



# Accessing Country



This Fact Sheet provides information about Aboriginal people accessing different types of land in NSW as well as providing an overview of legislation relating to Aboriginal people hunting, fishing and gathering on Country.

It is one of a series of Culture and Heritage Fact Sheets which have been developed for Local Aboriginal Land Councils (LALCs) and the Aboriginal community by the NSW Aboriginal Land Council (NSWALC).

Please Note: While all care has been taken in the preparation of this document, it is not a substitute for legal advice. The information in this Fact Sheet is current as of February 2016.

## Gaining access to land

The legal rights of Aboriginal people to access land and water depends on the legal status of that land or water. Prior to seeking access to lands it is important to find out who the lands or water are owned and/or managed by.

## Making access agreements

The *Aboriginal Land Rights Act 1983* (NSW) (ALRA) provides avenues for Local Aboriginal Land Councils to pursue access to land to hunt, gather or fish for domestic purposes. ***This can be both public and private land.***

Section 47 of the ALRA allows LALCs to negotiate agreements with the owner, occupier or person in control of any land to permit specified Aboriginal community members or groups, to gain access to land to hunt, gather and fish.

There are also provisions under the *Native Title Act 1993* (Commonwealth) that may allow for Registered Native Title claimants and Native Title holders to negotiate access agreements over places subject to native title claims<sup>1</sup>. Native title holders may also have the right to access country under traditional laws and customs.

## Negotiating an Access Agreement under the ALRA

- 1. Find out who owns, controls or occupies the land:** Information on land ownership may be accessed at your local council or through NSW Land and Property Information. Contact NSWALC for further assistance.
- 2. Approach the landholder with a request:** It is important to take into consideration that landholders may not be aware of the access provisions in the ALRA. It may be useful to provide the landholder with information about the ALRA and organise a meeting to discuss reasonable conditions for access. This may include suitable times to access specific locations, the number of people and vehicles, and preferred communication methods.

### What does an access agreement under the ALRA allow?

An access agreement will allow entry and use of the relevant land for the purpose specified in the agreement. ***NOTE: There are a number of laws that may restrict hunting, fishing and gathering on certain lands and waters, and***

**licences or permits may be required. See below for further information.**

### **What happens if an access agreement cannot be negotiated?**

If the LALC and the landholder are not able to come to an agreement regarding access terms, the LALC may seek a permit from the NSW Land and Environment Court (**the Court**) 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.<sup>ii</sup>

### **How does the Court issue access permits?**

The LALC lodges an application for an access permit determination with the Registrar of the ALRA, who then lodges the application with the Court.

Any person who is likely to be affected by the issue of an access permit is provided notice by the Court, in order to assess the impact of granting access to the land in question.

The Court assesses the application and determines whether to issue an access permit. The access permit may be issued subject to conditions.

### **Key types of Public Land in NSW<sup>iii</sup>**

Below is a summary of key types of public lands in NSW, and the government departments and agencies who can be contacted about accessing lands.

**National parks** are areas of land reserved by the NSW Government under the *National Parks and Wildlife Act 1974* (NSW) (**NPW Act**), managed for conservation purposes and public enjoyment. They can protect ecosystems, native animals, areas of natural and cultural significance and aquatic reserves. National parks are generally managed by the National Parks and Wildlife Services (**NPWS**) area of the NSW Office of Environment and Heritage (**OEH**). Entry fees may be charged.

**Local National Parks offices can be contacted to discuss accessing parks for cultural purposes,**

**support for undertaking cultural or educational activities, waiving fees for accessing parks, and any approvals or licences that may be required.**

**Aboriginal areas** reserved under the NPW Act are to be managed to allow the use of the area by Aboriginal people for cultural purposes. Most Aboriginal areas have unrestricted access, although some sites have been fenced. The local National Parks and Wildlife Office should be contacted to access fenced sites. There are currently 24 Aboriginal areas in NSW.<sup>iv</sup>

**Aboriginal Places** may be also be gazetted under the NPW Act, and are places that '*is or was of special significance with respect to Aboriginal culture*'.<sup>v</sup> The Minister administering the NPW Act may declare any lands an Aboriginal Place. There are currently 104 Aboriginal Places listed in NSW.<sup>vi</sup>

**Nature reserves** are areas reserved under the NPW Act of special scientific and conservation interest, set up to mainly protect their native plant and animal communities. Nature reserves are generally managed by the NPWS/OEH.

**State conservation areas** are areas reserved under the NPW Act, often containing important natural environments, which have been set aside for conservation, public enjoyment and potential exploration. State conservation areas are generally managed by the NPWS/OEH.

**State forests** are managed by the Forestry Corporation of NSW. Access to these lands is generally permitted with restrictions attached to certain activities.

**Crown land** is land that is owned by the NSW State Government. There are different types of Crown land that may be allocated to public uses such as camping and recreation areas that may be managed by different government agencies, Crown Reserve Trusts or corporations.

Crown Land that is not covered by a lease, license or has otherwise been dedicated, reserved or proclaimed for a specific purpose is generally controlled by the Crown Lands Division of Trade and Investment NSW.

Travelling Stock Reserves are parcels of Crown lands reserved under legislation for use by travelling stock and are generally managed by Local Land Services.

Leased Crown land owners such as an agricultural lease, or a western lands lease may be approached as a private landholder for negotiating access agreements.

**Community land** is land reserved by Local Government in a Local Environmental Plan (LEP) and includes areas such as beach foreshores, bushland reserve or sports grounds. It can also include areas of Aboriginal cultural significance. Community land is generally managed by Local or Shire Councils.

**Waterways** are generally managed by Local Councils according to the *Coastal Protection Act 1979 (NSW)*<sup>vii</sup> and include the coastal zone and public lands along streams and rivers. Generally, there is public access to rivers, lakes, streams and beaches for a variety of activities.

**Marine parks** are managed by the NSW Marine Parks Authority and have been established to protect biodiversity. There are 6 Marine Parks in NSW. Each park has different laws for activities permitted.

### Hunting, Fishing and Gathering

The right to hunt, fish and gather is a significant component of Aboriginal culture. These rights have been recognised in legislation that generally permits these activities. However, **it is important to note that some restrictions may apply.**

Usually, animals and plants within a national park or similar area are protected. There are general restrictions on the carrying, licence

and use of firearms and these apply to Aboriginal people when hunting.<sup>viii</sup>

**Hunting:** Aboriginal people and their dependents (whether of Aboriginal descent or not) are exempt from certain offence provisions in the NPW Act relating to to 'harming' animals, and using hunting devices when hunting for their own domestic purposes<sup>ix</sup>. This applies to areas within wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement. However, it is important to note that other offence provisions may still apply.

**Please note:** Licences for certain hunting devices such as firearms are still required as are licences from the OEH for taking **threatened species**<sup>x</sup>. A licence from the NSW Game Licensing Unit is required for hunting **game on public land** unless you are a member of a LALC, or in the company of such a member, undertaking cultural hunting within your LALC's boundaries<sup>xi</sup>.

Hunting in national park or historic sites requires a licence issued by OEH unless the hunting is carried out on lands jointly managed under Part 4A of the NPW Act and is carried out by an Aboriginal Owner of the lands (or by any Aboriginal person with the consent of such an Aboriginal Owner) for domestic, ceremonial or cultural purposes<sup>xii</sup>. Firearms restrictions will still apply.

**Fishing:** In general, fishing activities must be compliant with provisions of the *Fisheries Management Act 1994 (NSW)*. In NSW, an Aboriginal person is exempt from permit and licensing requirements for both saltwater and freshwater fishing activities, **if they are undertaking traditional cultural fishing for domestic use in line with the current Interim Compliance Policy**. Cultural fishing is still subject to prescribed methods and bag/possession limits.

For further information see ['Fishing Rights Fact Sheet 1: Aboriginal Cultural Fishing in NSW'](#). Some additional restrictions may apply when

fishing in Marine Parks or Aquatic Reserves. For more information see NSWALC '[Fishing rights Fact Sheet 2: Marine Parks and Aquatic Reserves](#)'.

**Gathering:** Aboriginal community members and their dependents (whether of Aboriginal descent or not) are generally permitted to pick and possess flora for their own domestic purposes without obtaining licences or permits to do so, provided the gathering or harvesting does not unreasonably interfere with the plant's means of reproducing and where woody species are concerned does not significantly harm the plant<sup>xiii</sup>. This applies to areas within wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement. **Please note:** Where threatened species are concerned, a licence from OEH is required<sup>xiv</sup>.

**Defence to prosecution:** There is also a defence to prosecution for offences relating to threatened species, populations and ecological communities available to Aboriginal people undertaking traditional Aboriginal cultural activities under the NPW Act<sup>xv</sup>.

**Native title defence:** under the Native Title Act there is a defence available to native title holders who are charged with an offence of hunting, fishing, or gathering without a licence or permit. This defence is available to Aboriginal people exercising their native title rights in relation to land or waters.<sup>xv</sup>

### **Parks under Joint Management arrangements**

Aboriginal owners of parks handed back under Part 4A of the NPW Act can hunt, fish and gather without a permit (for further information see Fact Sheet 3: Joint Management of National Parks (Part 4A)).

### **Where can I get more information? NSWALC**

Website: [www.alc.org.au](http://www.alc.org.au)  
Phone: (02) 9689 4444  
Email: [policy@alc.org.au](mailto:policy@alc.org.au)

### **NSW Office of Environment and Heritage and National Parks and Wildlife Service**

Website: [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)  
Phone: 131 555 or 1300 361 967

The NSW OEH website threatened species profile search can assist in identifying threatened and non-threatened species: [www.environment.nsw.gov.au/threatenedSpeciesAPP](http://www.environment.nsw.gov.au/threatenedSpeciesAPP).

### **Office of the Registrar of the Aboriginal Land Rights Act 1983 (NSW)**

Website: [www.oralra.nsw.gov.au](http://www.oralra.nsw.gov.au)  
Phone: 02 9562 6327  
Email: [adminofficer@oralra.nsw.gov.au](mailto:adminofficer@oralra.nsw.gov.au)

### **Crown Lands (Trade and Investment NSW)**

Website: [www.crownland.nsw.gov.au](http://www.crownland.nsw.gov.au)  
Phone: 1300 886 235  
Email: [cl.enquiries@crownland.nsw.gov.au](mailto:cl.enquiries@crownland.nsw.gov.au)

### **Local Land Services**

There are 11 Local Land Services across NSW. Website: [www.lls.nsw.gov.au](http://www.lls.nsw.gov.au)  
Phone: 1300 795 299

### **EDO NSW**

EDO NSW is a specialist public interest legal centre that may be able to provide free legal advice, and have developed a number of legal guides and fact sheets for communities.

Website: [www.edonsw.org.au](http://www.edonsw.org.au)  
Phone: (02) 9262 6989

### **Marine Parks Authority**

Website: [www.mpa.nsw.gov.au](http://www.mpa.nsw.gov.au)  
Phone: 1300 550 474  
Email: [marine.environment@dpi.nsw.gov.au](mailto:marine.environment@dpi.nsw.gov.au)

### **NTSCORP – NSW native title service provider**

Website: [www.ntscorp.com.au](http://www.ntscorp.com.au)  
Phone: 02 9310 3188 or freecall 1800 111 844  
Email: [information@ntscorp.com.au](mailto:information@ntscorp.com.au)

<sup>i</sup> For more information about native title claims, contact NTSCORP.

<sup>ii</sup> *Aboriginal Land Rights Act 1983* (NSW), section 48.

<sup>iii</sup> <http://www.environment.nsw.gov.au/parktypes/typesofparks.htm>

<sup>iv</sup> A list of Aboriginal areas is available on the OEH website at: <http://www.environment.nsw.gov.au/nationalparks/parktypes.aspx?type=aboriginalarea>

---

<sup>v</sup> *National Parks and Wildlife Act 1974 (NSW)*, section 84

<sup>vi</sup> A list of Aboriginal Places is available on the OEH website: <http://www.environment.nsw.gov.au/aboriginalplaces/>

<sup>vii</sup> Soon to be replaced with a new coastal management legislative framework. See: the *Coastal Management Bill 2015 (NSW)*.

<sup>viii</sup> *Firearms Act 1996 (NSW)*.

<sup>ix</sup> *National Parks and Wildlife Regulation 2009 (NSW)* clause 72.

<sup>x</sup> *Threatened Species Conservation Act 1995*, section 91.

<sup>xi</sup> *Game and Feral Animal Control Act 2002 (NSW)*, s17(1)(c)

<sup>xii</sup> *National Parks and Wildlife Act 1974 (NSW)*, section 45

<sup>xiii</sup> *National Parks and Wildlife Regulation 2009 (NSW)* clause 75.

<sup>xiv</sup> See footnote x.

<sup>xv</sup> *National Parks and Wildlife Act 1974 (NSW)* Part 8, section 118G.

<sup>xv</sup> *Native Title Act 1993 (Cth)* s 211.