

CROWN LAND MANAGEMENT ACT 2016

Transition guide for Crown land managers—boards and administrators

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Transition Guide for Crown Land Manager: boards and administrators

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More information

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Introduction

Commencing 1 July 2018, the new *Crown Land Management Act 2016* (the CLM Act) provides a revised management structure for Crown Reserves that recognises the diversity and capability of Crown land managers. While many aspects of Crown land management will remain the same, the new CLM Act provides improved transparency, enabling the community to have confidence that Crown reserves are managed appropriately for the benefit of the people of NSW, including through good governance.

On commencement of the new Act, all current reserve trust managers appointed under the *Crown Lands Act 1989* will automatically transition so they will continue to have the care, control and management responsibility for their Crown reserves.

Existing trust boards, administrators and non-council corporations appointed to manage reserve trusts, will be known as non-council Crown land managers under the new CLM Act.

Local councils will also continue to manage Crown reserves. How local councils manage Crown reserves under the CLM Act is different from other Crown land managers as they will principally manage their Crown reserves under the public land provisions of the *Local Government Act 1993*. Local councils should refer to the Office of Local Government website for information on their new requirements:

www.olg.nsw.gov.au/crownland.

Background

In 2012, the NSW Government began the first major review of Crown land in 25 years, prompting a comprehensive consultation process with community and other interested parties about the future management of Crown land.

This extensive review process culminated in the NSW Parliament passing the new CLM Act in November 2016 and the *Crown Land Legislation Amendment Act* in May 2017.

This new legislation will commence on 1 July 2018 and will ensure the Crown estate is managed efficiently and effectively and continues to support and generate social, environmental and cultural benefits for the people of NSW.

In NSW, Crown land is managed by the Department of Industry—Lands & Water (the department). Previous Crown land legislation was complex and included eight different pieces of legislation.

The new CLM Act will:

- reduce red tape and duplication in managing Crown land
- improve certainty and clarity about legal requirements
- support greater community involvement in local decisions made about Crown land
- formalise opportunities and processes for community involvement and engagement
- recognise and support Aboriginal involvement in the management of Crown land.

About this guide

The new CLM Act changes the structures for reserve trusts. The purpose of this document is to help boards and administrators currently appointed to manage reserve trusts understand the changes and how to transition to the new arrangements.

Included in this document are:

- **Understanding the changes:** an overview of the transition changes and requirements for managers

- **Transition checklist:** a step-by-step checklist with supporting templates to help managers implement the transition activities. The checklist is provided as a guidance tool only and is not compulsory.

A separate frequently asked questions document addresses common questions managers may have in relation to the changes, their role and transition requirements.

The CLM Act will impact reserve trusts differently depending on what type of manager is appointed. Managers should ensure they refer to the transition guide that is **applicable to their manager type** (refer to Figure 1):

- *Transition guide for Crown land managers—corporations*
- *Transition guide for Crown land managers—boards and administrators* (this guide)
- *Transition guide for Crown land managers—schools of arts and other institutions*

If you are uncertain of which manager type you are, please contact the department on 1300 886 235 or email reserves@crowmland.nsw.gov.au.

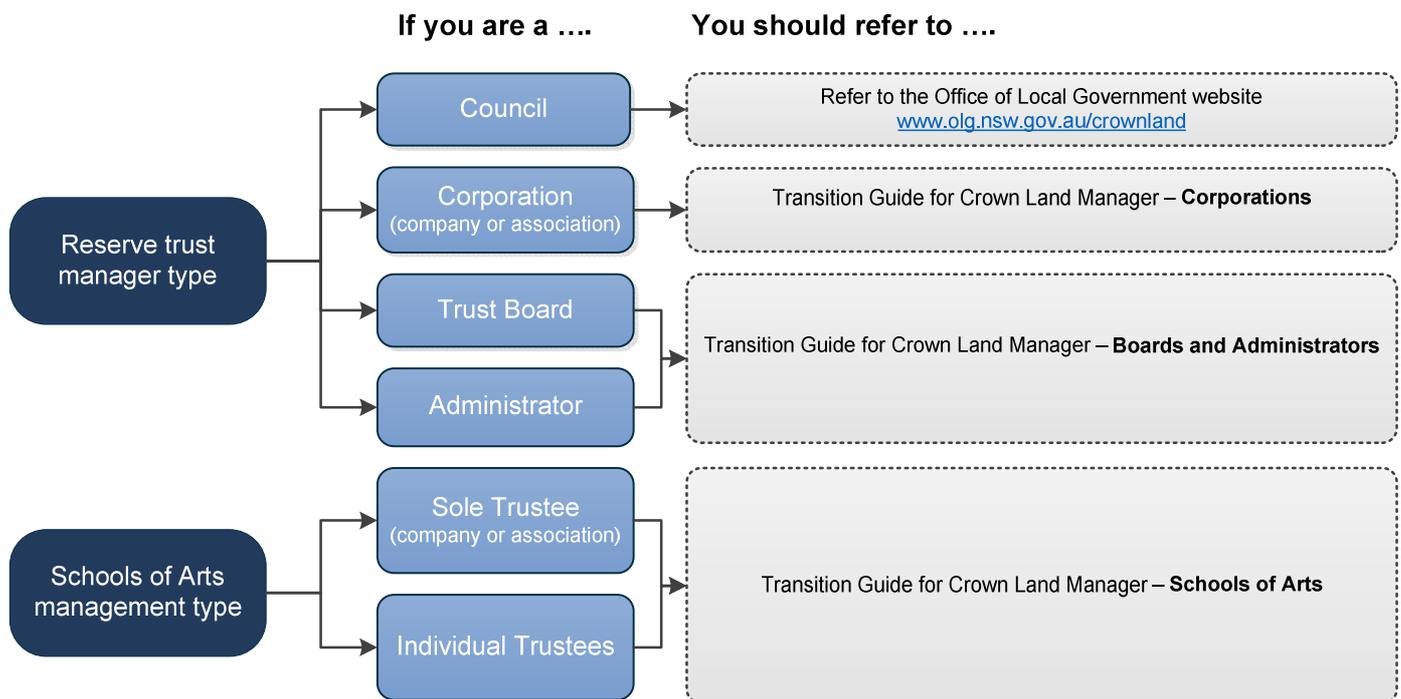


Figure 1. Reference guide: transition information for managers

New terminology

The CLM Act introduces new terminology that is referred to in this guide. To help you understand key terms, here is a summary:

- **Appointment instrument:** a document that sets out the term and conditions of a Crown land manager’s appointment.
- **Crown land manager** or **CLM:** the name given to a legal entity appointed to manage a Crown reserve
- **Category 1 non-council Crown land manager** or **Category 1 manager:** a Crown land manager that is not a local council and has been assigned as a Category 1 manager, having demonstrated advanced governance and expertise in Crown land management.
- **Category 2 non-council Crown land manager** or **Category 2 manager:** a Crown land manager that is not a local council and is not assigned as a category 1 manager.

- **Community Engagement Strategy:** a document approved by the minister that sets out the minimum requirements for engaging with the community on certain proposed activities on Crown land such as sale, leasing and licensing.
- **Crown Reserves Improvement Fund:** the name of the funding program that replaces the Public Reserves Management Fund to provide financial support for the development, maintenance and improvement of Crown reserves and freehold showgrounds.
- **Native Title Manager:** a person who has undertaken approved training and is employed or engaged by either a local council or category 1 Crown land manager to ensure dealings with their Crown reserves comply with native title legislation.
- **Statutory land manager:** a legal entity established by the *Crown Land Management Act 2016* so that individuals as members of a board and administrators can manage Crown reserves.

Understanding the changes

Managing Crown land

The ability to reserve and dedicate Crown land for the public benefit continues under the CLM Act.

Appointed managers are still required to manage their Crown reserves in line with the reserved or dedicated purpose/s. It is important that all activities and uses on the reserve are suitable to occur within the reserve purpose/s, including anything permitted through a lease or licence. If in doubt, the department can provide advice on the suitability of any proposed activity.

New management structure

Under current arrangements, all managers are appointed to manage a reserve trust entity which is established as a statutory entity under the existing *Crown Lands Act 1989*. The reserve trust is responsible for the care, control and management of Crown reserves. Under the CLM Act, the reserve management structure will change depending on the type of Crown land manager appointed. The changes are designed to better reflect the diversity of organisations involved in the management of Crown reserves.

Appointed boards and administrators

Under the CLM Act, any reserve trust entity being managed by a trust board or administrator becomes known as a 'statutory land manager'. Existing appointed trustees are automatically appointed to become board members of the new statutory land manager.

The statutory land manager is the same legal entity as the former reserve trust, but there is a name change to reflect a shift in terminology from 'trust' to 'land manager'.

Boards appointed under the CLM Act can have a maximum of seven members including ex-officio appointments. Any boards that currently have more than seven members will continue as is until their current appointment term expires.

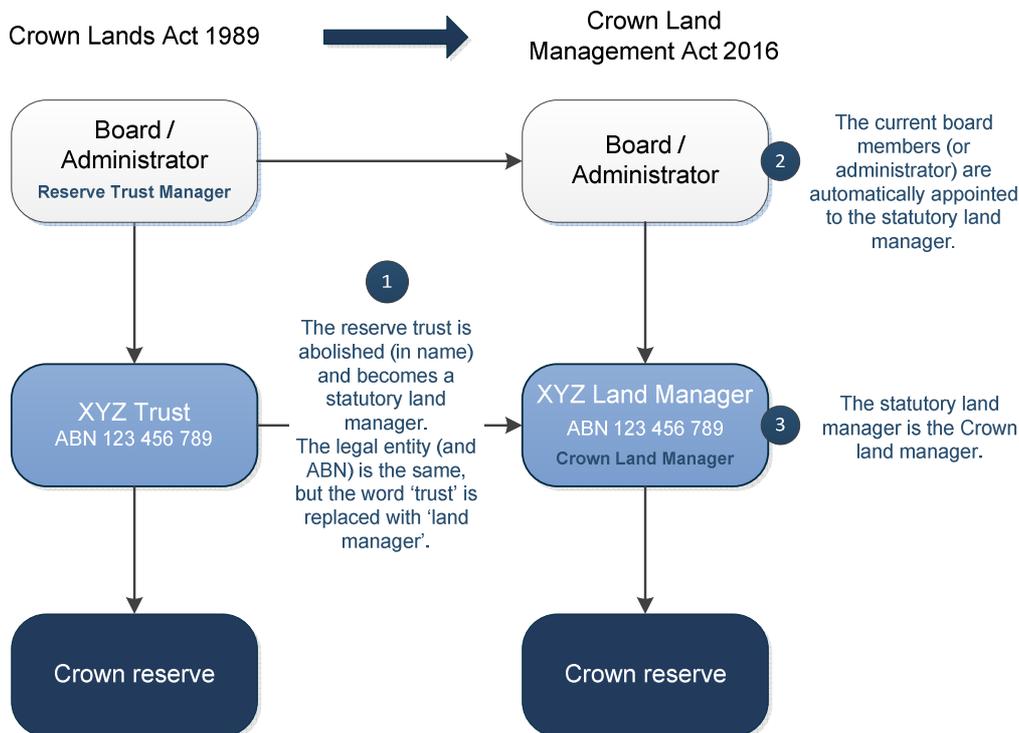


Figure 2. Transition to the CLM Act: Reserve trusts managed by boards and administrators

	<i>Crown Lands Act 1989</i> (today)	<i>Crown Lands Management Act 2016</i>
Entity known as:	Reserve trust	Statutory land manager
Established as:	Trustee	Crown land manager
Key function:	Care, control and management of the reserve	Care, control and management of the reserve
Legal name:	XYZ Trust	XYZ Land Manager
ABN (if registered):	e.g. 123 456 789	No change
Role of the trust board or administrator:	To manage the affairs of the reserve trust	To manage the affairs of the statutory land manager
Board membership:	At least 3 and not more than 7 members (plus ex officio)	Not more than 7 members (including ex-officio) Any boards that currently have more than seven members will continue until current appointment term expires.
Appointment term:	Up to 5 years	Up to 5 years

Table 1. Overview of the key changes for boards and administrators

Transition of assets, rights and liabilities

As the statutory land manager is the same legal entity as the former reserve trust, all of the assets, rights and liabilities of the reserve trust will continue as assets, rights and liabilities of the new statutory land manager. The Act also provides that references to the reserve trust in any legal document will be automatically taken to be updated to the name of the new statutory land manager. This means that any existing leases or licences issued by the trust will automatically continue under the new CLM Act for their remaining term.

Categorisation for non-council Crown land managers

To recognise the diverse capacity and capability of current managers, non-council Crown land managers will be categorised as either:

- Category 1 managers
- Category 2 managers.

Category 1 managers are Crown land managers who have demonstrated advanced governance and expertise in Crown land management. Category 1 managers are authorised under the CLM Act to enter into leases and licences for terms of up to 10 years without the need to obtain ministerial consent.

The ability to enter into longer-term leases and licences without requiring consent, also means all category 1 managers are required to employ or engage a qualified Native Title Manager. This requirement ensures compliance with native title obligations.

Category 1 managers that will be established from commencement of the CLM Act are:

- NSW Crown Holiday Parks Land Manager
- Northern Metropolitan Cemeteries Land Manager
- Rookwood General Cemeteries Reserve Land Manager
- Catholic Metropolitan Cemeteries Trust
- Southern Metropolitan Cemeteries Land Manager
- Rookwood Necropolis Land Manager

All other Crown land managers will be Category 2 managers at commencement of the CLM Act.

Category 2 managers will continue to need ministerial approval for all proposed leases and all licences of more than one year in length (including any option to renew). As part of the consent process, the department will continue to provide oversight for native title obligations for development, leasing and licencing activities for Category 2 managers.

Aboriginal land rights and interests in Crown land

For the first time, Aboriginal land rights, native title rights and interests and Aboriginal people's involvement in the management of Crown land are explicitly recognised and supported in the CLM Act. Crown land has spiritual, social, cultural and economic importance and value to Aboriginal people. For many Crown reserves across the state this traditional connection to the land remains largely intact.

Native title rights may exist over the Crown reserve you manage and you must still consider the effect an activity could have with respect to the *Native Title Act 1993*.

The introduction of the CLM Act does not change this requirement.

Aboriginal cultural heritage places or items could also be present on Crown reserves you manage. When undertaking management activities on your Crown reserve you must consider if these activities or works could possibly impact on Aboriginal cultural heritage places or items. The introduction of the CLM Act does not change this requirement.

Grant and loan funding

The Public Reserves Management Fund will be known as the Crown Reserves Improvement Fund under the CLM Act. While the name is new, the ability to apply for grant funding and the existing process will remain the same.

All Crown land managers are still encouraged to apply for this annual grant funding. Applications can be made online when the annual funding round is open at www.industry.nsw.gov.au/lands/reserves/funding.

Construction, repairs and maintenance on Crown land

All Crown land managers are required to undertake development on Crown reserves in accordance with relevant planning legislation. Under the CLM Act, a Crown land manager is not a statutory body representing the Crown. While not giving public authority status, appointment as a Crown land manager does provide certain development pathways to recognise your public land management responsibilities.

Crown land managers are now allowed to make a development application with their local council or planning authority for a range of low-impact development on Crown land without the need to get prior landowners consent from the Minister for Lands and Forestry. This allows Crown land managers and holders of leases and licences to make development applications for activities such as repairs, maintenance and restoration of existing buildings and structures, and the erection and maintenance of fencing and signage. For all other activities requiring a development application to be lodged, landowner consent from the minister is required.

When considering development activities on your reserve, it is important to discuss your proposal with the department as early as possible so that assistance can be provided to identify the most appropriate development pathway.

Leases and licences

All Category 2 managers can still issue short-term licences (formerly known as 'temporary licences') for up to 12 months without the minister's consent and can issue leases and longer term licences with the consent of the minister. Category 1 managers will now only need to get the minister's consent for leases and licences longer than 10 years (including any option to renew).

All non-council Crown land managers are now required to set rent for any lease or licence on their Crown reserve at market value. Recognising community benefits, subsidised rent that is less than market value is still

possible if it is justified with a business case to the minister as part of applying for consent to grant the lease or licence. Revised lease and licence templates and updated guidance for Crown land managers will be available on the department's website.

The *Community Engagement Strategy* is a new statutory requirement under the CLM Act and it must be followed prior to issuing any lease, or any licence for a term greater than 12 months (see further below). Crown land managers are encouraged to contact their local Crown Lands Office to discuss any new lease or licence proposal for assistance in meeting these new requirements.

Improving reserve governance

Crown reserves code of conduct

There has always been a requirement for reserve trust managers to prepare and adopt a written code of conduct. The introduction of the *Crown reserves code of conduct* has been timed to coincide with the start of the CLM Act. The code of conduct is the foundation of expected standards of management for the Crown reserve system, now and into the future.

The ten standards detailed in the code of conduct outline the need to respect others; act with integrity and transparency; be responsive to our communities; and maintain an environment that has regard for the safety of volunteers, employees and reserve users. Importantly the code of conduct will ensure that managers of Crown reserves can have the confidence to participate in an environment that is safe, respectful and enjoyable.

The code of conduct aligns with community expectations that Crown reserves will be managed with transparency, integrity and good governance—adopting consistent standards and behaviours will help to instil public trust and confidence in the integrity and professionalism of the Crown reserve system.

Appointment instruments for Crown land managers

Crown land manager appointments will be established and governed by appointment instruments that set out the terms and conditions of their management functions. The appointment instrument will generally set out the date of appointment, rules or guidelines to be complied with, adherence to the code of conduct and use of the land compatible with the reserve purpose. A standard suite of appointment instruments will be used by the minister when appointing Crown land managers and will be progressively issued to existing managers from commencement of the CLM Act.

Reporting requirements

Non-council Crown land managers will still be required to report to the minister annually via the online Crown Reserves Reporting System (CRRS)—this will continue to be done online via the CRRS portal. To support the transition to the new CLM Act, a reporting exemption has been applied to all non-council Crown land managers for the 2017–18 financial year. You will still need to prepare your normal financial reporting statements for your financial entity.

Community Engagement Strategy

As custodians of some of the most valuable land in NSW, the minister and Crown land managers have an obligation to current and future generations to optimise benefits from Crown reserves. Community needs and expectations change over time and engaging with the community ensures informed decision-making and better outcomes for the community that use and enjoy Crown reserves.

As a Crown land manager you are already expected to engage with your community about the activities being undertaken on your Crown reserves.

The *Community Engagement Strategy* is a statutory requirement of the CLM Act and applies to decisions made by the department and all non-council Crown land managers. It seeks to ensure that decisions about Crown land are made in an open and transparent way by setting out engagement requirements for certain activities such as leasing and licensing. The statutory requirement for community engagement corresponds with the expected level of impact on community use and enjoyment if the lease or licence was granted.

Non-council Crown land managers are encouraged to contact their local Crown Lands Office to discuss any development, leasing or licensing proposal early, so the department can assist you to meet your obligations under the *Community Engagement Strategy*. For more information about your requirements, refer to the department's website.

Crown cemetery operators

Crown land managers that are appointed to manage a Crown cemetery continue to have legislative requirements under the *Cemeteries and Crematoria Act 2013*. In situations where the same function is covered under both the CLM Act and the *Cemeteries and Crematoria Act 2013* you should rely on the provisions within the *Cemeteries and Crematoria Act 2013*.

Crown land managers of cemeteries should also refer to the *Impacts of the Crown Lands Management Act 2016 on Crown Cemetery Operators Fact Sheet* for further information.

Transition checklist and templates

While the CLM Act provides for the name of the reserve trust to be taken to be updated in any legal document, there are certain things Crown land managers will need to do to complete the transition.

The checklist and pro forma templates below are provided to assist board and administrators managing reserve trusts in their transition to the CLM Act. Every reserve trust is different, so Crown land managers should consider their own circumstances and seek additional guidance from the department where necessary.

You are **not** required to complete the checklist or submit it to the department—it is provided as a guidance tool only.

Checklist for notifying a change in legal name

Is this checklist relevant for my reserve trust?

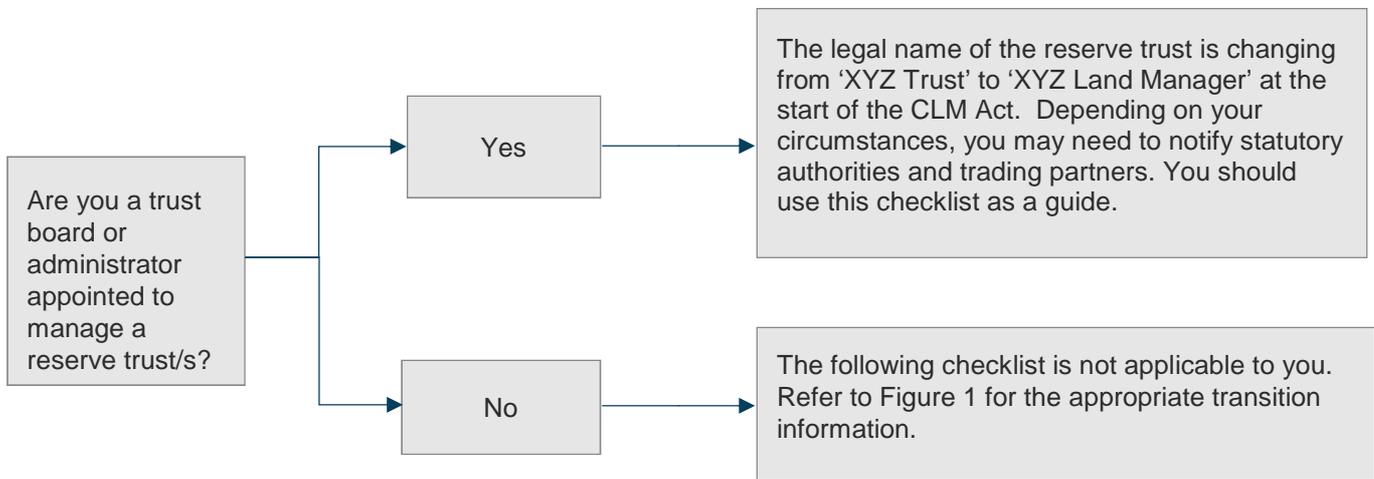


Figure 3. Transition checklist confirmation for boards and administrators

Notification of legal name change	Actions	Timing	Action complete?	Reference
A. Statutory authorities				
1. Does the Reserve Trust entity have an ABN?	<ul style="list-style-type: none"> If yes, there is no action required by you. The department will notify the Australian Business Register of the legal name change on your behalf. If no, no action required. 	n/a		n/a
2. Is the Reserve Trust entity registered for payroll tax?	<ul style="list-style-type: none"> If yes, notify Revenue NSW of the legal name change. If no, no action required. 	as soon as practicable		Template A
3. Does the Reserve Trust entity operate in a regulated industry or hold a special operating license?	<ul style="list-style-type: none"> If yes, notify the regulator and/or licensing body of the legal name change. If no, no action required. 	as soon as practicable		Template A

Notification of legal name change	Actions	Timing	Action complete?	Reference
4. Does the Reserve Trust have any registrations, licenses or permits with Service NSW?	<ul style="list-style-type: none"> If yes, you will need to visit a Service NSW centre to update the Reserve Trust legal name. 	as soon as practicable		n/a
5. Is the Reserve Trust listed on a land title?	<ul style="list-style-type: none"> If yes, there is no action required by you. NSW Department of Industry will notify Land Registry Services on your behalf. 	n/a		n/a
B. Insurance				
6. Does the Reserve Trust have insurance via the Treasury Managed Fund (TMF)?	<ul style="list-style-type: none"> All category 2 trust boards are automatically covered for assets listed on Asset Declaration/CRRS Annual Report. No action required by you. NSW Department of Industry will notify the TMF on your behalf. 	n/a		n/a
7. Does the Reserve Trust have other insurance policies in place (not via the TMF)?, e.g. workers comp	<ul style="list-style-type: none"> If yes, notify your insurer or broker of the legal name change and request an updated Certificate of Currency If no; consider whether you should have insurance in place. 	as soon as practicable		Template A
C. Banking				
8. Does the Reserve Trust operate a bank account, merchant facilities or credit cards?	<ul style="list-style-type: none"> If yes, notify your bank and/or credit card issuer of the legal name change 	as soon as practicable		Template A
D. Employees				
9. Does the Reserve Trust employ staff?	<ul style="list-style-type: none"> There is no impact on employees' terms and conditions. You may wish to notify employees of the legal name change or provide them with the general fact sheet. 	1 July 2018		Template B
10. Does the Reserve Trust remit superannuation on behalf of employees?	<ul style="list-style-type: none"> If yes, you should notify the fund/s of the legal name change. If not, then no action is required. 	as soon as practicable		Template A
E. Other stakeholders				

Notification of legal name change	Actions	Timing	Action complete?	Reference
11. Does the Reserve Trust hold utilities accounts in its name?	If yes, you should notify of the legal name change: <ul style="list-style-type: none"> • utilities (water, gas, electricity) • telephone/mobile phone 	as soon as practicable		Template A
12. Is the Reserve Trust carrying on a business?	If yes, you should notify of the legal name change: <ul style="list-style-type: none"> • suppliers • customers • other trading partners • lessees or tenants • community user groups • accountants • legal advisors 	as soon as practicable		Template A
F. Systems, stationery and branding				
13. Does the Reserve Trust have: <ul style="list-style-type: none"> • Accounting, payroll or other systems? • Stationery or marketing collateral? • A website or Facebook page? 	Update the legal name from 'XYZ Trust' to 'XYZ Land Manager': <ul style="list-style-type: none"> • in IT software and systems including accounting and payroll (if relevant) • on invoices and receipts • on all stationery including letterhead and email signatures • on logos, signage and other marketing collateral • your website, domain name or Facebook page • communication tools including newsletters <p>Managers should note there is no legal requirement to update marketing collateral and to incur costs in doing so. Management should consider whether the legal name can be updated at low cost or towards the end of the useful life of existing materials.</p>	as soon as practicable		n/a

Table 2 winding down checklist

Template A: Example written notification to stakeholders including:

- banks
- insurers
- suppliers/customers
- utilities
- superannuation fund
- advisers
- other

[insert date]

[addressee]

[address line 1]

[address line 2]

Dear Sir/Madam

Re: Change of legal name

Account [or policy/license] holder: [XYZ Trust]

ABN [if registered]

Account [or policy/license] number: [insert account number/s]

Please be advised that on [insert commencement date] the [XYZ Trust] changed its name to [XYZ Land Manager] under statute pursuant to clause 11 of Schedule 7 of the *Crown Land Management Act 2016*.

Please update your records accordingly. All other entity and account details remain the same.

Should you have any queries, please contact [name] on [phone] or via email on [insert email].

Your sincerely

[name]

[position]

When writing to statutory authorities or your bank, the authorised contact person or account signatory should sign off.

Note: This wording is provided as an example only for use when written notification of the legal name change is required. You should:

- Replace all [red text]
- Delete, modify or add text as relevant.

Template B: Example written notification to employees

[insert date]

Circular to employees

Re: **[XYZ Trust]**—change of legal name

As you may be aware, the *Crown Land Management Act 2016* (the CLM Act) was implemented on [insert commencement date].

Under the CLM Act, the [XYZ Trust] will continue to manage [the reserves] and will be renamed as the [XYZ Land Manager].

The purpose of this circular is to notify employees of the name change and confirm that there is no impact on your employment terms and conditions.

Should you have any queries, please contact [name] on [phone].

Your sincerely

[name]

[position]

Note: This example circular is applicable to employees of reserve trusts which are managed by **trust boards or administrators only**.

You should:

- Replace all [red text]
- modify wording where relevant.
- copy and paste the body of wording into your own letter head or an email.