



Managing 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 have managed the natural environments of NSW for thousands of years. This fact sheet outlines how environmental laws can be used to continue to manage country. It addresses contaminated lands, the dumping of rubbish, water and noise pollution, bush fire mitigation, mining and environmental conservation.

Contaminated land

Contaminated land is land that contains pollutants at above-average levels and may cause harm to humans or the environment.² A public record of all regulated contaminated lands is available on the [NSW Environment Protection Authority \(EPA\) website](#). Sites that are being monitored by the EPA for air, water, noise, and waste impacts can be found on the public register which is available on the [EPA website](#).

The local council is responsible for dealing with contaminated land that doesn't pose a risk of harm. If this is the case, the land may not appear on this register. In this

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

² As defined under the *Contaminated Land Management Act 1997* (NSW), s. 5.

case, the local council can provide information on contaminated land in a s. 149 certificate.³

You must inform the EPA if you become aware of any contamination on your land, even if the contamination was not caused by you.⁴

The EPA can order an investigation into land to establish whether the contamination poses a risk of harm.⁵ Where it is not a significant risk, the local council is responsible for management.

If contamination is found to be present, the person who caused the contamination or the owner of the land⁶ may be issued with a management order requiring them to remediate the land.⁷ An occupier of the land or a person reasonably suspected of causing pollution may be issued a clean-up notice.⁸

Remediation is the responsibility of the person that caused the contamination. If this person cannot be found or identified, responsibility may become that of the current owner of the land.⁹

Remediation includes:¹⁰

- preparing a long-term management plan (if any) for the land;
- removing, dispersing, destroying, reducing, mitigating or containing the contamination of the land;
- eliminating or reducing any hazard arising from the contamination of the land (including by preventing the entry of persons or animals on the land).

Remediation is the responsibility of the person who caused the contamination. If this person cannot be found or identified, responsibility may become that of the current owner of the land.

[See our Fact Sheet on Contaminated land](#) for more information about contaminated land.

Dumping rubbish

It is illegal for transporters of waste to leave their waste anywhere that is not a legal waste facility.

³ *Environmental Planning and Assessment Act 1979* (NSW), s. 149. Councils must provide these certificates upon the payment of the appropriate fee.

⁴ *Contaminated Land Management Act 1997* (NSW), s. 60.

⁵ *Contaminated Land Management Act 1997* (NSW), ss. 7, 9, 10.

⁶ *Contaminated Land Management Act 1997* (NSW), s. 13.

⁷ *Contaminated Land Management Act 1997* (NSW), s. 14.

⁸ *Protection of the Environment Operations Act 1997* (NSW), s. 91.

⁹ *Contaminated Land Management Act 1997* (NSW), s. 12.

¹⁰ *Contaminated Land Management Act 1997* (NSW), s. 4.

Properties can only accept waste if they hold a waste facility licence from the EPA or their local council. The licence can come with a s. 143 notice, which must specify the types of waste the property can accept. If the transporter disposes of a different type of waste, or contaminated waste, the transporter may have to pay for cleaning it up,¹¹ or remediate the land if the contamination causes a 'significant risk of harm'.¹²

If harmful waste is dumped illegally on your property or you suspect it has been dumped elsewhere you must report it to the EPA or the local council.¹³ Waste should not be touched as it may be dangerous. Also, if the site is not disturbed investigators may be able to identify who dumped the waste material.

You may need permission to dump rubbish on your land, depending on the likelihood of it causing environmental damage, and the size, extent and source of the rubbish.¹⁴ To find out if you need permission, contact your local council or the OEH.

Littering in a public place is an offence that carries large fines, with fines more severe if the rubbish is likely to cause harm to people or the environment.¹⁵ It is always safest to check with the local council and the OEH to find out whether you need permission before dumping any rubbish.

You need to check with your local council to confirm the rules regarding things that may be burnt in your area. You must try to minimise the air pollution caused by the burning. This may include taking into account such things as the wind direction and the type of material being burnt.¹⁶

You must never burn some items such as tyres, certain treated timbers, coated wires, paint tins and solvent containers.¹⁷

[See Fact Sheet on Waste management](#) for more information about waste management.

Water pollution

There is a general ban on polluting surface and ground water without permission.¹⁸ Any matter placed in water could be a pollutant depending on the effect the matter has on the water. For example, if the matter makes the water undrinkable for people

¹¹ *Protection of the Environment Operations Act 1997* (NSW), s. 91.

¹² The maximum penalty for polluting or causing pollution of land is: for corporations - \$1,000,000 and a further \$120,000 for each day the offence continues; or for individuals - \$250,000 and a further \$60,000 for each day the offence continues.

¹³ *Protection of the Environment Operations Act 1997* (NSW), Pt. 5.7.

¹⁴ *Protection of the Environment Operations Act 1997* (NSW), s. 144.

¹⁵ The maximum penalty is \$3,300 for an individual and \$5,500 for a corporation. See: *Protection of the Environment Operations Act 1997* (NSW), ss. 145, 145A.

¹⁶ *Protection of the Environment Operations (Clean Air) Regulation 2010* (NSW), cl. 10.

¹⁷ *Protection of the Environment Operations (Clean Air) Regulation 2010* (NSW), cl. 11. For more information, contact the OEH Pollution Line on 131 555 or your local Fire Brigade or Rural Fire Service.

¹⁸ *Protection of the Environment Operations Act 1997* (NSW), s. 120.

or farm animals, or the condition of the water is changed, then the matter pollutes the water.

It is also an offence to place matter where it is likely to get into the water and cause pollution, such as in a drain or gutter or a dry river bed.¹⁹

Polluting waters without a licence is an offence that carries large fines.²⁰ If you are in doubt, you should contact the OEH to see whether you need a licence. If the water pollution harms or is likely to harm the environment, the maximum penalty for an individual may include imprisonment.²¹

[See our Fact Sheet on Air, Water & Noise pollution](#) for more information about water pollution.

Noise pollution

There is no general ban on causing noise, however if noise is 'offensive noise', a police, local council, or OEH officer may issue a 'noise abatement direction'. This is a temporary order that requires you to control the noise. In addition, the local council may issue a noise control notice to place ongoing restrictions on the noise. An offensive noise is one which is harmful to, or likely to interfere unreasonably with, the comfort of a person on another property.²²

If you are affected by noise you can also apply to the Local Court for a 'noise abatement order'.²³

Noise can also be regulated under the conditions of a development consent. [Read our Fact Sheet on Development Applications and Consents](#) for more information about development consents.

Certain noisy activities, such as operating heavy machinery may need a licence from the EPA.²⁴

[See Fact Sheet on Air, Water & Noise pollution](#) for more information about noise pollution.

¹⁹ *Protection of the Environment Operations Act 1997* (NSW), Dictionary.

²⁰ The maximum penalty for a corporation is \$1,000,000 with an additional maximum penalty of \$120,000 for each day the offence continues. For individuals, the maximum penalty is \$250,000 with a \$60,000 additional penalty for each day the offence continues. See: *Protection of the Environment Operations Act 1997* (NSW), s. 123.

²¹ The maximum penalty for environmental harm is \$5,000,000 for a company and \$1,000,000 and/or 7 years imprisonment for an individual. See: *Protection of the Environment Operations Act 1997* (NSW), s. 119.

²² Offensive noise is defined in the dictionary of the *Protection of the Environment Operations Act 1997* (NSW).

²³ *Protection of the Environment Operations Act 1997* (NSW), s. 268.

²⁴ *Protection of the Environment Operations Act 1997* (NSW), s. 42, Schedule 1. Check with the OEH to see if you require a licence.

Bushfire mitigation

Approval is required to light a fire during the ‘[bush fire danger period](#)’, which is usually from 1 October to 31 March.²⁵ However, the danger period may be varied by a local council or OEH so you should check with your local [Rural Fire Service](#) and OEH for variations, bans and ‘[no burn notices](#)’. You usually need a permit to light a fire during the bush fire danger period, which is available from your local Rural Fire Service [Fire Control Centre](#). You may also need to notify your neighbours and the council. Permits are automatically cancelled if a total fire ban comes into force, or if the fire danger is ‘high’ or above.

Outside the bush fire danger period, you may still need a permit. You may also need to notify your neighbours, the local Rural Fire Service Fire Control Centre²⁶ and the local council, letting them know the location, purpose, period and time of the fire.²⁷ If you live in a built-up area, you must also give your local fire brigade at least 24 hours’ notice.

It is always advisable to contact the Rural Fire Service or council before lighting a fire as failure to notify the required people or obtain a permit, can lead to severe penalties including fines and imprisonment.²⁸

You should also check to see if your area is covered by a [Bush Fire Risk Management Plan](#). These plans are prepared by the Bush Fire Management Committees in various parts of the State and set out requirements for managing risks associated with bush fire. They may impose restrictions on lighting fires in certain places. Restrictions may also be imposed due to a place’s heritage value. If a plan has been prepared for your area, you can get a copy from your Local Council.

You have a legal duty to take certain steps to prevent bushfires. These include any steps that the Bush Fire Management Committee advises you to take, and any steps included in a Bush Fire Risk Management Plan that applies to your land.²⁹

Your local council may issue you with a notice requiring you to do hazard reduction work on your property. You can object to having to comply with a notice,³⁰ and the council’s Fire Control Officer must try and find an acceptable solution with you.³¹ If you are still not satisfied, you can appeal to the Commissioner of the Rural Fire Service.³² Otherwise, it is an offence to not comply with the notice and an officer of

²⁵ *Rural Fires Act 1997* (NSW), s. 81.

²⁶ with at least 24 hours notice.

²⁷ *Rural Fires Act 1997* (NSW), ss. 86-88.

²⁸ *Rural Fires Act 1997* (NSW), ss. 86-88, 92.

²⁹ *Rural Fires Act 1997* (NSW), s. 63.

³⁰ Within seven days of being given the notice. See: *Rural Fires Act 1997* (NSW), s. 67.

³¹ Within seven days of being given the notice. See: *Rural Fires Act 1997* (NSW), s. 67.

³² *Rural Fires Act 1997* (NSW), s. 68.

the local council, fire brigade or Rural Fire Service may enter your property and carry out the work, at your expense.³³

If a fire breaks out on your property, you should make an emergency call immediately by dialling 000 or 112 if you cannot put it out yourself. Also contact the [NSW Fire Brigade](#) on (02) 9265 2999 to find your local service office, the NSW [Rural Fire Service](#) Information Line on 1300 679 732, the Forestry Corporation, or OEH for assistance.³⁴

Officers of the Rural Fire Brigade have powers to do various things on private property to control fires and minimise danger, including: pulling down buildings, structures and fences, removing living or dead vegetation, establishing fire breaks, and using water from your property without payment.³⁵

The Rural Fire Brigade must give you written notice of its intention to come onto private property, unless entry is needed urgently.³⁶

Managing mining

As a general rule, the Crown owns the minerals on or under your land, including native title land and LALC lands.³⁷ The consent of the landowner is not required for mining to be approved. The mining industry is the only industry in Australia where a private company can develop a person's land without their consent. The native title right to negotiate cannot stop the approval of a mine.

Landowners are entitled to compensation if mining or petroleum activities affect the surface of their land.³⁸ Native title holders and registered native title claimants are entitled to compensation if mining or petroleum activities impact on their native title rights and interests.³⁹ However, there is no compensation for the destruction of Aboriginal places, objects, artefacts or relics under an AHIP. Any type of partnership, agreement or contract may be entered into with mining companies to manage the impacts of their activities on Aboriginal rights, interests or heritage.

There are a number of titles that can be issued by the NSW Department of Trade and Investment, Regional Infrastructure and Services – Resources and Energy that allow for the exploration and extraction of minerals (such as coal and gold) and petroleum (such as coal seam gas), and in many instances approval from either the NSW Department of Planning and Environment or a local council will be required for such activities.

³³ *Rural Fires Act 1997* (NSW), s. 70. Failure to comply with a notice also comes with a maximum penalty of \$5,500 or 12 months imprisonment. See: *Rural Fires Act 1997* (NSW), s. 66.

³⁴ The maximum penalty for not doing so is a fine of \$2,200 and/or 6 months imprisonment. See *Rural Fires Act 1997* (NSW), s. 64.

³⁵ *Rural Fires Act 1997* (NSW), s. 22.

³⁶ *Rural Fires Act 1997* (NSW), Pt 2, Div 3.

³⁷ The *Native Title Act 1993* (Cth) reserves state ownership of mineral rights.

³⁸ *Mining Act 1992* (NSW), s. 265; *Petroleum (Onshore) Act 1991* (NSW), s. 107.

³⁹ *Mining Act 1992* (NSW), s. 267A; *Petroleum (Onshore) Act 1991* (NSW), s. 112A.

A number of restrictions are placed on mining activities. Mining operations are not permitted within 200 metres of a person's home, within 50 metres of a garden or on any land improvement such as a dam without the written consent of the land occupier.⁴⁰ A land occupier may not take back their consent after it has been granted.

Conditions on a mining approval may also include restrictions on activities to protect Aboriginal cultural heritage.⁴¹ Holders of exploration licenses must get a permit from the OEH before disturbing or harming any Aboriginal object or place in the exploration area.⁴² For other licences and leases, approval may be required under the *Environmental Planning and Assessment Act 1979*, which may need environmental impact and heritage impact assessment.⁴³ Native title holders and registered native title claimants have a right to negotiate how exploration and mining goes ahead on native title lands.⁴⁴ Restrictions may include how and where mining happens, protection or relocation of Aboriginal objects or other agreements for employment or compensation. This right to negotiate cannot stop the approval of a mining or petroleum project.

If the conditions of a mining lease or licence are breached, you can report the breach to the Industry and Investment NSW, the Department of Planning and Environment, your local council, or the Office of Environment and Heritage. You should also contact the mine directly. Any person may bring an action in the NSW Land and Environment Court to remedy or restrain a breach of environmental or planning laws.⁴⁵

[See our Fact Sheet on Mining](#) for more information about mining. [See our Fact Sheet on Coal Seam Gas \(CSG\)](#) for more information about coal seam gas (CSG). See [Mining law in New South Wales: A guide for the community](#) for a comprehensive guide to mining and CSG law in NSW.

Managing environmental conservation

Three of the six Commonwealth national parks in Australia are joint-managed by Aboriginal people.⁴⁶ In NSW, Aboriginal people may own and jointly manage national parks and other reserves.⁴⁷

⁴⁰ *Mining Act 1992* (NSW), ss. 31, 49, 62, 118.

⁴¹ *Environmental Planning and Assessment Act 1979* (NSW), s 80A(1).

⁴² *National Parks and Wildlife Act 1974* (NSW) (NSW), ss. 87, 90.

⁴³ For more information on the application process, contact EDO NSW, the NSW Aboriginal Land Council or the Minerals Council at www.nswmin.com.au.

⁴⁴ *Native Title Act 1993* (Cth), Pt 2, Div 3, Subdiv P.

⁴⁵ *Environmental Planning and Assessment Act 1979* (NSW), s. 123 and the *Protection of the Environment Operations Act 1997* (NSW), s. 253.

⁴⁶ <http://www.environment.gov.au/parks/parks/index.html>

⁴⁷ *National Parks and Wildlife Act 1974* (NSW), Part 4A and the *Aboriginal Land Rights Act 1983* (NSW), s. 36A.

Certain protected areas⁴⁸ can be transferred to the Local Aboriginal Land Council (LALC) and leased back to the National Parks and Wildlife Service (NPWS) for continued use as a national park or other reserve.⁴⁹ Aboriginal owners and representatives of the LALC negotiate the terms of the lease and rent is paid by the NPWS into special accounts for each park to compensate the Aboriginal owners for loss of full use and enjoyment of the lands. The rent must be spent within the park in line with the Plan of Management. Aboriginal owners jointly manage the reserve as a majority on a board of management with the LALC and NPWS.

In addition, the *Native Title Act 1993* allows for the registration of [Indigenous Land Use Agreements](#) which are generally initiated by native title holders or claimants. These allow for the joint management of both Commonwealth and State protected areas.⁵⁰ Memoranda of Understanding may also be negotiated between any party for joint or co-management of land.

Voluntary Conservation

There are a number of programs through which landholders may voluntarily conserve areas of ecological value on their properties, some of which are listed here. [See our Fact Sheet on Conservation on Private Land](#) and [A Guide to Private Conservation in NSW](#) for more information about conservation on private land.

Conservation Agreements

A [Conservation Agreement](#) is a statutory covenant which is attached to the title of the land.⁵¹ The land remains in the ownership of the landholder but the landholder and any future purchasers are required to manage the property in accordance with the conservation agreement.

NSW Environmental Trust: Protecting Our Places Program

The [Protecting Our Places](#) program aims to restore or rehabilitate Aboriginal land or land that is culturally significant to Aboriginal people. It also aims to educate communities about the local environment and the value Aboriginal communities place on their natural environment.⁵²

Biobanking

Aboriginal groups own and continue to acquire areas of land with significant biodiversity value. Aboriginal landowners have a duty to care for this country, but are often required to also provide employment and economic advancement for their communities.

⁴⁸ Being areas under Schedule 14 of the *National Parks and Wildlife Act 1974* (NSW).

⁴⁹ *National Parks and Wildlife Act 1974* (NSW), s. 71F.

⁵⁰ *Native Title Act 1993* (Cth), s. 24BI.

⁵¹ *National Parks and Wildlife Act 1974* (NSW), s. 69B.

⁵² For more information, contact the Trust's Aboriginal Programs Officer on 02 8837 6399 or at 'Environmental Trust' PO Box 644, PARRAMATTA NSW 2124; <http://www.environment.nsw.gov.au/grants/pop.htm>

The Biodiversity Banking and Offsets Scheme ([BioBanking](#))⁵³ is an option available to landholders who wish to generate tradeable credits by committing to actively preserving the biodiversity on their properties. The credits that are generated can be sold on the market and used to offset the destruction of biodiversity elsewhere. [See our Fact Sheet on BioBanking](#) for more information about BioBanking.

Property Vegetation Plans

[Property vegetation plans](#)⁵⁴ are a way to authorise the clearing of native vegetation but can also be used to conserve native vegetation and may provide the landholder with access to financial incentives such as grants to help fund conservation practices. Contact your [Local Land Services](#)⁵⁵ for more information, or see [Fact Sheet on Clearing Vegetation](#).

Nature Conservation Trust Agreements

The [Nature Conservation Trust](#)⁵⁶ aims to encourage conservation on privately managed land in partnership with land managers. The Trust buys property of high conservation value, places a conservation covenant on it and then sells the property. The Trust may also enter into legally binding conservation agreements with landholders to manage land for the protection of natural heritage.⁵⁷

Indigenous Protected Areas

The [Indigenous Protected Areas program](#) supports Indigenous landowners to manage their lands for the protection of natural and cultural features in accordance with internationally recognised standards and guidelines. The program is part of the [National Reserve System](#) program and the national [Caring for our Country](#) funding scheme.⁵⁸

Tax Incentives and Rate Relief

Donations to eligible environmental bodies of property valued at over \$5,000⁵⁹ enable the donor to gain an income tax deduction. Gifts granted under a will attract a capital gains tax exemption.

Also, if a landholder enters a perpetual conservation covenant, they may be able to gain an income tax deduction for any decrease in land value as a result of entering into the covenant, and capital gains tax provisions will apply as if it were a sale or gift of land. The value of the deduction can be spread over five years.

⁵³ Under the *Threatened Species Conservation Act 1995* (NSW).

⁵⁴ *Native Vegetation Act 2003* (NSW), Part 4.

⁵⁵ <http://www.lls.nsw.gov.au/>.

⁵⁶ Established by the *Nature Conservation Trust Act 2001* (NSW).

⁵⁷ Rate relief is available for land with a conservation covenant.

⁵⁸ <http://www.nrm.gov.au/about/caring/index.html>

⁵⁹ Including land, building, shares, and vehicles.

Glossary

Key to terms used in this Fact Sheet

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

EPA means NSW Environment Protection Authority

LALC means [Local Aboriginal Land Council](#)

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