



The Legalities of Taking Action

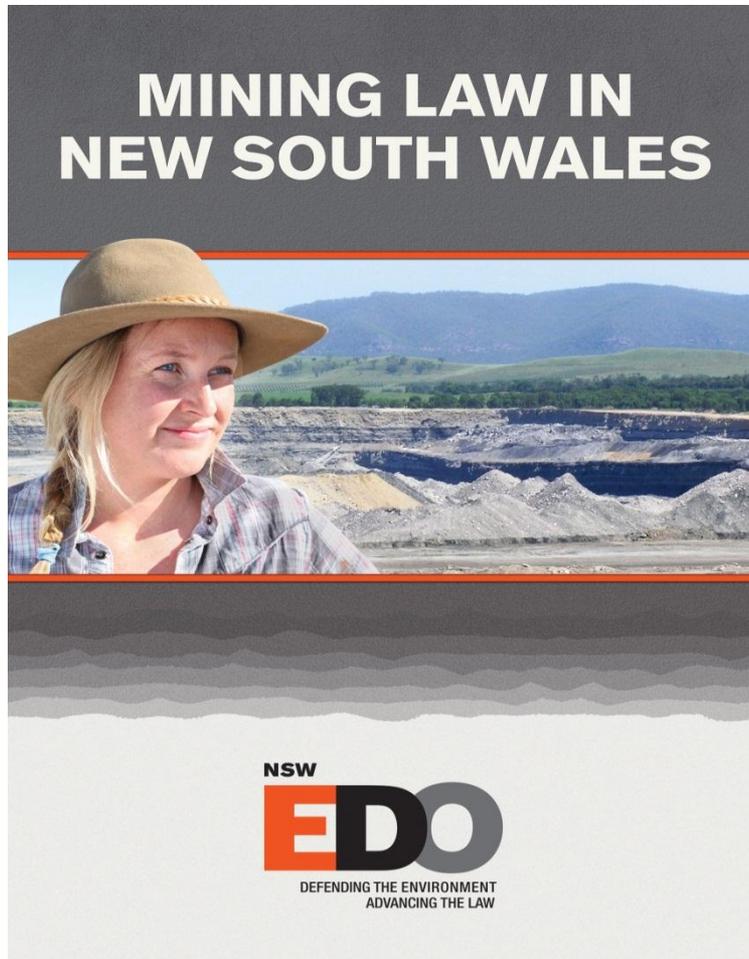
North West October 2014



About EDO NSW

- A community legal centre specialising in public interest environmental law.
- We help people who want to protect the environment through law.
- Our reputation is built on:
 - **Successful environmental outcomes using the law**
With nearly 30 years' experience in environmental law, EDO NSW has a proven track record in achieving positive environmental outcomes for the community.
 - **Broad environmental expertise**
EDO NSW is the acknowledged expert when it comes to the law and how it applies to the environment.
 - **Independent and accessible services**
As a non-government and not-for-profit legal centre, our services are provided without fear or favour.

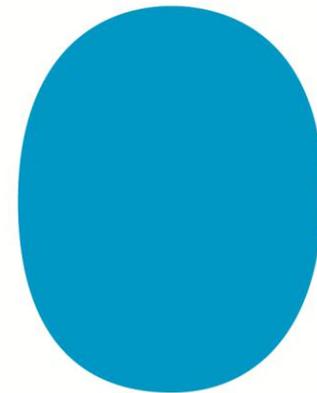
EDO NSW publication on mining & CSG law



Outline

- Possible Civil & Criminal Offences
- Police Powers/Responsibilities
- Going to Court

civil and criminal offences



Outline

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1. Unlawful Assembly
2. Obstruction
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1. Unlawful assembly

- General right to peacefully assemble in any public place
- Unlawful assembly – where the safety or the rights and freedoms of others are compromised
- Can ‘authorise’ assembly by giving notice to the Police (then District or Supreme Court)
- Must be carried out “substantially in accordance with” notice
- Not unlawful just because no notice – must be dangerous, disruptive or intimidating, disturbing the peace
- **Offence** in NSW to knowingly join or continue in an unlawful assembly, or to carry arms in such an assembly
- **Maximum penalty** \$550 fine or six months imprisonment, or both (or double this for carrying arms)

2. Obstruction

- **Offence:** “wilfully prevent, in any manner, the free passage of a person, vehicle or vessel in a public place”
- Considerations: A matter of interpretation based on the facts (eg can people go around the protest?)
- **Defence:** Reasonable excuse
- **Maximum penalty:** fine of up to \$440
- Victim’s compensation – some companies seeking this now
- **Offence - Road Rules – used in Piliga to date**
 - A pedestrian must not unreasonably obstruct the path of any driver or another pedestrian.
 - **Maximum penalty:** \$2,200.

3. Nuisance

- 1) **Private nuisance** - when someone substantially and unreasonably interferes with, or disturbs someone else's ordinary and reasonable use of the land they own or occupy
 - Civil offence
 - No direct entry onto the land
 - Eg, unusual or excessive noise

- 2) **Public nuisance** - when a person causes a nuisance which endangers the health, property or comfort of the public generally or obstructs the public in the exercise of their rights
 - Can be criminal or civil offence
 - Most cases concerned with obstruction

4. Entering inclosed lands

- **Offence:** To enter inclosed lands without the consent of the owner or occupier of the land
- **Offence:** To remain on those lands after being requested by the owner, occupier or person apparently in charge of those lands to leave those lands
- “Inclosed lands” - public or private land that is wholly or partly surrounded by a fence, wall
- **Maximum penalty:** \$550
- **Defence:** Lawful excuse (eg, necessity to preserve life or protect property, honest and reasonable mistake)
- If you enter inclosed lands; **and** are required to give name and address but refuse; **then** you may be apprehended by the owner/occupier/person in charge (eg security guard) and taken to the nearest police station
- Also an offence to give a false name and address. The maximum penalty is \$55.

5. Remaining on inclosed lands

- **Offence:** To remain on inclosed lands after being requested to leave by the owner or occupier, or the person apparently in charge of those lands, **and** while remaining on the lands, behaving in an offensive manner
- **Maximum penalty:** \$1,100
- **Defence:** Reasonable excuse
- Same penalties for refusing to give name/address, or giving false name and address

6. Trespass

- Criminal and civil
- “Trespass” - intentional or negligent act which directly interferes with right to exclusive possession of land (including buildings)
- Eg, unlawful entry onto land or buildings which are privately owned

7. Offensive conduct and language

1) Offensive conduct

- **Offence:** To act “in an offensive manner in or near, or within view or hearing of, a public place or a school”
- Calculated to arouse anger, resentment, disgust or outrage in the mind of a reasonable person
- If obviously political - may not be offensive conduct
- Not necessary for anyone to actually be offended
- **Maximum penalty:** \$660 or up to 3 months imprisonment
- **Defence:** reasonable excuse (eg reflex action)

2) Offensive language

- **Offence:** To “use offensive language in or near, or within hearing of, a public place or school”
- **Maximum penalty:** \$660 or up to 100 hours of community service
- **Defence:** reasonable excuse

8. Forestry Offences

- **Offence:** Risk safety of self or others or damage environment
- maximum penalty of \$2,200

- **Offence:** Fail to leave area on being requested by authorised officer
- maximum penalty of \$2,200

- The Forestry Regs are very familiar territory to protestors and their lawyers

9. Intimidation

- **Offence:** To wrongfully and without legal authority:
 - use violence or intimidation towards another person or their family;
 - follow that person around; and
 - hide that person's property to cause them to do (or stop them doing) something they have a right to do
- Is used against non-violent environmental campaigners (eg blockades)
- Video footage of protest can help in answering charges
- **Maximum penalty:** \$5,500 or two years imprisonment, or both

10. Climbing Or Jumping From Buildings

- **Offence:** To climb down or up, ascend, abseil, jump or parachute from any part of the building or other structure if to do so would risk the safety of any other person
- **Maximum penalty:** \$1,000 or imprisonment for 3 months, or both
- **Defence:** Reasonable excuse or lawful purpose

11. Conspiracy

- **Offence:** A conspiracy is the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means
- Example: two or more persons agreed to commit obstruction
- Cannot be used as an alternative to another offence (ie either conspiracy, or the offence, or both)

12. Hindering police and resisting arrest

- **Offence:** To resist or hinder, or to incite someone else to assault, resist or hinder, a member of the police force in the execution of his or her duty, including the making of an arrest
- **Maximum penalty:** 12 months imprisonment or a fine of \$1100, or both
- Resistance or hindrance must be intentional
- Best to comply with any arrest to avoid additional charges (time to contest the grounds for arrest is in court)
- **Further offence:** To resist or wilfully obstruct a police officer in the execution of his/her duty
- **Maximum penalty:** 5 years imprisonment

13. Assaulting police

- **Offence:** To assault, resist, or wilfully obstruct police and other officers in the execution of their duty
- **Offence:** To assault any person, with intent to resist or prevent the lawful apprehension or detention of any person for any offence
- Assault can be both physical and verbal
- Threats of violence to police and other officers in the heat of the moment could have serious consequences
- **Maximum penalty:** 5 years imprisonment

14. Offences under Petroleum (Onshore) Act

136 Other offences

- (3) **A landholder of any land or any other person who:**
- (a) **obstructs** any person prospecting or mining for petroleum in the doing of any act which the person is by or under this Act authorised to do on any such land, or
 - (b) interferes with, removes, destroys or defaces any notice required by this Act or the regulations to be placed on any land, is guilty of an offence.
- Maximum penalty: \$11,000.

Case study: Police v Warrick Jordan

- Mr Jordan was participating in a protest at an Eastern Star Gas drilling site in the Bibblewindi State Forest - Pilliga.
- Mr Jordan harnessed himself to the Drilling Rig on the site. At the end of the day Mr Jordan voluntarily descended and was subsequently arrested and charged.



Image: Warrick Jordan, Pilliga CSG action (courtesy Boudicca Cerese)

Case study: Police v David Ramsey

- 20 June 2012 protester blocked access to a METGASCO site on Pollocks Rd.
- Protestor attached himself to a Bulldozer inside private land. Police Rescue was called to remove Mr Ramsey from the Bulldozer.



Image: Davey Bob Ramsey, Casino CSG action (courtesy Boudicca Cerese)

Police powers and responsibilities

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Generally

- Police have a general obligation to prove they are a police officer, including:
 - giving you their name and place of duty and
 - providing reasons for the exercise of police power
- These powers are:
 - to search or arrest you,
 - to search a ‘registrable vehicle’,
 - to seize property,
 - to stop or detain you,
 - to request your name or the name of someone else,
 - to request you open your mouth or shake your hair, and
 - to request you to submit to a frisk search

Identification

- Police may ask you for your name and address, but in most cases you don't have to comply
- Key exceptions:
 - police are trying to serve a fine default warrant or penalty notice
 - reasonable belief you are able to assist police in relation to a serious crime (Max Penalty: \$220)
 - you are driving a car
 - you are arrested
 - you are the target of an authorisation for the use of special powers under anti-terrorism laws
- **Offence:** Failure to comply in the above circumstances
- **Defence:** Reasonable excuse
- **Maximum penalty:** \$5,500 or 12 months imprisonment, or both

Directions to move on

- Cannot direct to “move on” in public places where an apparently genuine demonstration or protest, procession or organised assembly is occurring
- Can direct people to “move on” in public places if police reasonably believe that conduct:
 - is causing an obstruction
 - constitutes harassment or intimidation
 - is causing or is likely to cause fear to another person or persons
 - drug-related
- Can direct a group to move on – don’t need to repeat warning individually
- **Offence** : to refuse/fail to comply with direction
- **Defence**: Reasonable excuse

Search and seizure

- Police may stop, search and detain you if they reasonably suspect that you possess, in a public place, a dangerous article (such as a gun or explosive) to be used in a serious offence
- Police can frisk search you if they reasonably suspect you have a knife or dangerous implement in a public place
- Police must give their name and place of duty, the reason for the request, and a warning

Police questioning

- Right to remain silent. Can answer 'no comment' except for name and address if arrested
- If you chose to remain silent, say nothing **CONSISTENTLY**
- You do not have to go to the police station for questioning unless you are arrested
- Anything you say at any time may be used in evidence

Arrest

- You will know you are arrested when:
 - you are told by a police officer that you are under arrest, and you are told generally why you are being arrested
 - You voluntarily go with police knowing you are arrested
 - You are physically removed by police
 - You remain in a place indicated by police
- If you do not know why you are being arrested, you should ask
- You do not have to go with police unless you are under arrest

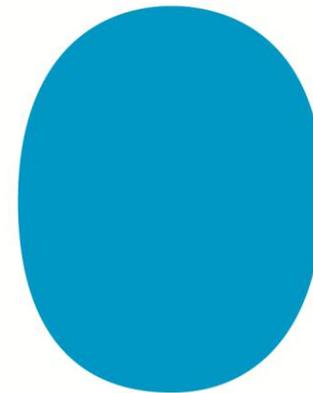
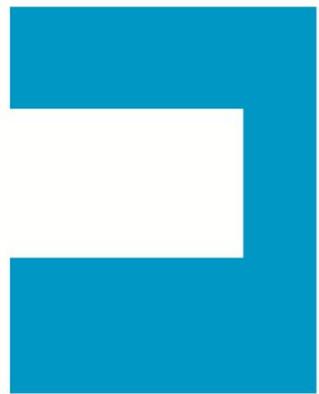
Detention

- Police can hold you at the Police Station for the 'investigation period'
 - a 'reasonable time', but no more than 4 hours or such longer period as extended by an investigation warrant

Your rights if you are arrested

- You have a right to:
 - remain silent
 - a phone call and support
 - an adult present (if you are under 18)
 - someone from the Aboriginal Legal Service (ALS) present if you are ATSI
 - an interpreter (if English is not your first language)
 - be treated as innocent until proven guilty
 - immediate medical assistance if you reasonably request it, or if it appears to the police that you require it
 - refreshments and access to a bathroom
 - lodge a complaint if you are mistreated by police or denied any of the above rights

Going to Court



Going to court

- If you are arrested and charged, you will be given an “infringement notice” with details of the offence and a Court date for your first “appearance”
- At court, you will be asked how you intend to plead – “guilty” or “not guilty”
- Things to do before your first court date:
 - You must **get legal advice** before you decide how to plead, including whether you can ask for a “section 10”
 - Ask for the **police fact sheet** which records their version of events
 - If the police fact sheet is incorrect, contact the police officer early to have it corrected before your court date
 - Start getting together references from friends and family – this will help in sentencing if you are pleading guilty

If you're convicted

- If it's your first offence, and the charge is minor, you may be granted a "Section 10" order
 - finding of guilt, but no conviction recorded
 - not guaranteed – magistrate's discretion
- If a conviction is recorded it will show up on a police check for a period of 10 years from the date of the conviction
- These checks may be required for certain jobs (eg, working with children)
- If you are convicted of a crime punishable by imprisonment, or serve time in prison, the 10 years starts again
- 3 years for children

Firearms Licence

“Fit and Proper” Person

- A danger to public safety – Breach of the peace

Certain criminal convictions automatically disqualify from owning a firearm.

- Sexual offences
- Violent offences
- Offences related to prohibited drugs
- Robbery
- Terrorism-related offences
- Offences relating to organised crime and criminal groups
- Firearms or weapons offences
- Fraud, dishonesty and stealing offences
- If you have been convicted of a prescribed offence within the last 10 years, your firearms licence application will be refused, and you will be required to surrender any firearms you possess.

Free legal advice, fact sheets and updates

- EDO NSW runs a free Environmental Law Advice Line
 - Monday - Thursday
 - 2pm-5pm
 - 02 9262 6989 or 1800 626 239
- Fact Sheets are available on our website:
 - www.edonsw.org.au
- For updates on environmental law and policy, sign up to our weekly eBulletin

Support our work

- Your support for EDO NSW will help us to:
 - Provide legal advice and representation;
 - Promote changes to environmental laws; and
 - Provide community legal education.
- Donations are tax deductible
- <http://www.givenow.com.au/edonsw>