gov.au.

The information in this chapter is designed to give you a better understanding of the basic accounting records you must maintain. In addition, the Crown Lands Reserves Team is available to give advice on keeping financial records.

22.1 Keeping the books up to date

It is important that the accounting books and other financial records be kept up to date at all times to ensure relevant information is available about:

- how the reserve is performing
- the operating costs
- funds needed to develop the reserve
- compliance with legal requirements.

22.2 Accounting method – cash or accrual?

There are two ways of accounting for business transactions: cash and accrual.

The cash method is the simpler method. It is normally used for smaller organisations. This method records monies actually received and actually paid during the accounting period. It ignores all monies that are owed (e.g. orders on account) or receivable (e.g. rent receivable).

The accrual method provides a more accurate picture of the financial position. It is recommended for organisations with higher volumes of transactions or with significant capital infrastructure.

This method differs from the cash method in that income is recognised when it is earned (as opposed to received) and expenditure is recognised when it is incurred (as opposed to paid). The accrual method also accounts for non-cash transactions such as depreciation and allowances for bad debts.
22.3 Accounting records

Reserve trusts are responsible for ensuring records are created in accordance with the State Records Act 1988. The accounting records kept will depend on whether you decide to use the cash method or the accrual method for keeping your accounts.

There are a number of references that will help you determine the appropriate period for maintaining records, including General Retention & Disposal Authority - Administrative Records (GDA-28) – 2009 and State Records Guideline No 3 – Destruction of Records A Practical Guide.


The Cash Method – records to be kept

You can keep accounting records in either paper or electronic format. Electronic format is better if possible, preferably using a standard accounting package.

Paper records

If you keep paper records, the most common records required are:

A cash receipt book: record of all monies received and deposited in the bank account
A cash payment book: record of all cheques issued.

Sample cash books are shown at Appendix C.

Multi-column cash books make it easier to analyse receipts and payments under different heads and can be purchased from any newsagency.

Consider subtotalling receipts and payments each month. This will make it easier to keep track of income and expenditure and will also make it easier to find mistakes.

Electronic records

An alternative method of keeping track of cash receipts and payments is to use a spreadsheet or accounting software package.

A spreadsheet is set up in a similar way to cash receipt and cash payment books kept in paper form. The use of the addition function within the spreadsheet program function to add the content within the various columns has the benefit of reducing the likelihood of addition errors.

An accounting software package can also be used for the cash method. There are common accounting packages available. These packages are easy to use, and provide the benefit of producing standard reports and reducing the likelihood of errors.

Remember to keep a back-up of any electronic data files. Back-up copies should be kept in a different location from the main computer.

The Accrual Method – records to be kept

You can keep accounting records in either paper or electronic format. Electronic format is better if possible, preferably using a standard accounting package.

Paper records

If you keep paper records, the most common records required are:

A cash receipt book: record of all monies received
A cash payment book: record of all cheques issued
A purchase book: record of all purchases on account
A revenue book: record of all revenue on credit
A **journal book**: record of all journal entries prepared during the reporting period. This is used to record transactions that cannot be accommodated by the other books.

A **general ledger**: the ‘book of final entry’. All books are summarised at the end of each month and posted in the ledger. Financial reports, such as the balance sheet and income statement, are generated from this book.

Additional books that can assist with record-keeping are discussed later in this section.

### Electronic records

An alternative method of keeping track of cash receipts and payments is to use a spreadsheet or accounting software package.

A spreadsheet is set up in a similar way to the cash receipts and cash payments books in Appendix C. The additional books kept to assist with record-keeping may also be kept electronically. The use of the addition function within the spreadsheet program to add the content within the various columns has the benefit of reducing the likelihood of addition errors.

It is highly recommended that you use an integrated standard accounting software package. There are commonly available packages that are easy to use, and provide the benefit of producing standard reports and reducing the likelihood of errors.

A standard accounting software package should provide all the items required to keep the books and records of a reserve trust.

Remember to keep a back-up of any electronic data files. Back-up copies should be kept in a different location from the main computer.

The only records you may then need to keep in paper are minute books (ie. recording the minutes of meetings).

### 22.4 Records to be kept

The **Crown Lands Regulation 2006** requires that certain records be maintained by a reserve trust. See Chapter 17.

In addition to all these records, there are ancillary records that you could consider using, which can help with the daily management of the reserve. These include gas and electricity meter books and stock cards showing the purchase of stores for kiosks and the like.

Figure 22.1 describes how the financial records and asset register should be used, and also recommends other books that will make the process of managing the reserve trust easier.

Examples of a number of these types of books can be found in Appendix C.

In addition to all these records, there are ancillary records that you could consider using, which can help with the daily management of the reserve. These include gas and electricity meter books and stock cards showing the purchase of stores for kiosks and the like.

**Figure 22.1 - Record-keeping books**

<table>
<thead>
<tr>
<th>Book</th>
<th>What it contains / How it is used</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank deposit book</td>
<td>All collections from all sources amounting to $100 or more should be deposited daily, or as frequently as possible to the reserve trust’s bank account. That limit may be raised to $200 where travelling costs involved would make banking of lesser amounts uneconomical or the banking of collections involves closure of services to the public provided that collections do not remain unbanked for more than one week. A bank deposit book must</td>
</tr>
<tr>
<td>Book</td>
<td>What it contains / How it is used</td>
</tr>
<tr>
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<tr>
<td>Trust Handbook</td>
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<tr>
<td>Receipt books</td>
<td>The receipt numbers corresponding to the amounts deposited should be written on the butt of the bank deposit book to serve as an audit trail.</td>
</tr>
<tr>
<td>Cheque book</td>
<td>All amounts paid by the reserve trust must be drawn on a reserve trust cheque. This must be signed by two authorised board members or employees, with particulars (date, payee, amount, brief description of payment) written on the cheque butts at the time. Receipts should be obtained and kept for every payment made.</td>
</tr>
<tr>
<td>Receipt books</td>
<td>A receipt must be issued for every sum received. The receipt book should be printed in duplicate and each form numbered by the printer (not by hand). When a new book is purchased, a record must be made of the first and last numbers in the book. A convenient place for recording this information is in the front of the cash book. Receipt books can be bought from any newsagency.</td>
</tr>
</tbody>
</table>
| Wages book           | The reserve trust must keep wages records. A wage book can be purchased from any newsagency.  

**Contents of the wages book**  
In the wages book, each employee must have a separate page showing their net wage and all deductions. Information such as starting date, qualifications, dependants, entitlements, deductions requested and tax payable must be kept for each employee. Each employee must be provided with a payslip for each wages payment.  
Taxation cheques for PAYG withholding should be entered into the wages column of the cash payments book.  

**PAYG**  
If the reserve trust has employees, the trust must be registered for PAYG tax withholding. Taxes must be withheld from salary/wage payments made to employees. The amount to be withheld can be calculated by referring to the ATO’s PAYG Withholding Tax Tables, available at [www.ato.gov.au](http://www.ato.gov.au). PAYG withholding must be paid to the ATO with the activity statement (either a Business Activity Statement or an Instalment Activity Statement). Withholding payments are required as follows:  
- quarterly (for small employers – as at 1 August 2011 PAYG withholding less than $25,000 a year)  
- monthly (for larger employers – as at 1 August 2011 PAYG withholding more than $25,000 a year, but less than $1m a year)  
- twice weekly (for very large employers – as at 1 August 2011 PAYG withholding more than $1 million a year).  

**Payroll tax**  
If your monthly wages bill exceeds an amount set by the NSW Office of State Revenue (e.g. $55,574 for a 30 day month as at 1 August 2011), the trust must assess and pay payroll tax. To find out whether you are exempt from this requirement, check the benchmark figure for payroll tax exemption each year. This can be obtained from the NSW Office of State Revenue ([www.osr.nsw.gov.au](http://www.osr.nsw.gov.au)). |
<p>| Cash payment (petty cash) book | All money must be banked in the reserve trust’s bank account. However, occasionally there are small items which trust board members or personnel pay for. These sums can be accumulated until they are a meaningful amount and |</p>
<table>
<thead>
<tr>
<th>Book</th>
<th>What it contains / How it is used</th>
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<tr>
<td></td>
<td>then a cheque is issued to reimburse expenses. The cheque should be written up as shown in the entry in Appendix C.2. Alternatively, if the reserve trust uses a petty cash float, it must maintain a separate petty cash book. A board member, manager or caretaker (known as the petty cash custodian) is responsible for the petty cash float and petty cash book. That person must analyse the petty cash dockets so the type of expense can be disclosed correctly, then write them up in the petty cash book in a similar format to the cash payments book. Approved petty cash dockets should be used to substantiate a reimbursement of the petty cash. If the petty cash runs low, paid dockets will be summarised for replenishment by the petty cash custodian. Replenishment is done by drawing a cheque from the normal bank account payable to the petty cash custodian, who cashes the cheque and provides cash back to the petty cash float. The signatories to the normal bank account approve the reimbursement. Cheques issued from the normal bank account are subsequently recorded in the cash payments book.</td>
</tr>
<tr>
<td></td>
<td>If the reserve trust receives income from rents or licence fees for the regular use of a reserve, a rent/licence fee register should be maintained. The register will allow you to monitor rent collections and identify users who fall into arrears. If this happens, discreet action by the board could reduce problems which tend to escalate if left unchecked. Large reserves with varied activities may need separate registers for rental of buildings and for ground hire. The register may be kept in an exercise book or in electronic format. A sample rent register is shown in Appendix C.3.</td>
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<td></td>
<td>A minutes book must be kept to record meetings. The minutes should contain: • the date of the meeting • who was present • all decisions and expenditure approvals • for annual general meetings, the presentation and adoption of the annual report and its financial statements. All minutes are to be signed and dated by the chairperson and countersigned by the secretary as being a true and accurate record of the business transacted.</td>
</tr>
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<td>An asset register allows the board to determine the value of trust property at any time. The register should form part of the trust records and be inspected by a new board or trust secretary whenever a handover occurs. This helps avoid embarrassing situations involving the ownership and whereabouts of assets. <strong>Value of assets to be included</strong> Before establishing an asset register, the trust should determine the minimum value of assets to be included (e.g. ‘only include assets with an initial value of $500 and above’). In this way, individual items with a value of less than $500 need not be recorded in the register, but can be regarded as current expenditure. However, if the trust considers that certain items should be included for stocktake purposes, they may be included. <strong>Compiling the register</strong> The register can be kept in an exercise book or in electronic format.</td>
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### Stocktaking

A stocktake should be done once a year and the result compared with the asset register. The stocktake should also review the quality of assets to ensure they are in appropriate working condition.

If you are using the accrual method of accounting, stocktake results should also be reconciled with the general ledger.

A sample asset register is shown in Appendix C.4.

If you have a large number of assets you should consider using an electronic asset register system.

### 22.5 Financial management

The reserve trust manager is responsible for the financial management of the reserve trust’s affairs. It is important that all members of the reserve trust board make themselves aware of the financial position of the reserve trust and its operations. The reserve trust board is responsible for ensuring there are adequate controls over the reserve trust’s assets and for ensuring that the actions of any employees are adequately monitored and controlled.

The following information, on budgeting, asset valuation and depreciation, and financial trend analysis, will assist reserve trust boards to manage their reserve trust’s financial affairs. The number and variety of standard accounting practices that are adopted will depend on the nature and use of the reserve and the financial turnover.

Where expertise is not available from among members, reserve trusts are encouraged to seek assistance from suitably qualified or experienced community members or from the staff of the local Crown Lands office.

#### (i) Budgeting

The reserve trust should be aware of the funds needed to operate their reserve in a cost effective way.

This awareness can be achieved by ensuring a budget is prepared and regularly monitored. You should start by determining the desired level of activities to be operated and the level of funding that you expect to be available. Identifying constraints and room for improvement will assist in making the budget exercise simpler and more realistic in subsequent years. Existing budgets are normally adjusted to reflect these factors.

A copy of the budget should be included with the reserve trust’s annual return to Crown Lands (see Chapter 23) to show how the reserve operates. It will also assist when any applications for financial assistance are being considered.

If your reserve trust does not handle any finances, the budget exercise will not be necessary. If your reserve trust does not earn any income, but still has expenses, a budget should be prepared for the expenses.

A comparison of the reserve trust’s financial performance with the budget can help with the early identification of operational problems. For example, a significant increase in expenses above...
budget may indicate that the reserve trust will run into financial difficulties at a later date, or may indicate unauthorised expenditure or fraud. It may also indicate that the original budget was incorrect. The reserve trust board should ensure it regularly reviews the reserve trust’s financial performance compared to the original budget.

A sample budget is included in Appendix C.
(ii) Asset valuation and depreciation

Valuation

To be sure your assets have been valued correctly it is preferable to have them valued by qualified people and not just by reserve trust board members.

If an asset is purchased for its normal fair value, its value should be recorded as the actual cost the reserve trust paid for it. It can also be helpful to use the information obtained when your insurer values major assets such as buildings and plant.

Revaluation at regular intervals is recommended to ensure that appropriate insurance is being maintained.

Depreciation

Depreciation is the reduction in value of assets due to normal use and the expiry of time. It is important to understand this cost to enable the reserve trust to budget for the replacement of items over time.

Reserve trust managers can get into financial difficulties if they overlook the major expense of the depreciation of assets. Depreciation is a genuine expense under accrual accounting.

If depreciation is not allowed for in the accounts, it can create a false picture of the reserve trust’s financial position. A reserve trust might believe it is making a small profit or breaking even, when it is actually making a loss because of the extent of depreciation that has been overlooked.

While the depreciation expense is not a cash expense, it is a true expense in the sense that it is a true economic cost to the reserve trust. Most assets that depreciate in value must be replaced at some time. By charging depreciation in the accounts, and as long as the reserve trust breaks even, the reserve trust should have cash available to replace assets (although this may not take into account the fact that some assets have increased in cost in the period between when they are replaced and when they were originally purchased).

The Straight-line method

The straight-line method is advocated to calculate depreciation, because it reflects the writing-off of an asset over its estimated useful life. This method is based on the assumption that assets deliver the same benefits each year.

Write-off periods may vary according to the asset type. For example, heavy plant may have an operation life of seven years and office equipment five years. In these circumstances, it would be necessary to prepare an asset schedule outlining predetermined depreciation periods and rates.

Examples of depreciation rates can be found on the Australian Taxation Office website (www.ato.gov.au), or in Australian Master Tax Guide published by CCH Australia Ltd.

(iii) Financial trend analysis

Financial trend analysis is an effective way of determining the success of a reserve trust’s operations. There are several methods for analysing trends, but the most common is comparing the results for a particular year against those of previous years and analysing the factors or issues that may have caused the variation.

Trend analysis will enable the reserve trust to identify any existing or potential financial issues and give you the opportunity to rectify possible problems.

A sample format for a trend analysis of the cash receipts and payments statement is included in Appendix C.
22.6 Australian Business Number (ABN) requirements

Depending on their circumstances, many reserve trusts will need to obtain an Australian Business Number (ABN). Businesses are required to deduct withholding tax from any payments exceeding $50 made to another business that does not advise its ABN. An ABN is also a prerequisite for registration for the Goods & Services Tax (GST) (see below).

The reserve trust’s ABN must appear on all invoices issued and on its letterhead.

The ATO’s website provides further guidance on this: www.ato.gov.au

22.7 GST requirements

Generally, an enterprise (i.e. a reserve trust) is required to register for GST if its current or projected turnover (generally its income) is greater than $75,000 a year. For non-profit organisations the turnover threshold is $150,000 a year.

If a reserve trust’s turnover is below the relevant thresholds it is not required to be registered for GST, however it may voluntarily register for GST. This enables the reserve trust to claim back GST credits for the GST paid on purchases made by the reserve trust.

However, for small reserve trusts, the costs and time required to comply with GST reporting may exceed the benefits.

A registered business must lodge GST returns either monthly or quarterly via a Business Activity Statement. The net GST (GST collected minus input tax credits) is paid to or claimed back from the ATO at the same time.

Non-profit organisations

‘Non-profit’ is not defined in the GST legislation. However the ATO considers that it means the organisation must not carry on its business for the purposes of profit or gain to its individual members. This requirement will be satisfied if the instrument governing the establishment of the organisation prohibits the body from distributing its profits or assets among its members while the body is functional or on its winding up.

If this prohibition does not appear in the constitution (or by operation of law), the ATO will also accept that the organisation is non-profit if it is clear from its objectives, policies, history, activities and future plans that there will be no distribution to members.

It is likely that all reserve trusts will satisfy this requirement.

Claiming GST credits

If you claim GST credits on your expenditure you are required to hold a valid tax invoice at the time of making the claim.

A tax invoice must state:

- the words “tax invoice”
- the date of issue
- the name and ABN of the supplier
- a brief description of the goods or services supplied
- the GST inclusive price, and either the total amount of GST payable or, where the GST is 1/11th of the price, the statement “the total price includes GST for this supply”, or “GST included in total”, or “total includes GST".
Where a transaction involves a combination of GST-taxable and GST-free or input-taxed (see below) supplies, the tax invoice must clearly identify each tax component and show the total GST payable and the total amount payable.

If the invoice is greater than $1,000, details must also include:

- the name of the recipient (purchaser)
- either the address or the ABN of the recipient
- for each description of the good or service supplied, the quantity of the goods or the extent of the services supplied (e.g. the number of items or the hours or labour).

**Input tax**

Some supplies, such as financial supplies and residential rents, are ‘input taxed’. Input-taxed supplies are not subject to GST. However the supplier of the input-taxed supply is liable for GST on their own inputs and is not entitled to a refund of the input tax on those inputs.

There is also a limited range of GST-free supplies where GST is not required to be charged on the supplies but the supplier is entitled to a refund of input tax.

If you have questions about GST requirements you should consult an accountant or look for information on the ATO website (www.ato.gov.au). You may also call the ATO and discuss your query with them.

**22.8 Claiming tax exemptions**

A reserve trust might be eligible for income tax exemption. However, the requirements can be extremely complicated. Broadly, exemptions may be available for reserve trusts that are classified as charities or as certain non-profit groups.

The ATO produces a publication dealing with the tax implications for non-profit groups. You can find this publication on the ATO website (www.ato.gov.au). This publication also outlines the requirements to become income tax exempt.

If you have any questions about tax issues you should consult an accountant or the ATO.

**22.9 Frequency and format of reporting**

Section 122 of the Crown Lands Act requires all reserve trusts to submit an annual report to the Minister by the end of September each year.

Where the trust board is indirectly responsible for the financial management of the reserve trust because it has delegated the responsibility to separate management, the trust board should ensure that it receives regular reports from that management concerning the operations of the reserve trust.

The frequency of internal reporting of financial information and the format of that financial information depends on the size and complexity of the reserve trust’s operations. A large reserve trust with complex operations should report internally more frequently than a smaller or simpler reserve trust.

- A large reserve trust should report monthly.
- Most other reserve trusts should report quarterly.
- It might be appropriate for some reserve trusts to report six-monthly or (rarely) annually.
Even if you do not report internally each month or quarter, you must ensure that the financial records are kept up to date so that the reserve trust can comply with its GST reporting obligations.

Ultimately, the reserve trust manager is responsible for the financial operations of the reserve trust and even though some responsibilities may be delegated to separate management, the reserve trust board is responsible for monitoring and controlling management.

### Regulatory requirements

- *Crown Lands Act 1989*
- *Crown Lands Regulation 2006*
- *(C’wealth) Income Tax Assessment Act 1936 and (C’wealth) Income Tax Assessment Act 1997*
- *(C’wealth) A New Tax System (Goods and Services Tax) Act 1999*

### Further guidance

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the *Crown Lands Act 1989*, can be found at:

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23 **Annual report and financial statements**

Annual reports and financial statements are important items that assist the reserve trust manager and other interested parties to review the financial position of the reserve trust. They also enable Crown Lands to review the reserve trust’s operations and to help identify those reserve trusts that may require assistance. In addition, the financial report assists the reserve trust manager and Crown Lands to determine whether a reserve trust’s financial resources are being controlled and managed in the most appropriate way.

### 23.1 Annual reporting

Section 122 of the Crown Lands Act requires all reserve trusts to submit an annual report to the Minister administering the Crown Lands Act within three months of the close of the trust’s financial year. This means that most annual reports need to be lodged by 30 September each year since the financial year for a reserve trust is the year commencing 1 July, unless otherwise specified by the Minister.

### 23.2 Information to be reported annually

Clause 32 of the *Crown Lands Regulation 2006* sets out the matters and information to be reported annual to the Minister. The annual reporting requirements in Clause 32 relate to the care and use of Crown reserves as set out in this Handbook.

To complete an annual report the following information is required:

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<tr>
<th>Information to be reported annually</th>
<th>Trust Handbook chapter</th>
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<tr>
<td>Contact details of the reserve trust board members or reserve manager</td>
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<td>Details of reserve trust manager meetings (trust boards only)</td>
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<td>Reserve trust ABN (if not previously supplied)</td>
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<td>Number of staff, volunteers and contractors engaged</td>
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<td>Details of any work place health and safety and code of conduct programs</td>
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<td>Details of any functions of the reserve trust delegated with the Minister’s consent</td>
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<td>Audit details (reserve trust boards, showgrounds and caravan parks only)</td>
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<td>Usage and the number of visitors to the reserve(s)</td>
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**Electronic Reporting**

From July 2009 annual reports have been required to be submitted electronically using the Crown Reserve Reporting System (CRRS). CRRS simplifies the reporting requirements stipulated in Clause 32 of the Crown Lands Regulation 2006 into a streamlined online form. CRRS also allows reserve managers to retrieve annual reports previously submitted online, making it easier to provide information.

To access the online reporting system, please contact the CRRS help desk at crrs@lands.nsw.gov.au

**Paper Based Reporting**

Reserve trust managers who do not have access to the internet can continue to submit their reports in paper format using the Crown Lands standard reporting form (see Appendix C).

**Help Resources**

Resources are available to help reserve trust managers prepare their annual report to the Minister, include:

- a printable help document and an online training demonstration located in CRRS
- Help Desk service at crrs@lands.nsw.gov.au

**Exemption from reporting**

Section 122(2) of the Crown Lands Act enables the Minister to grant an exemption from the statutory requirement to provide a report. This exemption:

- may relate to a particular reserve or class of reserve trusts
- may be subject to conditions
• operates for the period advised by the Minister.

Reserve trust managers seeking exemption from lodging an annual report and financial statement should provide their reasons in writing to the Crown Lands Reserves Team. The circumstances in which an exemption will be provided are normally extremely limited.

It may seem unnecessary for a reserve trust with little income to prepare an annual report. However, apart from providing information about the reserve trust’s financial operations, the report keeps Crown Lands and Minister informed about specific matters. These include the use and condition of the reserve, the assets of the reserve trust, improvement and maintenance works, explanations for any significant increase or decrease in patronage, and information about reserve trust board membership, where applicable.

23.3 The financial statements

In addition to the annual report, Crown Lands may, by a notice in writing to a reserve trust, request the following financial statements (see sample Appendix C):

- receipts and payments statement
- bank reconciliation statement
- financial handover statement (if applicable)
- balance sheet
- income and expenditure statement
- cash flow statement
- notes to financial statements.

The financial year for a reserve trust is the year commencing 1 July, unless otherwise specified by the Minister. This change has been introduced because different reporting periods can make it difficult to compare reserve trust management outcomes and performance.

Receipts and payments statement

Under the cash method of accounting, a ‘statement of receipts and payments’ is prepared. The statement summarises the transactions that occurred during the accounting period. This information gives the reserve trust manager better control over the financial management of the reserve trust.

The format of the statement of receipts and payments will differ according to the nature and purpose of the reserve trust. However, the aim is the same – to see how well the reserve trust is performing and what funds are available or needed for future maintenance, development and improvement.

The reserve trust should compile the statement from information shown in the cash payments book (see Appendix C).

Bank reconciliation statement

At the close of the year, the final balance on the bank statement must be reconciled with the balance as shown in the cash books. The reconciliation should be done regularly throughout the year to ensure that any problems are quickly identified and corrected.

An example of a bank reconciliation can be found in Appendix C.
Financial handover statement
A financial handover statement is provided by the reserve trust manager to the Crown Lands Reserves Team at the end of the reserve trust manager’s term or when handing over to a new reserve trust manager.

The financial handover statement should provide all information that will allow a new reserve trust manager to understand the financial operations of the reserve trust and to take over responsibility for the financial management of the reserve trust. The financial handover statement should include all information referred to in this section.

An example of a financial handover statement is in Appendix C).

Balance sheet
The balance sheet shows the reserve trust's assets and liabilities. An excess of assets over liabilities represents the accumulated funds of the reserve trust. As such, the balance sheet shows the reserve trust's financial situation at a particular point in time.

Where possible, assets recorded at a market value, rather than cost, should be valued by a qualified person. The assets should be depreciated to reflect any loss in value of assets over time. Chapter 22 provides more information in relation to accounting and depreciation.

Income and expenditure statement
The income and expenditure statement shows the result of the reserve trust’s operations (i.e. the net trading position) for the accounting period.


Cash flow statement
The cash flow statement shows the flow of cash from the reserve trust’s operations, investment activities and financing activities.

Notes to the financial statements
Notes to the financial statements supplement the financial statements in order to help people understand the operations and financial position of the reserve trust. The level of notes required will depend on what additional information needs to be provided.

23.4 Auditing of reserve trust boards
Crown Lands requires the following reserve trusts to be audited and issued with an audit certificate by a registered company auditor annually:

- All reserve trusts with an annual income over $50,000.
- All showground reserve trusts, regardless of their annual income.

Crown Lands also requires reserve trust boards with an annual income of less than $50,000 to be audited and get an audit certificate annually; however, the audit may be performed by any responsible local citizen, other than a reserve trust board member or a relative of a reserve trust board member.

It is not necessary to submit audit certificates to Crown Lands annually with annual reports; however the certificates must be made available to Crown Lands upon request. Audit certificates may be requested as part of a random audit of all reserve trust boards, or in response to issues or concerns that may have arisen with particular reserve trust boards.
23.5 Contracts

Section 6(1) of the Government Information (Public Access) Act 2009 (GIPA Act) requires the publication of certain information about contracts made between government agencies (such as Crown Lands) and the private sector for:

- contracts above $150,000 - a summary of the contract containing the particulars specified at Section 29 of the (GIPA Act) will be required;
- contract above $5 million - a summary of the contract and a copy of the contract will be required.

This information is required to be made public within 60 days after a government contract becomes effective by publication on the NSW Government e-Tender website (https://tenders.nsw.gov.au/nsw/) or other internet website authorised by the Premier.

For the purposes of the GIPA Act, reserve trusts, including trustees of commons, are treated as part of Crown Lands (see Schedule 4, GIPA Act).

For more information regarding the publication of contract information you should contact the Crown Lands Reserves Team.

23.6 Performance management and reporting

The Minister responsible for Crown lands may also require reserve trust managers to report on their performance in managing their reserve(s) and on such other matters as the Minister considers appropriate. The matters to be reported on can be prescribed in the Regulations and also advised direct to a reserve trust by a notice in writing.

Crown Lands intends to establish, in consultation with reserve trust representatives, specified performance criteria will help reserve trust managers to understand what is expected of them in their role as land and asset managers for the local and wider community. Subsequent review of reserve management performance against those criteria will also assist the Minister to ensure that reserves are managed as effectively as possible and in a way that is designed to achieve outcomes sought.

It is likely that these performance criteria will be different for different types of reserves and may include such matters as satisfactory submission of annual reports, maintenance of insurances including fire and property as well as public liability cover and demonstrated management of the reserve to meet legislative, environmental, social, economic and maintenance requirements. Reserve trusts will be advised as and when performance criteria are developed.
Regulatory requirements

- *Crown Lands Act 1989* - Sections 96A, 122 and 122A
- *Crown Lands Regulation 2006* - Clause 32
- *Government Information (Public Access) Act 2009*

Further guidance

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the *Crown Lands Act 1989*, can be found at: www.legislation.nsw.gov.au


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24 Privacy, and personal information

Privacy obligations govern how you:
- collect and handle personal information relating to individuals
- deal with complaints about the way you have handled personal information.

This Chapter explains your responsibilities and obligations under the Privacy & Personal Information Protection Act 1998 (PPIP Act) including:
- Information Protection Principles
- review rights and complaints
- regulatory requirements

24.1 What is privacy?
Privacy has three components:
- physical privacy (e.g. not entering someone’s house without their knowledge or consent)
- privacy of information (e.g. not giving a person’s contact details to others without the person’s consent)
- freedom from excessive surveillance (e.g. not photographing someone without their knowledge).

In the context of a reserve trust, you will be mostly concerned with the personal information of individuals and its:
- collection
- storage
- access
- use
- disclosure.

An individual may complain if they feel you have misused their personal information.

24.2 Personal Information
Personal information is defined in Section 4 of the PIPP Act and is essentially any information or opinions about a person where that person’s identity is apparent or can be reasonably ascertained. Personal information can include a person’s name, address, family life, sexual preferences, financial information, finger prints and photos.

There are some kinds of information that are not considered personal information, for example information about someone who has been dead for more than 30 years, information about someone that is contained in a publicly available publication, or information or an opinion about a person’s suitability for employment as a public sector official. Health information is generally excluded here as it is covered by the Health Records and Information Privacy Act 2002.
24.3 Information Protection Principles

The PIPP Act (refer Division 1 of Part 2) lists 12 Information Protection Principles with which you must comply. These are legal obligations which describe what your reserve trust must do when it collects, stores, uses and discloses personal information. These are:

Collection of personal information:

- Only collect personal information for a lawful purpose. Only collect the information if it is directly related to the reserve trust activities and necessary for that purpose.
- Only collect information directly from the person concerned, unless they have given consent otherwise.
- Individuals are to be told what information is being collected, why it is being collected and who will be storing and using it. The individual must be advised how they can view and correct this information.
- Ensure that the information collected is relevant, accurate, up-to-date and that the amount collected is not excessive. Ensure that the collection does not unreasonably intrude into the personal affairs of the individual.

Storage:

- Ensure that personal information is stored securely, not kept any longer than necessary, and disposed of appropriately. Information should be protected from unauthorised access, use or disclosure.

Access:

- Explain to the individual what personal information about them is being stored, why it is being used and any rights they have to access it.
- Allow people to access their personal information without unreasonable delay or expense.
- Allow people to update, correct or amend their personal information where necessary.

Use:

- Ensure that personal information is relevant and accurate before using it.
- Only use personal information for the purpose for which it was collected, a directly related purpose, or a purpose to which the individual has given consent. However, personal information can be used without consent in order to deal with a serious and imminent threat to any person’s health or safety.

Disclosure:

- Only disclose personal information if the person has given their consent or if they were informed at the time of collection that it would be disclosed in this way. Only disclose the information for a related purpose if the person concerned is not likely to object.
- Do not disclose sensitive personal information, for example information about a person’s ethnic or racial origin, political opinions, religious or philosophical beliefs, health or sexual activities or trade union membership. Sensitive information can only be disclosed without consent in order to deal with a serious and imminent threat to any person’s health or safety.
24.4 Review rights, and complaints

Internal Review

People have the right to seek an internal review under the PPIP Act if they think a reserve trust has breached the PPIP Act or *Health Records and Information Privacy Act 2002* relating to their own personal information. People cannot seek an internal review for a breach of someone else’s privacy, unless they are authorised representatives of that other person.

People must apply for an internal review within six months of when they first become aware of the breach.

An application for internal review must (in accordance with Section 53(3) of the PIPP Act):

- be in writing
- be addressed to NSW Trade & Investment
- specify an address in Australia to which a notice can be sent.

If a reserve trust receives a request for internal review it is required to immediately forward that request to the Department of Trade & Investment, Regional Services & Infrastructure (NSW Trade & Investment) Information & Privacy Unit, at:

- PO Box K220, Haymarket NSW 1240, or
- privacy@trade.nsw.gov.au

Other ways to resolve privacy concerns

It makes sense to encourage people to try to resolve privacy issues informally before going through the formal review process, or to at least first discuss the matter with the NSW Trade & Investment Information & Privacy Unit.

A person can also raise concerns by:

- making a complaint directly to the NSW Privacy Commissioner
- using the reserve trust complaints process (see Chapter 26).
Regulatory Requirements

- *Privacy & Personal Information Protection Act 1998*
- Reserve trusts which collect health information, for example from employees, should also be aware of their obligations under the *Health Records and Information Privacy Act 2002*.

Further guidance

- NSW Trade & Investment Access to Information Unit:
  PO Box K220, Haymarket. NSW 1240
  Tel: 8289 3962
  E: gipa@trade.nsw.gov.au
  www.trade.nsw.gov.au/about/access-to-information
- NSW Information and Privacy Commission:
  GPO Box 7011, Sydney. NSW 2000
  Tel: 1800 472 679
  E: ipcinfo@ipc.nsw.gov.au
  www.ipc.nsw.gov.au

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This Chapter explains your responsibilities and obligations in accordance with the Government Information (Public Access) Act 2009 including:

- how government information is released
- where there is an overriding public interest against disclosure of information
- regulatory requirements
- contacts and additional information

### 25.1 Government Information (Public Access) Act 2009


The GIPA Act encourages government agencies to release more information than ever before as a way of ensuring open, accountable, fair and effective government in NSW.

Members of the public have an enforceable right to access government information under the GIPA Act.

All documents and records held by reserve trusts are considered to be government information and are subject to the requirements of the GIPA Act. This legislation places obligations and responsibilities on reserve trusts to disclose and provide access to a broad range of information.

### 25.2 How government information is made available

Under the GIPA Act there is a presumption in favour of the release of government information unless there is an overriding public interest against disclosure. There are four ways that government information is to be released:

- **by Mandatory proactive release**

  Government agencies are required to make public specific “open access information” on their website free of charge. The types of information that comprise “open access information” are listed in Part 3 of the GIPA Act.

- **by Authorised proactive release (as determined by each agency)**

  Agencies are encourage to make as much information as possible publicly available in an appropriate manner, including on the internet, unless there is an overriding public interest against making such information available. The information should be made available free of charge at or at the lowest reasonable cost.

  Reserve trusts should consider releasing annual reports and meeting minutes proactively to the public.

- **by Informal release of information (in response to an informal request)**

  Informal release of government information occurs when information is provided in response to a request without requiring a formal application to be submitted under the GIPA Act.
Informal requests may be received by phone, email, letter, and fax or in person. The GIPA Act encourages information to be provided to members of the public in response to such ad-hoc enquiries unless there is an overriding public interest against disclosure.

Factors to be taken into account in deciding what information is appropriate to be released informally include the volume of information sought, the amount of time and resources it would take to respond to the request, whether the information concerns a third party, is contentious or is against the public interest to disclose.

- **by Formal release of information (in response to an Access application)**

Government agencies may release government information in response to a formal Access application made under the GIPA Act. Such applications are a last resort if the information is not available in any other way.

Persons can apply formally for information under GIPA Act by downloading an application form from the Department of Trade & Investment, Regional Infrastructure & Services (NSW Trade & Investment) website, at: [www.trade.nsw.gov.au/about/access-to-information/how](http://www.trade.nsw.gov.au/about/access-to-information/how).

If a reserve trust receives a formal Access application the reserve trust is required to immediately forward the application to the Information & Privacy Unit within NSW Trade & Investment, at:

PO Box K220
Haymarket NSW 1240
Tel: 8289 3947
8289 3921
8289 3962
E: gipa@trade.nsw.gov.au

### 25.3 Where release of information should not occur

There is a presumption in favour of the release of government information unless there is an “overriding public interest against disclosure”. Section 14 of the GIPA Act lists two circumstances where disclosure is not to occur:

- where a conclusive presumption against release has already been made
- where release would be inconsistent with a set of public interest tests.

(i) **Conclusive presumption against release**

It is to be conclusively presumed that there is an overriding public interest against disclosure of any of the 12 categories of government information listed in Schedule 1 of the GIPA Act. This includes Cabinet information and legal professional privilege.

(ii) **Public interest considerations against disclosure**

Section 14 of the GIPA Act includes a Table of public interest considerations to be used when determining whether there is an overriding public interest against disclosure. These are the only considerations that can be taken into account. The considerations are listed under 6 headings:

1. responsible and effective government
2. law enforcement and security
3. individual rights, judicial process and natural justice
4. business interests of agencies and other persons
5. environment, culture, economy and general matters
6. secrecy provisions.

**Regulatory requirements**

- *Government Information (Public Access) Act 2009*

**Further guidance**

- NSW Trade & Investment Access to Information Unit. Contact this Unit for all GIPA enquiries:
  
  PO Box K220, Haymarket. NSW 1240
  
  Tel: 8289 3962
  
  E: gipa@trade.nsw.gov.au

  
  This website provides access to:
  
  - details on how to access information held by the agency
  - Formal Access application forms
  - contact details for GIPA enquiries

- NSW Information and Privacy Commission:
  
  GPO Box 7011, Sydney. NSW 2000
  
  Tel: 1800 472 679
  
  E: ipcinfo@ipc.nsw.gov.au

  
  This website provides access to:
  
  - information for members of the public regarding GIPA
  - information for government agencies regarding GIPA
  - brochures and fact sheets
  - frequently asked questions
  - contact details for GIPA enquiries.

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Even in the best run agency, there will be occasions when a member of the public has a complaint. However, this is not necessarily a negative issue. It is good practice to view complaints as a means for providing better services to the public and to improve how the reserve trust operates by listening to feedback.

Good complaints handling reassures customers that the reserve trust is committed to resolving problem and improving operations, along with improving the reserve trusts accountability.

Complaints should always be listened to, and dealing with complaints is made easier when trust board members or staff empathise with the person making the complaint and consider the problem in a sympathetic manner.

This Chapter outlines how to establish a procedure for managing complaints. The objective is to provide a fair, efficient and accessible means of handling complaints and to learn from them where we can.

26.1 What is a complaint and what is an allegation?

A complaint is defined in the Australian Standard relating to the handling of complaints (AS ISO 10002-2006 ‘Customer Satisfaction – Guidelines for complaint handling in organizations’) as:

any expression of dissatisfaction with a product or service offered or provided.

Complaints are best considered not as ‘trouble’, but as a chance to help fix a mistake or resolve someone’s disappointment in their experience or use of the reserve.

A complaint is generally an expression of dissatisfaction, by a community member, customer, client, service provider or reserve trust employee, with the conduct of the reserve trust manager – and where the complainant requires some form of action. Some examples include dissatisfaction with quality of service provided; service delays; incorrect, misleading or incomplete advice being provided; inappropriate procedures; ambiguous, unhelpful or officious correspondence being provided; or reserve trust managers or their staff being rude, abrupt, aggressive or unsympathetic in the provision of a service (whether in person, in an email, by correspondence or on the phone).

26.2 What is an Allegation of Fraud or Corrupt Conduct?

An allegation differs from a ‘complaint’ in the level of seriousness. Allegations relate to potential corrupt conduct and concerns in relation to probity issues. Some examples include receiving or offering bribes, abuse of power (eg. releasing confidential business information, use of business information for personal benefit, etc), theft, fraud, serious and substantial waste of public funds or resources, unacceptable behaviour whilst representing the reserve trust manager (eg. public drunkenness, abusive behaviour, harassment or assault, etc), or a conflict of interest.

Any allegation received by a reserve trust manager must be referred to Crown Lands who will register and refer it to the appropriate person for investigation or to the Independent Commission Against Corruption (ICAC) if required. Investigation of allegations can only be undertaken by specifically trained staff.
26.3  The complaints register

A complaints register is a document which records all complaints received and how they were handled. This provides a quality control mechanism for customer service and management review, and facilitates the tracking of complaints.

Each reserve trust manager should maintain a complaints register and it should include, at a minimum:

- the date the complaint was made
- the date the reserve trust was advised of the complaint
- a brief description of the complaint
- the matter the complaint refers to (for example timeliness of service, public safety, environmental protection, incorrect or misleading advice, rudeness by a reserve trust manager or their staff in the provision of a reserve-related service)
- the person/group making the complaint
- the person who received and logged the complaint
- actions taken to resolve the complaint, including any remedies
- the status of the complaint
- the date the complainant was advised of the outcome.

Each reserve should ensure that only designated and trained officers:

- have authorisation to access and enter details into the complaints register
- record and securely store any confidential documents relating to the complaints handling process.

A complaints register template is included in Appendix D.

26.4  How to handle complaints

The following principles provide basic guidelines for handling complaints. These guidelines have been developed for use by reserve trusts. If complaints about a reserve trust are made directly to Crown Lands, Crown Lands may refer the complaint directly to the reserve trust in question, who should then follow these procedures in order to resolve the complaint and also advise Crown Lands of the outcome. See Figure 26.1 for an overview of the procedure, as well as reading this chapter.

Accessibility: Complaints can be made to the reserve trust orally or in writing. The contact details of the reserve trust should be readily available to members of the public (e.g. on a website and/or in a publicly available telephone directory).

Confidentiality: Complainants should be able to make a complaint confidentially. You should ensure that records and documents relating to complaints are kept in a secure location such as the complaints register, and that only designated and trained staff or reserve trust manager representatives have access to these records.

No fees: Complainants should not be charged a fee at any stage of the complaints handling process.

Prompt response: Complaints should generally be resolved within a target time of 28 days.
Trust Handbook

**Fairness:** All complaints should be treated fairly and on their merits.

**Investigation of complaints:** All complaints should be thoroughly investigated. There should be an objective evaluation of the facts provided. Where necessary, complaints should be escalated to a senior staff member, trust board member or Crown Lands officer for further investigation.

**Keeping the complainant informed:** Complainants should be informed about the progress of the resolution of the complaint.

**Remedies:** To resolve complaints fairly, a variety of remedies is to be considered, such as a referral to another party, the supply of information, an apology, or assistance.

**Monitoring:** An appropriate senior staff member or trust board member should monitor the complaints register on a regular basis.

**Performance review:** Complaints handling should be part of the performance review of staff members.

### 26.5 Dealing with oral complaints

If you receive an oral complaint, follow the procedure below:

1. Identify yourself.
2. Listen to the details of the complaint.
3. If it meets the definition of a complaint (see 26.1), log it in the complaints register. Ensure you have full contact details for the complainant.
4. If you do not have authority to deal with complaints, or are not sure whether it meets the definition of a complaint, you must refer the complainant to an officer of the reserve trust who is authorised to receive complaints. If you are not authorised to receive complaints, it is your responsibility to ensure that you provide the authorised officer with enough information for them to contact the complainant and handle the complaint.
5. The following steps apply to the person who has authority to deal with complaints.
   - explain the process and timeframe
   - explain the possible options to the complainant.
   - attempt to resolve the complaint, and explain the actions that will be taken or at least confirm that the complaint will receive attention.
   - give all responses to the complaint promptly. The final response should be in writing if an address is known; any interim responses could be by letter of by telephone.

### 26.6 Dealing with written complaints

If you receive a written complaint, follow the procedure below:

1. If it meets the definition of a complaint, log it in the complaints register.
2. If you do not have authority to deal with complaints, or are not sure whether it meets the definition of a complaint, you must refer the written complaint to an officer of the reserve trust who is authorised to receive complaints. If you are not authorised to receive complaints, it is your responsibility to ensure that you provide the authorised officer with enough information for them to contact the complainant and handle the complaint.
The following steps apply to the person who has authority to deal with complaints.

- confirm to the complainant, either by letter or by telephone, that their complaint has been received.
- explain the process, timeframe and possible options to the complainant (either by letter or by telephone).
- attempt to resolve the complaint, and explain the actions that will be taken to do so.
- give all responses to the complaint promptly. The final response should be in writing if an address is known; any interim responses could be by letter or by telephone.

26.7 Information that should be given to the complainant

In all cases – oral and written complaints, resolved or unresolved – you should always ensure that the complainant is given the following information:

- the process undertaken to resolve the complaint
- an estimated time to resolve the complaint
- the final decision made and the reasons for it
- avenues of further review.

If you are not authorised to deal with complaints, you must advise the complainant that an authorised person will contact them and will provide further details of the above information.

26.8 Monitoring complaints

Senior reserve trust staff or a trust board member should review the complaints register regularly to monitor the handling and status of complaints. Information gained from this process can be used to change organisational practices or re-train staff.

The review should specifically aim to:

- identify any recurring problems
- identify any individuals who are frequently the subject of complaints
- evaluate whether the time taken to resolve complaints is reasonable.

Senior staff should report regularly to the trust board with an overview of the complaints received during the period, how they were investigated, whether any are still resolved, and an analysis of trends.
26.9 Anonymous complaints

Anonymous complaints should still be investigated where sufficient detail has been provided to allow an assessment to be made, noting that such assessment may be affected by the inability to seek further information and details from the complainant.
26.10 Training staff

Reserve trust staff should receive regular training in handling complaints, including the use of the complaints register. Complaints training should also form part of the induction training for new staff.

The complaints handling procedure as set out in this chapter should be readily available to all staff.

26.11 Reviewing procedures

The reserve trust’s complaints handling practices should be reviewed regularly to ensure they are meeting targets and are in accordance with expectations in the community, including any applicable external standards or regulations.

Regulatory requirements

Not applicable.

Further guidance

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the Crown Lands Act 1989, can be found at: www.legislation.nsw.gov.au

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Commons provide the residents of a locality with the ability to use land in common, generally for grazing and, in specific circumstances mentioned below, other purposes.

Commons differ from Crown reserves and other public land in that they were created for the use of local residents. They can be used by other people only if the management plan which applies to the common indicates that there are other opportunities for use, e.g., for public recreation or for environmental purposes that are consistent with the main purpose of the common.

### 27.1 What are commons?

Commons are parcels of land set aside to provide land on which eligible residents of the Land District within which the common is located can pasture their livestock. Many commons were established in the 19th and 20th centuries. These commons still exist, though the legislation which governs them has changed—the most recent major change being the passing of the Commons Management Act 1989.

Where land is identified as needing to be set aside for a common, a notice setting it aside as a common is published in the Government Gazette.

A trust is established to run both newly created and existing commons.

A map of Land Districts is included at the end of this Chapter.

### 27.2 What purposes can a common be used for?

The government order or notification setting aside a common usually sets out the purposes for which a common may be used. Generally this will be to permit the eligible local residents to pasture their livestock or undertake other agricultural activities such as collecting firewood. In addition, a management plan for the common may also outline other suitable uses.

The Commons Management Act 1989 and the Commons Management Regulation 2006 provide further guidance on the permitted uses of commons.

In addition, the trust board of a common can make by-laws to regulate its use. These by-laws must comply with the requirements of the Commons Management Act 1989 and the Commons Management Regulation 2006, and must be consistent with the purpose for which the common was set aside, and approved by the Governor. Where a trust board has not made a by-law specific to the common it manages, the Model By-law set out in Schedule 1 to the Commons Management Regulation 2006 applies.
27.3 Determining eligibility to be a member of, and use, a common

The map of New South Wales Land Districts in Figure 27.1 can be used for reference when determining eligibility to be a member of, and use, a common (see also chapter 28).

On this map Land Districts are outlined in red and their names are listed in the Table on the right-hand side.

This map should not be used to determine administrative areas relating to the current office locations of Crown Lands. For this information, visit the Crown Lands website:

Regulatory requirements

- Setting aside land for a common and establishment of a trust: 
  Commons Management Act 1989 – Part 2, Division 1.

Further guidance

- State legislation (e.g. Acts and Regulations) relating to commons, including the 
  Commons Management Act 1989 and the Commons Management Regulation 2006, 
  can be found at:
  www.legislation.nsw.gov.au

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28 How the commons system works

Local landowners, farmers and councils play an important role in the care and use of commons. The system of commons trusts provides a framework to participate in the stewardship of the common.

28.1 What is a commons trust?

A commons trust is the legal body created to enable the temporary ownership of the common so that it can be managed by the commons trust on behalf of the members of the common.

The trust owns a legal interest in the property for which it is responsible. A trust can only make decisions and take actions concerning the common in the interests of the common itself and the members of the common. Further, all such decisions must be in accordance with the provisions of the Commons Management Act.

28.2 How is a common managed?

A common is managed by a commons trust established, named and constituted as a corporation by the Minister administering the Commons Management Act, in accordance with the provisions of the Commons Management Act.

The affairs of the commons trust are managed by one of the following methods:

- by an administrator appointed by the Minister, or
- by a trust board comprising individual commoners, or
- by a local authority (local government council).

Trust managers must not receive any personal benefit from fulfilling their role as trustee or through their dealings with the commons trust property.

28.3 Who are the members of a common?

The members of a common are known as ‘commoners’. The names of the commoners are recorded on a commoners’ roll kept by the commons trust.

As most commons were already in existence when the Commons Management Act 1989 commenced operation on 1 September 1991, the previous rules for membership of a common apply to people who were commoners at that date. That means that such members must:

- live within the land district in which the common is located
- not be enrolled as a commoner of another common
- meet any other membership requirements set out in the notice which established the common.

New residents of a district are eligible to be enrolled as a commoner if they:

- live within the land district in which the common is located and do not hold more than 20 hectares of land in that land district
- are not enrolled as a commoner of another common
meet any other membership requirements set out in the notice which established the common.

28.4 How does someone become enrolled as a commoner?

Applying to be enrolled

The *Commons Management Regulation 2006* states that a person who is eligible to be enrolled as a commoner for a particular common can apply to be enrolled by “filling in the approved application form and submitting it to the commons trust”. However at present, there is no approved application form in existence, so each commons trust may have their own application form available or alternatively, an application can be made by letter. An application form or application letter should contain the following information:

- the applicant’s name and residential address
- details of all land within the land district for that common which the applicant owns or leases
- a declaration that the applicant is not enrolled as a commoner of another common
- any other relevant information to show that the applicant meets any particular requirements of the notice which established the common.

The commons trust can charge a fee for receiving the application. The maximum fee is notified in Schedule 2 of the *Commons Management Regulation 2006*.

Notice to be given

The commons trust must display copies of the application in at least two conspicuous places on the common (e.g. at entrance points or at a building which most commoners would visit when they are on the common). A copy of the application must also be displayed at some other public place not on the common, as determined by the commons trust.

The application must remain on display until the application has either been accepted or rejected.

Commons trust hearing and consideration of applications

A commons trust must deal with an application for enrolment as soon as possible after it is lodged. The application:

- cannot be dealt with until at least five days have passed since copies of the application were put on display
- must be finalised within two months after it is lodged.

The commons trust must hear and consider the applicant’s request to be enrolled as well as any objections made by other commoners. The commons trust must then decide whether to add the applicant’s name to the roll of commoners, or to refuse the application.

If an application is refused, the commons trust must immediately give the applicant written notice that the application has been refused, including the reasons for refusal.

Appeal against refusal of application

A person whose application for enrolment has been refused can appeal against that decision to the Local Land Board.

The appeal must be lodged within 28 days after the applicant received notification that the application had been refused. A fee must be paid when the appeal is lodged.
Both the applicant and the commons trust can make submissions when the Local Land Board considers the appeal.

The Local Land Board can either confirm the commons trust’s decision to refuse the application, or can order that the person be enrolled as a commoner. The commons trust must act accordingly.

28.5 Annual review of the commoners’ roll

Not later than 15 December each year, a special meeting of the commoners must be held to review the commoners’ roll and remove the names of people who are no longer entitled to be enrolled.

The commons trust must write to any affected person to give notice of the determination and the grounds for the decision. The person may object to the decision and has 28 days after the date of the decision to write and give grounds for the objection. The commons trust must meet within seven days of receiving an objection, and the objector is entitled to be heard. The commons trust must then consider the objection/s and either confirm or reverse the original decision. The process must finish within three months of the original decision.

The restriction on owning or leasing more than 20 hectares of land within the land district for the common (which would make a person ineligible to remain enrolled) does not apply to commoners who were enrolled as at 1 September 1991.

28.6 What is a commons trust board?

A trust board for a common is made up of commoners who are elected at a general meeting of the commoners.

It works in a similar way to the board of directors of a company.

The role and responsibilities of a commons trust board are discussed in Chapter 29.

28.7 What is the legal status of a commons trust?

A commons trust holds the legal ownership of the land making up the common and is responsible for it in almost every respect. However, it can only use or deal with that land in ways that are permitted by the Commons Management Act and are consistent with the purposes for which that common was set aside or, if a management plan has been adopted by the Minister, uses that are set out in that plan.

When a commons trust is established, it is given a corporate name.

When an action is taken by a commons trust (for example, if it enters into contracts or grants leases or licenses), this is done using its corporate name. Contracts should not be entered into using the names of individual members of the commons trust board. If the affairs of a commons trust are managed by a council, the name of the council should not be used.

28.8 What are commons trust board members’ liabilities?

Members of a commons trust board are protected against most legal claims which arise in the course of the use and management of the common, provided the commons trust (the statutory corporation) and the members of the commons trust board have acted in good faith and in accordance with the Commons Management Act.
However, commons trust board members *can* be personally liable for breaches of legislation covering workplace health and safety, environmental protection and pollution, anti-discrimination and freedom of information. Refer to the separate Chapters in this Handbook dealing with these topics for further guidance.

### 28.9 Appointment of an administrator

The Minister can appoint an administrator to manage a commons trust when a common is first set aside. This is to fulfil the role of a commons trust board prior to the establishment of the commoners’ role and the election of members to the commons trust board.

An administrator can also be appointed if:

- an election to elect members of the commons trust board has failed
- a commons trust has been notified by the Minister that the trust has been committing a breach of the Commons Management Act and that breach is not remedied
- an inquiry has been held and the Minister decides that it would be in the best interests of the commoners to remove the current commons trust board and appoint an administrator
- the commons trust board has no members and the Minister determines that there is no prospect of suitable candidates being elected to the commons trust board.

The commons trust board may have no members if, for example, all the members have:

- ceased to be eligible to be commoners (e.g. they have all sold the land in the local district which qualified them to be enrolled for that common)
- resigned
- died
- been removed from office by the Minister
- been removed from office because they have been convicted of certain categories of criminal offences (which causes them to lose their office automatically).

### 28.10 How does a commons trust work with Crown Lands?

The appointment of a commons trust board is intended to ensure that day-to-day management of the common is performed by interested local landholders. However, the commons trust board remains responsible to the Minister responsible for Crown lands for the proper management of the common.

In this regard, the principal point of contact for the members of a commons trust board is the Crown Lands Reserves Team. The Crown Lands Reserves Team is available to assist with matters which arise concerning the operation of the commons trust or the use and management of the common.

There are certain activities which require the consent of the Minister, for example, the granting of a lease over a common or part of it. In such circumstances the commons trust board should contact its local Crown Lands office at the outset of any discussions.
Regulatory requirements

- Creation of commons trusts and their status:  
  Commons Management Act 1989, sections 4 and 8

- Membership of commons, applications, appeals, review of the roll:  
  Commons Management Act 1989, sections 10 and 11  
  Commons Management Regulation 2006, clauses 5 to 12

- Appointment of administrators:  
  Commons Management Act 1989, section 5 and 48

- Liability of commons trust board members:  
  Commons Management Act 1989, Schedule 2, clause 5

Further guidance

- State legislation (e.g. Acts and Regulations) relating to commons trusts, including the  
  Commons Management Act 1989, can be found at:  

www.legislation.nsw.gov.au

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29  Role and responsibilities of the commons trust board

By participating as members of a commons trust board, commoners play an important part in the management and operation of their common.

Commons trust boards frequently rely on the commoners’ volunteer assistance in fulfilling their responsibilities. Further, volunteers with a regular association with the activities of the common may form a useful pool of future members of the commons trust board.

The role and responsibilities of the commons trust board must therefore be clearly understood, both by its members and by potential future members.

29.1 A typical commons trust board

For commons created under the Commons Management Act 1989, the Minister administering the Commons Management Act can fix the number of members of the commons trust board. This must be at least three and a maximum of seven members.

Commons trusts established before 1 September 1991 (the date of the Commons Management Act 1989) may have had commons trust boards with fewer than three or more than seven members. However, the Minister can fix the number of members at between three and seven for these commons trusts.

The members of a commons trust board are elected by the commoners.

An election for the members of the commons trust board must be held every three years, at the annual general meeting of the commoners. At that meeting, the commoners also elect a president and other office-bearers (deputy president, treasurer and secretary) from among the people who have been elected to the commons trust board.

The people elected at an annual general meeting hold their positions for three years, unless they resign, are removed from the commons trust board, or otherwise cease to be a commoner.

29.2 The role of the commons trust board

The main role of the commons trust board is to manage the affairs of the common.

This responsibility belongs to the members of the commons trust board and cannot be delegated entirely to others. However, a commons trust board can appoint or employ others to assist it in the management of the common.

Commons trust board members should attend all meetings of the commons trust board or send an apology and provide a reason for their inability to attend.

While a commons trust board may employ people to assist it in the management of the common (e.g. caretakers, maintenance staff), the members of the commons trust board should also ensure that they regularly visit and inspect the common to identify and rectify hazards and to see that maintenance authorised by the commons trust board has been carried out.

Note that a caretaker is ancillary to the purpose of the common but is an employee of the commons trust.

The commons trust board can make decisions about regulating such things as:
the way in which the common is used
the driving and parking of vehicles on the common
fees to be paid by commoners
permitted or prohibited activities.

These are controlled through:

- a management plan for the common (see Chapter 30)
- by-laws made under the Commons Management Act. The matters that by-laws can cover are listed in section 9 of this Act.

By-laws must be approved by the Governor of New South Wales before they take effect. A commons trust board should therefore consult the Crown Lands Reserves Team for assistance in framing suitable by-laws and to ensure the approval process is followed.

A model by-law applies to a common where a commons trust has not made a by-law of its own. This model by-law is contained in Schedule 1 of the Commons Management Regulation 2006. The commons trust board can bring legal proceedings to enforce the laws, regulations and by-laws which apply to the common. In certain circumstances, an authorised officer of Crown Lands may be required to bring certain enforcement proceedings. Commons trust boards should consult the Crown Lands Reserves Team before starting any legal proceedings. See Chapter 6 (Visitors to reserves) for information about the training and accreditation of commons trust board members or employees to issue penalty notices for offences.

Under Section 56 of the Commons Management Act a member of the commons trust board or an employee authorised by the commons trust can remove a person from the common if they are:

- not authorised to be on the common
- breaching a part of the Commons Management Act that applies to the common
- breaching a by-law that applies to the common
- engaging in disorderly conduct which is apparently annoying or causing inconvenience to commoners or other people lawfully using the common.

Commons trust managers and employees should only have a direct role in ensuring compliance where they would be in no personal danger. Where they believe that their safety may be threatened, relevant details should be noted (e.g. licence plate, descriptions of offenders) and the local police contacted for assistance.

Section 56 of the Commons Management Act specifically authorises the assistance of the NSW Police Force to be called in.

Before seeking to exercise the power given under Section 56, a commons trust board member or employee should identify themselves and the office they hold before directing someone to leave the common.

### 29.3 Code of conduct

Crown Lands requires a commons trust board to prepare and adopt a code of conduct for the commons trust board members and the commons trust employees to follow in accordance with the Conduct Guidelines for Members of NSW Government Boards and Committees in Appendix C. Crown Lands also requires that the code of conduct be reviewed regularly and that new members and employees of the commons trust board be given a copy of the code of conduct and be made aware of its importance.
In addition, as commons trust boards carry out work for the NSW Department of Trade and Investment, Regional Infrastructure and Services (NSW Trade & Investment) (through their appointment by Crown Lands, which is an agency of NSW Trade & Investment) commons trust managers are also required to comply with the NSW Trade & Investment Code of Conduct for members of advisory committees / boards, contractors and consultants to the NSW Department of Trade and Investment, Regional Infrastructure and Services which can be found at:


This code of conduct could also be used as a sample in developing the commons trust’s own code of conduct.

### 29.4 Declaration of financial and non-financial interests

#### Disclosure of financial interests

If a member of a commons trust board has any financial interest in a matter being considered by the commons trust board, the member must disclose that interest to the commons trust board.

A financial interest may include the following examples:

- the member is the owner or part-owner of a business proposing to enter into a contract with the trust, or is employed by that business
- the member has an interest in land adjoining the common and it is proposed to carry out some work or other activity that may affect his or her land in some way
- where one of the preceding examples involves a relative or friend rather than the member.

If you are a commons board member and you are in any doubt about whether you hold a financial interest, you must disclose the matter to the commons trust board for it to consider.

Once a matter has been disclosed for consideration by the commons trust board, the relevant commons trust board member must not be present during any discussion regarding the matter, nor take part in any vote on it.

The commons trust board can decide to allow the member to take part in discussions or vote on the matter, but the question of the interested member’s involvement must be considered and decided in their absence.

#### Register of financial interests

Each commons trust must keep a book in which disclosures of financial interests are recorded.

The book must be made available to the public for inspection at reasonable hours. The commons trust can charge a fee for this inspection (for the current fee, see Schedule 2 of the Commons Management Regulation 2006). A commoner does not have to pay a fee to inspect this book.

Details of disclosures of financial interests must be included in the commons trust’s annual report.

#### Tenders for contracts

Specific procedures must be followed when commons trust board members believe that a member has an interest in a business which proposes to enter into a contract with the commons trust, to, for example, supply goods, do work or provide a service.

In this case, the commons trust board must invite tenders for the contract. The invitation to tender must:
• be published in a local newspaper
• set out the nature of the work or services required or the goods to be supplied
• allow at least 21 days for tenders to be submitted.

The commons trust must not enter into a contract with a business associated with any commons trust board member unless the board is satisfied that none of the other proposals received is more advantageous than that from the commons trust board member’s business.

Crown Lands also requires that in these circumstances the Regional Director of Crown Lands must approve the commons trust entering into the contract.

Relevant factors to consider include the price, the nature or quality of the work or services to be performed or the goods to be supplied, the time in which works can be carried out, and whether the tenderer has provided satisfactory services in the past.

Where services or goods are needed in an emergency, these requirements need not be met.

29.5 Appointing or replacing commons trust board members

At the end of their term, commons trust board members can be re-elected (that is, they are not prevented from serving successive terms).

A person ceases to be a member of a commons trust board if they:

• resign
• complete their term and are not re-elected
• are removed by the Minister
• are absent from 4 consecutive meetings, unless granted leave by the board
• become bankrupt or seek the protection of bankruptcy laws
• are mentally incapacitated
• are convicted anywhere in Australia or overseas of an offence that is punishable in NSW by at least 12 months imprisonment
• cease to qualify as a commoner for that common
• die while in office.

Casual vacancies

If someone ceases to be a member of the commons trust board, the commons trust board must convene a general meeting of the commoners to elect a person to fill that casual vacancy.

The meeting must be held within one month after the vacancy occurs.

However, if the vacancy occurs less than two months before the next annual general meeting at which an election of commons trust board members is to be held, the casual vacancy does not need to be filled unless there would be not enough members left on the commons trust board to have a quorum at meetings. In that circumstance, a meeting for an election to fill the casual vacancy must be held.

29.6 Can commons trust board members be paid?

Commons trust board members are not paid for the time spent inspecting, operating or maintaining the common, attending meetings of the commons trust board, or otherwise running
the affairs of the common. They can, however, be reimbursed for out-of-pocket expenses if the commons trust board approves, as detailed below.

With the approval of the commons trust board, a member of the commons trust board can be employed in roles such as treasurer, secretary or herder and be paid for the work they carry out in that role.

Commons trust funds are by their very nature, public funds held “on trust” and commons trust boards must be able to demonstrate that expenditure and the use of trust funds is reasonable, acceptable, has been necessary and is incurred for the general purposes of the trust. Commons trust boards are wholly accountable for the commons trust’s funds under their control and high standards of accountability, transparency and good governance surrounding the use of these funds and expenditure are necessary to support this. Chapter 20 sets out further details on the use of commons trust funds, including for out-of-pocket expenses.

Commons trust board members should be required to provide a receipt before any reimbursement of out-of-pocket expenses and any costs should be assessed as reasonable, acceptable, necessary, has been incurred for the general purposes of the commons trust and consistent with the formal adopted policy of the commons trust in relation to out-of-pocket expenses (refer to Chapter 20 for further information).

See also Chapter 15 about the appointment of volunteers, employed staff and contractors.

29.7 Keeping up to date

Commons trust board members should keep themselves up to date with the legal requirements which affect the running of the commons trust, the board and the management of the common. Copies of the Commons Management Act 1989, the Commons Management Regulation 2006 and any by-laws made for the common should be made available to all members of the commons trust board.

This Handbook will be updated by Crown Lands as changes are made to laws, regulations and government policies. It might be useful to discuss any changes at the next meeting of the commons trust board after each update notification is received.

In particular, if a commons trust board is considering some particularly significant matter (for example, constructing a major building or a large expenditure); the handbook should be checked for any changes to the relevant requirements. If in any doubt, you should contact the Crown Lands Reserves Team.

29.8 Annual reporting and disclosure

Each commons trust must submit its annual report to the Minister within two months after the end of its financial year.

The principles discussed in Chapter 23 will assist in the preparation of the annual report. The sample annual report in Appendix C sets out the matters that the annual report should contain. In particular, details of financial interest disclosures made by members of the commons trust board must be included in the annual report.

Electronic Reporting

Annual reports are able to be submitted electronically using the Crown Reserve Reporting System (CRRS). CRRS simplifies the reporting requirements for commons into a simple online form. CRRS also allows the commons trust to retrieve annual reports previously submitted online.
To access the online reporting system please contact the CRRS help desk at crrs@lpma.nsw.gov.au

**Paper Based Reporting**
Commons trusts who do not have access to the internet can continue to submit their reports in a paper based format using the Crown Lands standard reporting form (see Appendix C).

**Regulatory requirements**
- Commons trust board membership and term of office: 
  *Commons Management Act 1989* – section 32 and Schedule 2
- Casual vacancies: 
  *Commons Management Act 1989* – section 33
- Financial (pecuniary) interests disclosure: 
  *Commons Management Act 1989* – clause 6 of Schedule 2
- Fees for inspection of financial (pecuniary) interests disclosure records: 
  *Commons Management Regulation 2006* – Schedule 2
- Tenders: 
  *Commons Management Act 1989* – clause 6 of Schedule 2

**Further guidance**
- State legislation (e.g. Acts and Regulations) relating to commons trusts, including the *Commons Management Act 1989*, can be found at: 
  www.legislation.nsw.gov.au

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**Revisions to this chapter**

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A management plan is a formal document which provides a framework for the strategic and/or operational (day-to-day) management of a common.

The management plan can also enable the commons trust to suitably broaden the activities and purposes for which the common may be used.

This Chapter explains what is required for a management plan specifically in relation to commons trusts. Reference should also be made to Chapter 5 in this Handbook on plans of management generally.

30.1 Management plans for commons

The Minister administering the Commons Management Act may require a commons trust to prepare a management plan. Alternatively, commons trusts can prepare their own draft management plans without the Minister’s permission.

A management plan is required where any activity (generally other than the pasturing and watering of stock) is proposed for a common, irrespective of its size.

Where formal management plans do not exist, the use of the common by the commoners for pasturing and watering their stock is permitted by the Commons Management Act, and management of the common generally is to be in accordance with that Act and the Commons Management Regulation 2006, including any By-laws. (See separate sub-section, below, on by-laws).

Commons trust board members should discuss any need or requirement for a management plan with the Crown Lands Reserves Team, who can assist with the decision-making.

Clause 30 of the Commons Management Regulation 2006 sets out the minimum requirements for a management plan. In addition, a management plan should:

- be consistent with the objectives of the common, and the purpose for which the land was originally set aside
- provide for any suitable and permissible additional or alternative uses that are supported by the commons trust and community (and are subject to a resolution passed by not less than 75% of the commoners in accordance with Section 27 of the Commons Management Act)
- be supported by the commons trust board, so all commoners and employees understand the importance of its implementation
- be thorough and comprehensive and address all issues of relevance to the particular common (for example workplace health and safety, bushfire prevention)
- be flexible and simple, so it is easy to understand and is adaptable to a quickly changing environment
- focus on continual improvement, so the commons trust learns from any mistakes and prevents similar problems recurring
- involve and inform commoners and employees so they understand their role and why the commons trust needs an effective plan
allow for regular review and updating.

Smaller commons, or commons with simple uses and management practices, could prepare a simple and shorter management plan, whereas a large commons with many users or one within environmentally sensitive areas may need to prepare a more comprehensive and detailed management plan.

**Additional regulation through by-laws**

Commons trusts can also regulate activities on commons by adopting by-laws.

Where a commons trust has not adopted a by-law and the common has been in existence at 1 September 1991, the Model by-law in Schedule 1 of the *Commons Management Regulation 2006* applies.

Commons trusts who wish to make new by-laws or amend existing ones (including the Model by-law if it applies) must discuss their needs with the Crown Lands Reserves Team and obtain the assistance of Crown Lands to gain the consent of the Governor of New South Wales.

### 30.2 Preparing management plans

There are three options regarding the preparation of the management plan:

1. Commons trusts can prepare their own draft management plans without the prior permission of the Minister, but if they do this they must provide a copy of the draft to the Minister.
2. The Minister might direct the commons trust to prepare a draft plan, in which case the Minister can prescribe its contents and a time limit for its completion.
3. The Minister might decide to prepare a draft plan. The Minister is only obliged to refer a copy to the commons trust if the common was created before 1st September 1991 (the date the Commons Management Act commenced). In respect to such plans:
   - For **commons formed before September 1991**, the Minister must make the draft plan available for public comment for a minimum of 14 days and require the commons trust to hold a public meeting to discuss the content of the plan. Further, if the draft plan proposes uses which are inconsistent with the use of the common before September 1991, the approval of at least 75% of the commoners present at a special general meeting is required before the Minister can adopt the plan.
   - For **commons formed after September 1991**, the Minister may (but is not required to) make the draft plan available for public comment. Notwithstanding any decision in this regard, the Minister must require the commons trust to hold a public meeting in respect to the plan. Further, the Minister has the final say as to the content of the plan.

If the draft management plan is adopted by the Minister, the commons trust must implement that plan and comply with it. The commons trust cannot allow or undertake any activities not contained within an adopted management plan. The Minister may amend or revoke a management plan at any time.

### 30.3 What must be included in a management plan

Clause 30 of the *Commons Management Regulation 2006* requires a management plan to:

- specify the purposes for which the common may be used
• identify those entitled to use the common
• identify those responsible for the maintenance of the common and the methods by which it is to be maintained
• identify those responsible for the cost of maintenance.

Commons trust board members should discuss the requirements for a management plan with the Crown Lands Reserves Team, which can assist with decision making.

Chapter 5 and Appendix A of this Handbook provide further information on preparing plans of management which, while not strictly applicable to commons, should provide helpful assistance.

Chapter 11 of this Handbook describes some of the most important environmental factors which may affect the commons land. Where relevant to a particular site, these factors should be addressed in the management plan.

Regulatory requirements

• By-laws:
  • Commons Management Act 1989 – Section 9
  • Preparing draft management plans: Commons Management Act 1989 – Section 25
  • Referral of draft plans to commons trusts: Commons Management Act 1989 – Section 26
  • Adoption of management plans: Commons Management Act 1989 – Section 27
  • Amendment or cancellation of management plans: Commons Management Act 1989 – Section 28
  • Basic requirements for the contents of a management plan: Commons Management Regulation 2006 – Clause 30

Further guidance

• State legislation (e.g. Acts and Regulations) relating to commons trusts, including the Commons Management Act 1989, can be found at: www.legislation.nsw.gov.au

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Commons are generally set aside for the specific needs of the landholders of the local district. However, leases or licences of parts of the common can be granted with the prior authorisation of the Minister administering the Commons Management Act.

This Chapter explains when leases and licences can be used and provides information about the process to be followed specific to commons trusts. Reference should also be made to Chapter 14 on leases, licences and land management agreements generally.

31.1 When can a common be leased or licensed?

Generally, a lease or licence of a common can only permit the lessee/licensee to use the common in a way that is consistent with the purposes stated when the common was set aside and/or with the common’s management plan. Chapter 30 provides information on management plans.

The Minister’s authorisation is required for a lease or a licence other than a temporary licence.

A proposed lease or licence may affect native title interests in the common. Before granting a lease or licence, or when re-negotiating existing arrangements, commons trusts should refer to Chapter 12 and, if appropriate, consult their local Crown Lands office to clarify any possible native title issues before proceeding.

When a lease should be used

A lease should be used when the lessee needs exclusive use of part of the common or a building because of the type of activity they will be conducting.

A lease may also be required if the lessee has invested or proposes to invest substantial sums of money installing or improving facilities on the common.

When a licence can be used

When the proposed user does not need exclusive use of any part of the common, a licence is more appropriate than a lease.

Licences can also provide greater flexibility in use by different users. Provided their uses don’t directly conflict, licences covering the same common or parts of the common can operate at the same time. A number of licences can be issued over the same area for different times or days.

31.2 Temporary licences

A commons trust can grant a temporary licence for up to three months for grazing or any other purposes that are prescribed in the Commons Management Regulation 2006. The only matter currently so prescribed is any activity consistent with the management plan for the common.

Temporary licences do not require the authorisation of the Minister.

31.3 Seeking approval to issue leases and licences

A lease or licence is an important contract which regulates the use of the leased/licensed area and sets out the rights and responsibilities of both the commons trust and the lessee/licensee.
Leases and licences other than temporary licences

The terms of all leases and licences other than temporary licences, including the rent, any other commercial terms agreed, and the form of the lease or licence must be approved by Crown Lands before they are signed.

Minister’s authorisation

Before a lease or licence (other than a temporary licence) is signed, the commons trust must obtain the Minister’s authorisation through Crown Lands.

The request for authorisation must include:
- whether the proposal is for a lease or a licence
- the nature of the lessee/licensee’s proposed use of the common
- the name and address of the proposed lessee/licensee
- the length and other terms of the proposed lease or licence.

Approval process

The procedure that must be followed is set out below:

1. The commons trust’s solicitor prepares a draft lease/licence and sends it to Crown Lands for comment.
2. Crown Lands notifies the commons trust of any amendments, and when agreed are referred to the solicitor who then prepares the final document.
3. The commons trust’s solicitor issues the lease/licence to the lessee/licensee.
4. If the lessee/licensee requests any amendments that the commons trust intends to agree to, the amendments must be referred to Crown Lands for approval.
5. Once the final form of the documents is agreed by the parties and approved by Crown Lands, the commons trust’s solicitor issues three copies of the lease/licence to the lessee/licensee for signing.
6. All three copies are signed by the parties, stamped with the appropriate stamp duty and returned to Crown Lands.
7. The three executed documents are checked to see that they match the approved draft and include any amendments previously notified by Crown Lands. The Minister’s consent is then added to the documents.
8. One copy is retained by Crown Lands and two copies are returned to the commons trust’s solicitor – one of which is returned to the lessee and the other retained by the commons trust.

31.4 Which lease or licence document should be used?

Temporary licences

A sample temporary licence agreement can be found on the Crown Lands website.

Leases or licences other than temporary licences

The commons trust should instruct its solicitor to prepare a lease or licence which is suitable for the particular common and the lessee’s proposed use. The following points will need to be included in the instructions:
• Generally, a lease/licence will only cover a part of the common. A diagram showing the area or building(s) leased/licensed will need to be included as part of the lease documents.

• If the common has a Real Property Act title (a Torrens title) and the lease is for more than three years, the lease must be prepared in the form required under the *Real Property Act 1900* and subsequently registered with NSW Land and Property Information.

### 31.5 Content of the lease or licence document

#### Length of term

The term of a lease or licence should be as short as possible, taking into account the particular circumstances of the common and the proposed use by the lessee or licensee. Future changes in community needs should also be kept in mind when negotiating the length of term.

Terms of more than 20 years will not normally be agreed by Crown Lands.

Options for renewal or lengthy ‘holding over’ rights at the end of a lease/licence will also not normally be agreed. If there is still a need for the activity at the end of the term, a new lease/licence can be negotiated. This gives the commons trust the opportunity to revisit the arrangement in the light of the then current and anticipated needs of the commoners.

#### Rent and rent review

The rent or licence fee should be a commercial market rent.

Relevant factors to consider are:

- the permitted use under the lease/licence
- the value of the part of the common being used
- who owns the building or improvements to be used by the lessee/licensee
- costs to be incurred by the commons trust.

Leases and licences should provide for regular rent reviews.

Rent should be reviewed annually by reference to the Consumer Price Index or some other agreed factor (e.g. a fixed percentage).

For longer leases, in addition to annual CPI reviews, the rent should be reviewed to market rent at least every three years. There should be a mechanism to have the market rent determined by an independent expert such as a valuer if the commons trust and the lessee cannot agree on the market rent.

#### Nominal rents

- Where a commons trust wishes to charge a rebate on the market rent because the lessee is a charitable or non-profit organisation, the commons trust should contact the local Crown Lands office to discuss the proposed rebate. Guidance when considering applications or proposals for rental rebates, waivers and hardship relief is given in the *Policy on concessions and hardship relief for Crown lands tenures* available on the Crown Lands website. This policy will be used by Crown Lands when considering any request for the Minister’s consent to a proposed tenure involving a concession. The policy can be found at: [www.lpma.nsw.gov.au/crown_lands/leases/concessions_and_hardship_relief](http://www.lpma.nsw.gov.au/crown_lands/leases/concessions_and_hardship_relief)
Buildings and improvements

Where a lease or licence agreement requires the lessee/licensee to undertake building or development works, the lease/licence should specify that no work is to be undertaken until:

- plans have been approved by the commons trust and the Minister
- any necessary development consents and/or construction certificates have been obtained from the local council.

At the end of a lease/licence, any improvements become the property of the commons trust. A lease or licence should not give the lessee/licensee a right to receive compensation for buildings or other improvements installed by them. In appropriate cases, the lessee/licensee should be required to clear and restore the common to the satisfaction of the commons trust and the Minister.

Consents, approvals, etc

The lessee/licensee must obtain all consents or approvals it needs to use the common and buildings and to operate its business. This may include:

- development consent from the local council, to permit the common or a building to be used for the purpose proposed by the lessee/licensee
- a construction certificate (previously called Building Approval) from the local council or an accredited certifier for any building works or renovation works
- an occupation certificate from the local council or an accredited certifier if this is required in connection with any approved building works or renovation works
- any other approvals which are particular to the lessee/licensee’s type of operations.

The lease or licence should make the lessee/licensee responsible to obtain all necessary consents, approvals and notifications and to keep them current.

Required clauses

Your legal adviser should be instructed to include in all licence agreements a provision that the licence is not transferable or assignable.

In addition, Crown Lands requires the provisions listed below, with appropriate amendments to make them consistent with the rest of the lease or licence as appropriate, be included in any lease or licence of a common.
• The lessee* must indemnify the Minister and the lessor* in respect of any claim which may arise out of the lessee’s use and/or occupation of the area, except to the extent that the claim arises out of the negligence or a wilful act or omission on the part of the Minister or the lessor.

• This lease is subject to the provisions of the Commons Management Act 1989 including section 23 of that Act.

• The lessee must not grant any sub-lease or otherwise deal with the leased premises without the consent of the lessor and the Minister.

• The lessee must not sublet, assign or otherwise deal with the premises without the consent of the lessor and the Minister.

• The lessee must take out a public risk insurance policy, with a reputable insurance office approved by the lessor, for a minimum of $10,000,000, noting the interests of the lessor and the Minister and covering the indemnities in favour of the lessor and the Minister given in this lease.

Note: If for a licence, change “lessee” to “licensee” and “lessor” to “licensor” in all clauses.

31.6 Managing lessees and licensees

Tenancy management

It is important that the commons trust makes sure that each lessee or licensee is:

• obeying the terms of its lease/licence
• paying rent and other money on time
• not doing anything that is inconsistent with the lease/licence or the permitted purposes of the common, or inconsistent with any adopted management plan for the common.

Regular inspections

The commons trust should regularly inspect the area occupied by the lessee/licensee as a part of its general inspection program. Any breaches of the lease/licence or other matters of concern should be communicated to the lessee/licensee promptly, rather than ‘letting things slide’. A lessee/licensee is less likely to respond to the commons trust’s concerns if known breaches have been left unmentioned for any length of time.

Where a lessee/licensee appears to be doing something that goes beyond the permitted use, the commons trust must act promptly to have the activity stopped. This is particularly relevant where a lessee may have expanded a commercial operation or started a new activity which is not consistent with the permitted purposes of the common or any adopted management plan.

Monitoring of rent payments

The commons trust’s treasurer must monitor payments of rent or any other money payable under the lease/licence, and report any arrears or irregularities to the commons trust board as soon as they become apparent.

Dates for rent reviews and the expiry of leases and licences should be diarised and be reviewed at the annual general meeting or at other appropriate meetings during the year.
Resolving user conflicts
A commons trust will sometimes grant more than one lease or licence over its common.
When negotiating leases or licences, the commons trust must take into account any other
arrangements that have already been entered into, to avoid any overlap or conflict over:

- leased or licensed areas
- times for use of particular facilities
- uses which are inconsistent with each other.

If a dispute should arise between users, the commons trust must not favour one user over
another when seeking to resolve it, and must act fairly and in accordance with the leases,
licences or other agreements it has entered into.

Regulatory requirements

- Minister’s authorisation:
  Commons Management Act 1989 – section 16
- Temporary licences:
  Commons Management Act 1989 – section 22
  Commons Management Regulation 2006 – clause 29

Further guidance

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the
  Crown Lands Act 1989, can be found at:
  www.legislation.nsw.gov.au
- Chapter 14 – Leases, licences and external land management agreements

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32 General administration for commons

A commons trust is responsible for the care of the common in the interests of the commoners. Everything the commons trust does should therefore take place, and be recorded, in an open and accountable manner to ensure confidence in its operation is maintained.

This Chapter explains your obligations in terms of the administration of the commons trust and the common. Reference can also be made to Chapter 17 on other general administration matters.

32.1 Principal place of administration

Each commons trust must decide on an address that will be its principal place of administration. That address, and any change of that address, must be notified to the Crown Lands Reserves Team.

The principal place of administration must be within the land district where the common is located, unless the Minister approves an address outside the land district.

32.2 Records to be kept

A commons trust must keep the following records:

- the roll in which the names and addresses of the commoners are recorded
- a livestock register which contains details of the livestock pastured on the common (including the type of livestock, brands or markings, and the name and address of the owner)
- minutes of all meetings
- receipts for all money received
- documentation of all expenditure
- cash payments book
- bank deposit book
- plant and asset register
- register of declarations of financial interests (see Chapter 29).

In addition, the commons trust should keep records of all income or fees received.

A commons trust that employs staff must keep adequate records of wages, annual leave, sick leave and long service leave, and proof of workers compensation payments.

The commons trust’s records must be kept at the principal place of administration. All commoners are able to inspect the records of the common without charge.
32.3 **Fees for use of the common**

At the annual general meeting, the commoners can agree upon the fees each commoner must pay to the commons trust for their use of the common.

The Model By-law in the *Commons Management Regulation 2006* provides that these fees must be paid quarterly in advance on 1 January, April, July and October of each year. Alternative arrangements for payment of fees can be decided on by the commons trust via adoption in additional by-laws for the common (see Chapter 27).

Fees should be set at a reasonable rate, taking into account the average rate charged by private landowners for grazing agistment in the local land district. In setting fee levels, commons trusts should ensure that funds will be available not only for anticipated routine expenses, but also for unforeseen repairs, maintenance or replacements.

Schedule 2 to the *Commons Management Regulation 2006* sets prescribed fees which may be charged to carriers, teamsters, travellers and drovers for pasturing animals for limited periods.

32.4 **Commons trust board meetings**

While meetings of the commoners and of the commons trust board do not need to be excessively formal, observing basic meeting procedures and appropriate record-keeping will assist in maintaining the commoners’ confidence in the operation of the commons trust.

**Frequency of ordinary meetings**

The commons trust board must meet at least six times a year.

**Time and place of meetings**

The commons trust board can determine where it meets and the time of meetings.

**Special meetings**

A special commons trust board meeting can be called at any time by the secretary or any other member of the commons trust board.

Notice of the special meeting, the time and place at which it will be held and details of the business to be discussed must be sent to each of the commons trust board members at least 24 hours before the meeting.

Only the business specified in the notice of meeting can be dealt with at a special meeting.

**Quorum**

A meeting of the commons trust board can only take place if there is a quorum. The quorum is one more than half the number of members (ignoring fractions). For example, for a commons trust board with seven members, the quorum is four. For a commons trust board with six members, the quorum is also four.

**Notice of commons trust board meetings and agenda (ordinary meetings)**

Notice of each meeting and an agenda must be circulated to the commons trust board members at least three days before each meeting.

A sample agenda for a meeting (other than the annual general meeting) would include the following items:

- president’s opening address
- record of members present and apologies from absent members
- confirmation of minutes of the previous meeting
• business arising from the minutes
• report by secretary/correspondence
• report by treasurer/accounts for payment
• general business items
• other matters for discussion
• date and place for next meeting
• close of meeting.

Conduct of meetings
The president is responsible for the orderly conduct of a meeting. If the president is not present, the members present at the meeting must elect someone to preside at the meeting.

The meeting should keep to the agenda and members should be encouraged to take part in the discussion of matters under consideration without interruption from other members.

Voting
Where an issue requires action, or a contract or agreement is to be entered into, the matter must be agreed upon by a resolution of the commons trust board.

All members, including the person chairing the meeting, have one vote on resolutions. A resolution is approved if a majority of the votes cast are in favour of it. If the votes are tied, the person chairing the meeting has a second, ‘casting’ vote.

A member cannot vote on a matter in which they have an interest unless the commons trust board has resolved that they can do so (see Chapter 3).

Recording resolutions
All resolutions passed at commons trust board meetings must be recorded in writing and have the common seal of the commons trust affixed to them.

Minutes
The minutes of commons trust board meetings are recorded by the secretary. The minutes should indicate which commons trust board members are responsible for following up any action agreed at the meeting.

The secretary should arrange for copies of the minutes to be forwarded to all commons trust board members as soon as possible after each meeting, to allow action to be taken before the next meeting.

Reports presented at meetings
At all meetings, the secretary provides a report of follow-up action and correspondence sent and received.

The treasurer provides a report which explains monthly results for key items included in the annual report and financial statement (see the templates in Appendix C).

32.5 Subcommittees
The commons trust board might find it helpful in carrying out its business to establish subcommittees to deal with management, finance, planning or maintenance.

The role of such subcommittees is to make recommendations and provide advice to the commons trust board, but not to make decisions.
While the make-up of these committees is at the commons trust board’s discretion, the level of expertise required for the tasks envisaged is an important factor that should be considered when selecting members.

The commons trust board should define the terms of reference for any committees. Meetings of committees are conducted in the same way as meetings of the commons trust board.

The treasurer should be a member of any finance subcommittee, particularly committees involved in preparing budget estimates.

### 32.6 The annual general meeting of the commoners

Each commons trust must have an annual general meeting.

An annual statement of accounts, setting out the financial position of the commons trust (including an income and expenditure statement, a balance sheet showing the assets and liabilities of the commons trust, and details of any mortgages granted by the commons trust) must be presented at the annual general meeting.

An auditor’s report must be included with the accounts.

The annual general meeting must also consider the following business:

- confirm the minutes of the previous annual general meeting
- receive the annual report of the commons trust’s activities
- receive and consider the annual accounts
- confirm the continued appointment of the commons trust’s auditor or appoint a new auditor.

### 32.7 Election of the commons trust board and office-bearers

Every three years, two elections are held at the annual general meeting:

- one to elect the commoners who are to be the members of the commons trust board
- one to elect the president and other office-bearers from among the commoners just elected to the commons trust board.

#### Nominations

To be eligible for election to the commons trust board, a person must have been enrolled on the commoners’ roll for at least six months before the meeting at which the election is held. This applies whether the election is the three-yearly election of the whole commons trust board or an election to fill a casual vacancy.

However, if the commoners’ roll for the commons trust has been established for less than six months at the time of the election, the commoners being nominated must have been enrolled for the whole of the time since the roll was established.

To nominate someone, two commoners must sign a written notice of nomination and deliver it to the commons trust board secretary at least seven days before the meeting at which the election is to be held.

#### Voting and results

Anyone who is enrolled as a commoner and is over 18 years of age can vote in elections for the commons trust board and its officers.
Crown Lands must be informed of the results of an election within 14 days after the election. The notice must be given by the president and should include the names and addresses of the people elected to the commons trust board and the offices held by any office-bearers elected.

32.8 Special general meetings of the commoners

A special meeting of the commoners can be called by the commons trust at any time. In addition, a special meeting must be called if:

- a written request for a special meeting is signed by at least 20 per cent of the members recorded on the commoners’ roll and delivered to the president or secretary. The request must state the purpose of the meeting
- the Minister directs the commons trust to hold a special meeting for a specified purpose
- the common was created before 1 September 1991 and there is a proposal to adopt a management plan which would change or add to the purposes for which the common can be used.

The special meeting must be held within one month. If the commons trust board does not convene the meeting within that time any of the commoners can convene the meeting themselves, provided that meeting is held within a further one month time period.

32.9 Meetings of the commoners – general requirements

The commoners and the auditor of the commons trust must be given at least 14 days notice of annual general meetings and other general meetings.

The notice of meeting must be posted to each commoner and the auditor of the commons trust and include details of:

- the place, date and time of the meeting
- the business to be considered at the meeting.

Only the business specified in the notice of meeting can be dealt with at the meeting.

If the meeting is an annual general meeting, copies of the annual report to the Minister and the statements of accounts to be submitted at the meeting must also be sent with the notice of meeting.

Minutes of the general meeting of the commoners must be confirmed at the next annual general meeting.

A commoner can request copies of the minutes of meetings of the commoners and the commons trust board. The commons trust can charge a fee for supplying copies of the minutes (see Schedule 2 of the Commons Management Regulation 2006).

32.10 Conducting business

All actions taken by the commons trust must be authorised by resolution of the commons trust board.

In particular, all contracts and other agreements must be authorised by resolution and must be made in the corporate name of the commons trust.
32.11 Insurances

Crown Lands requires that each commons trust maintain appropriate insurance of its assets and property for public liability and, where appropriate, for motor vehicle and workers compensation. Chapters 7 and 8 provide detailed guidance regarding risk assessment and insurance.

The public liability, volunteers and property insurances arranged by Crown Lands through the Treasury Managed Fund for reserve trusts under the Crown Lands Act 1989 (discussed in Chapter 8) also cover commons trusts incorporated under the Commons Management Act 1989, commons trust board members, commons trust employees and volunteers in the same way and subject to the same exclusions, exceptions and requirements as for reserve trusts. Refer to Chapter 8 for full details.

It is important to note that a commons trust is not covered by any insurance arranged by Crown Lands if it is managed by a local authority (local council). These commons trusts must obtain all their own necessary insurance. Insurance cover referred to in Chapter 8 as being arranged by Crown Lands specifically excludes these commons trusts.

Similarly insurance cover is not provided for all commons trusts in respect of the exceptions listed in section 2 in Chapter 8 (and summarised in Figure 8.1 in that Chapter), being such things as high risk and commercial activities. Insurance cover referred to in Chapter 8 as arranged by Crown Lands specifically excludes these types of activities.

Commons trusts should review all types of risks associated with their common and ensure that they obtain additional insurance cover where appropriate for those risks. Chapters 7 and 8 provide detailed guidance regarding risk assessment and insurance. In particular Crown Lands requires commons trusts to obtain the other insurance referred to in Chapter 8, such as workers compensation insurance and motor vehicle insurance where appropriate, and to ensure that contractors are appropriately insured.

32.12 Auditors

An auditor is required to be appointed by a resolution at the annual general meeting of the commoners.

An auditor’s appointment can be revoked by a resolution at a general meeting of the commoners.

If the auditor resigns or dies, or is removed from office, a general meeting must be held to appoint someone else as auditor.

Sections 46 and 47 of the Commons Management Act contain specific provisions regarding auditors and their functions. In particular, an auditor must be given notice of all general meetings of the commoners and is entitled to attend those meetings.

32.13 Common seal

A commons trust must have a ‘common seal’.

A common seal is usually a rubber stamp, which can be made by any of the stationery companies which offer this service.

The common seal must include the words “Common Seal” and show the full corporate name of the commons trust.

The common seal must be kept by the secretary or other relevant officer and must only be used following a resolution of the commons trust board to do so.
The common seal must only be put on a document when the secretary or other relevant officer is present to sign and date it.

The common seal is required for the following documents:

- resolutions of the commons trust board
- contracts of sale
- transfer or mortgages of land
- lease or licence agreements
- contracts for services
- contracts for the supply of major goods.

The common seal is not needed on bank deposit and withdrawal slips, receipts, admission tickets, insurance cover notes, documents about hiring motor vehicles, furniture or short-term services.
Trust Handbook

Regulatory requirements

- Principal place of administration:  
  Commons Management Act 1989 – section 29
- Records to be kept:  
  Commons Management Act 1989 – section 30
- Accounts:  
  Commons Management Regulation 2006 – clause 24
- Livestock register:  
  Commons Management Regulation 2006 – clause 25
- Annual report to the Minister:  
  Commons Management Act 1989 – section 37
- Meetings – time and place, frequency, AGM, notices, etc:  
  Commons Management Act 1989 – sections 31 to 34  
  Commons Management Act 1989 – Schedules 3 and 4  
  Commons Management Regulation 2006 – clause 17
- Meetings – special meetings:  
  Commons Management Act 1989 – section 35  
  Commons Management Regulation 2006 – clause 18
- Elections:  
  Commons Management Act 1989 – sections 32 and 33  
  Commons Management Regulation 2006 – clauses 14 to 16
- Auditors:  
  Commons Management Act 1989 – sections 43 to 47
- Common seal:  
  Commons Management Regulation 2006 – clause 23

Further guidance

- State legislation (e.g. Acts and Regulations) relating to reserve trusts, including the  
  Crown Lands Act 1989, can be found at:  
  www.legislation.nsw.gov.au
- For guidance regarding meeting procedures, etc:  
- N E Renton, Guide for Meetings and Organisations, Volumes 1 and 2
- For information on boards, committees and governance:  

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Commons trusts control the land making up the common for the benefit of the commoners and, if authorised in an adopted management plan, for the wider community as well. Therefore that land can only be sold or mortgaged, or added to through purchase or lease, in limited circumstances.

In all cases, a commons trust proposing to sell or mortgage a common, or to purchase or lease additional land, must approach Crown Lands to obtain the Minister’s consent. It is important that the commons trust discuss any of these proposals with Crown Lands before any significant progress on a proposal occurs or any commitments are made to third parties.

Additionally, a proposed dealing might affect any native title interests which might exist in the common. Before entering into any transaction, commons trust boards should refer to Chapter 12 and consult the Crown Lands Reserves Team to clarify any possible native title issues before proceeding.

33.1 Selling a common

The sale of a common or a part of it will only be considered in very exceptional circumstances. A sale can only occur with the Minister’s consent.

A reason for selling part of a common may be because the commons trust board or the commoners decide that it is not suitable for the purposes for which the common was set aside.

If the commons trust decides that it wishes to sell the whole or a part of the common, it must first contact the Crown Lands Reserves Team to discuss the proposed sale.

The commons trust must then publish a notice concerning its decision to sell in a local newspaper.

Notice of intent to sell

The notice must specify the details of the land in question, the reasons for the decision to sell and the date on which the decision was made, and any other relevant matters. The notice should invite commoners, members of the public or interested bodies to send comments regarding the proposal to the commons trust within 14 days of publication.

Application for consent to sell

The commons trust must wait at least 14 days after the notice is published before applying to Crown Lands for the Minister’s consent. The application should include copies of any responses received from commoners, the public or interested bodies, plus any relevant comment the commons trust board wishes to make regarding those responses.

Consent and conditions

The Minister’s consent might be granted on conditions, including that the money received:

- must be used to purchase other land to become part of the common
- must be given to another commons trust.

If no conditions are imposed, the money received can be used for the general purposes of the commons trust (maintenance, operating expenses, etc).
Crown Lands will not normally approve the sale of part of a common simply to raise funds for maintenance.

### 33.2 Can a commons trust grant a mortgage over the common?

A commons trust can grant a mortgage over the common land in limited circumstances. The Minister’s consent is required. However, a commons trust should not consider raising funds through a mortgage unless:

- there is a specific project or improvement program for which the money is needed
- the commons trust can demonstrate that it has the financial capacity to repay the loan.

Unless these criteria are met, a mortgage will not be approved.

The commons trust should consult the Crown Lands Reserves Team regarding other types of funding that are available. Reference should also be made to Chapter 19 on other sources of income that may be available to the commons trust.

### 33.3 Can a commons trust lease or purchase land?

A commons trust can buy land or take a lease of land for use in its operation of the common. The Minister’s approval is required.

When land is bought or leased, the land forms part of the common and the by-laws and rules applying to the rest of the common will apply to that land.

Subject to availability of funds, approval to buy or lease land to create a new common or add to an existing common will normally only be granted if at least one of the following criteria is met:

- There is a need to provide more common facilities on the basis that the existing common is not sufficient to meet the local area’s needs (for example, there may be a need for an additional grazing area or for the extension of a common’s natural areas).
- The land to be acquired can be used to raise money (through fees, rents or licence fees, etc) to assist the commons trust provide financial support for the management of the common.
- The land to be acquired will improve the management of an existing common (for example, improved access).
- The sale and purchase of land along a common’s boundaries will make management of its boundaries easier (this may involve ‘exchange’ of land with a neighbour).

### 33.4 Allowable investments

If a commons trust has money which is not needed for normal operating expenses, Crown Lands requires that investment of that money be in line with the *Investment Policy for Trust Boards Managing Crown Reserves and Commons 2005*, as outlined in Chapter 20 and available from Crown Lands or here:

Trust Handbook

Regulatory requirements

• Sale of common land:  
  Commons Management Act 1989, sections 16, 20 and 21

• Mortgaging of common land:  
  Commons Management Act 1989, sections 16 and 17

• Purchase or leasing of additional land:  
  Commons Management Act 1989, section 15

Further guidance

• State legislation (e.g. Acts and Regulations) relating to commons trusts, including the 
  Commons Management Act 1989, can be found at:  
  www.legislation.nsw.gov.au

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Many halls or meeting rooms across New South Wales are governed by the *Trustees of Schools of Arts Enabling Act 1902* because the land is either:

- Crown land reserved, dedicated or granted for the purpose of a school of arts, literary institute or mechanics’ institute (public trusts), or
- private land purchased, given or granted in trust for the purpose of a school of arts, literary institute or mechanics’ institute (private trusts).

These will be referred to in this chapter as ‘institutions’.

These institutions were generally established in the late 1800s and early 1900s as educational facilities or libraries for tradespeople (mechanics). After World War II, the proliferation of public libraries and schools/colleges led to a decline in the need for these facilities.

The Trustees of Schools of Arts Enabling Act was passed at a time when there were no provisions for trustees to become an incorporated association. Trustees did not have the legal status of a company and could not hold property or enter into contracts easily. The Trustees of Schools of Arts Enabling Act provides that trustees can, with the Minister’s permission, take out a mortgage to build the required facility, enter into a lease, or to sell land if required. The Act also addresses the appointment of trustees.

**Trustees**

The trustees elected by the members to manage the institution are effectively the owners, in trust, and are shown on the Land Title.

Trustees hold their office until they resign by giving a written resignation to the Minister administering the Trustees of Schools of Arts Enabling Act, or are removed under section 14 of that Act. New trustees must be approved by the Minister.

**Incorporated associations**

Individuals appointed as trustees may be personally liable for events occurring on the institution’s property, or for contracts entered into by the institution.

For that reason, the members of many institutions have chosen to become a not-for-profit association incorporated under the *Associations Incorporation Act 2009*, and have then applied for that association to be appointed under the Trustees of Schools of Arts Enabling Act as the sole trustee of their institution’s property.

Incorporation has several advantages, including:

- No personal liability: generally, the members of an incorporated association and its committee are not personally liable for the debts of the association or for events that happen on the association’s property.
- No need to change trustees: since an association exists until it is dissolved under the *Associations Incorporation Act 2009*, changes in the membership of its committee can occur each year without the need to appoint new trustees under the Trustees of Schools of Arts Enabling Act (as is the case when individual trustees retire or die).
- Broader representation: the association will have a committee elected to run its affairs, allowing for a broader representation of the members in the control of the association’s affairs and property, rather than relying on a more limited number of individual trustees.
34.1 Appointment of new trustees

The appointment of new trustees, including the appointment of an incorporated association as trustee, requires two special meetings, four advertisements, approval by the Minister and notification in the NSW Government Gazette. The procedure is as follows:

First advertisement (to appear twice)

At least 14 days’ notice of a special meeting to declare vacant the position of one or more trustees must be published in two separate issues of a local newspaper. The notice must specify that the purpose of the special meeting is to declare the position of trustees vacant.

First special meeting

At the first special meeting, members need to resolve to declare the office of one or more of the trustees vacant. This may be because a trustee has resigned, died, become bankrupt or mentally ill, or because the members wish to remove one or more trustees and replace them with new trustees. Alternatively, for simplicity, all the positions may be declared vacant (and at the second meeting one or more of the current trustees may be re-elected).

If the meeting passes a resolution to declare the office of a trustee vacant, the trustee is removed from office when the resolution is passed. Note that if a trustee resigns by giving written notice to the Minister, the resignation takes immediate effect.

A copy of the resolution and copies of the required advertisements must be sent to Crown Lands as soon as possible after the resolution has been passed.

Second advertisement (to appear twice)

When the position of one or more trustees has been declared vacant, a second special meeting can then be called to consider the election of replacement trustees. As with the first meeting, at least 14 days’ notice of the meeting must be published in two separate issues of a local newspaper. The notice must specify that the purpose of the meeting is to elect new trustees.

Second special meeting

Members at the second special meeting need to elect the new trustee(s).

Approval of the Minister and Notification

Details of the special meeting at which new trustees were elected (including copies of the required advertisements) must be sent to Crown Lands as soon as possible, so that approval of the Minister can be obtained. (Note that details of the first special meeting should already have been forwarded to Crown Lands.) If the Minister approves the election of one or more replacement trustees, a notice which appoints the new trustee(s) will be published in the NSW Government Gazette.

34.2 Liabilities of trustees

If the institution is not an incorporated body, trustees holding office under the Trustees of Schools of Arts Enabling Act are personally liable for actions taken on behalf of the institution, events occurring on the institution’s property, or contracts entered into by the institution. (See insurance section below.)

In certain circumstances, individual trustees may be entitled to have liabilities they have incurred while carrying out their duties as trustee paid out of the trust’s assets. This will depend on the nature of the liability and whether the trustee was acting in good faith and in the interests of the trust.
Where an association has been appointed as the sole trustee of the institution, the individual members and committee members do not have any personal liability for actions taken by the association in its capacity as trustee, provided they have acted in good faith and in accordance with the Trustees of Schools of Arts Enabling Act, the constitution of the association, and the requirements of the Associations Incorporation Act 2009.

However, members may be personally liable for breaches of legislation covering workplace health and safety, environmental protection and pollution, anti-discrimination and freedom of information. Refer to the separate Chapters dealing with these topics for further guidance.

### 34.3 Managing the institution’s property and affairs

Trustees and institution members may find the following chapters of this handbook helpful:

- Chapter 4 – Communicating with Crown Lands and other agencies
- Chapter 7 – Managing risk
- Chapter 8 – Insurance and liability
- Chapter 9 – Emergency management
- Chapter 10 – Work health and safety
- Chapter 11 – Environmental responsibilities and land management
- Chapter 12 – Native title
- Chapter 13 – Managing buildings, assets and infrastructure
- Chapter 15 – Employment: paid staff, volunteers, contractors
- Chapter 16 – Anti-discrimination
- Chapter 24 – Protecting privacy
- Chapter 25 – Freedom of information
- Chapter 26 – Handling complaints

**Insurance**

**All trustees have public liability and volunteers cover.**

The trustees of all schools of arts, mechanics institutes and literary institutes subject to the Trustees of Schools of Arts Enabling Act are covered for public liability and volunteers insurance as arranged by Crown Lands through the Treasury Managed Fund, as outlined in Chapter 8. The Government provides this insurance cover since the Minister is responsible for appointing the trustees.

**Trustees of public land have property cover**

Schools of arts, mechanics institutes and literary institutes on public land (i.e. not private trusts) are also covered for property insurance as arranged by Crown Lands through the Treasury Managed Fund, as discussed in Chapter 8.

**Additional cover required**

Trustees should review all the types of risks associated with their institution’s property and activities; and ensure they provide separate cover for activities and property not covered by the Treasury Managed Fund. Chapters 7 and 8 provide detailed guidance regarding risk assessment and insurance. In particular trustees should obtain the other insurances referred to in Chapter 8, such as workers compensation insurance and motor vehicle insurance, where appropriate, and ensure that contractors are appropriately insured.
34.4 Leasing, selling or mortgaging institution land

Land held by trustees under the Trustees of Schools of Arts Enabling Act can only be leased, sold or mortgaged with the Minister’s consent.

The procedure is similar to the appointment of new trustees and also requires two special meetings each of which has been advertised in two separate issues of the local paper. The procedure is as follows:

First advertisement (to appear twice)

At least 14 days’ notice of a special meeting to consider the desirability of sale, lease, or mortgage must be published in two separate issues of a local newspaper.

First special meeting

At the first special meeting, a resolution that it is desirable to sell, lease, or mortgage the institution’s land must be passed and carried by a majority of not less than three-quarters of the members present.

Second advertisement (to appear twice)

If the resolution at the first special meeting is passed, a second special meeting of members for the purpose of confirming the resolution of the first meeting must be held at least a month after the first meeting. Again, this meeting needs to be advertised in two separate issues of the local paper, providing at least 14 days notice for the meeting.

Second special meeting

Members at the second special meeting need to resolve to confirm the resolution of the first special meeting that it is desirable to sell, lease, or mortgage such lands. This resolution needs to be carried by a majority of not less than three-quarters of the members present.

Approval of the Minister

The trustees must then apply for the consent of the Minister. The Minister can impose conditions on the sale, mortgage or lease.

The trustees can only proceed with the sale, mortgage or lease once all of these steps have been completed and the Minister’s written consent is received. They must comply with any conditions the Minister imposes.

In some circumstances there may be Native Title interests in the land owned by the trustees. A proposed lease, licence, sale or other dealing may affect those interests. Before entering into any transaction, trustees should refer to chapter 12 of this handbook and consult the Crown Lands Reserves Team to clarify any possible Native Title issues.

34.5 Use of institution funds

The Minister can direct how the proceeds of any sale, the rent received under a lease, or the money advanced under a mortgage is used.

If no directions are given, these funds must be used for the general purposes of the institution’s property (e.g. maintenance, replacements or other operating expenses).

34.6 Transfer of ownership and management to local or State government

All known trustees of institutions governed by the Trustees of Schools of Arts Enabling Act have been advised of the option to voluntarily transfer the ownership and management of the
institution to either the State government for management under the *Crown Lands Act 1989* or to local government for management as “community land” under the *Local Government Act 1993*.

The Minister administering the *Crown Lands Act 1989* also has the power, if considered appropriate, to revoke the dedication or reservation of any public land used for the purpose of an institute so that it vests in the Crown.

These transfer provisions were developed because of the outdated requirements of the Trustees of Schools of Arts Enabling Act and the more modern and appropriate provisions for the management of such institutions provided by the *Crown Lands Act 1989* and *Local Government Act 1993*. Should trustees take up this option, they will generally have an opportunity for continuing involvement in the management of their institute through arrangements that would be negotiated as part of the transfer of assets. Trustees will be relieved of what is often a substantial burden associated with managing facilities in accordance with outdated trustee arrangements and requirements.

Land that is transferred under these provisions to the Crown or a council is freed and discharged from any trusts, estates, interests, reservations, dedications, conditions, restrictions and provisions affecting the land.

Any trustees wishing to transfer their institution to the Crown or local Council should contact the Crown Lands Reserves Team for assistance.

**Transfer as Crown land**

Where trustees wish to transfer the ownership and management of their institution to the Minister administering the *Crown Lands Act 1989* to be managed as Crown land, they may enter into an agreement with Crown Lands on behalf of the Minister. The agreement may specify the purpose for which the land is to be used after it is transferred to the Crown.

Before any land is transferred to and vested in the Crown the Minister may advertise the proposal and seek submissions from the public.

**Transfer to a local council**

Where land is transferred to a local council it is envisaged that the agreement between the trustees of the institution and the council will establish a future use of the institution’s land and buildings which is compatible with the needs of the local community. Land that is transferred to a local council will be used and managed by the council as “community land”, to which particular provisions in the *Local Government Act 1993* apply, including the preparation of a plan of management.

Where a plan of management is prepared by the local council for the future use of the institution’s assets, the council will be required to:

- advise the Minister for Local Government that it is preparing a draft plan of management
- take into account the previous use of the assets as a place of public instruction or amusement
- consult with such people as the council considers appropriate or as the Minister directs and
- give public notice in accordance with Section 38 of the *Local Government Act 1993*. 
34.7 Jurisdiction of local land boards

The Crown Lands Regulation 2006 provides that any matter that arises out of the administration of land subject to the Trustees of Schools of Arts Enabling Act can be referred to the local land board for consideration and decision.

For more information about the powers and processes of local land boards, see Schedule 2 of the Crown Lands Act 1989.

Regulatory requirements

- Resignation, removal and election of trustees:  
  Trustees of Schools of Arts Enabling Act 1902 – sections 13 and 14

- Approval of leasing, selling or mortgaging institution property:  
  Trustees of Schools of Arts Enabling Act 1902 – sections 5 to 8

- Dealing with institution funds:  
  Trustees of Schools of Arts Enabling Act 1902 – section 11

- Transfer to State government:  
  Crown Lands Act 1989 – sections 138 A to G

- Transfer to Local government:  
  Local Government Act 1993 – section 54B

Further guidance

- State legislation (e.g. Acts and Regulations) relating to schools of arts, literary institutes or mechanics’ institutes, including the Trustees of Schools of Arts Enabling Act 1902, can be found at:  
  www.legislation.nsw.gov.au

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