

CHAPTER 11

GENERAL

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11. GENERAL

11.1. INTRODUCTION

This Chapter covers the general provisions set out in Part 11 of the *Land Administration Act 1997* (LAA) dealing with the miscellaneous yet important issues for Crown land administration in this State. Primary features of Part 11 include provisions relating to liability, land in closed railways, offences on Crown land, regulations and approved forms.

11.2. GENERAL PROTECTION FROM LIABILITY

11.2.1. GENERAL

Sections 259 and 264 of the LAA deal with issues of liability. Further provisions in relation to liability will be found in sections 66 (dealing with public access routes) and 196(7) (dealing with public access easements).

Section 259 makes provision for a person who is the Minister, a delegate of the Minister or a public service officer of the Department of Regional Development and Lands (RDL) to receive general protection from an action in tort relating to the doing of an act or the omission to do anything where that person has in good faith exercised or performed a function under the LAA.

Section 259 does not however relieve the Crown from liability that it might already have in relation to the act or omission by the Minister, a delegate of the Minister or an officer of RDL.

11.2.2. RESPONSIBILITIES OF RDL OFFICERS UNDER THE LAW

It is very important for all government officers to be aware of their duty of care and to know the limits of their power, or risk the possibility of being “reckless” in the exercise of that power. The officer may personally be liable for a “reckless” exercise of that power.

The High Court of Australia decision: Northern Territory and Ors v Mengel (1995) 129 ALR 1: introduced the concepts of “reckless indifference” and “reckless disregard” to the test for misfeasance in public office.

Officers should also be aware of section 46 of the *Financial Administration and Audit Act, 1985*.

It is for these reasons that officers within RDL who purport to carry out functions under legislation must ensure that they abide by the requirements of the LAA, other written law and know and observe the limits of their power. Where RDL officers are unsure as to the level and extent of their authority and legal requirements, the officer should seek legal advice. It is important for RDL officers to appreciate that total reliance on section 259 of the LAA to relieve them performing a function in accordance with the LAA (or any other Act administered within the Department) will not necessarily relieve that officer from personal liability.

11.3. ABILITY OF INSOLVENTS, INCAPABLE PERSONS AND DECEASED PERSONS TO HOLD CROWN LAND

11.3.1. GENERAL

An important part of any transaction involves the competency and capacity of persons under a legal disability to hold Crown land. Part 11 of the LAA expressly deals with some types of incapable persons.

At common law, if all the elements of contract exist between two parties, the enforceability of the agreement may be affected if one or both of the parties lack capacity to contract or hold Crown land. The LAA deals with three main types of persons that lack capacity either totally or, to some extent at common law and sets out who may actually deal with the land on behalf of the incapable person.

11.3.2. INSOLVENT PERSONS

Any person who becomes bankrupt under the *Bankruptcy Act 1966* and who is an insolvent under administration within the meaning of the *Corporations Law*, or is a corporation under receivership, administration, deed of arrangement or is being wound up within the meaning of the *Corporations Law* may only sell his or its interest to the person entitled to hold the land as trustee under the *Bankruptcy Act 1966* or *Corporations Law* with the consent of the Minister for Lands: Section 261 of the LAA.

The automatic vesting in the trustee or administrator etc. for the purposes of the *Bankruptcy Act 1966* or the *Corporations Law* will only apply with the consent of the Minister having been obtained and given before the interest is transferred or sold.

11.3.3. INCAPABLE PERSONS

An incapable person for the purposes of section 262 of the LAA refers to an incapable person under the *Mental Health (Consequential Provisions) Act 1996*.

If the holder of an interest in Crown land is declared to be an incapable person under the *Mental Health (Consequential Provisions) Act 1996*, that interest may be held by the person having charge of his or her estate with the consent of the Minister for Lands. However, that person must apply to the Minister in writing for permission to occupy the Crown land within 12 months after declaration of the holder of that interest as an incapable person. Failure to do so entitles the Minister to forfeit the interest under section 35 of the LAA. For more information on the forfeiture of interests, see Chapter 2 ([Paragraph 2.11](#)) of this Manual.

Again, a precondition to the transfer of the interest from the deceased to his or her legal representative is that all unfulfilled conditions relating to that interest are fulfilled in trust and for the benefit of the persons entitled to that interest: Section 262(2) of the LAA.

A precondition of the transfer of the interest from the incapable person to the trustee is subject to all unfulfilled conditions of improvements relating to that interest being fulfilled in trust for the benefit of the person entitled to the interest: Section 262(2) of the LAA.

11.3.4. DECEASED ESTATES

Under Section 262 of the LAA, where the holder of the interest in Crown land dies before the completion of the conditions of improvements relating to that interest, the Minister may consent to a legal representative completing the conditions for the benefit of the estate.

Again, the legal representative must apply to the Minister for consent to occupy and complete the conditions within 12 months of the death of the holder of the interest. Failure to do so entitles the Minister to forfeit the interest under section 35 of the LAA. For more information on the forfeiture of interests, see Chapter 2 ([Paragraph 2.11](#)) of this Manual and Section 262(2) of the LAA.

Where the interest in Crown land is granted for the purpose of enabling the holder to acquire a fee simple interest in that Crown land, then under section 263 of the LAA the Minister may consent to transfer the fee simple of that Crown land to the executor or administrator upon application by that executor or administrator of the estate of that holder. The fee simple interest in the land will form part of the deceased person's estate and can then be dealt with accordingly.

11.4. PROTECTION OF THE CROWN AND MANAGEMENT BODIES FROM LIABILITY

11.4.1. GENERAL

Approximately 36% of the State's area is unallocated Crown land while another 37% comprises leased pastoral land, and a further 3% is other leases under the LAA. About 15% of the State's area is reserved, but most of this is either conservation estate or land set aside for Aboriginal purposes. In the light of the large areas of land involved, it is foreseeable that there is a high exposure to the Crown for damages claims arising from this land.

Claims may arise from such things as escaping wild fires, inadequately maintained improvements over some Crown land, damages claims from injury caused by persons using the facilities on that Crown land, uncontrolled weeds and vermin entering properties adjacent to Crown land. However the determination of the amount of damages may ultimately be a matter for a Court.

These forms of liability may lead to extensive potential costs with no clear responsibility as to the person liable to pay these costs. As the manager of the Crown estate, (particularly those areas not subject to management by other agencies or lessees), RDL is responsible for identifying the issues involved and developing risk management plans and performing that management to limit liability of the Crown in foreseeable cases.

11.4.2. RISK MANAGEMENT

Treasurer's Instruction (TI) 109 directs that:

"The Accountable Officer or Authority shall ensure that there are procedures in place for the periodic assessment, identification and treatment of risks inherent in the operations of the department or statutory authority, together with suitable risk management policies and practices, and that these are documented in the accounting manual or other relevant policy manuals."

As a result, risk management has become a key focus in the public and private sector, and serves as a basis for sound business practice and service delivery. It is recognised as a key management discipline, closely linked to change management, with aims to minimise loss exposure and increase the potential for cost savings through the better management of resources.

Public corporations have implemented organisational structures to manage risk. They share similar common elements such as:

- The creation of a formal Corporate Risk Management Policy;
- Transparent and accountable Risk Management Processes based on appropriate standards of best practice;
- A pro-active approach towards risk management that is not solely reliant upon reactive approaches to risk, such as insurance and financial compensation after the fact;
- A dedicated senior management promoting the culture of risk management throughout the work environment;
- Committees dedicated to monitoring and managing risk;
- Management systems which systematically report and document upon the profile and treatment of risk; and
- Culture change programs aimed at raising the awareness of staff towards risk management.

RDL aims to achieve best practice in the management of all risks associated with its business operations, especially those which possess the potential to adversely impact upon its ability to meet its obligations and duties towards the Government, its customers, staff, and the public at large. RDL has a corporate risk management policy. The policy requires identification of risks and development of appropriate management strategies for each significant risk.

Pursuant to this corporate policy, risk treatment plans have been developed for a range of risks identified in relation to Crown land. These need to be kept current and observed by Crown land managers; with new treatment plans being developed for new risks as they are identified.

RDL Officers should refer to Policy 11.2.7 in the Government Land Policy Manual which provides general guidance to the Lands Division staff for risk management at the operational level.

11.4.3. RISK MANAGEMENT ON RDL-MANAGED PROPERTY

RDL has risk management responsibilities in relation to unallocated Crown land (UCL), unmanaged reserves (UMR) and public works properties which it manages and leases. In this policy all such land and properties are referred to as “RDL-managed properties”.

Management responsibility for UCL and UMR outside of the metropolitan area, regional centres and townsites has been transferred to CALM. Currently, CALM has restricted this responsibility to fire, weed and vermin control.

Risk management is primarily the responsibility of parties who lease or manage Crown land – i.e. LAA lessees, management bodies, and agencies having statutory control or management of particular Crown land (e.g. local governments and Main Roads WA in relation to roads, port authorities in relation to Crown land in gazetted parts, and Public Transport Authority in relation to Crown land use for railways).

Documentation of risk assessment, exposure and treatment plans is essential. The failure to show evidence of risk management procedures may be one matter to affect the liability of the State. If the State is found to owe a duty of care, such documentation may affect a determination as to whether the State has met its obligation under that duty.

11.4.4. RISK MANAGEMENT PROCEDURES

Risk Management procedures support RDL’s Risk Management Policy and Procedure Guide. Risk Management procedures to be followed in relation to RDL-managed properties are as follows:

11.4.4.1 RDL’S RISK MANAGEMENT PROCESS

The RDL Risk Management procedures are based on the practice guidelines contained in the AS/NZ 4360/199: Risk Management standard, and is broken down into six steps.

- **Establish the Context**

Setting the scope and boundaries of the application of the risk management process involves resolving key issues:

- The policy, function, process or activity
- Strengths and weaknesses
- Major outcomes expected
- Threats and Opportunities faced
- Key stakeholders
- RDL’s accountability to stakeholders
- Factors in RDL’s internal and external environment
- Risks identified in previous reviews

- **Identify Risk**

Key strategies in risk identification include:

- Examining sources of risk – which can include but are not limited to management activities, natural events, technology and legal environment.
- Focussing on new projects and areas of change that are new and have not previously been identified.
- Understanding the risks and likelihood of occurrence and consequences.

- Ensuring that managers and staff are knowledgeable.

Methods of risk identification can include interviews, surveys and questionnaires, brainstorming, SWOT analysis, incident, accident and injury investigation, history or failure analysis, scenario analysis, and an examination of past or personal experience.

- **Analyse Risk**

There are four progressive stages in this step:

- Deciding the adequacy of existing controls
- Applying a likelihood rating
- Applying a consequence rating
- Determining the overall risk rating

- **Evaluate Risk**

This step is aimed at developing a prioritised list of risks for further action. Risk evaluation involves comparing the level of risk found in Step 3 and deciding whether risks will or will not be accepted.

- **Treat Risks**

This step is separated into three parts:

- Risk treatment
- Evaluating risk treatment options
- Preparing and implementing treatment plans

- **Risk Treatment Options**

Five acceptable options for treating risk include:

- Reduction of the likelihood of occurrence by policy or procedural improvements including:
 - Quality programs
 - Warning signs
 - Preventative maintenance
 - Supervision and training.
- Reduction of consequences by policy or procedural improvements including:
 - Disaster recovery planning
 - Data backup
 - First Aid Training
- Transfer the risk to third parties, where permitted in law, through:
 - Agreement with suppliers
 - Contracts and service providers
 - Contractual arrangements with partners

- Retention of risk when:
 - No treatment plans are economic to implement
 - Previous treatment has reduced risk to an acceptable level
 - Management through routine procedures.
- Avoid the risk by:
 - Recommending refraining from participating in the activity that generated that risk
 - Withdrawing from current activities.

- **Evaluate and Select Treatment Options**

The cost of implementing Risk Treatment options must be compared to the anticipated reduction in the level of risk. Ideal strategies possess a high level of assurance of risk reduction but cost little. Risks within a high likelihood of occurrence are best managed by reducing the likelihood parameters, whereas a reduction in consequence parameters will best manage those risks possessing high levels of consequence.

- **Preparing and Implementing Treatment Plans**

Each action plan should document individual responsibilities, the expected outcome of treatments, budgeting and performance measures, and a mechanism for evaluation. Those officers identified as responsible for implementation must act in accordance with the Treatment Plan, and if after treatment is taken, there is a residual risk remaining, a decision should be taken as to whether to retain the risk or repeat the risk treatment program.

- **Monitor and Review Risk Action Plans**

Risk action plans developed must be monitored and reviewed, and reported to Senior Management every six months. A suitable method of review should be adopted and can include internal checking, program evaluation, reviews of branch strategies and processes, analysis of claims data and history, annual risk audit and self-assessments.

- **Document Risk Management**

Documentation of risk management is crucial to risk management and to meeting related accountability requirements.

- **Maintain Risk Registers**

A Branch Register is to be maintained by the Lands Division (State Land Services), containing information on:

- All risks identified and serially numbered
- Decisions reached after analysis of the risk
- Assessment of risk
- Acceptance of level of risk by management or recommendation for further treatment
- Risk assessment updates and documentation based on the efficacy of Treatment Plans
- Ongoing monitoring and review
- Review and audit of the Risk Register.

- **Regional Managers are to:**
 - Identify new or emerging risks, which could impact on any part of the operations of RDL/LD, and report these promptly to the General Manager, State Land Services, Lands Division.
 - Ensure that an appropriate internal control framework is established to identify and manage all existing and potential key risks in their regions, providing assurance that each key business risk is being managed appropriately within the RDL framework.
 - Carry out risk assessments of LD managed properties on a prioritised basis to identify risks and potential hazards; and to use this information as part of the basis for preparing and implementing maintenance and/or remediation programs on a prioritised basis.
 - Consider risk management issues during the process of inspecting LD-managed properties and UCL as part of normal LD activities.
 - Promptly investigate all reported accidents and injuries on LD-managed property and implement appropriate risk mitigation measures.
 - Where accidents or injuries are reported, and there are other parties who may share responsibility for management of the same area of Crown land, or an immediately abutting area of Crown land, Regional Managers should take the initiative in coordinating efforts between such agencies and RDL. It is important that identical or complementary risk management procedures be implemented by agencies sharing the responsibility for a property, simultaneously where possible, and that the site and physical measures (such as signs) are inspected on a regular basis.
 - Use specialist expertise to identify and rate risks where necessary.
 - Provide appropriate training to ensure the staff under their management possess adequate knowledge of risk assessment, risk control and incident management procedures.
 - Where appropriate, provide signs to bring to visitor's attention, those hazards associated with structures, facilities or natural attractions which are not reasonably obvious. (Where practicable, standard pictogram or symbol signs will be used for easy comprehension).
 - Obtain appropriate indemnity from organizations, individuals or their agents in connection with the use of LD-managed property.
 - Establish and implement upward reporting mechanisms within their regions, which identify and report on:
 - i. The frequency and severity of events resulting in claims against RDL;
 - ii. Potential risks on LD-managed property in their regions;
 - iii. The assurance that the risks are now being appropriately managed; and,
 - iv. The potential and actual costs of these risk control measures.
 - Report quarterly to the General Manager LD:
 - i. All key risks, their potential impact, the effectiveness of existing controls, and residual risk exposure;
 - ii. Compliance with related legislative requirements;

- iii. Instances of current or perceived non-compliance with legislation; and
- iv. Plans to mitigate or reduce risk exposure.

- **General Manager LD is to:**

- Provide the Director Lands Division with an assurance that all key business risks are being managed effectively, and that relevant legislation and risk minimisation processes are being complied with. Instances of non-compliance are to be reported to the Director Lands Division either immediately or as part of regular risk management reports, as the severity of the activity/event may dictate.
- Regularly review the status of claims in respect of injury on LD-managed properties, and through liaison with RiskCover and the State Solicitor's Office, attempt to promptly finalise them on a professional basis.
- Analyse the occurrences of injury and misadventure to determine the best options for a suitable balance between risk control and risk financing management strategies.
- Advise the Director Lands Division on budget requirements for implementing agreed risk management strategies on a prioritised basis.
- Liaise with Legislative and Legal Services in relation to any legislative changes needed to deal with legal problems associated with risk management on LD-managed property.
- Ensure preparation, maintenance and discharge of Risk Management Treatment Plans for all identified risks on LD-managed properties.
- Based on information provided by Regional Managers, ensure that RDL maintains a level of insurance cover appropriate to the level of risk and RDL's exposure to liability claims.

- **Director Lands Division is to:**

- Based on the information provided by General Manager LD, ensure that the Department maintains a level of insurance cover appropriate to the level of risk and RDL's exposure to liability claims in relation to LD-managed Crown land and public works properties.
- Seek provision through the budgetary process, revenue retention proposals or other arrangements, and for sufficient funds to service agreed risk management strategies on a prioritised basis.
- Progress legislative change considered necessary to deal with legal problems associated with risk management on RDL-managed properties.
- Report to Executive Director on a regular basis, particularly in relation to high-level risks (for reporting to Corporate Executive and the Director General).

11.4.5. COMMON LAW DUTY OF CARE

Mr Justice Mason in the High Court of Australia decision of *Sutherland Shire Council v Heyman (1985) 157 CLR 424* at 459-461 stated:

“Generally speaking, a public authority is under no statutory obligation to exercise a power comes under no common law duty to do so But an

authority may by its conduct place itself in such a position that it attracts a duty of care which calls for exercise of a power. A common illustration is provided by the cases in which an authority in the exercise of its functions has created a danger, thereby subjecting itself to a duty of care for the safety of others which must be discharged by an exercise of its statutory powers or by giving a warning . . . There are other situations in which an authority's occupation of premises or its ownership or control of a structure in a highway or of a public place attracts to it a duty of care . . . And then there are situations in which a public authority, not otherwise under a relevant duty, may place itself in such a position that others rely on it to take care for their safety so that the authority comes under a duty of care calling for positive action. Such a relationship has been held to arise where a person, by practice or past conduct upon which other persons come to rely, creates a self-imposed duty to take positive action to protect the safety or interests of another or at least to warn him that he or his interests are at risk . . . ”

Mr Justice Mason expanded on the function of reliance in his context as follows:

“A public authority is liable for negligent failure to perform a function when it foresees or ought to foresee that: (a) the plaintiff reasonably relies on the defendant performing the function and taking care to do so, and (b) the plaintiff will suffer damage if the defendant does not take care. It is positive conduct on the part of the defendant or the plaintiff's acting to his detriment which gives rise to specific, as distinct from general, reliance or dependence. Contributing conduct on the part of the defendant is an element in the vast majority of cases simply because without it the plaintiff's reliance would fail to establish reasonable reliance.”

11.4.6. LIABILITY OF THE CROWN

It is on the basis of the above principles of the common law duty of care that the provisions in the LAA arise.

Section 264(2)(a) of the LAA provides that any person who suffers any injury, damage or loss on Crown land that comprises an unmanaged reserve or is unallocated Crown land is limited only to those situations where the injury, damage or loss was suffered as a direct consequence of an act of the Crown or activity undertaken by the Crown. In other words, where a person suffers injury, damage or loss in an unmanaged reserve or over unallocated Crown land where the Crown has not undertaken any positive act or activity, the Crown cannot be held liable for such injury, damage or loss.

This same principle of a negation of liability will apply where any Crown title for that land contains a statement warning of a possible hazard or other factors and a person suffers some injury, damage or loss as a result of that hazard or other factors.

Under section 264(3) of the LAA, the liability of the Crown is also limited where Crown land comprises a managed reserve placed with a management body and that managed reserve is unimproved Crown land.

11.4.7. LIABILITY OF MANAGEMENT BODIES

The same principles in [Chapter 1](#) (Paragraph 1.4.3) of this manual apply to management bodies where Crown land within a managed reserve is unimproved and the management body has taken no act or undertaken any activity that led to the damage, injury or loss suffered by a person.

11.4.8. LIABILITY OF THE CROWN AND MANAGEMENT BODIES IN RELATION TO PUBLIC ACCESS ROUTES

Public access routes are a form of statutory easement created over Crown land in the nature of an easement under section 66 of the LAA granting legal access to members of the public to access remote sites of interests. See Chapter 5 ([Paragraph 5.11](#)) of this manual for more information on public access routes.

Because of the nature of such access routes, section 66 of the LAA specifically restricts the liability of the Minister for Lands, the local government agency in the area of that public access route and any holder of an interest in Crown land through which that access route traverses from any liability to persons using that access route.

It is clear that there is no liability on any person to construct and/or maintain a public access route nor does that access route make any occupier of the surrounding land liable for the purposes of the *Occupiers' Liability Act 1985*.

The creation of public access routes is purely for the benefit of the public who wish to use the route at their own risk: section 66(6) of the LAA. No action in tort will lie against any person who, in good faith, opens a public access route over an area of Crown land.

11.4.9. LIABILITY OF THE CROWN AND LOCAL GOVERNMENT IN RELATION TO PUBLIC ACCESS EASEMENTS

Public access easements are created under section 196 of the LAA over private land (generally) and for the use and benefit of the public at large. Further information in this connection can be found in Chapter 8 ([paragraph 8.33](#)) of this manual.

Given that these easements have a general public benefit, section 196(7) specifically limits the liability of the Crown and relevant local government, by stating that for the purposes of the *Occupiers' Liability Act 1985* they are not occupiers of the land over which a public access easement is granted.

11.5. APPLICATION OF THE PRESCRIPTION ACT 1832

11.5.1. WHAT IS THE DOCTRINE OF PRESCRIPTION?

At common law, it is possible to claim title by prescription. Title claimed may take the form of ownership or an easement. The basis of the doctrine of prescription is that if long enjoyment of a right over land is shown, a Court will usually strive to uphold the right by presuming that it had a lawful origin. Therefore, on proof of a fact of long enjoyment, the Court may presume that there was once an actual grant of the right claimed even though it is impossible to produce any direct evidence of such a grant.

Prescription does not extinguish the landowner's title, but creates an additional incorporeal right which is superimposed on the title of the servient tenement. Prescription is an exception to the doctrine of indefeasibility under the TLA.

11.5.2. APPLICABILITY OF THE PRESCRIPTION ACT 1832 TO CROWN LAND

Section 36 of the *Limitation Act 1935* provides that title by adverse possession cannot be claimed against the Crown.

In the past there has been some doubt as to whether prescriptive rights can be obtained against the Crown in Western Australia under the *Prescription Act 1832*.

That doubt has now been removed by section 265 of the LAA. This section clarifies the position that no rights of prescription apply to the Crown or any Crown land in respect of any past, present or future claims.

This complements the statutory principle in section 36 of the *Limitation Act 1935* that title by adverse possession cannot be claimed against the Crown.

11.6. CLOSURE OF RAILWAYS

11.6.1. GENERAL

Section 266 of the LAA carries over the effect of the former section 118C(1) of the *Land Act 1933*. . This section specifically provides that where a special Act discontinues a railway or the line of the railway is deviated as a result of the provisions of the Act, the land becomes unallocated Crown land free from mineral and petroleum rights and free from any estates, rights, titles, interests, claims or demands.

The Registrar of Titles will cancel all subject freehold titles to put section 266 into effect. It is presumed that the special Act will deal with the extinguishment of any remnant tenures, estates, rights and interests affecting the land and any mineral or petroleum rights.

The powers and functions in Part VIIIA of the *Land Act 1933* dealing with the alienation of closed roads, etc, particularly those in the former section 118C(2) relating to former railway land, are contained in section 87 of the LAA.

11.7. OFFENCES ON CROWN LAND

11.7.1. GENERAL

Section 267 of the LAA sets up a number of situations on Crown land where a person will commit an offence. A person commits an offence of the nature set out in [Paragraph 11.7.2](#) where he does not obtain the permission of the Minister for Lands or does not have any reasonable excuse for the action.

Reasonable excuse can be clearly established if there is a statutory requirement for the act or, there is a legal agreement enabling access or occupation of Crown land for the purposes complained of.

There is a time limit of 10 years within which a complaint of an offence against Crown land may be made. This time limit applies despite section 51 of the *Justices Act 1902*: Section 267(4) of the LAA.

11.7.2. TYPES OF OFFENCES

Under Section 267(2) of the LAA, a person commits an offence where he does any of the following acts without the permission of the Minister for Lands and has no other reasonable excuse for the action:

- resides on Crown land;
- constructs roads or tracks, or erects any structure, on Crown land;
- clears, encloses, cultivates or causes or allows stock to graze on Crown land;
- excavates Crown land or reclaims Crown land below high water mark;
- collects, drills for or stores water on, or takes water from, Crown land;
- removes from Crown land any plant (whether alive or dead) or such other thing of any kind as is prescribed;
- deposits or leaves any thing of any kind on Crown land; or
- discharges any firearm or other weapon on Crown land.

11.7.3. CAMPING ON CROWN LAND

Camping on Crown land without the authorisation of the Minister is an offence under section 267. Additionally, the *Caravan Parks and Camping Grounds Regulations 1997* (administered by the Minister for Local Government) provide that a person may camp only at a site in a caravan park or camping ground, as appropriate, licensed under the *Caravan Parks and Camping Grounds Act 1995*; or in accordance with regulation 11 (penalty of \$1,000) (Regulation 10).

Regulation 11 provides that –

- (i) a person may camp for up to 3 nights on land which he or she owns or has a legal right to occupy; or on any other land, if he or she has permission to do so from the person who owns or has a legal right to occupy the land; or
- (ii) a person may camp for up to 24 hours in a caravan or other vehicle on a road-side rest area; or
- (iii) a person may camp on reserved land subject to a management order, in accordance with the management body's permission; or
- (iv) a person may camp on unallocated Crown land (UCL) or unmanaged reserve (UMR), in accordance with the permission of the Minister for Lands.

Regulation 11 then goes on to provide that a person may camp for longer than 3 nights on such land if he or she has written approval (and is complying with that approval) from the relevant local government, for a period of up to 3 months in any period of 12 months; or from the Minister for Local Government, for periods longer than 3 months in any period of 12 months.

It appears that time limits specified by Regulation 11 and the requirement for approvals by the relevant local government and the Minister for Local Government do not apply to grants of permission by the Minister for Lands for camping on UCL or UMR.

11.7.4. VEHICLES ON CROWN LAND

Driving of vehicles across Crown land is not an offence under section 267. However, it is an offence in tort.

The *Control of Vehicles (Off-Road Areas) Act 1978* (CVORAA) deals with the use of unlicensed (i.e., not licensed for public road use under the *Road Traffic Act 1976* (RTA)) vehicles on Crown (and other) lands. It is an offence for a person to drive an unlicensed, “off-road vehicle” in any area other than (a) on private land, by consent, or (b) a “permitted area” – areas gazetted under the CVORAA. It is also an offence under the CVORAA to drive any vehicle (i.e., including vehicles licensed under the RTA) in “prohibited areas” gazetted as such under the CVORAA.

11.7.5. HARVESTING OF NATURAL FLORA

The harvesting of natural flora on unmanaged reserves and unallocated Crown land by CALM is permitted as it is seen as a part of the Crown's management responsibilities over Crown land in relation to particular areas of interest and as being consistent with the *Willandgatefe Conservation Act 1950*.

The *Willandgatefe Conservation Act 1950* is administered by the Minister for the Environment and Heritage and provides a regime for the issuing of licences to take protected flora from Crown land. There is a memorandum of understanding in place between CALM and RDL in relation to this matter, and RDL officers should refer to Policy 17.06 in the Government Land Policy Manual for further information on the guidelines for harvesting of natural flora on unallocated Crown land and unmanaged reserves.

CALM also has a statutory responsibility for the taking of wildflowers from Crown land and as such, there is no necessity for CALM to obtain approval from the Minister through RDL in relation to managing wildflower harvesting on individual areas of Crown land reserves.

11.7.6. TIMBER AND FOREST PRODUCE ON CROWN LAND

The *Conservation and Land Management Act 1984* (CALM Act) and the *Sandalwood Act 1929* provide that the Crown owns timber or "forest produce" on Crown land. The Department of Conservation and Land Management administers those rights.

Under the CALM Act, the State retains timber rights in the following categories of Crown land:

- unallocated Crown land;
- leased Crown land, but not conditional purchase leases;
- Crown land reserved for "Timber" (whether with or without other reserve purposes);
- Crown land the subject of a section 33(2) CALM Act management agreement;
- Crown land reserved and/or dedicated to the purposes of the CALM Act;
- Crown land reserved and placed under the management of a CALM Act body, pursuant to Part 4 of the LAA;
- but not other forms of reserves.

Timber rights not specifically reserved to the Crown under the CALM Act nevertheless remain the property of the Crown, until the land is alienated. These rights may, however be made the subject of LAA tenure, for example, - licence, profit á prendre, management order condition.

RDL Officer should refer to Policy 17.7 in the Government Land Policy Manual which relates to timber and forest produce on Crown land.

11.7.7. INTERFERING WITH SURVEY MARKS AND SURVEYS

Section 268 of the LAA specifically provides that any person shall not wilfully and without lawful excuse destroy, mutilate, deface, take away or alter a survey mark placed, sunk or set up for the purposes of the LAA. There is a penalty for doing so of \$1000 for the first offence and \$2000 for a subsequent offence.

A survey mark means a cairn, beacon, structure, trigonometrical station, post, peg, block, plug, tube, pipe, spike, pole or other survey mark of whatsoever material composed: Section 268(3) of the LAA.

It is also an offence for wilfully and without lawful excuse, obstructing any person from carrying out a survey or placing, sinking or setting up a survey mark for the purposes of the LAA. The penalty for doing so is \$1,000: Section 268(2) of the LAA.

11.7.8. CONTRAVENTION OF CONDITIONS OF COVENANTS IMPOSED ON CROWN LAND

Under section 269 of the LAA, it is an offence to contravene or to enter into a transaction of Crown land for the purpose of avoiding a condition or covenant imposed on Crown land. The penalty is \$1000 and if the offence continues, a daily penalty of \$100 also applies.

11.7.9. PENALTIES FOR OFFENCES ON CROWN LAND

Where any person commits any offence on Crown land, he or she will be liable (under section 267 of the LAA) to a penalty of \$10,000 and, where the offence continues, a daily penalty of \$200.

In addition to any penalty imposed for an offence, under section 267(6) of the LAA any person convicted of that offence is liable to pay an amount by way of compensation or reimbursement for the reinstatement or rehabilitation of any Crown land together with any expenses that may be incurred for the cost of inspecting the land, harvesting of any crops or removal of any stock as a result of the offence.

11.8. UNAUTHORISED STRUCTURES ON CROWN LAND

11.8.1. GENERAL

There are large portions of unallocated Crown land that are unoccupied and unmanaged. Accordingly, such land is open to acts of trespass and squatting in areas that are not easily monitored. It was therefore necessary to introduce legislation to enable the Minister to remove unauthorised structures from Crown land so that such Crown land could be cleared for development.

RDL Officers should refer to Policy 12.5.1.1 in the Government Land Policy Manual which relates to removal of unauthorised structures from Crown land.

Sections 270-273 of the LAA set up statutory powers enabling the Minister for Lands to remove unauthorised structures from Crown land without paying compensation to any person. These sections replace sections 164A, 164AA and 164B of the repealed *Land Act 1933* which were inserted in 1980.

An unauthorised structure is defined in section 270 of the LAA to mean a structure that -

- was either not authorised at the time it was erected under any Act or law or,
- was originally authorised but has since ceased to be authorised by any Act or law.

Sections 270-273 of the LAA expand the sections of the repealed Act to enable the Minister to remove structures that may have been originally authorised, but the tenure under which those structures were erected have long since expired or, have otherwise been determined.

11.8.2. REMOVAL OF UNAUTHORISED STRUCTURES FROM CROWN LAND

The process to remove unauthorised structures from Crown land is set out in section 270 of the LAA. In summary the process is as follows:

- The Minister may advertise, in a newspaper circulating in the locality of the unauthorised structure, a direction to the specified owner or occupier of the structure to remove that structure and any fixtures, materials and objects in its vicinity within 90 days after the date of publication of the notice in the newspaper.
- Within 14 days after the publication of the notice, the Minister must serve a copy of the notice on the owner or occupier of each alleged unauthorised structure to which the notice relates.
- The notice is duly served if served personally on any person in occupation or apparent occupation of the alleged unauthorised structure, or is affixed to the alleged unauthorised structure in a conspicuous place.
- The owner or occupier or person aggrieved may lodge an appeal pursuant to section 272(1) of the LAA under Part 3 of the Act within 21 days after that service or such longer period as the Minister permits.
- An appeal can only be lodged on the grounds that the structure to which the notice relates is not an unauthorised structure.
- If no appeal is lodged or, where an appeal is lodged, it has been dismissed, the unauthorised structure, contents and fixtures, and any material or objects remaining in the vicinity become the property of the Crown and may be removed, destroyed or disposed of as the Minister thinks fit.

Compensation is not payable in respect of the removal, destruction or disposal of the unauthorised structure.

- An extension of time to remove the unauthorised structures can be applied for by the owner or occupier under section 271 of the LAA.

Under Cabinet's 1989 policy, the cooperation of local governments is enlisted in removal of structures from Crown land. Reserves are created over relevant areas and placed under the local government's management for a limited term (generally 6 years), with power to lease for this period. Lease rents for existing structures are applied by the local government to management and rehabilitation of the land. Powers are delegated to the local government under section 273, to facilitate removal of the structure at expiry of the 6-year period. In one case, (Wedge and Grey) CALM has substituted for the local government.

11.8.3. PROFESSIONAL FISHERPERSONS' STRUCTURES

RDL officers should refer to Policy 12.08.1 in the Government Land Policy Manual. This Policy, entitled Professional Fisher Shack Tenure along the Central Coast of Western Australia, establishes guidelines and criteria for management order leases granted to professional fishers' shacks along the Central Coast of Western Australia in accordance with Cabinet's July 1989 Policy for the Administration of Coastal Squatter Shacks.

These transitional leases are to enable professional fishermen to remain in their shacks until designated development nodes are established. Once these development nodes are established, transitional leases will cease and professional fishermen will be offered longer-term leases in designated nodes.

When building in a development node professional fishermen will be required to meet building requirements set down by the relevant local government authority.

In using these coastal areas, fishermen must have regard for the coastal environment. This should be monitored and regulated by the local authority.

Generally formalised tenure to a lease lot in a development node may only be granted to those with:

- a demonstrated, ongoing professional fishing involvement in the area in question; and
- a professional fishing licence under the control of Fisheries WA; and
- subject to conditions laid down by RDL and the relevant local government

RDL officers should refer to Policy 12.08.1 in the Government Land Policy Manual for details on the policy statement and the criteria that professional fishermen need to meet in order to qualify for a management order lease under the LAA.

11.8.4. DELEGATION UNDER SECTION 273 OF THE LAA

The delegation of powers and duties in relation to unauthorised structures is provided for in section 273 of the LAA. The delegation must be made by the Minister by a signed, written instrument of delegation.

Under section 273(1) of the LAA, the delegate may be appointed by name or by office. If the person is appointed by their office, the person from time to time, holding that office, will have the delegation.

The reasoning behind the ability to appoint a delegate by office is based upon section 53 of the *Interpretation Act 1984*. This section provides that where a written law confers a power or imposes a duty on a person to appoint a person to perform any function or be or do any other thing, that person may make the appointment either by name or by appointing the holder of an office by the term designating his office. Any such appointment shall be construed as the appointment of the person from time to time holding, acting in, or lawfully performing the functions of the office.

Powers have been delegated to a number of local governments, and details are in the delegations register (on Notes).

While in most cases delegations have been given for specified reserves, more general delegations (for example, in relation to all UCL and UMR in a local government area) is possible, and has been done in one case (Shire of Broome).

Section 273 relates to powers and duties under sections 270 and 271. It does not cover general trespass powers under section 267. If powers in relation to section 267 are to be delegated, the provisions of section 9(1)(c) must be employed. Under section 9(1)(c), it is possible for the Minister for Lands to delegate its powers to a person or class of persons (for example, "local government chief executive officers") who are prescribed.

RDL officers should refer to Policy 12.5.2 in the Government Land Policy which relates to delegations of powers under sections 267 and 270-272 of the LAA.

11.9. SERVICE OF DOCUMENTS

11.9.1. GENERAL

The service of documents for the purposes of the LAA is contained in section 274 of that Act. For all intents and purposes, it is very similar to the service of notices provision in section 240 of the TLA. The need for similarity was to ensure consistency between the Crown and freehold in the requirements for service following the introduction of a single registration system for changes to interests in Crown land under the TLA.

11.10. REGULATIONS

11.10.1. GENERAL

The regulating making power in relation to Crown land matters is set out in sections 275, 276 and 277 of the LAA. In particular, while section 275 is the general regulation making power, section 276 relates specifically to regulating fees and section 276 deals with regulations affecting advisory panels that can be created under section 73 of the LAA in relation to the sale or lease of Crown land.

The *Land Administration Regulations 1998*, gazetted on 27 March 1998, put in place some preliminary regulations as they affect certain procedures in the LAA to enable the LAA to be introduced.

Those regulations relate specifically to some general procedures set out in Part 2 of the Regulations, specific regulations affecting the survey of Crown land in Part 3 of the Regulations and finally, regulations for the constitution and functions carried out by advisory panels in Part 4.

11.10.2. FEES REGULATIONS

A clear set of fees for all services undertaken on behalf of the Minister under the LAA is currently being developed. Until this occurs, any person dealing with Crown land should be aware of the following:

- Regulation 17 of the *Land Administration Regulations 1998* provides for fees payable to the Director General in relation to services provided by RDL for and on behalf of the Minister. Those fees are set out in Schedule 1 of the Regulations.
- It is important to note that where fees have not been assessed for certain services, the Regulations provide that the Minister may charge a fee, not to exceed the cost of providing the service, for the performance of any service for the purposes of the LAA.
- In addition to the fees for services provided by RDL on behalf of the Minister for Lands under the LAA, fees are also payable to the Registrar of Titles for the registration of documents to effect changes in tenure and any other dealings affecting Crown land. These fees are set out in the *Transfer of Land Regulations 1997* and are payable in respect of the lodgement, registration or recording of any dealing relating to Crown land executed after 30 March 1998 or any caveat made in respect of such dealing relating to Crown land.

There are certain documents that are exempt from fees payable to the Registrar of Titles. These are set out in Schedule 2 of the *Transfer of Land Regulations 1997*.

It should be noted that the lodgement of a dealing, plan or document by or on behalf of the Minister for Lands has been interpreted as being limited to a document where the benefit of the conveyance of land following the registration of the document is a benefit to the Minister for Lands and not where the benefit accrues to a third party. Simply because a document or dealing is lodged by the Minister does not automatically entitle that document to be exempt from registration fees under the *Transfer of Land Regulations 1997*.

Where fees have not been assessed for certain services, RDL officers should refer to Policy 18.05 in the Government Land Services Policy Manual. This policy provides a framework for determining when advertising costs should be passed on to clients to ensure that there is a full and transparent accountability in the disposition of Crown land.

As a general principle, all costs associated with any transaction affecting Crown land must be taken into account. This includes advertising costs. Where the beneficiary (being the proponent, acquiring authority or holding authority) of the transaction is a third party, that person should meet the costs associated with the transaction. RDL should only absorb any costs if the Crown, the State or RDL benefits from the transaction.

11.10.3. REGULATIONS AFFECTING SURVEYS

The survey regulations set out in Part 3 of the *Land Administration Regulations 1998* replace the regulations for the survey of Crown land that were previously set out in the *Land (Guidance of Surveyors in the Department of Land Administration) Regulations 1961*.

These survey regulations incorporate the *Licensed Surveyors (Guidance of Surveyors) Regulations 1961* and must be read with them. If these regulations are inconsistent with the *Licensed Surveyors (Guidance of Surveyors) Regulations 1961*, these regulations have priority over those general regulations: Regulation 23 of the *Land Administration Regulations 1998*.

11.10.4. REGULATIONS ABOUT ADVISORY PANELS

Part 4 of the *Land Administration Regulations 1998* sets out general provisions affecting the constitution of advisory panels that may be set up pursuant to Part 6 of the LAA.

11.11. APPROVAL OF FORMS

11.11.1. APPROVAL BY DIRECTOR GENERAL RDL

Section 278 was inserted into the LAA to enable all forms to be approved forms and not prescribed forms, as was the case under the *Land Act 1933*. This process of form approval is more flexible as forms can be approved and amended in the manner provided in section 278 of the LAA.

Under the LAA, certain actions must be undertaken in an “approved form”. An “approved form” is one approved under section 278 of the LAA.

The procedure for obtaining LAA form approval is referred to under procedure 3000-02-1998 in the Asset Management Directorate Quality Management System.

11.11.2. APPROVAL OF REGISTRATION FORMS WITH CONSENT OF REGISTRAR OF TITLES

With the introduction of the single registration system in the LAA, there is a requirement that forms approved for use in relation to Crown land for registration purposes under the TLA are approved by the Director General RDL only after the Registrar of Titles has been consulted. This is to ensure that the approved forms meet the criteria and requirements under the TLA.

11.12. REVIEW OF LAA

11.12.1. GENERAL

As the LAA is a new piece of legislation, Parliament required that the Minister carry out a review of the operation and effectiveness of the Act within 5 years and 6 months after the appointed day. The appointed day is 30 March 1998.

The Act is currently under review. Once the review is completed, the Minister will report to each House of Parliament.

This requirement for a review is set out in section 279 of the LAA.