



Industry &  
Investment

## **Fossicking:**

A guide to fossicking in New South Wales





## Guidelines for Fossicking

Fossicking is the small scale search for and collection of, minerals, gemstones or mineral bearing material from the surface (or by digging from the surface) with hand-held implements. This activity may only be undertaken for recreational, tourist or educational purposes.

Fossicking offers an opportunity to discover the beauty and diversity of this state's mineral wealth. It combines leisure, pleasure and 'treasure' all in one. Best of all, no licence is required under the *Mining Act 1992*.

However, some basic rules must be followed.

In these guidelines the NSW Department of Industry and Investment is referred to as Industry & Investment NSW.

### What legislation governs fossicking in NSW?

The main provisions that apply to fossicking are Section 12 of the [Mining Act 1992](#) and Clause 12 of the *Mining Regulation 2010* ([link](#)).

#### Other relevant legislation

As a fossicker you must ensure that you comply with all relevant legislation.

Other Acts that apply to fossicking include: the *Forestry Act 1916*, *Native Title Act 1993* (*Commonwealth*), *Fisheries Management Act 1994*, *National Parks and Wildlife Act 1974* (in relation to Aboriginal cultural heritage), *Water Management Act 2000* and *Protection of the Environment Operations Act 1997*.

See below for further information on the *Forestry Act 1916* and the *Fisheries Management Act 1994*.

If you require further information about the *National Parks and Wildlife Act 1974*, *Water Management Act 2000* and the *Protection of the Environment Operations Act 1997* ([links](#)) you should contact the Department of Environment, Climate Change and Water.

### What techniques can be used for fossicking?

Fossicking on land or waters that may be subject to native title is restricted by the terms of the *Native Title Act 1993* (*Commonwealth*). Land subject to native title can be taken to be any land other than freehold land, land held under perpetual Western Lands leases and some specific leasehold and reserved lands.

Fossicking can be done on land or waters subject to native title using hand held implements, which include picks, shovels, hammers, sieves, shakers and gold pans. However, regardless of the implements used, no excavation is permitted.

On land or waters that are **not** subject to native title, fossicking is not restricted to hand held implements, but power-operated equipment cannot be used for the purpose of surface disturbance, excavation or processing.

Metal detectors can be used in fossicking activities on any land where fossicking is permitted.

### **What techniques cannot be used for fossicking?**

Neither explosives nor dredges can be used in fossicking.

Power-operated equipment cannot be used on land or in waters for surface disturbance, excavation or processing. Power operated equipment includes mechanical, hydraulic, pneumatic, battery and electrical equipment or machinery.

### **Where can fossicking take place?**

As a general rule, fossicking in accordance with the legislation can take place on any land, provided that permission is obtained from the landowner or land manager, except in National Parks where fossicking is prohibited.

Note: To fossick in State forests you need permission from Forests NSW, in the form of a special purpose permit.

### **What consents/permissions do I need?**

- for private land – the permission of the landholder;
- for Crown land that is managed, controlled or under trusteeship - the permission of the trustee or manager of that public or local authority. To fossick on these lands the consent of the appropriate authority (e.g. Land and Property Management Authority, Forests NSW, local council, Livestock Health and Pest Authorities, Trustees of Commons) is required. Information about the ownership or status of land can be obtained from local councils or the Land and Property Management Authority. You can contact Forests NSW (a division of Industry & Investment NSW) for information about State forest land;
- for land held under a lease, licence or permissive occupancy under the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* or the *Western Lands Act 1900* - the permission of the lessee, licensee or occupant. Information about the ownership and status of land may be sought from local councils or the Land and Property Management Authority;

- for land that is covered by an exploration licence, assessment lease, mining lease, mineral claim or opal prospecting licence under the *Mining Act 1992* – the permission of the titleholder. However, permission is not required from the holder of an exploration licence where the licence is affected by a Fossicking District. Information regarding the location of titles and fossicking districts can be obtained from Industry & Investment NSW's Maitland, Orange and Lightning Ridge offices or by searching the TASMap facility:  
<http://www.minerals.nsw.gov.au/tasmap/>;
- where native title rights and interests in land or waters have been determined to exist under the Commonwealth's *Native Title Act 1993* - the permission of the relevant registered native title body. For information about registered native title claims in NSW go to:  
<http://www.nntt.gov.au/Native-Title-In-Australia/Pages/ACT-New-South-Wales.aspx>.

Fossickers must comply with any conditions or requirements of the landholder. These could include, for example, which tracks to use, which paddocks to avoid, the use of gates, or periods of access.

Note: A landholder cannot permit the carrying out of activities that are prohibited under the *Mining Act 1992*, the *Mining Regulation 2010* or under other legislation.

## Who owns fossicked gems and minerals?

Any publicly owned mineral that is recovered in the course of lawful fossicking becomes the property of the person who found it at the time it is removed from the land on which it was found.

Where minerals are privately owned, ownership of those minerals needs to be agreed between the fossicker and the landholder.

## How much can I take?

Fossicking is limited to taking no more than the amounts prescribed in the *Mining Regulation 2009* during any single period of 48 hours. This includes 10 kg of mineral-bearing material, 5 kg of minerals (other than gold or gemstones), 50 grams of gold (or 5 nuggets of 10 grams or greater) or 100 grams of gemstones. Gemstones refer to Group 6 and Group 7 minerals listed in Schedule 2 of the *Mining Regulation 2010* and include diamond, sapphire, ruby, corundum and opal.

## Other restrictions on fossicking

The *Mining Regulation 2010* also prohibits:

- the damage or removal of any bushrock.
- the disturbance of more than 1 cubic metre of any soil, rock or other material during any single period of 48 hours.

## How should I leave a fossicking site?

Any fossicking site must be left in a clean and tidy condition. If you have disturbed the site you need to restore it as close as possible to its pre-disturbed condition. Soil, rock or other material that has been excavated must be replaced before you make any further excavations. You must remove all refuse, including bottles, cans, etc from the site.

## What happens if I breach fossicking requirements?

If you do not comply with the requirements of the [Mining Act 1992](#) and the *Mining Regulation 2010* ([link](#)), you are liable to a penalty of up to \$5,500 on conviction for each breach.

For fossicking activities in waterways that result in breaches of the *Fisheries Management Act 1994*, you may incur on-the-spot fines or court-awarded penalties of up to \$110,000 for individuals or up to \$220,000 for corporations on conviction, as well as having to pay for aquatic habitat restoration works.

Please refer to 'How do I protect waterways when I fossick?' below to ensure you comply with the *Fisheries Management Act 1994*.

## Personal Protection/Safety

While fossicking you should be aware of personal safety.

The following list highlights some potential safety risks, although it is not an exhaustive list of possible risks or the measures that could be taken to avoid them.

- Appropriate clothing, including a broad-rimmed hat and/or a jumper or raincoat.
- An appropriate sun-protection cream.
- Appropriate eye protection, e.g. goggles or safety glasses when smashing rocks.
- Appropriate/protective sturdy footwear. Good soles provide a sound grip and can help prevent you from slipping. Open footwear, such as sandals, is not appropriate.
- Appropriate hand protection. Gloves help protect your hands.
- Take extreme care when fossicking near old mine workings or pits, and do not enter these sites.
- Avoid visiting isolated areas alone. Always let someone know of your plans.
- An adequate supply of water.
- A basic knowledge of first aid.
- Be aware of logging trucks and other heavy vehicles on some State forest roads.

Note: Personal safety (and the safety of others who might be impacted by fossicking activities) is the responsibility of the persons undertaking fossicking. Industry & Investment NSW is not responsible for the safety of people who are engaged in or impacted by fossicking activities.

## How do I protect waterways when I fossick?

If you fossick, you must take steps to protect the environment, in particular any waterway (including the bank of the waterway) that is likely to be habitat for native fish.

Sediments may be extracted in freshwater areas for the purpose of fossicking. Gemstones and alluvial gold collect in crevices in stream beds and in gravel bars on the insides of stream bends. These may be recovered by panning, but it is more common for the gem-seeker to use sieves made especially for this purpose.

Disturbance to the bed of the waterway and in-stream washing and sorting of materials collected to extract the gemstones can result in direct impacts on aquatic habitats or indirect impacts such as siltation and smothering of in-stream gravel beds and aquatic vegetation. Siltation also reduces water quality for in-stream fauna and can affect the gills of fish, causing respiratory distress or disease.

The *Fisheries Management Act 1994* regulates a range of activities including those that harm the habitat of native fish (including threatened species of fish) and recreational fishing. Following the guidelines and avoiding the activities listed below will assist you in complying with this Act:

- removing or disturbing any material that is important habitat for fish (including threatened species of fish) from the bed or banks of a waterway including woody debris (snags) greater than 3m in length, large cobbles, rocks or boulders (greater than 500mm in diameter) or aquatic vegetation; or
- placing or reshaping any material across a waterway that may obstruct the free passage of fish.

If you wish to undertake recreational fishing while fossicking, please ensure you comply with the fishing regulations as summarised in the [Freshwater Fishing Guide](#) (link).

You should avoid disturbing mud, clay or fine silt that causes significant turbidity in a waterway, as this could lead to a breach of the *Protection of the Environment Operations Act 1997*.

## Fossicking in NSW State forests

State forests are administered by Forests NSW. People wishing to fossick in a State forest must obtain a special purpose permit (link to <http://www.dpi.nsw.gov.au/forests/permits>).

Fossicking is not permitted in the following areas in State forests:

- flora or timber reserves;
- areas zoned Forest Management Zone 1; and
- any areas held under lease under the *Crown Lands (Continued Tenures) Act*, without the consent of the landholder.

Native title has not been extinguished in most State forests. Therefore in most cases excavation is not allowed.

Where Native Title rights and interests have been determined under the Commonwealth's *Native Title Act 1993* to exist in State forests, for example under an Indigenous Land Use Agreement, the fossicking permit applicant is required to consult with the relevant registered native title body before a permit can be issued by Forests NSW. This is particularly the case for fossicking activity in Forests NSW North East Region. Applicants should first contact the North East Region on (02) 6652 0111 on the need for consultation if seeking a permit in this Region.

Permits will not be issued for areas of State forests closed for harvesting, fire fighting or when the forest is officially closed due to extreme weather conditions.

Permits are usually issued for a 12 month period and incur a fee.

Permit holders must:

- a) ensure that the site of any fossicking is left in a clean and tidy condition and that any permitted excavation is filled in before making any further excavations; and
- b) indemnify Forests NSW against claims brought by any person against Forests NSW resulting from any activity carried out by the permit holder.

While fossicking you must not interfere with the rights of other legitimate forest users such as campers, swimmers, hunters or those with permits for organised recreational and research activities. Information about events in State forests can be obtained from Forests NSW. Fossickers must not interfere with and should heed the directions of Forests NSW staff or contactors.

Fossickers should note that some State Forests are open for conservation hunting. To obtain information on these forests visit the Game Council at the following link ([link to http://www.gamecouncil.nsw.gov.au/](http://www.gamecouncil.nsw.gov.au/)).

### **Who do I contact about fossicking in State forests?**

Special purpose permits for fossicking are administered by Forests NSW regional offices. Information about regional offices can be obtained from <http://www.dpi.nsw.gov.au/aboutus/about/office> ([link](#)) or by calling 1300 655 687.

### **Fossicking in Lightning Ridge and White Cliffs**

The basic fossicking requirements apply to fossicking in Lightning Ridge, including the requirement to obtain the titleholder's consent to fossick in an area subject to an Opal Prospecting Licence (OPL) granted under division 2, part 10 of the *Mining Act 1992* or Mineral Claim granted under part 9 of the *Mining Act 1992* (insert [links](#)) at Lightning Ridge.

OPLs and mineral claims are handled by the Lightning Ridge office of Industry & Investment NSW. The office is located at the NSW Miners Association Building, Lot 60 Morilla Street, Lightning Ridge, telephone: 6829 9200. Staff from that office can tell you if there is an OPL or a mineral claim on a particular parcel of land.

### **Legislative provisions under the *Mining Act 1992* and the *Mining Regulation 2010***

#### **Mining Act 1992**

Section 12 of the [Mining Act 1992](#) states that:

- (1) For the purposes of this or any other Act or law, it is declared that fossicking is a lawful activity.
- (2) Subsection (1):
  - (a) does not affect any other Act or law that prohibits, regulates or restricts fossicking or that has the effect of prohibiting, regulating or restricting fossicking and, in particular, does not make fossicking a lawful authority or lawful excuse for the purposes of any such Act or law, and
  - (b) does not confer on any person a right of entry on to land (other than land prescribed by subsection (2A)) for fossicking purposes.



(2A) For the purposes of subsection (2)(b), the prescribed land is Crown land (within the meaning of the *Crown Lands Act 1989*):

- (a) that is not held under a lease, licence or permissive occupancy under the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* or the *Western Lands Act 1901*, and
- (b) that is not under the management or control of a trustee or a public or local authority.

(3) Any publicly owned mineral that is recovered in the course of lawful fossicking becomes the property of the person by whom it is found at the time it is severed from the land on which it is found.

(4) A person must not carry out fossicking on any land the subject of an authority, mineral claim or opal prospecting licence except with the consent of the holder of the authority, claim or licence.

Maximum penalty: 50 penalty units.

(5) Subsection (4) does not apply to the carrying out of fossicking on land the subject of an exploration licence if the land is within a fossicking district.

(6) A person must not carry out fossicking on any land that is, or in waters that are, the subject of an approved determination of native title under the Commonwealth *Native Title Act* to the effect that native title exists, except with the consent of the relevant registered native title body corporate with respect to that native title.

Maximum penalty: 50 penalty units.

### **Mining Regulation 2010**

Clause 12 of the *Mining Regulation 2010* states that:

(1) Any soil, rock or other material that is disturbed in the course of work carried out for the purpose of fossicking for minerals must:

- (a) be removed and stockpiled separately, and
- (b) after completion of the work, be replaced in order to reconstruct the original soil profile.

Maximum penalty: 50 penalty units.

(2) A person must not carry out work that includes any of the following activities for the purpose of fossicking:

- (a) the use of any equipment other than hand-held implements on any land or waters that are subject to native title,
- (b) the excavation or clearing of any land or waters that are subject to native title,

- (c) the use of power-operated equipment for the purpose of surface disturbance, excavation or on-site processing on any land,
- (d) the use of explosives on any land,
- (e) the damage or removal of any bushrock,
- (f) the removal of more than the prescribed amount of material from any land during any single period of 48 hours,
- (g) the disturbance of more than 1 cubic metre of any soil, rock or other material during any single period of 48 hours.

Maximum penalty: 50 penalty units.

**Note.** The language of part of this subclause mirrors the language of part of section 24LA (Low impact future acts) of the [Native Title Act 1993](#) of the Commonwealth. That section refers, in part, to an act (in relation to particular land or waters) that does not consist of, authorise or otherwise involve "the excavation or clearing of any of the land or waters" or "mining (other than fossicking by using hand-held implements)".

(3) In this clause:

**gemstone** means a Group 6 or Group 7 mineral.

**Note.** Group 6 and Group 7 minerals are listed in Schedule 2.

**power-operated** equipment means any equipment powered by mechanical or electrical means.

**prescribed amount**, in relation to material, means:

- (a) 10 kilograms of mineral-bearing material (other than the material referred to in paragraphs (b)–(e)), or
- (b) 5 kilograms of minerals (other than gold or gemstones), or
- (c) 50 grams of gold (except where found as nuggets of 10 grams or greater), or
- (d) 5 nuggets of 10 grams or greater of gold, or
- (e) 100 grams of gemstones.



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