



Access rights over non-freehold land PUX/901/654

SLM/2013/401

Version 2.06

Last reviewed 20/06/2016



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Version History

Version	Date	Description/Comments
1	24/12/1997	Endorsed
1.1	01/07/2005	Conversion Project – New WORD/XML template
2	13/12/2007	Updated to reflect Land Act amendments. Endorsed by Scott Spenser, Director –General, Departmental Natural Resources and Water
2.1	02/02/2011	Minor updates to reflect departmental name change to DERM
2.3	05/09/2012	Minor updates to reflect departmental name change to DNRM
2.4	19/03/2013	Updated to change government logo
2.05	10/03/2014	Updated to new DNRM template
2.06	20/06/2016	Minor amendment to review and insert text on new template

Approval

Position	Name	Date
Acting Director, Operations Support - Land	Amanda Kearnan	20/06/2016



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Purpose

To provide guidelines on lands that are administered under the [Land Act 1994](#) and that may be accessed by the public.

This Policy does not apply to:

Deeds of grant in trust for the benefit of Aboriginal or Islander Inhabitants or for Aboriginal or Islander purposes - although these deeds of grant in trust are administered under the Land Act, these lands are also subject to provisions of other legislation including in regard to access rights

or any rights of native title holders to access certain non-freehold land under any authority of the Native Title Acts.

Rationale

The *Land Act 1994* administers various lands commonly referred to as non-freehold land.

Non freehold lands administered under the Land Act are as follows:

- A term lease (including a term lease for pastoral purposes), State lease over a reserve, a perpetual lease (including a grazing homestead perpetual lease and a non-competitive lease), and a freeholding lease (including a grazing homestead freeholding lease), known as leased land
- An Occupation Licence
- A reserve
- Unallocated State land, being land that is not:
 - freehold,
 - subject to a lease or licence,
 - a road or reserve,

[For reference, unallocated State land is also not a national park or conservation park (both administered under the [Nature Conservation Act 1992](#)) and State forest or timber reserve (administered under the [Forestry Act 1959](#))]


- Road and esplanade
- Road Licence being a licence over temporarily closed road
- A permit to occupy

The Land Act also administers land granted in trust under that Act, known as a deed of grant in trust.

The Land Act provides that a person may not unlawfully occupy (trespass) non freehold land or trust land.

Unlawfully occupation is as follows

- a) occupy or live on it;
- b) enclose it;
- c) build, place or maintain any structure, improvement, work or thing on it;
- d) clear, dig up or cultivate it;
- e) depasture stock or cause stock to be depastured on it.



The State may take trespass action under the land Act in relation to unallocated State land, trust land and roads.

Local government may also take action in certain circumstances for trespass on road.

A lessee, licensee, permittee or trustee may also take trespass action under the Land Act in respect of these respective lands.

Accordingly, guidelines are required on lands that are administered under the Land Act 1994 and that may be accessed by the public.

Policy

Leased Land and Occupation Licence

Leasehold Land (except State leases over reserved land) and Occupation Licence

These lands are generally for the exclusive use of the lessee or licensee who have the right to refuse access to the public.

Unless the lease or licence has a specific condition permitting access to the general public, it must be regarded as private land.

State lease over a Reserve

A condition will be included in the State lease where appropriate, that the leased land is available for use by the public for the purpose for which it was dedicated.

Trust Land (reserves and deeds of grant in trust)

Although trust land may only be dedicated or issued for a community purpose under the Land Act 1994, in addition to community purposes, previous legislation provided for a number of other trust land purposes, known as operational purposes.

For trust land for a community purpose as defined under Schedule 1 of the Land Act, generally the public have access to trust land for those community purposes usually associated with public access e.g. garden park, recreation and sport, or for travelling stock, travelling stock requirements, or watering places. However, a trustee of the reserve may restrict a particular type of access.

Other trust land for other community purposes such as beach protection, coastal management, scientific, although providing a wider community benefit may not be available to the public for access as the public may be excluded to protect these areas or any associated facilities.

Trust land for operational purposes are generally for the operation of government services - depending on the purpose of the trust land, the public may be able to access the trust land for the particular government service.

Unallocated State Land

Unallocated State land is not generally available for access by the public although access to beaches or watercourses is permitted, subject to any requirements of government agencies e.g. a local government may exclude access to dunes for environmental reasons, or if the area is within a recreation area under the [Recreation Areas Management Act 2006](#), a permit may be required.



Roads and Esplanades

Although the land in a road or esplanade may vest in the State, a road other than a State controlled road (e.g. highway), is managed by local government.

The public generally have the right of access, although a local government may restrict access at certain times (for safety reasons during construction on adjoining land), and also restrict the type of access e.g. access for pedestrians only.

Travelling stock may also use roads, and some roads have been declared to be a stock route under the [Land Protection \(Pest and Stock Route Management\) Act 2002](#)

Stock routes are managed by local government. A permit for travelling stock may be required.

A State controlled road is administered by the Department of Main Roads which may also restrict access, or the type of access.

A Road Licence is a licence issued to someone over a road that is temporarily closed to the public i.e. the public do not have the right of access.

Permit to Occupy

A permit to occupy may be issued over unallocated State land, a reserve or a road.

A permit to occupy is a personal right of permissive occupancy only, and is still unallocated State land, reserve, or a road, and public access applies as outlined above.

Legislation

Land Act 1994

Recreation Areas Management Act 2006

Land Protection (Pest and Stock Route Management) Act 2002

Nature Conservation Act 1992

Forestry Act 1959