

# Landholders' Workshop



Environmental Defender's Office (NSW) Ltd

# About the EDO

- A community legal centre specialising in public interest environmental law
- Mission: To empower the community to protect the environment through law
- Functions
  - Legal Advice and Representation
  - Scientific Assessment and Advice
  - Policy and Law Reform
  - Community Education

# Casework Guidelines

- The EDO will consider acting for you if it considers the matter involves a public interest environmental issue.
- In determining this, the EDO will have regard to whether:
  - the issue involves a real threat to the environment; or
  - engagement in the issue has the capacity to result in good environmental outcomes; or
  - the issue concerns the manner in which the environment is regulated; or
  - the issue raises matters regarding the interpretation and future administration of statutory provisions.

# Casework Guidelines

- Having determined the matter is a public interest environmental issue, the EDO will act for you provided:
  - the matter has reasonable prospects of success;
  - the EDO has the human and financial resources to properly act in the matter; and
  - there is utility or value in commencing proceedings.
- In considering any application, the EDO will also have regard to the financial means available to the applicant.

# Overview

- Native Vegetation Management
- Bush Fire Management
- Water Management
- Agricultural Chemicals
- Pest and Weed Control
- Mining
- Voluntary Conservation

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# Native Vegetation Management



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ENVIRONMENTAL DEFENDER'S OFFICE (NSW)

# Outline

- Clearing Native Vegetation
  - Definition of native vegetation
  - Categories of native vegetation
  - When you can clear native vegetation
  - Definition of clearing
  - Approvals to clear native vegetation
  - Penalties for illegal clearing
  - Assistance to conserve native vegetation
- Relevant legislation: *Native Vegetation Act 2003; Native Vegetation Regulation 2005*
  - Tree Preservation Orders

# Clearing native vegetation



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# Definition of native vegetation

- Native vegetation includes:
  - Trees (saplings, shrubs, scrub),
  - Understorey plants,
  - Groundcover, and
  - Wetland plants...

... that are indigenous to NSW

# Categories of native vegetation

- **Re-growth:**
  - native vegetation that has re-grown since January 1990 (except in the Western Division, where it's January 1983) or since a date specified in a PVP for the land;
  - Does not include re-growth following illegal clearing or clearing as a result of bushfire or other natural causes.
- **Remnant native vegetation:** any native vegetation other than re-growth

# Categories of native vegetation

- **Protected re-growth:** re-growth identified as protected in a Property Vegetation Plan, environmental planning instrument, natural resource management plan or interim protection order

## When native vegetation can be cleared

- You can clear native vegetation if:
  - You have a Development Consent approved by the Minister; or
  - The clearing is permitted under an approved Property Vegetation Plan; or
  - The native vegetation is:
    - Regrowth that is not protected
    - Certain groundcover; or

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– the clearing is:

- a ‘routine agriculture management activity’ (“**RAMA**”) to the minimum extent necessary to carry out that activity
  - Specific types of RAMA are set out in Part 4 and cl 32 and 33 of the Regulation;
  - RAMAs can only apply to “protected riparian land” in certain circumstances – see cl. 32 of the Regulation;
- a continuation of existing cultivation, grazing, or rotational farming practices that is not clearing of remnant vegetation; or
- authorised under other legislation; or

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- is land being “sustainably grazed” –grazing that is “not likely to result in the substantial long term decline in structure and composition of native vegetation”; or
  - is “to the minimum extent necessary...for the erection of a single dwelling” that is already the subject of development consent.

# Definition of clearing

- Clearing includes:
  - Cutting down
  - Felling
  - Thinning
  - Logging
  - Removing
  - Killing
  - Burning
  - Poisoning
  - Ringbarking
  - Uprooting

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# Approvals to clear native vegetation

There are two main forms of approval for clearing native vegetation:

1. Property Vegetation Plans
2. Development Consents

# Property Vegetation Plans (PVPs)

- Voluntary agreements negotiated between the landholder and the Catchment Management Authority (CMA)
- For individuals or groups of neighbouring farms
- For part or the whole of a property
- Last up to fifteen years
- Continue to have effect if the land is sold (“run with the land”);

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- Minister cannot approve a PVP that proposes clearing of remnant native vegetation unless it will “improve or maintain environmental outcomes”.
  - Whether clearing will “improve or maintain environmental outcomes” is dealt with under Part 5 of the Regulation.

# Development consents

- removal of trees may require development consent under a local environmental plan
- the loss of trees is considered as part of a development's impact on the environment
- local council will usually be the consent authority
- can only be used for clearing (not retaining) native vegetation
- issued for a shorter time than PVPs

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- Consent cannot be granted to development that includes clearing of remnant native vegetation unless it will “improve or maintain environmental outcomes”.
  - Whether clearing will “improve or maintain environmental outcomes” is dealt with under the Part 5 of the Regulation.

## Penalties for clearing without permission

- it is unlawful to clear remnant native vegetation or protected re-growth without a development consent or an approved PVP.
- Breaches of the *Native Vegetation Act* may result in civil or criminal action being brought by the Department of Natural Resources.
- third parties can also take civil action to restrain breaches of the Act.
- 'Stop work' and remedial orders may also be made against infringers of the legislation

# Tree Preservation Orders



ENVIRONMENTAL DEFENDER'S OFFICE (NSW)

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- Some local councils have Tree Preservation Orders (TPOs) that make it an offence to damage certain trees without a permit.
  - TPOs vary widely so check with your local council to see what trees (if any) are covered by the order and what exceptions apply.
  - Many TPOs do not apply to land zoned rural.
  - There are usually a number of exemptions to TPOs.

## For more information

- Hunter-Central Rivers Catchment Management Authority
  - Telephone: (02) 4930 1030
- Local Council
- Environmental Defender's Office
  - Telephone: (02) 9262 6989/ 1800 626 239
  - 2:30-5:30 Tues, Wed Thur

# Bushfire Management



ENVIRONMENTAL DEFENDER'S OFFICE (NSW)

# Outline

- Fire lighting approvals
  - Bush fire danger period
  - Penalties
  - Total fire bans
  - Hazard reduction fires
    - Hazard reduction certificates
  - Other fires
- Relevant legislation: *Rural Fires Act 1997, Rural Fires Regulation 2002.*

# Fire lighting approvals

- There are two types of approvals:
  - a permit to burn safely
  - A hazard reduction certificate and/or an environmental approval
- Applications for permits and approvals are available from:
  - your local NSW Rural Fire Service (RFS) Fire Control Centre in rural fire districts; or
  - your nearest NSW Fire Brigades station
- Conditions may be attached
- A permit to burn safely is usually valid for up to 21 days
- Always give 24 hours notice to adjacent landholders and your local RFS or NSW Fire Brigades station before you light an open fire (regardless of whether you require an approval).

# Bush Fire Danger Period

- Normally October 1- March 31
- May vary due to local conditions
- You must have a permit if you intend to light a fire in the open during this time
- Contact the RFS or closest NSW Fire Brigade station if you are unsure
- Permits are not required for fires that are lit for the purpose of heating or cooking provided certain conditions are met.

# Penalties

- Failure to obtain a required approval is an offence with a maximum penalty of \$5,500 and or imprisonment for 12 months
- Further penalties may be imposed if other environmental legislation is breached or if a fire causes substantial loss, damage, injury or death.

# Total Fire Bans

- Lighting open fires is prohibited during a total fire ban, even if you have a permit
- All permits are suspended or cancelled during days of 'high fire danger' or 'extreme fire danger'
- To check, ring the RFS Information Line on **1800 654 443** or go to **[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)**
- Likewise if the Environment Protection Authority (EPA) declares a 'no burn day'
- To check, call the EPA Pollution Line on **131 555** or go to **[www.epa.nsw.gov/airqual/aqupd.asp](http://www.epa.nsw.gov/airqual/aqupd.asp)**

# Hazard reduction fires

- You may require a Bush Fire Hazard Reduction (BFHR) Certificate (next slide) before you carry out hazard reduction burns such as those for fire breaks.
- You will also need a permit to burn if the fire could threaten a building- get the BFHR certificate first
- Some councils require a permit to burn all year round (not just in the bush fire danger period)
- Some councils require a smoke permit
- Advise your closest RFS or NSW Fire Brigade when you are conducting a burn
- Keep the permit/approval with you

# Bush Fire Hazard Reduction Certificate

- Environmental approval for bush fire hazard reduction work only
- Required if the bush fire hazard reduction:
  - Is done in native vegetation
  - Could threaten endangered species
  - Could result in air or water pollution or soil erosion
- Not required for agricultural activities such as stubble burning
- Issued by RFS
- Cannot be used in cases where an area is particularly sensitive such as a rainforest
- No other form of environmental approval is required if a bush fire hazard reduction certificate is issued
- Effective for 12 months from date of issue

# Obligations

- Council may issue you with a notice requiring you to do hazard reduction work on your property. Failure to comply is an offence but you can object to the notice and negotiate a solution with council's Fire Control Officer
- You have an obligation to take all possible steps to stop a fire on your property. You must call 000 to alert the RFS or Fire Brigade. Failure to notify is an offence.

## Other Fires

- If the fire is not for bushfire hazard reduction, other environmental approvals may be required.
- The following table summarises the various approvals for different types of fire

## Examples of environmental approvals required for different burning activities.

Type of Fire	Type of Environmental Approval Required	Where to go to get the approval
hazard reduction burn	Hazard Reduction Certificate or other environmental approval as advised	Rural Fire Control Centre
pile burn	Control of Burning Approval	Rural Fire Control Centre
bonfire	Control of Burning Approval	Local Council/EPA*
burning of windrows	DA, Control of Burning Approval	Local Council/EPA*
agricultural burning of material such as stubble, sugar cane, orchard pruning or diseased crops	Not Required	-
burning in an incinerator	Control of Burning Approval	Local Council/EPA*
burning charcoal	Not Required	-
burning domestic waste	Control of Burning Approval (not permitted in some areas)	Local Council/EPA*
burning to demolish a building or other building materials	Control of Burning Approval (not permitted in some areas)	Local Council/EPA*
burning to destroy sawmill waste material	DA, Control of Burning Approval	Local Council/EPA*
lighting fires to produce charcoal	Control of Burning Approval	Local Council/EPA*
burning animals that have died or have died due to disease	Not Required	-
Camp fire for cooking or heating	Not Required	-
Burning of <ul style="list-style-type: none"> <li>- tyres (except for the purpose of giving fire fighting instruction)</li> <li>- coated wire;</li> <li>- paint containers and residues</li> <li>- solvent containers and residues</li> <li>- treated timber</li> </ul>	Prohibited	-
Burning to clear native vegetation	Approval under the <i>Native Vegetation Conservation Act</i>	DIP&NR/Local Council

# For more information

- Rural Fire Service: 1800 NSW RFS (1800 679 737)
- local council
- Environmental Defender's Office
  - Telephone: (02) 9262 6989/ 1800 626 239
  - 2:30-5:30 Tue, Wed, Thur

# Water Management



ENVIRONMENTAL DEFENDER'S OFFICE (NSW)

# Outline

- Ownership
  - Access licences
    - Categories of access licence
  - Taking water without permission
  - Trading water entitlements
  - Building water works
  - Catchment Management
  - Drought
- Relevant legislation: *Water Management Act 2000*

# Water Ownership

- The State government has the right to the control, use and flow of all water in:
  - rivers,
  - lakes,
  - aquifers, and
  - water that occurs naturally on or below the surface of land

# Access licences

- In some circumstances you need to obtain permission from the government before extracting and using water.
- The Department of Natural Resources (DNR) is responsible for granting water access licences and water approvals.
- An access licence:
  1. Entitles you to a share in the available water of a water source, and
  2. Allows you to take water at specified times, in specified circumstances and from nominated locations.

# Categories of access licence

- There are a number of different categories of access licence and the category will determine what priority the licence holder has when water is made available for extraction.
- Access licences can be granted for specific purposes such as utilities and mining. Such licences are usually granted for a fixed term.
- Most other access licences are granted for an open ended term and the right to access water will continue until the licence is cancelled or surrendered.

# Taking water without permission

- You have the right to extract and use water without permission from the government if you are exercising a 'basic landholder right'.
- This is where you are using the water for:
  - Domestic purposes;
  - Stock watering;
  - In the exercise of native title rights; and
  - Where the taking of water is authorised by an order allowing the capture of up to 10% of rainwater run-off from your land.
- For all other uses, a water access licence is required.

# Trading water entitlements

- Most categories of access licence allow the holder to transfer water entitlements to another person who has the same category of licence.
- A transfer must be approved by the Minister for Natural Resources and must be in accordance with any rules set out in the relevant Water Management Plan
- Transfers are recorded in a Register maintained by the Department of Natural Resources.

## Building water works

- In addition to licences to use water, approval may also be needed to construct works to extract, transfer or store water.
- You need approval from DNR if you wish to carry out work that may affect the flow of water in a water course or interfere with the flow of groundwater such as building a:
  - water supply work- dam, weir etc
  - drainage work- pump, pipe, channel etc
  - flood work- causeway, embankment etc

- You must not alter the manner- direction or entry point- in which water enters your neighbour's property without approval.
- Additional approvals may be required for water works:
  - Development consent from the council
  - A pollution control licence from Department of Environment and Conservation
  - A fisheries permit from the Department of Primary Industries.

# Catchment Management

- NSW is divided into 17 water management areas.
- Water sharing plans exist for most rivers in each water management area.
- Water sharing plans:
  - set out how water is shared between water users and the environment; and
  - Establish rules that govern the amount of water available for use from time to time.

# Drought

- Restrictions may be placed on your ability to access water - there will be less water available for extraction.
- The priorities that exist in relation to extracting water by different categories of licences may be altered.

## For more information

- Hunter-Central Rivers Catchment Management Authority
  - Telephone (02) 4930 1030
- Local Council
- Department of Primary Industries (Fisheries)
  - Telephone (02) 1300 550 474
- Department of Natural Resources
  - Telephone (02) 9228 6111
- Environmental Defender's Office
  - Telephone (02) 9262 6989/ 1800 626 239
  - 2:30-5:30 Tues, Wed, Thur

# Agricultural Chemicals



ENVIRONMENTAL DEFENDER'S OFFICE (NSW)

# Outline

- Allowable pesticides
- Permissions to use pesticides
  - Aerial spraying
  - Licences and permits
- Using pesticides
- Reporting misuse
- Other considerations
- > Relevant Legislation: *Pesticides Act 1999*;  
*Pesticides Regulation 1995*

# Allowable pesticides

- You may use pesticides that are:
  - Registered in NSW; or
  - For which you have a permit from the Australian Pesticides and Veterinary Medicines Authority (APVMA)
- Certain pesticides such as 1080 poison baits can only be used under certain conditions.
- Some pesticides can only be used by people who have obtained a certificate of competency from the Department of Environment and Conservation.

# Permissions to use pesticides

- Generally, you do not need permission to use pesticides. However,
  - You need a permit to use unregistered pesticides;
  - You need a certificate of competency to use or possess restricted pesticides; and
  - There are restrictions on using certain chemicals on or near water bodies.
- Spray drift and run-off need to be controlled. If adjoining properties are affected you may be vulnerable to legal action.

# Aerial spraying

- A licence is required by the pilot and for the aircraft when aerial spraying is to be done.
- It is illegal to spray pesticides within 150m of houses, schools, factories or public places without the consent of the owner or occupier.



# Licences and permits

- For inquiries regarding licences, contact the Department of Environment and Conservation on **131 555**.
- For information on permits, contact the Australian Pesticides and Veterinary Medicines Authority on **(02) 6210 4748**.

# Using pesticides

- Always read the label before you use a pesticide and use the pesticide in accordance with the directions.
- Misusing pesticides or using unregistered pesticides without a permit can result in substantial fines.
- If you are using pesticides as part of your work you must record:
  - The name and quantity of the pesticide
  - The equipment used
  - Who applied the pesticide
  - The crop sprayed
  - Time of application
  - Wind speed and direction
  - Other relevant considerations

# Reporting misuse

- Report the misuse of pesticides as soon as possible.
- If possible, include photographs, video recordings and notes.
- If the misuse of pesticides damages your property or affects your health, you may be able to seek compensation from the person responsible.
- You can confidentially report the misuse of pesticides by calling the Department of Environment and Conservation Pollution Line: **131 555**

## Other considerations

- Pesticide contamination may affect the certification status of organic farms, causing economic loss to the affected farmer.
- Stock affected by chemical residues may be subject to withholding periods and other restrictions.

# For more information

- Department of Environment and Conservation
  - Telephone: (02) 9995 5000
- Australian Pesticides and Veterinary Medicines Authority
  - Telephone: (02) 6210 4700
  - Website: [www.apvma.gov.au](http://www.apvma.gov.au)
- local council
- Department of Primary Industries
  - Telephone: (02) 6391 3100
- Environmental Defender's Office
  - Telephone: (02) 9262 6989 /1800 626 239

Tues, Wed, Thurs

# Pest & Weed Control



ENVIRONMENTAL DEFENDER'S OFFICE (NSW)

# Outline

- Pest animals and insects
  - *Rural Lands Protection Act 1998*
- Noxious Weeds
  - *Noxious Weeds Act 1993*

## Pest animals and insects

- Landholders are required by law to suppress and destroy by any lawful method declared pest animals or pest insects on their land.
- A list of declared pest animals and insects is available from local council or the Rural Lands Protection Board (RLPB).
- The RLPB can order landholders to undertake control work to eradicate pests.
- Note: There are legal restrictions on the use of pesticides

## Noxious weeds

- Landholders are required by law to control declared noxious weeds.
- The list varies between local government areas so see council for a local list.
- Council Weed Control Officers may inspect your property and order you to take steps to control weeds.
- Note: there are legal restrictions on the use of herbicides

## For more information

- State Council of Rural Lands Protection Boards
  - Telephone (02) 6391 4242
- Local council
- Environmental Defender's Office
  - Telephone: (02) 9262 6989 / 1800 626 239  
2:30-5:30 Tues, Wed, Thurs

# Mining



ENVIRONMENTAL DEFENDER'S OFFICE (NSW)

# Outline

- Mining on your land
- Restrictions
- Consent
- Compensation
- Quarrying
- Relevant Legislation: *Mining Act 1992* and *Mining Regulation 2003*, *Environmental Planning and Assessment Act 1979*

# Mining on your land

- Generally, the Crown owns the minerals on or under your land
- Licences and leases allow for prospecting and extraction on private land
  - Exploration licences allows the licence holder to search for minerals on private land. Last 5 years (renewable).
  - Assessment leases grant the leaseholder the right to prospect for specified minerals in a designated area. Last up to 5 years
  - Mining leases gives the leaseholder the right to engage in approved mining activities and related activities.
  - Section 138 approvals allow the extraction of underground panels of coal.

# Restrictions

- Mining operations must not be closer than 200m of a landowner's home or 50m of a person's garden, land improvement or dam without the person's written consent
- Mining activities are often subjected to conditions and they must be carried out in accordance with those conditions
- If the conditions are breached, you can contact the mine, the Department of Primary Industries (and the Minister) and the Department of Natural Resources.
- You can also take action in the Land and Environment Court to remedy or restrain a breach of consent conditions.

# Consent

- The mining industry is permitted to develop a person's land without their consent
- Landowner objections will not necessarily prevent mining activities on private land
- Once a mining lease has been granted, the mining company must obtain consent from the landowner in order to further develop the land

# Compensation

- Landowners and occupiers are entitled to compensation if mining affects their farming activities or their land (subsidence)
- Compensation can be negotiated with the mining company or the Mining Warden
- The maximum compensation payable is the market value of the property

## For more information

- Department of Primary Industries (minerals and petroleum)
  - Website: [www.dpi.nsw.gov.au/minerals](http://www.dpi.nsw.gov.au/minerals)
  - Telephone: 1300 736 122
- Local Council
- Environmental Defender's Office
  - Telephone: (02) 9262 6989
  - 2:30-5:30 Tues, Wed, Thurs

# Voluntary Conservation



ENVIRONMENTAL DEFENDER'S OFFICE (NSW)

# Outline

- Voluntary conservation on private land
  - Voluntary Conservation Agreements
  - Wildlife Refuge Agreements
  - Land for Wildlife
  - Property Vegetation Plans
  - Nature Conservation Trust Agreements
  - Private Protected Areas
  - Australian Bush Heritage Fund
  - National Heritage Trust
- Donating land to the NSW Foundation for National Parks and Wildlife
- Tax incentives and rate relief

# Conservation on private land

- Conservation on private land is essential to protecting biodiversity in Australia
- Most land of high conservation value is privately owned.
- Private landholders hold the key to the survival of many flora and fauna communities
- There are a number of programs through which landholders can voluntarily conserve the ecological value on their properties.

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## Voluntary Conservation Agreements

- Statutory covenant declared under the *National Parks and Wildlife Act*.
- the land remains in the ownership of the landholder.
- The covenant is attached to the title of the land so it binds future owners of the land
- Department of Environment and Conservation

# Wildlife Refuge Agreements

- Non-binding agreements
- Created under the *National Parks and Wildlife Act*
- Allow the landholder to nominate all or part of their property to be managed for wildlife conservation and the conservation of natural environments
- Department of Environment and Conservation

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# Land for Wildlife

- Non-binding, voluntary national support program
- Encourages and assists landholders to conserve wildlife and habitat on their land
- Participating properties are registered as part of a network
- Landholders are provided with technical advice and educational material
- Facilitated by the Department of Environment and Conservation and implemented by community groups or local government.

# Property Vegetation Plans

- Voluntary conservation measure under the *Native Vegetation Act*
- Mechanism for authorising the clearing of native vegetation and/or accessing financial incentives for conserving native vegetation
- Local Catchment Management Authority

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# Nature Conservation Trust Agreements

- The Nature Conservation Trust was established under the *Nature Conservation Trust Act*
- The Trust is independent of government-funding is supplied through philanthropy and industry investment
- Trust fosters conservation on private land in partnership with landholders

# Private protected areas

- Private protected areas are established under the Natural Heritage Trust National Reserve System Program
- The program provides up to two thirds of the purchase price to assist land purchase provided there is permanent protection attached to the land
- For incorporated community groups and local governments

# Australian Bush Heritage Fund

- Non profit organisation- funded by donors
- Maintains a portfolio of properties that contribute to the national protected area network
- The fund purchases land of outstanding conservation value and protects it permanently

# Natural Heritage Trust

- Provides financial support for a range of activities such as:
  - Protecting and restoring the habitat of threatened species
  - Improving the condition of natural resources that underpin resource based industries
  - Providing landholders and community groups with understanding and skills to contribute to biodiversity conservation and sustainable resource management

# Donating land to the NSW Foundation for National Parks and Wildlife

- The Foundation is a non-profit fundraising organisation that deals with projects involving the care and protection of our parks and wildlife
- The Foundation accepts bequests of land suitable for nature conservation
- The Foundation may also sell the land and apply the funds for important land acquisitions or projects

# Tax incentives and rate relief

- Income tax deductions and rate relief are available in some circumstances.
- Varies between programs.
- Ask what financial incentives are available
- shop around

## For more information

- NSW Department of Environment and Conservation
  - website: [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au) (download resources and fact sheets)
  - Telephone: (02) 999 55 000
- Commonwealth Department of Environment and Water Resources
  - Website: [www.environment.gov.au/land/publications](http://www.environment.gov.au/land/publications) (for a range of resources on land management issues)