



## Crown Land Management in WA

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*This factsheet was last updated on 13 August 2025*

### What is this factsheet about?

Approximately 92% of Western Australia's land area is Crown land (that is, not private land). The majority of this comprises pastoral leases, reserves and "unallocated" Crown land.

With such a large area managed by public authorities, the laws applying to the use and administration of Crown lands are of great importance in Western Australia.

This Fact Sheet examines the law in relation to Crown Land. It covers controls and management over unallocated Crown land and reserves other than conservation reserves.

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## What is Crown land?

“Crown land” refers to all land in Western Australia that is not alienated from the Crown (the State). In other words, Crown land is any land that is not freehold (private) land. As Crown land occupies 92% of the State, its sustainable management is essential for the effective protection of biodiversity and heritage.

Crown land can consist of unallocated Crown land, leases (including pastoral leases), and reserves (including conservation reserves). Most roads, as well as recreation reserves, river foreshores, and beaches, are Crown land. Public utilities such as dams, pump stations, and electricity switch yards are typically constructed on Crown land.

## General controls applying to Crown land

The *Land Administration Act 1997* (WA) (the “**LAA**”) contains many of the relevant provisions applicable to Crown land in Western Australia.

Under the *LAA*, it is an offence for a person to do any of the following things on Crown land without the permission of the Minister for Lands (**Minister**) or a reasonable excuse:

- a) reside on Crown land;
- b) construct roads or tracks, or erect any structure;
- c) clear, enclose, cultivate or cause or allow stock to graze;
- d) excavate or reclaim Crown land below high water mark;
- e) collect, drill for or store water on, or take water from;
- f) remove any plant (whether alive or dead) or such other thing of any kind as is prescribed;
- g) deposit or leave any thing of any kind; or
- h) discharge any firearm or other weapon.

A person committing one of these offences is liable to a fine of up to \$20,000 and a daily penalty of up to \$400 a day for continuing offences.<sup>1</sup>

## Crown land administration

The Department of Planning, Land and Heritage (**DPLH**) is the primary government agency responsible for the administration of Crown land. The DPLH is responsible for arranging and co-ordinating the following matters:

- subdivision of Crown land creating or extending roads and townships;
- sale of Crown land for private or commercial use, either subject to conditions for development or not;
- setting aside of Crown land aside to create reserves in the public interest for public use or for services and utilities to provide a public benefit;

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<sup>1</sup> *Land Administration Act 1997* (WA), section 267(2).

- placing of the day-to-day control and management of reserves in local Governments, statutory utilities or incorporated or statutory associations (such as service clubs, sporting clubs and churches);
- creation and registration of a lease of Crown land for residential, agricultural or industrial purposes;
- amendment of roads, for matters such as widening, deviation and closing;
- taking and revesting of freehold land required for public purposes; and
- collection and registration at Landgate of dealings as to interests in the Crown estate on certificates of Crown land title.

Other government agencies also have certain management roles over Crown land including – the Department of Biodiversity, Conservation and Attractions; the Water Corporation; the Department of Mines, Petroleum and Exploration; and the Department of Transport.

### Leases and easements on Crown Land

Under the *LAA*, the Minister can grant leases and easements over Crown land.<sup>2</sup> A common type of lease that can be granted under the *LAA* is a pastoral lease.

### Reserves

“Reserves” are areas of Crown land that have been set aside for a particular public purpose. Many reserves are created by an order of the Minister under the *LAA*.<sup>3</sup> Reserves may also be created under other statutes: for example, soil conservation reserves can be created by proclamation under the *Soil and Land Conservation Act 1945* (WA).<sup>4</sup>

The purpose of a reserve is stated in the document that created it. This is usually a brief statement such as the land is set aside “for nature conservation” or “for the benefit and use of Aboriginal persons”. The Minister can only place management in another person or grant a lease or licence over the reserve for the same purpose for which the reserve was created, or purposes ancillary or beneficial to that purpose.<sup>5</sup>

When creating a reserve under the *LAA*, the Minister is required to consult with the local government within the district where the reserve is located.<sup>6</sup>

The Minister may by order classify a reserve as a “class A reserve”.<sup>7</sup> These reserves are afforded the greatest degree of protection to protect areas of high conservation or

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<sup>2</sup> *Land Administration Act 1997* (WA), section 79 and 144.

<sup>3</sup> *Land Administration Act 1997* (WA), section 41. Reserves existing prior to the *LAA* continue: *LAA* clause 14, Schedule 2.

<sup>4</sup> *Soil and Land Conservation Act 1945* (WA), section 26.

<sup>5</sup> *Land Administration Act 1997* (WA), section 46.

<sup>6</sup> *Land Administration Act 1997* (WA), section 14.

<sup>7</sup> *Land Administration Act 1997*(WA), section 42.

community value. Special rules apply to creating, altering and managing these reserves and reserves with certain purposes.

### **Altering or cancelling a reserve**

For most types of reserves, Gazette and can alter the boundaries, change the purpose or cancel a reserve by making an order to that effect.<sup>8</sup> This order does not have to be published in the *Government Gazette*, and simply becomes effective when it is registered on the Crown Land Title Register.<sup>9</sup>

Before altering or cancelling a reserve, the Minister is required to obtain the consent of the management body (if any),<sup>10</sup> and consult with the local government in whose district the reserve is located.<sup>11</sup>

For reserves within the Swan River Management Area, the Minister must consult with the Swan River Trust before cancelling or altering the purpose of a reserve or reducing the size of a reserve within the management area.

### **Management of reserves**

The way a reserve is managed is generally governed by three things: the purpose of the reserve; the contents of the management order applying to the reserve; and the contents of a relevant management plan.

Where a reserve has been placed in the care, control and management of a body, the instrument giving effect to this act is called a “management order”. A management order must be consistent with the purpose of the reserve and may include conditions on how the reserve is to be managed.<sup>12</sup>

The person or public authority responsible for managing the reserve (called a “management body”) must manage the reserve in accordance with the terms of the management order and the purpose of the reserve.<sup>13</sup>

The management body in which conservation reserves and State forests are vested is the Conservation and Parks Commission, with the management responsibility held by the Department of Biodiversity, Conservation and Attractions (**DBCA**).

For the management of local government reserves, local governments must comply with the management order and any other laws that apply, for example, land clearing laws.

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<sup>8</sup> *Land Administration Act 1997* (WA), section 51.

<sup>9</sup> *Land Administration Act 1997* (WA), section 13(2) (this order is not subsidiary legislation within the meaning of the Interpretation Act 1984); pers comm., Sandra Eckert, Dept of Land Administration 26 March 2003.

<sup>10</sup> *Land Administration Act 1997* (WA), section 12.

<sup>11</sup> *Land Administration Act 1997* (WA), section 14.

<sup>12</sup> *Land Administration Act 1997* (WA), section 46(1).

<sup>13</sup> *Land Administration Act 1997* (WA), section 46(1).

Otherwise, local governments may undertake a range of activities on a reserve such as making improvements, undertaking earthworks or (subject to the approval of the Minister) granting licences for a person to run stock on the reserve.<sup>14</sup>

If the land is reserved, but there is no management order in place for that reserve, it is known as an “unmanaged reserve”. The DPLH is the responsible body for these reserves.

### Licences on Crown land

Section 91 of the *LAA* gives the Minister the power to grant a licence or profit à prendre over Crown land for any purpose.

A licence is a personal right granted to another person, authorising the doing of a certain act, for example, granting the right to enter land. A profit à prendre is a right to take a natural resource or produce of the land, for example, the right to plant a forest on someone else’s land, with the profits from the timber being shared between the profit à prendre holder and the landowner.<sup>15</sup>

The Minister may grant the licence or profit à prendre subject to any conditions, fix the duration, review, or (subject to the consent of its holder) amend the provisions of the licence or profit à prendre. If the licence holder breaches any of the conditions of the licence, the Minister may terminate the licence.<sup>16</sup>

Mining, petroleum and geothermal energy rights and a profit à prendre can exist simultaneously, if the Minister for Mines approves of the area being used for both purposes.<sup>17</sup>

Section 48 of the *LAA* also gives the Minister the power to grant leases, licences and profits à prendre over Crown land in unmanaged reserves for a purpose that is compatible with or ancillary to the current use of the reserve or the intended future use of the land.

A management body usually needs the approval of the Minister before entering into a lease, licence or profit à prendre in a reserve.<sup>18</sup> However, approval is not required where such an action is authorised under the management body’s management order,<sup>19</sup> or the management body is permitted to enter into such arrangements under another Act.<sup>20</sup>

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<sup>14</sup> *Parks and Reserves Act 1895* (WA), section 5, applied to local government by *Local Government Act 1995*, section 3.54.

<sup>15</sup> <https://www.landgate.wa.gov.au/land-and-property/land-transactions-hub/land-transaction-policy-and-procedure-guides/land-titles/encumbrances-interests-and-limitations/pap-01-profits-a-prendre/>

<sup>16</sup> *Land Administration Act 1997* (WA), section 91.

<sup>17</sup> *Land Administration Act 1997* (WA), section 91(5).

<sup>18</sup> *Land Administration Act 1997* (WA), section 18.

<sup>19</sup> *Land Administration Act 1997* (WA), section 46(3)(a).

<sup>20</sup> *Land Administration Act 1997* (WA), section 18, 46(7) and (8).

## Unallocated Crown land

Unallocated Crown land means Crown land in which no interest is known to exist, except potentially native title, and which is not reserved, declared or otherwise dedicated under LAA or any other written law.<sup>21</sup> Management responsibility for this land falls on the DPLH.

## Access to Crown land

As a general rule, a person may enter and use reserves in a manner which is consistent with the purpose of that reserve and have access to unallocated Crown land. However, access can be restricted in certain circumstances, including:

- conservation reserves or State forests can be closed to the public for a variety of reasons, including for the prevention of forest diseases and protection of habitats;
- water catchments may prohibit certain types of access to maintain water quality;
- it is an offence for a person (including a mining company employee) to enter land reserved for the benefit of Aboriginal people unless the person is authorised;<sup>22</sup>
- access into specific reserves can be restricted, with fines for entry in contravention of the restriction;<sup>23</sup> and
- access to unallocated crown land and unmanaged reserves by vehicle is limited to roads, tracks and designated parking areas,<sup>24</sup> and people are only permitted to camp in an area designated for camping.<sup>25</sup>

## Opportunities for public involvement

There are a number of opportunities for public involvement in the administration and management of Crown land, including:

- if you are concerned that Crown land is being used illegally, you can report the matter to the management body for the land, the local government of the area, or DPLH;
- if you are concerned that Crown land held under a lease is being managed inappropriately, contact DPLH in the first instance;
- if you are concerned about the management of fire or declared species on unallocated Crown land or an unmanaged reserve, contact DWER;
- to ascertain the relevant management body for a reserve, contact Landgate.
- you can encourage the Minister to require a management plan be developed in respect of a reserve that you are concerned is being poorly managed.

## Contacts and further information

Department of Planning, Lands and Heritage (DPLH), Tel: 61 8 6551 8002

<https://www.wa.gov.au/organisation/departments/departments-of-planning-lands-and-heritage>

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<sup>21</sup> *Land Administration Act 1997* (WA), section 3.

<sup>22</sup> *Aboriginal Affairs Planning Authority Act 1972* (WA), section 31.

<sup>23</sup> *Land Administration (Land Management) Regulations 2006* (WA), section 20.

<sup>24</sup> *Land Administration (Land Management) Regulations 2006* (WA), section 10.

<sup>25</sup> *Land Administration (Land Management) Regulations 2006* (WA), section 15.

Department of Biodiversity, Conservation and Attractions (DBCA), Tel: (08) 9219 9000  
<https://www.dbca.wa.gov.au/>

Department of Water and Environmental Regulation (DWER), Tel: 61 8 6364 7001  
[www.wa.gov.au/organisation/department-of-water-and-environmental-regulation](http://www.wa.gov.au/organisation/department-of-water-and-environmental-regulation)

Landgate, Tel: (08) 9273 7373 <https://www.landgate.wa.gov.au/>

For copies of legislation, see the Western Australian Legislation site at  
[www.legislation.wa.gov.au](http://www.legislation.wa.gov.au)

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