



# State Land Services

## Reserves

### **The Land Administration Act 1997**

The *Land Administration Act 1997* (LAA) is Western Australia's legislation dealing with the disposition of State land. The LAA is administered by the Minister for Lands, assisted by the Department of Regional Development and Lands (RDL).

Part 4 of the LAA provides for the creation and administration of reserves in Crown land.

### **The Parks and Reserves Act 1895**

The *Parks and Reserves Act 1895* provides for the appointment of boards of management to control and administer reserves. This very old statute preceded the first *Land Act 1898* and represents the State's first legislation in relation to reserves management. Except to the degree that section 3.54 of the *Local Government Act 1995* affords local governments powers under the *Parks and Reserves Act 1895* in relation to reserves vested under the LAA, the *Parks and Reserves Act 1895* provisions are now rarely used.

### **What is a reserve?**

Reservation is the setting aside of Crown land for a specified purpose, generally a public purpose – in effect, the dedication of land to that purpose.

Under section 41 of the LAA the Minister may set aside Crown lands by Ministerial Order in the public interest. Every such reservation has its description and designated purpose registered on a Crown Land Title (CLT) and is depicted on an authenticated map held by Landgate.

Reservation action is normally initiated by RDL's State Land Services Division following community or Government request, planning decisions or consequent to subdivision of land.

Reserves cover about 17.5 per cent of the total area of the State (443,393 km<sup>2</sup>).

### **Classification of reserves**

The *Land Act 1933* was replaced by the LAA on 30 March 1998. It provided for State reserves to be classified as Class A, B or C. There is no provision in the LAA to create new Class B reserves and there is no longer reference to Class C reserves.

Class A has the greatest degree of protection, requiring approval of Parliament to amend the reserve's purpose or area, or to cancel the reservation. The A classification is used solely to protect areas of high conservation or high community value.

Class B reserves continue, but are no longer created under the LAA. The Minister for Lands may deal with Class B reserved lands as normal reserves, provided that, should the reservation be cancelled, a special report is made to both Houses of Parliament within 14 days from the cancellation or within 14 days after the commencement of the next session.

Aside from conservation estate reserves, the Minister has general powers to deal with reserves which are not Class A or B, and retains legal and policy oversight of the use of reserves generally.

## Management of reserves

Once created, a reserve is usually placed under the care, control and management of a State government department, local government or incorporated community group by way of a Management Order registered against the relevant CLT. A Management Order under the LAA does not convey ownership of the land – only as much control as is essential for the land's management.

Management Order conditions may range from specific land management restrictions to granting leasing powers. State Land Services aims to ensure that reserves are used for their designated purpose. However, Ministerial consent is generally required for the grant of interests over reserves such as leases and mortgages.

Vesting Orders under the *Land Act 1933* automatically became Management Orders under the LAA.

Management Orders may be issued subject to prior interests existing in the land. The Minister may revoke Management Orders:

- with the agreement of the management body
- where there has been mismanagement of the reserve
- when it is in the public interest.

In the last case, compensation is payable for lawful improvements. Similarly, if a Management Order is cancelled through a taking process under Part 9 of the LAA, compensation is payable for lawful improvements.

With the Minister's approval, interests granted under a Management Order may survive revocation, with agreed variations.

## Management plans

The Minister for Lands may require a management body to prepare a suitable management plan in relation to reserved land.

## Management under other statutes

A number of statutes convey special management powers to bodies corporate created by Acts, relating to State land or reserves created under the LAA. Often those powers will include an ability to lease for particular purposes, but ownership is not conveyed and powers of disposal in fee simple are not included. The operation of these Acts is similar to the Management Order process under Part 4 of the LAA.

Examples include the *Government Railways Act 1904*, *Marine and Harbours Act 1981*, *Port Authorities Act 1999*, *Aboriginal Affairs Planning Authority Act 1972* and various tertiary education institutions Acts.

## Conservation estate

The *Conservation and Land Management Act 1984* (CALM Act) is the State's legislation dealing with the management of national parks, State forests and the conservation estate generally. Aside from State forests and marine reserves, the Act relies upon the creation of reserves under the LAA, in the first instance, with the land then coming under the special provisions of the CALM Act. State forests and marine nature reserves, marine parks and marine management areas, are exceptions to this process; they are created under the CALM Act over Crown land or Western Australian waters. State forests and the other categories of terrestrial reserves covered by the CALM Act are vested in the Conservation Commission, while marine reserves are vested in the Marine Authority.

## Changes to Class A reserves

The Minister may change Class A reserves in the following circumstances to:

- add Crown land
- amend unsurveyed boundaries, if the reserve's area is reduced by no more than five per cent
- excise five per cent or one hectare (whichever is the less), for public utility services
- redescribe the subject land (without change to the area)
- amalgamate reserves with a similar purpose.



However, where the Minister proposes to cancel the reserve or its A classification, to change its purpose, to excise land for a road, or to reduce the area by more than the five per cent or one hectare (whichever is the less) permitted in specified circumstances, the Minister must:

1. Advertise this intention in a State newspaper; and
2. No sooner than 30 days later, table the proposal before Parliament with an explanation.

Either House of Parliament then has 14 sitting days to pass a notice of disallowance.

## Changes to conservation estate reserves

With the consent of the Minister for the Environment, the Minister for Lands may by order amend conservation parks, national parks and Class A nature reserves, for the same reasons outlined above for Class A reserves.

The Minister must advertise and table in Parliament proposals to excise land from such reserves for a road.

However, a special Act of Parliament is required in relation to changes for such reserves where it is proposed to:

- cancel the reserve or change its purpose
- reduce the reserve's area by more than the five per cent or one hectare (whichever is the less) permitted in specified circumstances
- excise land for other purposes.

The LAA is restricted in its operations in relation to CALM Act tenures.



## Reserves distribution by category

Reserve Category	Area (km <sup>2</sup> )	% of WA's Reserved Land
Use and benefit of Aboriginal people	208,136	48.5
National parks and conservation	176,188	41.1
Managed by local government authorities	4,661	1.1
Vested with or managed by statutory authorities	19,949	4.6
Unmanaged reserves	20,147	4.7
<b>Total</b>	<b>429,081</b>	<b>100</b>

## Leases of reserves

Management Order conditions or special statutes may convey leasing powers to management bodies in relation to reserves.

The LAA gives the Minister powers to grant short-term leases, profits à prendre and licences in relation to unmanaged reserves, generally where the land is not immediately required for its designated purpose.

The Minister may grant leases for any term or condition over unmanaged reserves.

## Mall reserves

The LAA allows the creation of a reserve for the passage of pedestrians, vehicles used by adjoining land owners and other vehicles allowed by local government authority by-laws.

Mall reserves are generally created over existing public roads, effectively closing the road to motor traffic. The reserve is placed under the care, control and management of a management body with power to lease and make local laws. For more information see Brochure 5, Road Closures and Disposals.

## What is State Land Services' role?

RDL's State Land Services division administers the State's reserve system, except to the degree provided by special legislation other than the LAA.

Aside from reservations arising out of the processes of the *Planning and Development Act 2005*, decisions in relation to the creation of reserves are generally the responsibility of the manager of the relevant regional team. Each regional team is responsible for effecting disposition and administering relevant law and policy.

The LAA requires consultation with the relevant local government and statutory authorities prior to the exercise of an LAA power.

## Reserves policy

The department has a range of policies relating to the use, leasing and disposition of reserves.

## Reserves arising from the subdivisional process

The *Planning and Development Act 2005* is the State's primary legislation dealing with orderly town planning. Section 152 of this Act provides for the vesting in the State, land within private subdivisions which is designated for public purposes such as recreation and drainage. Such land is removed from the freehold estate and reserved under the LAA, generally under the control of the relevant local government authority.

To ensure maximum public access is preserved to such land, leasing powers are not given in management orders. Disposal is only allowed when the intention is to acquire replacement recreational land or to use the proceeds to enhance other public open space.

## How long will the various processes take?

The duration of each reserve action varies considerably from case to case. Some delaying factors include:

- consultation with a range of planning and management bodies
- survey
- changes to existing tenures
- disputes between interested parties
- legal complexities
- procedural requirements of the Commonwealth *Native Title Act 1993*.

## What fees and charges will I pay?

Costs will vary substantially from case to case. Subject to variation of statutory fees and the circumstances of each case, costs may comprise:

1. Lease of a reserve
  - lease preparation
  - lease registration
  - first half year's rent.
2. Registration of leases, mortgages and other interests
3. Disposal of Section 152 planning reserves to a local government
  - administration fee
  - freehold transfer.

## Further Information

State Land Services  
Department of Regional Development and Lands

PO Box 1143  
WEST PERTH WA 6872

Phone: (08) 6552 4400  
Fax: (08) 6552 4417  
Email: [StateLand@rdl.wa.gov.au](mailto:StateLand@rdl.wa.gov.au)  
Web: [www.rdl.wa.gov.au](http://www.rdl.wa.gov.au)

