



IT ONLY TAKES A SMALL EFFORT TO BUILD A COMMUNITY

What you need to know to be a
Crown land trust board member.



Crown Land Reserve Trust Board Member

INFORMATION BOOKLET

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CROWN LAND RESERVE TRUST BOARD MEMBERS

CONTENTS

WELCOME	4
1. INTRODUCTION	4
2. WHAT IS CROWN LAND?	5
3. ABOUT THE TRUST HANDBOOK	5
3.1 Crown reserves	5
3.2 How the trust system works	6
3.3 Roles and responsibilities of the trust board	6
3.4 Communicating with the Land and Property Management Authority & other agencies	6
3.5 Plans of management	6
3.6 Visitors to the reserves	7
3.7 Managing risk	7
3.8 Insurance and liability	7
3.9 Emergency management	7
3.10 Occupational health and safety	7
3.11 Environmental responsibilities and land management	7
3.12 Native title	8
3.13 Managing buildings, assets and infrastructure	8
3.14 Leases, licenses & external land management agreements	8
3.15 Employment: paid staff, volunteers, contractors	8
3.16 Anti-discrimination	8
3.17 General administration	9
3.18 Promotion and publicity	9
3.19 Sources of income	9
3.20 Using trust funds	9
3.21 Selling, mortgaging and acquiring reserve trust land	9
3.22 Accounting and financial management	10
3.23 Annual report and financial statements	10
3.24 Protecting privacy	10
3.25 <i>Government Information (Public Access) Act 2009</i>	10
3.26 Handling complaints	10
4. HOW TO CONTACT US	10

WELCOME



Welcome and thank you for volunteering to become a trust board member. By agreeing to be responsible for a reserve as a trust board member, you are an important and valuable part of NSW's Crown lands system.

Trusts allow communities, members of the public and councils, in partnership with the NSW Land and Property Management Authority, to care for and manage important land and public assets in their area.

A trust is a way to get involved in the local community and become a caretaker for land which is important to you and your family. It also allows the local community to have a say on how Crown land is used.

By taking responsibility for this land, you are ensuring it will be available for future generations to enjoy.

This booklet has been designed to give you an overview of the information you will require to carry out your duties as a trust board member. The information contained in this document is expanded upon in the Trust Handbook, which is available on LPMA's website and in hard copy format.

You are not alone in your reserve trust experience; there is a wealth of information available to you within your own trust and within the Land and Property Management Authority. If at any stage you have any concerns or questions, please don't hesitate to contact them.

Thank you once again and enjoy your trust board experience.

The Hon. Tony Kelly MLC

Minister for Planning
Minister for Infrastructure
Minister for Lands
Deputy Leader of the Government in the Legislative Council
Leader of the House in the Legislative Council

1. INTRODUCTION

As a member of a trust board your main role is to manage the affairs of the reserve trust and the reserve itself. More than 3,000 volunteers help to care for Crown reserves as members of trust boards.

A reserve trust enjoys a level of autonomy in its care, control and management of the Crown reserve. This includes entering into maintenance contracts, determining the development of the land (subject to Crown and council consent), and employing people to work for it.

A reserve trust is a statutory corporation, with its functions and responsibilities established under the *Crown Lands Act 1989*, with the overall responsibility for the care, control and management of the reserve. It is not a branch of a department of government and it does not operate for private profit.

Membership of a trust board is an honorary position. Trust board members are not employees of the Land and Property Management Authority and are not paid for the time they spend in their role on the board. They may, however, be reimbursed for out-of-pocket expenses if the trust board approves (Chapter 3 of the Trust Handbook provides further information). A board can have not less than three and no more than seven members (excluding ex-officio members). Members of trust boards are appointed by the Minister administering the *Crown Lands Act 1989*, for a term not exceeding five years. Members may, however, apply for reappointment for a further term on expiry of their term of office and may resign at any time.

The trust board can, subject to the *Crown Lands Act 1989* and Regulation, 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.

It is hoped that this booklet will provide you with an overview on the roles and obligations of a trust board member.

Detailed information is available in the Trust Handbook.

2. WHAT IS CROWN LAND?

Crown land is state-owned land administered by the NSW Land and Property Management Authority (LPMA) and managed for the benefit of the people of NSW.

Crown land makes up almost half the land area of New South Wales. The majority of the Crown land is held under tenure (or as Crown holdings). The remainder is essentially Crown reserves, with a small amount of Crown roads and other Crown land.

The Crown Reserve System is the oldest and most diverse system of land management in NSW. It promotes the cooperative care, control, and management of Crown reserves by the community with assistance from LPMA, other government agencies and reserve users.

Land has been set aside for public purposes, for example public recreation, environmental protection, community purposes, showgrounds, sports grounds and public parks, in NSW since colonial times. Crown reserves are created when Crown land is reserved or dedicated for a public purpose to protect and manage important community resources and these reserves are administered under the *Crown Lands Act 1989*.

There are over 30,000 reserves across NSW with a total area of more than 2.5 million ha – about 3% of the NSW land area.

The principles of Crown land management underpin the management and use of Crown land, including reserves. Natural resources such as water, flora and fauna and scenic beauty are conserved, while still encouraging public use and enjoyment of the land.

Crown reserves are generally managed by reserve trust boards, LPMA, local councils or other state government departments. Certain Crown reserves that do not have a trust appointed to manage the reserve and are not under lease, are either managed by the local government council, as a public reserve under S48 of the *Local Government Act 1993*, or by LPMA.

3. ABOUT THE TRUST HANDBOOK

The Trust Handbook (the handbook) is for trust boards managing Crown land reserves and commons and trustees of schools of arts which provides detailed information for trust board members and other managers of Crown reserves. The handbook may be accessed at www.lpma.nsw.gov.au.

The following sections provide a brief introduction to each of the chapters of the handbook. They give you an overview only of the types of matters a reserve trust board members needs to consider. It is important that you also read and become familiar with the corresponding chapter of the handbook when you are actually dealing with these types of matters as a reserve trust board member.

3.1 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 specified 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. A reserve that has been created through dedication can only be revoked with the agreement of both Houses of the NSW Parliament. Also, the land making up a dedicated reserve can only be changed by dealing with the whole piece of dedicated land, not just parts of it.

On the other hand, the Minister can decide to revoke a reserve created through 'reservation' without the matter being considered by Parliament. Parts of these reserves may be changed without affecting the remaining parts of the reserve.

Generally, a reserve's use can only be consistent with or supporting the purposes stated in the reservation or dedication or an additional use identified in a plan of management for that reserve adopted by the Minister. A reserve can also be used for various additional purposes under temporary licence as discussed in chapter 14 of the handbook. Where possible, multiple use of reserves is 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.

3.2 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, or Crown Lands Act trust, is the legal body which has the ownership of reserved or dedicated Crown land for the purposes of managing the reserve on behalf of the public. The trust has a legal interest in the property for which it is responsible.

A trust can only make decisions and take actions concerning the reserve in the interests of the reserve itself, and the public.

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 for Lands (generally through the Land and Property Management Authority)
- 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 protected under the Act against most legal claims which arise in the course of the use and management of the reserve, provided the reserve trust (the legal entity) and the individual members of the reserve trust board have acted in good faith and in accordance with the Act.

However, board members can be personally liable for criminal breaches of legislation covering, for example, occupational health and safety, environmental protection and pollution, anti-discrimination and freedom of information. More information is provided on this issue in chapter 2, section 10 of the handbook.

There are certain dealings 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 board should contact the local LPMA office.

3.3 Role and responsibilities of the trust board

Members of the community who are appointed to reserve trust boards undertake a valuable and responsible 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 also be the main users of the reserve, because of their interest in the use and management of the reserve. 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 all of the people NSW and not for a particular group or interest.

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 role and responsibilities of the board should therefore be clearly understood, both by its members and by potential future members and these are outlined in chapter 3 of the handbook.

3.4 Communicating with the Land and Property Management Authority and other agencies

As part of the day-to-day management of a reserve, trust boards will most likely need to contact or consult external sources for information or guidance. Chapter 4 of the handbook provides information to enable you to do that as effectively as possible. Contact details of your local LPMA office are given on the authority's website at www.lpma.nsw.gov.au or call 1300 052 637.

3.5 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 by the Minister for Lands. However, the principles discussed in chapter 5 of the handbook 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.

Chapter 5 of the handbook has detailed information on preparing a plan of management.

3.6 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'
- '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. Chapter 6 of the Trust Handbook provides you with guidance on managing public use of your reserve in accordance with the above principles.

3.7 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. Risks may include occupational health and safety, environment and land management, liability, emergency management, staff, contractors and volunteers, financial and asset management, and other administration risks.

LPMA 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, which is included in the appendices to the handbook.

3.8 Insurance and liability

Despite the most comprehensive and effective risk management procedures, accidents will happen from time to time, and the trust will require financial help in dealing with them. It is important to manage the trust's risks adequately to ensure that the cost of any insurance remains affordable.

Each trust must consider its employees, volunteers and assets and obtain appropriate insurance cover for those areas not covered by the Land and Property Management Authority. The authority has public liability and volunteer workers' insurance arrangements through the Treasury Managed Fund (TMF). These arrangements cover, for some circumstances as described in chapter 8 of the handbook, trust board members, trust employees and volunteers. The authority also organises, but does not pay for, fire and property damage insurance for those trusts that choose to be part of the group scheme.

3.9 Emergency management

Trusts are responsible for preparing to cope with 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 trust members, employees, contractors and volunteers know their responsibilities during an emergency. Examples of emergency situations that could occur within a reserve could include such things as floods, bushfires, chemical spills, a gas leak, medical emergencies, motor vehicle accidents and people being violent or threatening.

Chapter 9 of the handbook 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.

3.10 Occupational health and safety

Occupational health and safety (OHS) 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.

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

Meeting OHS legislative obligations can present a challenge to trusts. However, trust 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. They can do this by taking active steps to identify and manage foreseeable risks at their workplaces.

One way of achieving this is by developing and establishing an OHS Management System (OHSMS) which is then monitored and periodically evaluated. An OHSMS can be tailored to the specific circumstances of the workplace and the size of the organisation.

Chapter 10 of the handbook provides guidance on a trust's OHS obligations and how to meet them, and advice on setting up an OHSMS whether you are a small, medium or large trust.

3.11 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.

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

- noxious weeds
- plants and animals
- water management
- bushfire management
- heritage
- pesticides
- contaminated land
- dividing fences
- pollution
- approvals, licences and permits.

3.12 Native title

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 purpose specified when it was reserved 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 *Commonwealth Native Title Act 1993 (NTA)* are followed.

Chapter 12 of the handbook explains your obligations in this regard.

3.13 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. LPMA requires that trusts keep a register of structures, facilities, and other assets, including the land itself, recording the value and condition of all the assets.

Chapter 13 of the handbook provides guidance to help you ensure that the assets of your reserve are managed effectively.

3.14 Leases, licences & external 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 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.

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 (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.

In addition, a range of new land management agreements, seeking to achieve various environmental outcomes, are now being offered in exchange for direct funding 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 14.8.

3.15 Employment: paid staff, volunteers, contractors

When the 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 *Occupational Health and Safety Act 2000* and administered by WorkCover NSW.

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.

3.16 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.

LPMA supports a policy of equal opportunity reflecting the spirit and intent of state and federal legislation. LPMA 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 employees' abilities to perform workplace responsibilities are the only factors considered during their employment with trusts. In addition, when providing trust services or in allowing access to trust properties, it is important that the environment be free from discrimination.

LPMA's policies *Equal Employment Opportunity and Harassment in the Workplace* prohibit all forms of unlawful discrimination and harassment within the authority.

Chapter 16 of the handbook sets out information about what constitutes discrimination and your responsibilities in that regard.

3.17 General administration

A reserve trust is responsible for the care of public land in the interests of the community. Everything the 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 for financial management, assets and asset management, leases and licences, 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. Trust board members should never be in breach of the public trust that is given to them.

Chapter 17 of the handbook explains a number of general matters and related requirements in terms of the administration of the trust and the reserve, including information on:

- making business decisions
- records that must be kept
- trust board meetings
- annual general meeting
- committees
- common seal
- ICAC investigations.

3.18 Promotion and publicity

Trust board members are required to make the best use of the reserve and the income received, within the constraints of the public purpose of the reserve or 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 board member or even by becoming a volunteer or providing financial support.

Chapter 18 of the handbook provides guidance on how to promote your reserve to the best effect.

3.19 Sources of income

The best way to guarantee ongoing income for the trust is to encourage suitable economic activities within the reserve, while keeping its uses in accordance with the reserve's purpose. Fundraising activities are also appropriate.

A 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 trust or may be targeted at a specific initiative. The primary sources are set out in chapter 19 of the handbook.

3.20 Using trust funds

A trust must be diligent in how it uses its funds and ensure that all payments and investments are in accordance with the relevant legal requirements. Chapter 20 of the handbook contains information on the investments that trusts can make, and your responsibilities in ensuring that trust funds are used to maximise benefit to the reserve. Information is also provided on issuing tenders and contracts, leasing equipment and sponsorship.

3.21 Selling, mortgaging and acquiring reserve trust land

Reserve trusts control Crown land for the benefit of the community. To help the trust manage the reserve under the relevant legislation, the trust is considered to be the owner of the land making up the reserve.

This means that, subject to the Minister's consent and authority's involvement, the 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 also approach LPMA to obtain the Minister's consent.

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, trust boards should refer to chapter 21 (and 12) of the handbook and consult their local LPMA office to clarify any possible native title issues.

3.22 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 trust board members. Therefore, it is essential that board members exercise good financial management and control. However, 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 chapter 22 of the handbook is designed to give you a better understanding of the basic accounting records you must maintain. In addition, the local LPMA office is available to give advice on keeping financial records.

3.23 Annual report and financial statements

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

All trusts are required to submit an annual report to the Minister 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 now the year commencing 1 July, unless otherwise specified by the Minister.

Chapter 23 of the handbook details what is expected in the annual report and financial statements of the trust.

The authority requires trust boards with an annual income over \$10,000 to submit an audit certificate (by a registered company auditor) with annual reports. All showground trusts, regardless of their annual income, must do the same.

The authority also requires that trust boards with an annual income of less than \$10,000 also submit an audit certificate with annual reports; however, the audit may be performed by any responsible local citizen, other than a trust board member or a relative of a trust board member.

The Minister for Lands may now require reserve trust boards to report on their performance in managing reserves and on such other matters as the Minister considers appropriate. The matters to be reported on by trusts are prescribed in the Regulations and can also be prescribed by a notice in writing to a reserve trust.

3.24 Protecting privacy

Privacy obligations govern how you:

- collect and handle personal information relating to individuals
- conduct an internal review when a person complains about the way you handle their personal information.

Your privacy obligations are intended to ensure that you protect the information of individual members of the trust, individual reserve users and members of the public.

Chapter 24 of the handbook provides guidance on how you should meet those obligations.

3.25 Government Information (Public Access) Act 2009

Crown land trusts are required to provide public access to information in accordance with the requirements of the GIPA Act. Further information is available in the Trust handbook in chapter 25.

3.26 Handling complaints

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.

Complaints should always be listened to, and board members or staff will make dealing with the complaint easier if they empathise with the other person or consider the problem in a sympathetic manner.

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 to learn from them where we can.

4. HOW TO CONTACT US

If you would like more information on becoming a Crown land trust board member visit www.lpma.nsw.gov.au/reserve_trusts.

Alternatively, you can phone 1300 052 637 or visit any local Crown lands district office.

FOR MORE INFORMATION

www.lpma.nsw.gov.au/reserve_trusts

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