



Accessing Country

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Sydney: 02 9262 6989

Northern Rivers: 1800 626 239

Rest of NSW: 1800 626 239

EDO NSW has published a book on environmental Law for Aboriginal communities in NSW. For a more comprehensive guide, read [Caring for Country: A guide to environmental law for Aboriginal communities in NSW](#).

Overview

Aboriginal people need to be able to access lands and waters to continue their traditions. These traditional practices include fishing, hunting, gathering food, camping, gathering firewood, visiting places with cultural significance, caring for country, caring for burial and other sites, and practising culture.

Aboriginal people may always attempt to negotiate access, but the landowner may not always agree. The legal rights of Aboriginal people to access land and water depend on the legal status of the land or waterway.

Further information about land dealings may be obtained from the EDO's series of [Fact Sheets](#) and from the [NSW Aboriginal Land Council](#).

Access to particular types of land

General

A [Local Aboriginal Land Council](#) (LALC) may negotiate an agreement with *any* land owner or occupier or person in control of land to permit an Aboriginal group or

¹ http://www.edonsw.org.au/legal_advice

individual 'to have access to the land for the purpose of hunting, fishing or gathering on the land'.² If an agreement cannot be reached, the LALC may request that the Land and Environment Court issue a permit to access the land, or a right of way across the land, for the purpose of hunting, or fishing, or gathering traditional foods for domestic purposes.³

The [Native Title Act 1993 \(Cth\)](#) allows for access agreements to be negotiated. However, this may be a long, complicated and expensive process and may not apply to most land in NSW because native title has been extinguished by past land grants.

[Contact NTSCORP](#) for assistance with gaining native title access.

Private land (freehold)

LALCs may be entitled to obtain access to privately-owned land in accordance with rights given to them under the [Aboriginal Land Rights Act 1983 \(NSW\)](#).⁴

In NSW, licences from the NSW Department of Primary Industries are generally required for hunting.⁵ An Aboriginal person is exempt from holding a G-Licence when hunting a game animal pursuant to a native title right or interest. The right or interest must be the subject of an approved determination⁶ of native title or of a registered native title claim.

National Parks and Aboriginal areas

The Governor of NSW can reserve land as an 'Aboriginal area' in a similar way to the reservation of national parks.⁷ These are two of several types of 'parks'. Other types of parks include state conservation areas and nature reserves. The purpose of reserving land as an Aboriginal area is to identify, protect, and conserve areas that have natural or cultural significance to Aboriginal people, or are important for improving public understanding about Aboriginal culture.⁸

Among other things, an [Aboriginal area](#) is to be managed to allow the use of the 'area by Aboriginal people for cultural purposes'.⁹ There are 18 Aboriginal areas in NSW. Most Aboriginal areas have unrestricted access, although some sites have

² *Aboriginal Land Rights Act 1983 (NSW)*, s. 47.

³ *Aboriginal Land Rights Act 1983 (NSW)*, s. 48.

⁴ *Aboriginal Land Rights Act 1983 (NSW)*, s. 47.

⁵ Under the *Game and Feral Animal Control Act 2002 (NSW)*. See licence information at <http://www.dpi.nsw.gov.au/hunting>.

⁶ However, the Queensland case *Yanner v Eaton* B52/1998 (5 May 1999) provides some support for the exercise of native title rights in this way even if they are not the subject of an approved determination.

⁷ *National Parks and Wildlife Act 1974 (NSW)*, s. 30A.

⁸ *National Parks and Wildlife Act 1974 (NSW)*, s. 30K(1).

⁹ *National Parks and Wildlife Act 1974 (NSW)*, s. 30K(2)(c).

been fenced.¹⁰ Contact your local NPWS Office if access to a fenced Aboriginal area is required.

Plan of management

Plans of management must be prepared for national parks.¹¹ Plans of management may be prepared for Aboriginal areas, although this is not mandatory.¹² If a plan of management is prepared, a notice must be published in the [NSW Government Gazette](#)¹³ inviting public comment.¹⁴ The minimum period for public submissions is 90 days.¹⁵ This is an opportunity to point out the importance of access to Aboriginal sites and places for the Aboriginal community.¹⁶ Plans of management may be changed, so it is possible to ask the NPWS to include access to Aboriginal places, areas, or sites even if the plan is already operational.¹⁷

Any group use of a park, including tours or education groups, must be consistent with the plan of management.¹⁸ Aboriginal groups should contact NPWS staff to arrange access and support for Aboriginal education activities or education groups. A licence or permit is required to run a commercial activity including tours in a park.¹⁹

Usually, animals and plants within a park are protected. There are general restrictions on the carrying, licence and use of firearms and these apply to Aboriginal people when hunting.²⁰ However, Aboriginal people are exempt from the penalties attached to carrying an animal, firearm, net, trap or hunting device when they are for domestic purposes, except for raptors and parrots.²¹ Aboriginal people and their dependents (whether Aboriginal or not) may hunt and gather otherwise protected plants and animals for *domestic* purposes in parks, but may not hunt in national parks without a licence²² or conduct any kind of gathering in a nature reserve²³ or

¹⁰ For example, the scarred tree has been fenced in the Nambucca Aboriginal Area.

¹¹ *National Parks and Wildlife Act 1974* (NSW), s. 72(1).

¹² *National Parks and Wildlife Act 1974* (NSW), s. 72(1).

¹³ <http://www.nsw.gov.au/gazette>

¹⁴ *National Parks and Wildlife Act 1974* (NSW), s. 73(a); *National Parks and Wildlife Act 2009* (NSW), cl. 98.

¹⁵ *National Parks and Wildlife Act 1974* (NSW), s. 73(a).

¹⁶ *National Parks and Wildlife Act 1974* (NSW), s. 73A.

¹⁷ *National Parks and Wildlife Act 1974* (NSW), s. 73B. Management plans can be amended by the Minister following the recommendation of the National Parks Advisory Council.

¹⁸ *National Parks and Wildlife Act 1974* (NSW), ss. 2A(1)(d), 81A. In the [Brigalow and Nandewar Community Conservation Area](#) group access is in accordance with the Community Conservation Agreement.

¹⁹ *National Parks and Wildlife Regulation 2009* (NSW), cl. 21.

²⁰ *Firearms Act 1996* (NSW).

²¹ *National Parks and Wildlife Regulation 2009* (NSW), cl. 74.

²² *National Parks and Wildlife Regulation 2009* (NSW), cl. 74, 75; *National Parks and Wildlife Act 1974* (NSW), s. 45.

²³ *National Parks and Wildlife Act 1974* (NSW), ss. 56, 57.

karst conservation area.²⁴ Gathering protected native plants for domestic use must not interfere unreasonably with the plant's ability to reproduce.²⁵

Aboriginal objects and Aboriginal places

The [National Parks and Wildlife Service](#)²⁶ (NPWS) is responsible for the identification, conservation, and protection of, and prevention of damage to Aboriginal objects and Aboriginal places.²⁷ The Governor can declare a place to be an Aboriginal place if the NSW Environment Minister thinks that it is or was of special significance for Aboriginal culture.²⁸

It is an offence to harm or desecrate an Aboriginal object or place.²⁹ However, Aboriginal people and their dependants (whether Aboriginal or not) are exempt from these prohibitions if they would be prevented from carrying out traditional cultural activities. This does not extend to commercial activities.³⁰

[See our Fact Sheet on Aboriginal Cultural Heritage](#) for more information about Aboriginal objects and Aboriginal places.

Aboriginal owned parks

Any park may become owned by Aboriginal people through a LALC. These parks must be leased back to the NSW Government.³¹

The key difference in Aboriginal owned parks is that there must be a Board of Management with a majority of Aboriginal owners.³² The Board is responsible for the care, control and management of the park and the preparation of plans of management.³³ The Board considers proposals for the carrying out of cultural activities (including hunting and gathering) by Aboriginal people within the park.³⁴ The Board is subject to the direction and control of the NSW Environment Minister.³⁵

NSW State Forests

The Forestry Corporation of NSW, along with NPWS, are responsible for the management of Aboriginal places and sites in State forests. There are very few

²⁴ *National Parks and Wildlife Act 1974* (NSW), ss. 58Q, 58R.

²⁵ *National Parks and Wildlife Regulation 2009* (NSW), cl. 75.

²⁶ <http://www.nationalparks.nsw.gov.au/>

²⁷ *National Parks and Wildlife Act 1974* (NSW), s. 12(d).

²⁸ *National Parks and Wildlife Act 1974* (NSW), s. 84.

²⁹ *National Parks and Wildlife Act 1974* (NSW), s. 86.

³⁰ *National Parks and Wildlife Act 1974* (NSW), s. 87B.

³¹ *National Parks and Wildlife Act 1974* (NSW), Part 4A. Listed in the *National Parks and Wildlife Act 1974* (NSW), Schedule 14. Biamanga National Park, Gulaga National Park, Jervis Bay National Park, Mungo National Park, Mootwingee Historic Site, Mootwingee National Park and Coturaundee Nature Reserve, Mount Grenfell Historic Site, Mount Yarrowyck Nature Reserve.

³² *National Parks and Wildlife Act 1974* (NSW), s. 71AN.

³³ *National Parks and Wildlife Act 1974* (NSW), s. 71AO(1).

³⁴ *National Parks and Wildlife Act 1974* (NSW), s. 71AO(2).

³⁵ *National Parks and Wildlife Act 1974* (NSW), s. 71AO(4).

restrictions on accessing an Aboriginal place or site in a State forest, however a stop work order or interim protection order can still be made to protect an Aboriginal object or place within a State forest.³⁶

The Forestry Corporation has produced [Ecologically Sustainable Forest Management Plans](#) (ESFM Plans) that outline the management strategies for access to Aboriginal places and sites in State forests.³⁷

All ESFM Plans commit to fostering Aboriginal-run commercial tours to Aboriginal sites and places in NSW State forests. State forests that are subject to an existing agreement with a LALC or local Aboriginal community may already have a commercial tour operating.

Permission may be needed to conduct education groups or other non-forestry activities in a State forest, and the use and care of the site must be consistent with the objectives of the relevant Forest Agreement, ESFM Plan, or Regional Forest Agreement.³⁸

It is an offence to harm or damage an Aboriginal object or place, including in a State forest.³⁹ Some organised activities in a State forest may require a Special Purposes Permit. Contact your local Forestry Corporation office about this.⁴⁰

Aboriginal people and dependents may be able to hunt and gather otherwise protected plants and animals for *domestic* purposes in State forests, however they may not, depending on whether the area has been declared an Aboriginal place, or the forest agreement for the area. You should talk to your LALC for more information.

Commonwealth reserves

Commonwealth reserves located in NSW include [Booderee National Park](#) and [Solitary Islands Marine Reserve](#). Access to Commonwealth reserves under Commonwealth legislation⁴¹ **is subject to** management principles that state that the needs and aspirations of Indigenous people should be taken into account.⁴²

If there is no management plan in place that allows these actions, it is illegal to:⁴³

- kill, injure, or take native species;
- damage heritage;

³⁶ *Forestry Act 2012* (NSW), s. 69X; *National Parks and Wildlife Act 1974* (NSW), Part 6A.

³⁷ Made under the *Forestry and National Parks Estate Act 1998* (NSW); *Forestry Act 2012* (NSW), and available at www.forest.nsw.gov.au or at Forestry Corporation of NSW offices.

³⁸ *Forestry Act 2012* (NSW), Part 5.

³⁹ *National Parks and Wildlife Act 1974* (NSW), s. 86.

⁴⁰ <http://www.forestrycorporation.com.au/visiting/important>

⁴¹ *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth), Schedule 8.

⁴² *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth), Schedule 8, Part 2, cl. 3.07, 3.08.

⁴³ *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth), Part 12.

- undertake activities without a permit, including scientific research, littering, taking animals, plants or firearms into reserves, camping, fishing or using vehicles.

If a management plan is in place then a much wider range of activities may be undertaken if provided for in the management plan.

[See our Fact Sheet on Protected Areas](#) for more information on Commonwealth reserves.

World Heritage areas

In NSW, [World Heritage areas](#) include the [Greater Blue Mountains Area](#), [Gondwana Rainforests](#) and the [Willandra Lakes Region](#).

Aboriginal access to sites in world heritage areas is controlled by the management plan together with the existing access regulations of the land, which will generally be NPWS access policies.

[See our Fact Sheet on Protected areas](#) for more information on World Heritage areas.

Crown Land

Crown land is controlled by the [Department of Primary Industries](#)⁴⁴ and includes nearly half of all land in NSW.⁴⁵

NSWALC and LALCs can claim eligible unoccupied Crown land for conversion to freehold. The land will be managed by the LALC on behalf of its members.⁴⁶ Unoccupied Crown land that is subject to a native title claim cannot be claimed by a LALC.

Aboriginal people and dependents may be able to hunt and gather otherwise protected plants and animals for their own *domestic* purposes on unoccupied Crown land, however they may not. You should talk to your LALC or your local council for more information.

Crown reserves

Crown reserves include regional reserves, State parks, town parks, caravan parks, campgrounds, walking trails, travelling stock reserves and land reserved for conservation. Crown reserves can also include land that was leased for Aboriginal missions and Aboriginal settlements.

⁴⁴ *Crown Lands Act 1989* (NSW); http://www.lands.nsw.gov.au/crown_land.

⁴⁵ Land and Property Management Authority: http://www.lpi.nsw.gov.au/land_titles/land_ownership/crown_land.

⁴⁶ *Aboriginal Land Rights Act 1983* (NSW), s. 36.

A [Reserve Trust](#) is responsible for the management, care and control of a Crown Reserve⁴⁷ and can make decisions on access, permitted activities (including cultural activities and hunting and gathering), entry fees, opening hours, vehicle entry and moorings.⁴⁸

The NPWS is responsible for the management and protection of Aboriginal objects and declared Aboriginal places⁴⁹ on all land in NSW, including Crown reserves.⁵⁰ It is an offence to walk over, mark, scratch, or otherwise mutilate, deface, injure, interfere with, remove or destroy any Aboriginal rock carving, its surrounds or any other Aboriginal object in a Crown reserve.⁵¹ The Reserve Trust may be liable if any of their, or a reserve visitor's, actions or omissions cause damage to Aboriginal objects or places.⁵² Remember that AHIPs may authorise the harm or desecration of Aboriginal objects and places. [See our Fact Sheet on Aboriginal Cultural Heritage](#) for more information about AHIPs.

Travelling Stock Reserves

Travelling Stock Reserves (TSRs) are parcels of Crown land that are managed by a [Livestock Health and Pest Authority](#) (LHPA).⁵³ TSRs are managed for recreation, agistment, grazing and refuge in drought or flood, and conservation, in addition to stock movement. Function management plans are required to cover the management principles to conserve wildlife.⁵⁴ The management of Aboriginal heritage is not specifically required to be included in a function management plan, however the matters to be covered by function management plans is not limited.⁵⁵ Function management plans must go on public exhibition for a period of at least 28 days. A notification inviting submissions on the plan is required to be published in a local newspaper.⁵⁶ You may wish to make a submission recommending that Aboriginal heritage be included as a consideration in the plan.

Generally, access to an Aboriginal place or site on a TSR will be unrestricted during the day. Permission from the local LHPA is needed for things like overnight camping and other recreational activities, seed collecting, firewood collecting and taking water.⁵⁷ Hunting is generally banned but dogs are allowed.⁵⁸

⁴⁷ *Crown Lands Act 1989* (NSW), ss. 81, 88, 92.

⁴⁸ *Crown Lands (General Reserves) By-Laws 2006* (NSW), Part 3 Division 1.

⁴⁹ *National Parks and Wildlife Act 1974* (NSW), s. 84.

⁵⁰ *National Parks and Wildlife Act 1974* (NSW), s. 85.

⁵¹ *Crown Lands (General Reserves) By-Laws 2006* (NSW), cl. 22.

⁵² *National Parks and Wildlife Act 1974* (NSW), ss. 86, 90.

⁵³ *Rural Lands Protection Act 1998* (NSW), s. 85; <http://www.lhpa.org.au/travelling-stock-reserves>

⁵⁴ *Rural Lands Protection Act 1998* (NSW), s. 45.

⁵⁵ *Rural Lands Protection Act 1998* (NSW), s. 45.

⁵⁶ *Rural Lands Protection Act 1998* (NSW), s. 46.

⁵⁷ *Rural Lands Protection Regulation 2010* (NSW), cl. 27; <http://www.lhpa.org.au/travelling-stock-reserves/tsr-use-of-and-permits>

⁵⁸ *Crown Lands Regulation 2006* (NSW), cl. 22.

TSRs may be claimed as Aboriginal land⁵⁹ but must be leased back to the Crown for continued use as a TSR. Rent is paid to the LALC for continued public use of the TSR.⁶⁰

The NPWS is responsible for the care and management of Aboriginal objects and places on all land in NSW, including on TSRs. Permission may be required to use an Aboriginal place or site to avoid incurring a penalty for moving or damaging an Aboriginal place or object.⁶¹

Leased Crown Lands

Leases may be granted for exclusive possession over Crown land. Rent is charged on the lease.⁶²

Native title holders or registered native title claimants may hold rights to access fish, hunt or gather on leasehold land, or rights of access for other traditional purposes such as ceremonies. Otherwise, access to leasehold land is generally the same as access to private land.

Note: Native title rights were found to be completely extinguished on perpetual grazing leases granted under the *Western Lands Act 1901* (NSW).⁶³

Community Land

All public land managed by local government, other than a road or Crown land, must be classified as either 'community land' or 'operational land'.⁶⁴ Community land is land that should be kept for use by the general public, whereas operational land will likely be closed to the public (e.g. a Council works depot).⁶⁵

Community land includes areas such as beach foreshores, bushland reserves or sports grounds.⁶⁶ It can include areas of Aboriginal cultural significance.⁶⁷ A plan of management, including objectives for each category of community, land must be made by each council.⁶⁸ The public can make submissions on a draft plan of management.⁶⁹ All activities, including rights of access that take place on the land, must be consistent with the plan of management.

⁵⁹ *Aboriginal Land Rights Act 1983* (NSW), s. 37.

⁶⁰ *Aboriginal Land Rights Act 1983* (NSW), s. 37.

⁶¹ *National Parks and Wildlife Act 1974* (NSW), ss. 86, 90.

⁶² *Crown Lands Act 1989* (NSW), Part 4 Division 3.

⁶³ *Wilson v Anderson* (2002) AILR 44, per Gaudron, Gummow & Hayne JJ at 119.

⁶⁴ *Local Government Act 1993* (NSW), s. 25.

⁶⁵ *Local Government Act 1993* (NSW), Chapter 6 Part 2 Division 2.

⁶⁶ *Local Government Act 1993* (NSW), ss. 25, 26, note at beginning of Chapter 6 Part 2.

⁶⁷ *Local Government Act 1993* (NSW), ss. 36D, 36DA, 36E.

⁶⁸ *Local Government Act 1993* (NSW), ss. 36E-N.

⁶⁹ *Local Government Act 1993* (NSW), s. 38.

Access to Waterways

General

Generally, there is public access to rivers, streams, lakes and beaches for swimming, fishing and boating. Rivers, lakes and streams can be accessed from a boat, by walking along the stream, river or lake bed or via the foreshore from public land. Beaches can be accessed through dedicated paths or beachfront reserves.

There are rights to take and use water without the need for an access licence, water supply work approval or water use approval in the exercise of native title rights.⁷⁰ However, as yet no native title claims over water have been granted in NSW.

The NSW government has established the [Aboriginal Water Initiative](#), which is a program to help improve Aboriginal involvement and representation in water planning and management in NSW. The initiative is financially supported by the Federal government's [Closing the Gap](#) strategy. [Click here](#) for more information about the initiative.

Controlled activities

Activities such as collecting firewood along a riverbank or rebuilding fish traps in a river may need an approval if they come within the definition of 'controlled activity'. Controlled activities include:

- building or carrying out work;
- removing material or vegetation from land;
- depositing material on land; and
- carrying out any other activity that affects the quantity or flow of water in a water source.

It is an offence to carry out a controlled activity without a permit.⁷¹ Interference with the flow of a creek or estuary may also require an approval.⁷²

Marine Parks

NSW Marine Parks⁷³ currently include Cape Byron, Jervis Bay, Lord Howe Island and the Solitary Islands. Sanctuary zones, habitat protection zones, general use zones and special purpose zones in the marine park regulate activities and access to the park. In some zones it is an offence to fish or gather aquatic species. Commercial tours or use of the Marine Park may require a licence.

[See our Fact Sheet on Protected areas](#) for more information about marine parks.

⁷⁰ *Water Management Act 2000* (NSW), s. 55.

⁷¹ *Water Management Act 2000* (NSW), s. 91E.

⁷² *Water Management Act 2000* (NSW), s. 91.

⁷³ Created under the **Marine Parks Act 1997** (NSW); <http://www.mpa.nsw.gov.au/>

Ramsar Wetlands

Ramsar wetlands are listed on the List of Wetlands of International Importance. There are currently 12 [listed wetlands](#) in NSW. Access to such wetlands is in accordance with the plan of management prepared with the land owner. Any activity, such as gathering bird eggs, that is likely to significantly impact on the ecological character of the site must be assessed and approved by the Federal Environment Minister.⁷⁴

Fishing

Recreational fishing requires a recreational fishing licence. However, Aboriginal people are exempt from the need to hold a recreational fishing licence when fishing in fresh or salt water.⁷⁵

Bag limits apply to recreational fishers. Where a ceremony or cultural event is to occur, Aboriginal fishers may [apply to the NSW Department of Primary Industries – Fishing and Aquaculture](#) for an event exemption from the bag limit.⁷⁶ The exemption must be approved before the event, which may be difficult to organise for funerals.⁷⁷ There are no defences based on Aboriginal cultural heritage or tradition for taking threatened or endangered species declared under the *Fisheries Management Act 1994* (NSW).⁷⁸

For more information on fishing activities and the protection of marine species, [see our Fact Sheet on Threatened species & ecological communities.](#)

Glossary

Key to terms used in this Fact Sheet

AHIMS means the [Aboriginal Heritage Management System](#)

AHIP means an [Aboriginal Heritage Impact Permit](#)

Federal Environment Minister means the Federal Minister for the Environment

Forestry Corporation means the [Forestry Corporation of NSW](#)

LALC means [Local Aboriginal Land Council](#)

NPWS means the [NSW National Parks and Wildlife Service](#)

⁷⁴ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 16.

⁷⁵ *Fisheries Management Act 1994* (NSW), s. 34C(2)(f).

⁷⁶ *Fisheries Management Act 1994* (NSW), s. 37.

⁷⁷ More information and forms available at <http://www.dpi.nsw.gov.au/fisheries/aboriginal-fishing/cultural-fishing>

⁷⁸ *Fisheries Management Act 1994* (NSW), s. 21.

NSWALC means [NSW Aboriginal Land Council](#)

NSW Environment Minister means the NSW Minister for the Environment

NTSCORP means the [Native Title Service Provider for Aboriginal Traditional Owners in NSW and the ACT](#)